

AFTER RECORDING, RETURN TO:
 First Security Bank, N.A.
 580 State Street
 PO Box 868
 Salem, OR 97308
 ATTN: Nancy Gassner

Vol M99 Page 35918

Loan No. 801-055

\$4,950,000.00

COMMERCIAL TRUST DEED ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT

THIS COMMERCIAL TRUST DEED ("Trust Deed") is made on August 24, 1999, among the Grantor, **HARDER DEVELOPMENT II, LLC**, an Oregon limited liability company whose address is 2735 12th Street S.E., Suite 200, Salem, Oregon 97302 ("Grantor"); the Trustee, ASPEN TITLE & ESCROW, INC. whose address is 525 Main Street, Klamath Falls, Oregon 97601 ("Trustee"); and the Beneficiary, FIRST SECURITY BANK, N.A. whose address is 580 State Street, P.O. Box 868, Salem, Oregon 97308 ("Beneficiary").

GRANTOR, in consideration of the indebtedness recited in this Trust Deed, irrevocably grants, conveys, and assigns to Trustee, in trust, with Power of sale, the following described real property (the "Real Property") commonly known as: Pelican Pointe Assisted Living Center, 615 Washburn Way, Klamath Falls, Oregon

further described as:

Exhibit "A" attached hereto and by this reference incorporated herein.

together with the following, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Real Property covered by this Trust Deed; and all of which, together with the Real Property (or the leasehold estate if this Trust Deed is on a leasehold) are referred to in this Trust Deed as the "Property":

- (a) Any and all buildings, improvements, and tenements now or in the future erected on the Property;
- (b) Any and all previously or in the future vacated alley and streets abutting the Property and all easements, rights, appurtenances, leases or agreements now or in the future existing, however evidenced, conveying all or any portion of the Property, together with all rents and monies due or to become due thereunder;
- (c) Any and all revenues, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the Property now existing or in the future arising or acquired;
- (d) In connection with the Property any and all fixtures, machinery, equipment, engines, boilers, incinerators, building materials, appliances, and goods of every nature whatsoever now or in the future located in, on, used, or intended to be used in connection with the Property, including, but not limited to: those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air, and light; all escalators and elevators and related machinery and equipment; fire prevention apparatus; plumbing and plumbing fixtures; refrigerating and cooking equipment; floor coverings; and cabinets;
- (e) Any and all permits, licenses, franchises, trade names, certificates, and other rights and privileges obtained in connection with the Property;
- (f) Any and all proceeds arising from or by virtue of the sale, lease, or other disposition of any of the Property;
- (g) Any and all proceeds payable or to be payable under each policy of insurance relating to the Property;
- (h) Any and all proceeds arising from the taking of all or part of the Property for any public or quasi-public use under any law, or by right of eminent domain, or by private or other purchase in lieu thereof;
- (i) All Warranties of Title and against encumbrances given by Grantor's predecessors in interest, and Grantor's rights under any policy insuring Grantor's title to the Real Property;
- (j) All other interests of every kind and character which Grantor now has or at any time hereafter acquires in and to the Property, including all other items of property and rights described elsewhere in this Trust Deed.

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This Trust Deed is given as security for the following (collectively the "Indebtedness"):

- (a) The payment of the Indebtedness evidenced by Grantor's promissory note in favor of Beneficiary dated August 24, 1999 (the "Note") and all amendments, renewals, extensions and modifications of the Note, in the principal sum of **FOUR MILLION NINE HUNDRED FIFTY THOUSAND AND NO/100** Dollars (\$4,950,000.00), with interest thereon, with the final payment due on **March 5, 2001**, which is the maturity date of this Trust Deed;
- (b) The payment of all other sums, with interest thereon, advanced in accordance with this Trust Deed to protect the security of this Trust Deed;
- (c) The performance of the covenants and agreements of Grantor contained in this Trust Deed;
- (d) The performance of the covenants and agreements of Grantor contained in the commitment letter and loan agreement, if any, between Beneficiary and Grantor, other documents securing payment of the Note or related to the Indebtedness and any amendments to any of the above (collectively the "Loan Documents");
- (e) The payment of any future advances, with interest, thereon, made by Beneficiary to Grantor pursuant to this Trust Deed;
- (f) The payment of all other present or future Indebtedness and liabilities of all kinds of Grantor in favor of Beneficiary, whether or not related to the Property, and whether fixed or contingent, mandatory or discretionary, joint or several, direct or indirect, primary or secondary, regardless of how created or evidenced, and whether or not related to this transaction, by class or kind or whether contemplated by the parties at the time of granting this Trust Deed. No notice of the continuing grant of this security interest is required to be stated on the face of any such indebtedness or liability.

Beneficiary, at Beneficiary's sole option, may reject any partial payment. Any partial payment which Beneficiary accepts may be held in a non-interest bearing account until Beneficiary receives funds sufficient to equal a complete installment payment, or may be applied to the Indebtedness in any amount and in any order as Beneficiary may determine in Beneficiary's sole discretion. Any partial payment accepted may be co-mingled with other funds held by the Beneficiary.

Beneficiary shall not be responsible for identifying the person, partnership, company, corporation, or other entity (collectively "Person") making any payment as required by the Loan Documents, or for determining the source of any payment paid to the Beneficiary as required by the Loan Documents. Beneficiary reserves the right to accept monies, whether due and owing or paid in advance, from a Person other than Grantor without giving notice to Grantor.

The obligations secured by this Trust Deed may be indexed, adjusted, renewed or renegotiated.

WARRANTIES AND COVENANTS. Grantor warrants, covenants and agrees as follows:

1. Covenant of Title. Grantor covenants that Grantor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property (and, if the Trust Deed is on a leasehold, that the ground lease is in full force and effect without modification and without default on the part of either lessor or lessee), that the Property is unencumbered and that Grantor will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations, easements, and restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Beneficiary's interest in the Property.
2. Funds for Taxes, Insurance and Other Charges; Reserves. Beneficiary requires Grantor to maintain with Beneficiary reserves for the payment of real property taxes and assessments until the Note is paid in full. In addition to the required reserves for real property taxes and assessments, Beneficiary, at Beneficiary's option, may require Grantor to pay to Beneficiary until the Note is paid in full, a sum (the "Funds") as the Beneficiary shall reasonably estimate to be sufficient to produce, at least thirty (30) days prior to the time when payment thereof shall become due of (a) personal property taxes which may be levied on the Property, (b) the yearly water and sewer rates, (c) the yearly ground rents, if any, (d) the yearly premium installments for fire and other hazard insurance, rent loss insurance and such other insurance covering the Property as Beneficiary may require pursuant to this Trust Deed, (e) the yearly premium installments for mortgage insurance if any, (f) if this Trust Deed is on a leasehold, the yearly fixed rents, if any, under the ground lease, (g) the amount of any other charges or assessments which may attain priority over this Trust Deed, and (h) the amount of any other taxes, premiums, assessments and other charges in connection with Grantor or the Property which Beneficiary shall reasonably deem necessary to protect the Beneficiary's interests, (collectively, including real property taxes and assessments which may be levied on the Property, referred to as "Charges") all as reasonably estimated initially and from time to time by the Beneficiary on the basis of assessments and bills and reasonable estimates thereof. Beneficiary initially waives the requirement that Grantor pay Funds to Beneficiary (excluding the requirement that Grantor pay to the Beneficiary funds to be applied to a reserve account for the payment of real property taxes and assessments), provided that this initial Beneficiary waiver may be revoked by Beneficiary, in Beneficiary's sole discretion, at any time upon ten (10) days prior notice in writing to Grantor. No waiver of the requirement that Grantor maintain with Beneficiary reserves for payment of real property taxes and assessments is intended by this initial waiver of the requirement that Grantor pay funds to the Beneficiary. Beneficiary may require Funds for the payment of Charges to be paid by Grantor in a lump sum or in periodic installments, or any combination thereof, at Beneficiary's sole option.

The Funds shall be held by Beneficiary in a non-interest bearing deposit account (including a deposit account at Bank) and the Funds may be commingled with other funds held by Beneficiary. Beneficiary may apply the Funds to pay Charges so long as Grantor is not in breach of any covenant or agreement of Grantor set forth in the Loan Documents. Beneficiary does not hold the Funds in trust for Grantor and is not the agent of Grantor for payment of taxes and assessments required to be paid by Grantor. Upon Grantor's breach of any covenant or agreement of Grantor in this Trust Deed, Beneficiary may apply, in any amount and in any order as Beneficiary shall determine in Beneficiary's sole discretion, any Funds held by Beneficiary (i) to pay any Charge which is due, or (ii) as a credit against the Indebtedness. Beneficiary shall make no charge for so holding and applying the Funds, analyzing said account or for verifying and compiling said assessments and bills, unless Beneficiary pays Grantor interest, earnings or profits on the Funds and the law of the state in which the Real Property is located permits Beneficiary to make such a charge. Beneficiary shall not be required to pay Grantor any interest, earnings or profit on the Funds. If Beneficiary is required by law to pay interest on these sums, they shall earn interest at the lowest permissible rate. Beneficiary shall give to Grantor, without charge, an annual accounting of the Funds in Beneficiary's normal format showing credits and debits to the Funds and the purposes for which each debit to the Fund was made. The Funds are hereby pledged as additional security for the sum secured by this Trust Deed.

If the amount of the Funds held by Beneficiary at the time of the annual accounting thereof shall exceed the amount deemed necessary by Beneficiary to provide for payment of Charges, as they fall due, such excess shall be at Beneficiary's sole option, refunded directly to Grantor, retained in the Funds deposit account or applied to the Indebtedness. If at any time the amount of the Funds held by Beneficiary shall be determined by Beneficiary to be insufficient at any time to pay Charges, as they fall due, Grantor shall promptly pay any deficiency to Beneficiary on Beneficiary's demand, and if not paid within ten (10) days after such demand, Beneficiary at its sole option may (i) declare a default hereunder (ii) add the amount of such deficiency to the principal of the obligation secured hereby or (iii) advance the amount of the deficiency, which advance shall be repaid by Grantor to Beneficiary as provided in this paragraph. Unless Grantor and Beneficiary agree to other terms of payment in writing, such amounts advanced to pay the deficiency shall be payable upon notice from Beneficiary to Grantor, in twelve (12) equal monthly installments, commencing on a date specified by Beneficiary and interest on said deficiency amounts advanced shall bear interest from the date of disbursement until paid in full, at a rate no greater than 2 percent more than the interest rate stated in the Note or Loan Documents ("Default Rate of Interest"), unless payment of interest at such rate would be contrary to applicable law, in which event such deficiency amounts advanced by Beneficiary shall bear interest at the highest rate permissible under applicable law. Beneficiary shall not be required to pay all or any portion of any Charge as it falls due, unless Beneficiary has received Funds from Grantor necessary to pay said Charge in full and the Funds received have been designated for payment of the specific Charge. Grantor agrees in no event to hold Beneficiary responsible for failure to pay said Charge as it falls due. Grantor agrees in no event to hold Beneficiary responsible for failure to have any insurance written or for any loss or damage growing out of any defect in any policy.

3. Application of Payments. Unless applicable law provides otherwise, each complete installment payment received by Beneficiary from Grantor in accordance with the Loan Documents, shall be applied by Beneficiary in the following order of priority: (a) reserve amounts payable to Beneficiary by Grantor under Sections 4 and 7 of this Trust Deed, (b) late charges, (c) interest payable on the Note and any future advances, (d) principal of the Note and any future advances, (e) any other sums secured by this Trust Deed in such order as Beneficiary may determine. Upon a breach of any covenant or agreement of Grantor, Beneficiary may apply, in any amount and in any order as Beneficiary shall determine in Beneficiary's sole discretion, any monies received in accordance with the terms of the Loan Documents.

4. Charges; Liens. Grantor shall pay when due all Charges, fines and impositions attributable to the Property which may attain a priority over this Trust Deed, and leasehold payments or ground rents, if any, in the manner provided under Section 4 hereof or, if not directed by Beneficiary to pay in such manner, by Grantor making payment, when due, directly to the proper payee thereof. Grantor shall promptly furnish to Beneficiary all notices of amounts due under this Section, and in the event Grantor shall make payment directly, Grantor shall promptly furnish to Beneficiary receipts evidencing such payments. Grantor shall promptly discharge any lien which has priority over or is equal to the interests of Beneficiary under this Trust Deed except for the lien of taxes and assessments not due, Grantor may withhold payment of any taxes, assessments, claims or demands or may elect to contest any lien if Grantor is in good faith conducting appropriate proceedings to contest its obligation to pay and for so long as the lien of this Trust Deed is not jeopardized. If the Property is subjected to a lien which is not discharged within 30 days from the date that the notice of claim of lien is filed, Grantor shall, if requested by Beneficiary, deposit or cause to be deposited with Beneficiary or a court of competent jurisdiction cash, a sufficient corporate surety bond or other security reasonably satisfactory to Beneficiary in an amount adequate to provide for discharge of the lien plus any interest, costs, attorney fees or other charges that could accrue as a result of foreclosure or sale. In any contest, Grantor shall at Grantor's expense defend itself, Trustee and Beneficiary and shall satisfy any final adverse judgment before enforcement against the Property. Without Beneficiary's prior written consent, Grantor shall not allow any lien inferior to this Trust Deed to be perfected against the Property.

5. Insurance Requirements.

5.1 Grantor shall effect and maintain, or cause to be effected and maintained, insurance policies (the "Policies") covering the Property as follows:

- (a) "All Risk" property insurance, including sprinkler leakage (to the extent the Improvements are served by a fire sprinkler system), in an amount sufficient to prevent Grantor from being or becoming a co-insurer in any loss under the policy but in no event less than the Full Replacement Value (hereinafter defined) of the Property; and earthquake insurance (if available) in such amount as Beneficiary may from time to time reasonably require;

(b) Rental Value Insurance for loss occasioned by the perils commonly insured in the Broad-Form All Risk Policy in an aggregate amount equal to but not less than the "annual gross rent," with co-insurance in such percentage as may be acceptable to Beneficiary. "Annual gross rent" shall mean for a twelve-month period the sum of (i) the total anticipated gross rental from tenant occupancy of the Property, (ii) the amount of all charges which are the legal, contractual or other obligations of tenants and which would otherwise be obligations of Grantor, and (iii) the fair rental value of any portions of the Property occupied by Grantor or any of its affiliates;

(c) Comprehensive General Liability Insurance, including blanket contractual liability, products liability, premises liability, and personal injury coverage with a combined single limit for bodily injury and property damage of not less than \$2,000,000. Such requirement may be satisfied by a layering of Comprehensive General Liability, Umbrella and Excess Liability policies, but in no event will the Comprehensive General Liability policy be written for an amount less than \$1,000,000 combined single limit for bodily injury and property damage liability;

(d) Worker's Compensation and Employer's Liability Insurance subject to the statutory limits of the State of Oregon in respect of any work or other operations on, about or in connection with the Property and covering all employees of Grantor (but only to the extent Grantor has any employees in Oregon). Grantor agrees to require its Property Manager and any other agents of Grantor in Grantor's contracts with such agents to maintain such insurance for the employees of such agents;

(e) To the extent the improvements on the Property are served by a steam boiler, Steam Boiler and Machinery Breakdown Direct Damage Insurance and third party liability coverage (if not covered under the Comprehensive General Liability Policy) with full comprehensive coverage on a repair and replacement basis for all boilers and machinery which form a part of the Property including Rental Value insurance in connection therewith in accordance with subparagraph (2) hereof;

(f) If at any time the Property or any part thereof is within an area designated "flood prone" pursuant to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128) (collectively the "National Flood Insurance Program") or any amendments or supplements thereto or substitutions therefor, Grantor shall obtain flood insurance in such total amount as Beneficiary may from time to time reasonably require and shall in any event comply with the National Flood Insurance Program as set forth in the legislation; and

(g) Such other insurance with respect to the Property and in such amounts as Beneficiary may request in writing from time to time against such other insurable hazards which, at the time, are commonly insured against in respect of property similar to the Property.

5.2 Grantor may effect such coverage under its blanket insurance policies, provided that (i) any such policy of blanket insurance either shall specify therein or Grantor shall furnish to Beneficiary a written statement from the insurer under such policy so specifying: (x) the maximum amount of the total insurance afforded by the blanket policy available to the Property and (y) any sublimits in such blanket policy applicable to the Property, which amounts shall not be less than the amounts required pursuant to subparagraph (a) of this paragraph; (ii) any policy of blanket insurance hereunder shall comply in all respects with the other provisions of this paragraph 5; and (iii) the protection afforded Grantor under any policy of blanket insurance hereunder shall be no less than that which would have been afforded under a separate policy or policies relating only to the Property.

5.3 The insurance maintained by Grantor under clauses (1), (2), (6) and (7) of subparagraph (a) of this paragraph shall bear a standard noncontributory first mortgagee endorsement in favor of Beneficiary and shall provide that all property losses insured against shall be adjusted by Grantor (subject to Beneficiary's approval of final settlement of all estimated losses of \$50,000.00 or more) and that the proceeds thereof shall be paid directly to Beneficiary. The insurance maintained by Grantor under clauses (3) and (7) of subparagraph (a) of this paragraph 5 shall name Beneficiary as an additional insured. The insurance maintained by Grantor under clauses (1) and (2) of subparagraph (a) shall contain no aggregate limit of liability. The insurance maintained by Grantor under clause (1) of subparagraph (a) shall contain an "Ordinance or Law Coverage" or "Enforcement" endorsement. All insurance maintained by Grantor shall provide that:

(a) no cancellation, material change or reduction thereof with respect to the coverage in connection with the Property shall be effective until at least thirty (30) days after receipt by Beneficiary of written notice thereof; and

(b) all losses shall be payable to or on behalf of Beneficiary notwithstanding any act or negligence of Grantor or its agents or employees which might, absent such agreement, result in a forfeiture of all or part of such insurance payment and notwithstanding (i) the occupation or use of the Property for purposes more hazardous than permitted by the terms of such policy, (ii) any foreclosure or other action or proceeding taken pursuant to any provision of this Deed of Trust, or (iii) any change in title or ownership of the Property or any part thereof.

5.4 Grantor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required by this paragraph 5 to be furnished by Grantor unless:

(a) The policies are submitted to Beneficiary for its approval and are approved by Beneficiary;

(b) The insurers thereunder and the terms thereof are acceptable to Beneficiary in accordance with the requirements of this paragraph 5; and

(c) Beneficiary is included therein as an additional named insured, or mortgagee with loss payable as provided in this paragraph 5.

Grantor shall notify Beneficiary within thirty (30) days before any such separate insurance is taken out and shall deliver the policy or policies or copies thereof certified by the insurance carrier or broker, or certificates evidencing the same, as provided in this paragraph 5.

5.5 Grantor shall pay the premiums for the insurance required by this paragraph 5 (the "Insurance Premiums") as they become due and payable. On or before the anniversary or inception dates of the insurance policies required by this paragraph 5, Grantor shall furnish Beneficiary with (i) original copies of all such Policies, endorsements and renewals or (ii) copies thereof certified by the insurance carrier or (iii) certificates or binders evidencing the same and evidence of payment of premiums therefor.

5.6 For purposes of this paragraph 5, the term "Full Replacement Value" shall mean the actual cost of replacing the property in question, exclusive of the cost of excavations, foundations and footings, as determined from time to time (but not less often than once every calendar year) by the insurance company or companies holding such insurance or by an independent appraiser, engineer, architect or contractor proposed by Grantor and approved by said company or companies and Beneficiary. Beneficiary's consent to such proposed independent appraisers, engineers, architects and contractors shall not be unreasonably withheld, conditioned or delayed.

5.7 Upon Beneficiary's request, Grantor will assign and deliver to Beneficiary all Policies of insurance which insure against any loss or damage to the Property as collateral and further security for the payment of the Secured Obligations. In the event of a sale by power of sale or foreclosure of the Deed of Trust or other transfer of title in extinguishment, in whole or in part, of the Secured Obligations the purchaser of the Property shall succeed to all the rights of Grantor, including any right to unearned premiums, in and to all policies of insurance assigned or delivered to Beneficiary pursuant to the provisions of this paragraph 5. In the event that prior to the extinguishment of the Secured Obligations any claim under any Policy has not been paid and distributed in accordance with the terms of this Deed of Trust and any such claim shall be paid after the extinguishment of the Secured Obligations, and the foreclosure of this Deed of Trust, or other transfer of title to the Property shall have resulted in extinguishing the Secured Obligations for an amount less than the total of the Secured Obligations, then and in that event that portion of the payment in satisfaction of the claim which is equal to the difference between the total amount above referred to and the amount theretofore paid to Beneficiary shall belong to and be the property of Beneficiary and shall be paid to Beneficiary, and Grantor hereby assigns, transfers and sets over to Beneficiary all of Grantor's right, title and interest in and to said sum. The balance, if any, shall be paid to Grantor. Notwithstanding the above, Grantor shall retain an interest in the insurance Policies above described during any redemption period.

5.8 In order to meet the requirements of Beneficiary, the insurance companies affording insurance required pursuant to this paragraph must, among other things:

- (a) have a minimum rating according to Best's Key Rating Guide for Property - Liability of A-X or have sufficient surplus that the amount of coverage provided on the Property does not represent more than 5% of its policyholders' surplus;
- (b) be a stock company or nonassessable mutual company which must be organized under the laws of the United States of America or any state thereof having at least \$25,000,000.00 paid-up capital and surplus for the protection of their policyholders; and
- (c) be licensed to do business in the state where the Property is located.

5.9 Grantor shall not, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed, settle or waive any claim in excess of \$50,000.00.

5.10 In the event that Grantor fails to keep the Property insured in compliance with this paragraph, Beneficiary may, but shall not be obligated to, obtain insurance and pay the premiums therefor and Grantor shall, on demand, reimburse Beneficiary for all sums advanced and expenses incurred in connection therewith. Such sums and expenses, together with interest thereon at the Default Rate (as defined in the Note) provided for herein, shall be part of the Secured Obligations and secured by the lien of this Deed of Trust.

5.11 Nothing contained in this paragraph shall relieve Grantor of its duty to, and Grantor shall, at its sole cost and expense, maintain, repair, replace or restore the Property or rebuild the Property, from time to time, following damage thereto or destruction thereof whether or not sufficient proceeds of insurance are available to defray the cost of such repairs or restoration, or following any condemnation of all or any portion of the Property, subject to this paragraph 5.

5.12 Grantor further covenants and agrees that in any suit or action for damages arising from the alleged negligence of Grantor in which action Beneficiary is included or made a defendant, Grantor agrees to assume all of the burden, cost and expense of the defense or settlement of such action or claim and will well and truly pay any judgment which may be obtained against Beneficiary as provided in this paragraph. Notwithstanding anything to the contrary set forth above, Beneficiary may in its discretion retain its own counsel, at Grantor's expense, to defend or settle any such action or claim.

5.13 No approval by Beneficiary of any insurance company shall be construed to be a representation, certification or warranty of its solvency and no approval by Beneficiary as to the amount, type and/or form of any insurance shall be construed to be a representation, certification or warranty of its sufficiency.

5.14 In the event of loss, Grantor shall give written notice to the insurance carrier and to the Beneficiary. Beneficiary may give written notice to the insurance carrier if Grantor fails to do so within twenty (20) days of the casualty. Grantor hereby employs and empowers Beneficiary as attorney-in-fact for Grantor to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect, receive and hold insurance proceeds, and to deduct therefrom Beneficiary's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this section shall require to Beneficiary to incur any expense or take any action hereunder.

5.15 Grantor authorizes Beneficiary, at Beneficiary's option, (i) to apply the balance of such proceeds to the payment of the indebtedness, whether or not then due, or (ii) after deducting Beneficiary's costs and expenses described above, to hold the balance of such proceeds to be used to reimburse Grantor for the cost of reconstruction and repair of the Property. If the insurance proceeds are held by Beneficiary to reimburse Grantor for the cost of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as Beneficiary may approve in writing. Beneficiary may require that Grantor deposit with Beneficiary any amount in excess of the insurance proceeds necessary to complete restoration, which amount shall be disbursed prior to disbursement of any insurance proceeds. Unless Beneficiary and Grantor agree in writing otherwise or applicable law requires that Beneficiary pay Grantor interest on the proceeds, Beneficiary shall not be required to pay Grantor any interest on the proceeds or any other sum which Beneficiary may require Grantor to deposit with Beneficiary pursuant to this section. If Beneficiary is required to pay interest on these sums they shall earn interest at the lowest permissible rate. Beneficiary may, at Beneficiary's option, condition disbursement of those proceeds on Beneficiary's approval of such plans and specifications of an architect satisfactory to Beneficiary, contractors cost estimates, architect certificates, waivers of liens, sworn statements of mechanics and materialmen and other evidence of costs, percentage of completion

of construction, application of payments, and satisfaction of liens as Beneficiary may reasonably require. If the insurance proceeds are applied to the payment of the sum secured by this Trust Deed, any such application of proceeds to principal shall be applied to the most remote unpaid installment of principal and shall not extend or postpone the due dates of any payments required under the Note and this Trust Deed or change the amounts of any such payments. If the Property is sold to the Beneficiary, acquired by the Beneficiary, or if Beneficiary otherwise acquires title to the Property, then in addition to the lien and security interest otherwise granted to Beneficiary under this Trust Deed, Beneficiary shall have all of the right, title and interest in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property immediately prior to such sale or acquisition.

6. Use, Maintenance and Alterations.

6.1 Duty to Maintain. Grantor shall maintain the Property in good condition and repair and promptly perform all repairs and maintenance to preserve its value.

6.2 Waste, Nuisance. Grantor shall not conduct or permit any nuisance on the Property nor commit or suffer any strip or waste thereof.

6.3 Environmental Laws.

6.3.1 Definitions. In this Trust Deed, the following definitions shall apply:

(a) "Environmental Laws" shall mean any present or future local, municipal, state or federal law, rule, order, regulation or restriction relating to environmental protection and pollution control (including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendment and Reauthorization Act of 1986, the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, the Toxic Substances Control Act, and the Federal Insecticide, Fungicide and Rodenticide Act and any similar federal or state statutes and regulations), land use and zoning, energy and industrial facilities siting, or occupational health and safety.

(b) "Governmental Authority" or "Governmental Authorities" shall mean any federal, state, regional, county or municipal governmental agency, board, commission, officer or official whose consent or approval is required or whose regulations must be followed as a prerequisite to (i) the commencement or continuation of the project, (ii) the continued operation and occupancy of the Real Property, or (iii) the performance of any act or obligation or the observance of any agreement, provision or condition of whatever nature contained in this Trust Deed or the Loan Documents.

(c) The term "Hazardous Substance" is used in this Agreement in its very broadest sense and refers to materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. "Hazardous Substance" shall include, but is not limited to, petroleum, any and all hazardous or toxic substances, materials or waste as defined by or listed under the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act or any other of the Environmental Laws. "Hazardous Substance" shall specifically include, but not be limited to, petroleum, including crude oil and any fraction thereof.

6.3.2 Grantor's Representations. Grantor represents that:

(a) To the best of Grantor's knowledge, after due inquiry and investigation, none of the Property nor any property adjacent to the Property has ever been used by previous owners and/or operators or Grantor to generate, manufacture, refine, transport, treat, store, handle or dispose of any Hazardous Substances, and Grantor does not intend to use the Property for any such purposes.

(b) To the best of Grantor's knowledge, after due inquiry and investigation, the Property, whenever and whether owned by previous owners and/or operators or Grantor, has never contained asbestos, PCB or other Hazardous Substances, whether used in construction or stored on the Property.

(c) Grantor has received no summons, citation, directive, letter or other communication, written or oral, from any agency or department of any county or state or the U.S. Government concerning any intentional or unintentional action or omission on Grantor's part which has resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances into any waters or onto any lands or where damage may have resulted to the lands, waters, fish, shellfish, wildlife, biota, air or other natural resources.

6.3.3 Covenants.

(a) Compliance with Environmental Laws. Grantor shall cause the Property and the operations conducted thereon to comply with all Environmental Laws and orders of any governmental authorities having jurisdiction under any Environmental Laws and shall obtain, keep in effect and comply with all governmental permits and authorizations required by Environmental Laws with respect to the Property or operations. Grantor shall furnish Beneficiary with copies of all such permits and authorizations and any amendments or renewals thereof and shall notify Beneficiary of any expiration or revocation of such permits or authorizations.

(b) Preventative, Investigatory and Remedial Action. Grantor shall exercise extreme care in handling Hazardous Substances and Grantor shall, at Grantor's expense, undertake any and all preventative, investigatory or remedial action (including emergency response, removal, containment and other remedial action) (i) required by any applicable Environmental Laws or orders by any Governmental Authority having jurisdiction under Environmental Laws, or (ii) necessary to prevent or minimize property damage (including damage to Grantor's own property), personal injury or damage to the environment, or the threat to any such damage or injury, by releases of or exposure to Hazardous Substances in connection with the Property or operations of Grantor on the Property. In the event Grantor fails to perform any of Grantor's obligations under this Section 6.3.3, Beneficiary may (but shall not be required to) perform such obligations at Grantor's expense. All such cost and expenses incurred by Beneficiary under this section and otherwise under this Trust Deed shall be reimbursed by Grantor to Beneficiary upon demand with interest at the Default Rate of Interest. Beneficiary and Grantor intend that Beneficiary shall have full recourse to Grantor for any sum at any time due to Beneficiary under this Trust Deed, the Note, Loan Agreement or Loan Documents. In performing any such obligations of Grantor, Beneficiary shall at all times be deemed to be the agent of Grantor and shall not by reason of such performance be deemed to be assuming any responsibility of Grantor under any Environmental Law or to any third party. Grantor hereby irrevocably appoints Beneficiary as Grantor's attorney-in-fact with full power to perform such Grantor's obligations under this Section 6.3 as Beneficiary deems necessary and appropriate.

(c) Asbestos. Grantor represents and warrants that Grantor has not installed any asbestos or any substance containing asbestos in any portion of the premises and has no knowledge of the installation of any such material in any portion of the premises. Grantor shall not install or permit to be installed in the premises, asbestos or any substance containing asbestos and deemed hazardous by federal or state regulations respecting such material (collectively "Asbestos Materials"). If any Asbestos Materials are found on the premises, Grantor shall promptly either remove them or comply with all laws, rules, regulations, or orders with respect to the presence of Asbestos Materials (collectively "Asbestos Laws"). If Grantor fails to comply with the preceding sentence, Beneficiary may (but shall not be obligated to), after notice to Grantor and the expiration of any cure period stated in the notice, either (1) declare an event of default under this Trust Deed and/or (2) enter upon the premises and cause the Asbestos Materials to be removed or otherwise comply with the Asbestos Laws, and add the cost of removal or compliance to the Indebtedness evidenced by the Note and secured hereby, whereupon such cost shall become due and payable immediately upon demand with interest thereon at the Default Rate of Interest.

6.3.4 Notices. Grantor shall immediately notify Beneficiary upon becoming aware of any of the following:

(a) Any spill, release or disposal of a Hazardous Substance on any of the Property, or in connection with any of its operations if such spill, release or disposal must be reported to any governmental authority under applicable Environmental Laws.

(b) Any contamination, or imminent threat of contamination, of the Property by Hazardous Substances, or any violation of Environmental Laws in connection with the Property or operations on the Property.

(c) Any order, notice of violation, fine or penalty or other similar action by any governmental authority relating to Hazardous Substances or Environmental Laws and the Property or the operations conducted on the Property.

(d) Any judicial or administrative investigation or proceeding relating to Hazardous Substances or Environmental Laws and to the Property or the operations conducted on the Property.

(e) Any matters relating to Hazardous Substances or Environmental Laws that would give a reasonably prudent Beneficiary cause to be concerned that the value of Beneficiary's security interest in the Property may be reduced or threatened or that may impair, or threaten to impair, Grantor's ability to perform any of its obligations under this Trust Deed when such performance is due.

6.3.5 Access to Records. Grantor shall deliver to Beneficiary at Beneficiary's request, copies of any and all documents in Grantor's possession or to which it has access relating to Hazardous Substances or Environmental Laws and the Property, and the operations conducted on the Property, including without limitation, results of laboratory analysis, site assessments or studies, environmental audit reports and other consultant's studies and reports.

6.3.6 Inspections. Beneficiary reserves the right to inspect and investigate the Property and operations at any time, and Grantor shall cooperate fully with Beneficiary in such inspection and investigations. If Beneficiary at any time has reason to believe that Grantor or any tenants on the Property are not complying with all applicable Environmental Laws or the requirements of this Trust Deed or that a material spill, release or disposal of Hazardous Substances has occurred on or under the Property, Beneficiary may require Grantor to furnish Beneficiary at Grantor's expense an environmental audit or a site assessment with respect to the matters of concern to Beneficiary. Such audit or assessment shall be performed at Grantor's expense by a qualified consultant approved by Beneficiary.

6.3.7 Further Assurances. At any time Beneficiary requests, Grantor shall provide to Beneficiary further assurance of Grantor's compliance with this Section 6.3. The assurances shall be in form and substance satisfactory to Beneficiary in Beneficiary's sole discretion.

7. **Protection of Beneficiary's Security.** If Grantor fails to perform the covenants and agreements contained in this Trust Deed, or if any action or proceeding is commenced which affects the Property or title to the Property or the interest of Beneficiary in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, violation of any law or regulation including but not limited to violation of any law or regulation concerning environmental protection and pollution control referred to in Section 6, or arrangements or proceedings involving a bankrupt or decedent, then Beneficiary at Beneficiary's option may make such appearances, disburse such sums and take such action as Beneficiary deems necessary or advisable, in its sole discretion, to protect Beneficiary's interest, including, but not limited to, (a) employment of attorneys or other advisors, (b) entry upon the Property to investigate and make repairs, (c) procurement of satisfactory insurance, and (d) payment of any Charges. Any amount disbursed by Beneficiary pursuant to this Section 7, with interest thereon, shall become additional Indebtedness of Grantor secured by this Trust Deed. Unless Grantor and Beneficiary agree in writing to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement until paid at a rate of interest no greater than the Default Rate of Interest stated in the Note or the Loan Documents, unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible by applicable law. Grantor hereby covenants and agrees that Beneficiary shall be subrogated to the lien of any mortgage or other lien discharged in whole or in part, by the Indebtedness secured by this Trust Deed. Nothing contained in this Section 7 shall require Beneficiary to incur any expense or take any action.

8. **Inspection.** Beneficiary may make or cause to be made reasonable entries upon the Property to inspect the Property, including, but not limited to, inspecting any buildings on the Property and inspection and/or environmental evaluation of the Property.

9. **Books and Records.** At Beneficiary's request, Grantor shall furnish to Beneficiary, within 90 days after the end of each fiscal year of Grantor's operation of the Property, a balance sheet and statement of profit and loss prepared by an independent certified public accountant satisfactory to Beneficiary, in accordance with generally accepted accounting principles consistently applied. In lieu of audited financial statements, Grantor may supply unaudited statements prepared in accordance with generally accepted accounting principles consistently applied, certified by Grantor's chief financial officer, together with copies of Grantor's income tax returns and such other tax returns as Beneficiary shall request. In addition, Grantor shall, from time to time within 15 days after request by Beneficiary, permit Beneficiary to examine in the city where Grantor's main office is located or at the premises (at the election of Beneficiary), such records, books, and papers of Grantor that reflect upon the income and expense relative to the premises and the business conducted at the premises. Grantor further agrees that at Beneficiary's request, within 30 days after the end of each calendar quarter, it shall furnish to Beneficiary a written rent roll containing the names of all tenants of the premises, the terms of their respective tenancies, the spaces occupied, and the rentals paid therefor, and a statement of profit and loss from Grantor's operation of the premises for the quarter just ended, in accordance with generally accepted accounting principles consistently applied. The quarterly statement of profit and loss need not be prepared by an independent certified public accountant unless Beneficiary specifically requests an audited quarterly statement.

10. **Annual Financial Statements.** At Beneficiary's request, Grantor shall furnish to Beneficiary an annual financial statement dated not more than 90 days previous to the date of the request consisting of a balance sheet, statement of profit and loss and complete copies of tax returns to include all schedules thereto. Such financial statements shall be all-inclusive of all of Grantor's financial affairs including and not limited to the operation of the Property. Should there be more than one individual or entity of Grantor, then an annual personal financial statement shall be provided by each and all individuals, general partners of a partnership, owners of a limited liability company or officers of a corporation.

11. **Condemnation.** Grantor shall promptly notify Beneficiary of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part of the Property, and Grantor shall appear in and prosecute any such action or proceeding unless otherwise directed by Beneficiary in writing. Grantor authorizes Beneficiary, at Beneficiary's option, as attorney-in-fact for Grantor, to commence, appear in and prosecute, in Beneficiary's or Grantor's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with any such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part of the Property, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Beneficiary.

Grantor authorizes Beneficiary to apply such awards, payments, proceeds or damages, after the deduction of Beneficiary's expenses incurred in the collection of such amounts, at Beneficiary's option, to restoration or repair of the Property or to payment of the Indebtedness, whether or not then due, with the balance, if any, to Grantor. Unless Grantor and Beneficiary otherwise agree in writing, any application of proceeds to principal shall be applied to the most remote unpaid installment of principal and shall not extend or postpone the due date of any payments required under this Trust Deed or change the amount of any such payments. Grantor agrees to execute such further evidence or assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Beneficiary may require.

12. **Grantor and Lien Not Released.** From time to time, at Beneficiary's option, without giving notice to or obtaining the consent of Grantor, Grantor's successors or assigns or of any junior lienholder or guarantor without any liability on Beneficiary's part and notwithstanding Grantor's breach of any covenant or agreement in the Loan Documents (including, but not limited to, this Trust Deed), Beneficiary may do any or all of the following:

- (a) Extend the time for payment of the Indebtedness or any part of it;
- (b) Reduce the payments on the Indebtedness;
- (c) Release anyone liable on any part of the Indebtedness;
- (d) Accept renewal note or notes for the Indebtedness;
- (e) Release from the lien of this Trust Deed any part of the Property;
- (f) Release other or additional security;
- (g) Reconvey any part of the Property;

- (h) Consent to any map or plat of the Property;
- (i) Consent to any easement;
- (j) Execute any subordination agreement.

Any action taken by Beneficiary pursuant to this section, or any other agreement, promise or commitment entered into by the Beneficiary to modify or amend the terms of this Trust Deed, the Note or Loan Documents, or to make any other financial accommodation pertaining to the Indebtedness or any other extension of credit, shall not be enforceable against the Beneficiary or used as a defense against the Beneficiary unless the action, agreement, promise or commitment taken or made by the Beneficiary is set forth in a written document signed by the Beneficiary.

Any action taken by Beneficiary pursuant to this section or any modification of the rate of interest upward or downward, or modification of the period of amortization of the Note or change in the amount of the monthly installments payable under the Note or Loan Documents, or any combination thereof, which may extend or reduce the term of the Note or this Trust Deed or both, shall not affect the obligation of Grantor or Grantor's successors or assigns to pay the sums secured by this Trust Deed and to observe the covenants of Grantor contained in this Trust Deed, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the Indebtedness secured by this Trust Deed, and shall not affect the lien or priority of lien of this Trust Deed on the Property. Unless otherwise provided by law, the priority of this Trust Deed shall not be affected by any change in terms whether or not it adversely affects subordinate or prior interest holders. Grantor shall pay Beneficiary a service charge as determined by Beneficiary in its sole discretion but in no event shall the charge be in excess of 1% of the original principal balance of the Note, together with such title insurance premiums and attorney fees as may be incurred at Beneficiary's option for any such action if taken at Grantor's request.

13. Forbearance by Beneficiary or Receipt of Awards Not a Waiver. Any forbearance by Beneficiary in exercising any right or remedy under this Trust Deed, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy. The acceptance by Beneficiary of payment of any sum secured by this Trust Deed after the due date of such payment shall not be a waiver of Beneficiary's right to either require prompt payment when due of all other sums so secured or to declare a default of or failure to make prompt payment, nor shall Beneficiary's receipt of any awards or proceeds of damages under this Trust Deed operate to cure or waive any default in payment of sums secured by this Trust Deed.

14. Uniform Commercial Code Security Agreement. To the extent any of the Property is personal property, Grantor, as debtor, grants to Beneficiary, as secured party, a security interest therein together with a security interest in all other personal property of whatever nature which is located on or used or to be used in connection with any of the Property, and any products or proceeds of any thereof, pursuant to the Uniform Commercial Code (the "UCC") of the state in which the Real Property is located, on the terms and conditions contained herein except that where any provision hereof is in conflict with the UCC, the UCC shall control. Beneficiary hereby assigns such security interest to Trustee, in trust, for the benefit of Beneficiary to be dealt with as a portion of the Property except as otherwise specified herein. Grantor agrees that Beneficiary may file this Trust Deed, or a reproduction thereof, in the real estate records or other appropriate filing office or index, as a financing statement for any of the UCC items. Any reproduction of this Trust Deed or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Grantor agrees to execute and deliver to Beneficiary, upon Beneficiary's request, any financing statement, as well as extensions, renewals and amendments thereof, and reproduction of this Trust Deed, in such form as Beneficiary may require to perfect a security interest. Grantor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Beneficiary may reasonably require. Without the prior written consent of Beneficiary, Grantor shall not create or suffer to be created pursuant to the UCC any other security interest in the Property, including replacements and additions. Upon Grantor's breach of any covenant or agreement of Grantor contained in the Note and Loan Documents, including the covenants to pay when due all sums secured by this Trust Deed, Beneficiary shall have the remedies of a secured party under the UCC and, at Beneficiary's option, Beneficiary may proceed against the items of Real Property and any items of personal property specified in this Trust Deed separately or together and in any order whatsoever, whether by non-judicial sale or otherwise without in any way affecting the availability of Beneficiary's remedies under the UCC or of the remedies provided in this Trust Deed. At the request of Beneficiary, Trustee shall reassign to Beneficiary the security interest created hereby and after such reassignment Beneficiary shall have the right, upon the occurrence or continuance of any event of default, to realize upon the personal property subject to this Trust Deed, independent of any action of Trustee, pursuant to the UCC.

15. Leases of the Property. Grantor hereby assigns to Beneficiary all leases now existing or hereafter made of all or any part of the Property. Grantor shall comply with and observe Grantor's obligations as landlord under all leases of the Property or any part thereof. Grantor, at Beneficiary's request, shall furnish Beneficiary with executed copies of all leases now existing or hereafter made of all or any part of the Property, and all leases now or hereafter entered into will be in form and substance subject to the approval of Beneficiary. All leases of the Property shall specifically provide that (a) such leases are subordinate to this Trust Deed; (b) that the tenant attorns to Beneficiary, such attornment to be effective upon Beneficiary's acquisition of title to the Property; (c) that the tenant agrees to execute such further evidences of attornment as Beneficiary may from time to time request; (d) that the attornment of the tenant shall not be terminated by foreclosure, and (e) that Beneficiary may, at Beneficiary's option, accept or reject such attornment.

Grantor shall not, without Beneficiary's written consent, execute, modify, surrender or terminate, either orally or in writing, any lease now existing or hereafter made of all or any part of the Property providing for a term of three years or more or permit an assignment or sublease of such a lease without Beneficiary's written consent.

If Grantor becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of set-off against rent, Grantor shall (a) take such steps as shall be reasonably calculated to prevent the accrual of any right to set-off against rent, (b) notify Beneficiary thereof and of the amount of said set-offs, and (c) within 10 days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

Upon Beneficiary's request, Grantor shall assign to Beneficiary, by written instrument satisfactory to Beneficiary, all leases now existing or hereafter made of all or any part of the Property and all security deposits made by tenants in connection with such leases of the Property. Upon assignment by Grantor to Beneficiary of any leases of the Property, Beneficiary shall have all of the rights and powers possessed by Grantor prior to such assignment and Beneficiary shall have the right to modify, extend or terminate such existing leases and to execute new leases, in Beneficiary's sole discretion.

16. Assignment of Rents: Appointment of Receiver: Lender in Possession. As additional security under this Trust Deed, Grantor hereby assigns to Beneficiary the rents, issues, royalties and profits of the Property now existing or in the future arising, provided that unless there is an event of default under the Note, this Trust Deed, or Loan Agreement, or any Loan Documents, Grantor shall have the right to collect and retain such rents, issues, royalties and profits of the Property as they become due and payable. Upon Beneficiary's request, Grantor shall execute any additional documents requested by Beneficiary to assign to Beneficiary any leases and all security or other deposits concerning the Property. This assignment is not a delegation or assignment to Beneficiary of Grantor's duties or obligations under or in connection with the Property. Beneficiary's acceptance of this assignment does not constitute a promise by Beneficiary nor does it in any way obligate Beneficiary to perform any of Grantor's duties or obligations under or in connection with leases, rents or agreements. Grantor hereby agrees to indemnify Beneficiary against and hold it harmless from any and all liability, loss or damage which Beneficiary may or might incur under the leases, rents, or agreements or under or by reason of this assignment and of and from any and all claims and demands whatsoever which may be asserted against Beneficiary by any reason of any alleged obligation or undertaking on Beneficiary's or Grantor's part to perform or discharge any of the terms of the leases, rents or agreements.

In the event of default under the Note, this Trust Deed, Loan Agreement, or other Loan Documents, or abandonment of the Property, Beneficiary, in person, by agent or by judicially appointed receiver, may without regard to the condition of the Property or the adequacy of the security for the Indebtedness, and without notice to the Grantor or anyone else, take possession and care of the Property. Upon taking possession of all or any part of the Property, the Beneficiary, agent or receiver may:

- (a) use, operate, manage, control and conduct business of the Property and make expenditures for all maintenance and improvements as in its judgment are proper;
- (b) collect, receive, and retain any or all of the rents, issues, royalties and profits (collectively "Rents") which have theretofore arisen or accrued or which may arise or accrue during the pendency of judicial foreclosure proceedings, non-judicial foreclosure proceedings, or any other remedy permitted by applicable law;
- (c) at Beneficiary's option, complete any construction in progress on the Property, and in that connection pay bills, borrow funds, employ contractors and make any changes in plans or specifications as Beneficiary deems appropriate.

All rents collected by the Beneficiary or receiver shall be applied first to the expenses of use, operation and management, including but not limited to, costs of management of the Property and collection of rents, receiver fees, consultant fees, cost of employment of off-site and on-site manager, premiums on receiver bonds, maintenance, utility and insurance expenses, and reasonable attorneys' fees, in any order as determined by receiver or Beneficiary, and then to payment of the Indebtedness.

Beneficiary, agent or the receiver shall be liable to account only for those rents actually received. If the rents and other revenues produced by the Property are insufficient to pay expenses, the receiver or agent may borrow from Beneficiary (if Beneficiary in its sole discretion, agrees to lend) or otherwise, or Beneficiary may borrow or advance such funds as the receiver, agent, or Beneficiary may deem necessary for purposes stated in this section. The amounts borrowed or advanced shall bear interest from the date of expenditure until repaid at the same interest rate as provided in Section 7 if such amounts are borrowed or advanced by the Beneficiary. Such sums shall become a part of the Indebtedness secured by this Trust Deed and shall be payable by Grantor on demand.

17. Prohibition of Transfer of Property or Beneficial Interests by Grantor: Assumption. Without prior written consent of Beneficiary, Grantor shall not transfer or agree to transfer all or any part of Property or any interest in the Property. For the purposes of this section, the occurrence of any of the following, without limitation, shall be deemed to be a transfer of the Property:

- (a) Any sale, contract to sell, lease with an option to purchase, conveyance, assignment or other transfer of, or grant of a mortgage, trust deed, other lien, or other security interest in, all or any part of the legal or equitable title to Property,
- (b) If Grantor is a corporation, any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, twenty-five percent (25%) or more in the aggregate during the term of this Trust Deed, of Grantor's voting stock and securities which may be converted to voting stock,
- (c) If Grantor is a general partnership, the sale, conveyance, assignment or other transfer of, or the grant of a security interest in, any general partnership interest of Grantor,
- (d) If Grantor is a limited partnership or limited liability company, the sale, conveyance, assignment or other transfer of, or grant of a security interest in, any general partnership interest of Grantor, or twenty-five percent (25%) or more in the aggregate during the term of this Trust Deed, of the limited partnership interests of Grantor.

If any of (a), (b), (c) or (d), or any combination thereof occur, Beneficiary, at Beneficiary's option, may declare all of the sums secured by this Trust Deed to be immediately due and payable, and may invoke any of the remedies permitted by this Trust Deed, the Note, the Loan Agreement, or Loan Documents.

Beneficiary may, at Beneficiary's option, waive its right to declare all of the sums secured by this Trust Deed to be immediately due and payable and to invoke any of the remedies permitted by this Trust Deed, if: (a) the person to whom the Property is being transferred (the "Transferee") submits to Beneficiary such personal and other information as Beneficiary would ordinarily require of a new loan applicant; (b) Beneficiary reasonably determines that Beneficiary's security will not be impaired and that the risk of a breach of any covenant or agreement in this Trust Deed is acceptable; (c) all future interest to be payable on the sums secured by this Trust Deed are at a rate then acceptable to Beneficiary; (d) changes in the terms of the Note, this Trust Deed, the Loan Agreement, and Loan Documents required by Beneficiary are made, including but not limited to, periodic adjustment in the interest rate and a shorter period of time until the final payment date for the Note, and (e) the Transferee and the Grantor sign a Loan Assumption and Modification Agreement that is acceptable to Beneficiary that obligates the Transferee and the Grantor to keep all the promises and agreements made in the Note, this Trust Deed, the Loan Agreement and Loan Documents as modified. To the extent permitted by applicable law, Beneficiary also may charge a reasonable fee, as fixed and determined by Beneficiary, as a condition to Beneficiary's consent to any sale or transfer but in no event shall the fee be in excess of one percent (1%) of the original principal balance. Notwithstanding any of the foregoing, Beneficiary in its sole discretion, may withhold its consent to any transfer for any reason whether or not withholding consent is reasonable under the circumstances. Any consent, if granted, shall not release Grantor or any successor in interest from personal liability for payment and performance of the Indebtedness, or for performance of this Trust Deed, the Note, the Loan Agreement, or Loan Documents. Any release of Grantor, or any guarantor, by Beneficiary must be in writing and signed by Beneficiary.

18. Loan Agreement Provisions. Grantor agrees to comply with the covenants and conditions of the Loan Agreement, if any, and all other Loan Documents executed in connection with the Indebtedness secured by this Trust Deed. If the terms of this Trust Deed are inconsistent with the terms of the Loan Agreement, if any, the terms of the Loan Agreement will control.

19. Use of Property. Unless required by applicable law or unless Beneficiary has otherwise agreed in writing, Grantor shall not allow changes in the use for which all or any part of the Property was intended at the time this Trust Deed was executed. Grantor shall not initiate or acquiesce in a change in the zoning classification or comprehensive plan governing the Property without Beneficiary's prior written consent. If the Real Property is located in Oregon, Grantor warrants and agrees that this Trust Deed is and will at all times constitute a commercial trust deed, and will not constitute a residential trust deed as defined under Oregon law. The proceeds of the loan evidenced by the Note will be used solely for business purposes other than agricultural purposes, and are not being used for Grantor's personal, family, household or agricultural purposes. None of the Property is used principally or at all for agricultural or farming purposes.

20. No Offset. Grantor's obligation to make payments and perform all obligations, covenants, and warranties under this Trust Deed and under the Note shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense, or other right which Grantor or any guarantor may have or claim against Beneficiary or any entity participating in making the loan secured hereby.

21. Default. The following shall constitute events of default:

- (a) Failure of Grantor to pay any portion of the Indebtedness when it is due.
- (b) Failure of Grantor within the time required by this Trust Deed to make any payment for taxes, insurance or any other payment necessary to prevent filing of or discharge of any lien.
- (c) Transfer or agreement to transfer any part or interest in the Property in any manner whatsoever, including, but not limited to, allowing any lien inferior to this Trust Deed on the Property, or transfer of any other interest of Grantor as described in Section 16, except for leases entered into by Grantor subject to Beneficiary's approval as set forth in Section 14 of this Trust Deed.
- (d) Dissolution, termination of existence, insolvency or business failure of Grantor; the commencement by Grantor of a voluntary case under the federal bankruptcy laws or under any other federal or state law relating to insolvency or debtor's relief; the entry of a decree or order for relief against Grantor in an involuntary case under the federal bankruptcy laws or under any other applicable federal or state law relating to insolvency or debtor's relief; the appointment or the consent by Grantor to the appointment of a receiver, trustee, or custodian of Grantor or of any Grantor's property; an assignment for the benefit of creditors by Grantor; the making or suffering by Grantor of a fraudulent transfer under applicable federal or state law; concealment by Grantor of any of its property in fraud of creditors; the making or suffering by Grantor of a preference within the meaning of the federal bankruptcy law, the imposition of a lien through legal proceedings or distraint upon any of the property of Grantor or Grantor's failure generally to pay its debts as such debts become due. The events of default in this paragraph shall apply and refer to Grantor, any guarantor of the Indebtedness, and to each of the individuals or entities which are collectively referred to as "Grantor".
- (e) Failure of Grantor to make any payment or perform any obligation under any superior or inferior liens or encumbrances, within the time required under those liens or encumbrances, or commencement of any suit or other action to foreclose any superior or inferior liens or encumbrances.
- (f) Breach or default under the Loan Agreement or Loan Documents, which is not cured within any applicable cure period.

- (g) Termination or revocation of any guaranty delivered to Beneficiary in connection with the Indebtedness.
- (h) Failure of any person to comply with any law or regulation which affects the Property or title to the Property or the interest of Beneficiary in the Property.
- (i) Failure of Grantor to perform any covenant obligations under this Trust Deed other than those described in the preceding paragraphs (a) through (h) of this section, within ten (10) days after written notice from Beneficiary specifying the nature of the default.
- (j) Failure of Grantor to perform any other covenant, agreement, or obligation in this Trust Deed.

No notice of default and no opportunity to cure shall be required.

22. Rights and Remedies on Default.

22.1 Remedies. Upon the occurrence of any event of default and at any time thereafter, Trustee or Beneficiary may exercise any one or more of the following rights and remedies:

- (a) Beneficiary may declare all sums secured by this Trust Deed immediately due and payable, including, without limitation, any prepayment premium which Grantor would be required to pay.
- (b) Beneficiary may recover judgment on the Note and or any guaranties.
- (c) The Trustee shall have the right to foreclose by notice and sale, or Beneficiary shall have the right to foreclose by judicial foreclosure, in either case in accordance with applicable law.
- (d) If this Trust Deed is foreclosed by judicial procedure, Beneficiary shall be entitled to a judgment which shall provide that if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for the amount of the unpaid balance of the judgment.
- (e) Action may be commenced for judicial or nonjudicial foreclosure of any other trust deeds, mortgages, security agreements, or other consensual or non-consensual security interests or liens securing the Indebtedness.
- (f) With respect to all or any part of the Property that constitutes personalty, Beneficiary shall have all rights and remedies of a secured party under the UCC.
- (g) Beneficiary shall have the right to take possession of the Property and, with or without taking possession of the Property, collect all the rents and revenues of the Property in accordance with this Trust Deed and/or any other assignment of rents.
- (h) Beneficiary shall have the right to have a receiver appointed to take possession of any or all of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, to collect all the rents and revenues from the Property and apply the proceeds, over and above cost of the receivership, against the sums due under this Trust Deed, in accordance with Section 15. The receiver may serve without bond if permitted by law. Employment by Beneficiary shall not disqualify a person from serving as a receiver.
- (i) In the event Grantor remains in possession of the Property after the Property is sold as provided above or Beneficiary otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall: (1) become a tenant at will of Beneficiary or the purchaser of the Property and shall pay a reasonable rental for use of the Property while in Grantor's possession, or; (2) surrender possession of the property to Beneficiary at Beneficiary's request according to applicable law.
- (j) Trustee and Beneficiary shall have any other right or remedy provided in this Trust Deed, the Note, the Loan Agreement, Loan Documents, or available at law, in equity or otherwise.
- (k) Beneficiary shall have the right, at its election, to foreclose this Trust Deed subject to the rights of any tenant(s) of the premises. The failure to make any tenant(s) a party defendant to a foreclosure proceeding or to foreclose its rights will not be asserted by Grantor as a defense in any action instituted to collect the Indebtedness secured hereby or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Property. Grantor waives the benefit of any statute or rule of law to the contrary.

23. Future Advances. Beneficiary, at Beneficiary's sole option so long as this Trust Deed secures the Indebtedness, may make future, unrelated advances to Grantor. Such future advances, with interest thereon, shall be secured by this Trust Deed.

24. Waiver of Marshalling: Sale of the Property. Notwithstanding the existence of any other mortgage, trust deed, other lien or other security interest in the Property held by Beneficiary or by any other party, Beneficiary shall have the right to determine the order in which any or all of the Property, real or personal or mixed, shall be subject to the remedies provided in this Trust Deed or available at law, in equity or otherwise. Beneficiary shall have the right to determine the order in which any or all portions of the Indebtedness secured by this Trust Deed are satisfied from the proceeds realized upon the exercise of the remedies provided in this Trust Deed. In exercising its rights and remedies, Beneficiary, at Beneficiary's sole discretion, may cause all or any part of the Property to be sold as a whole or in parcels, and certain portions of the property may be sold without selling other portions. Beneficiary may bid at any public sale on all or any portion of the Property. Grantor, any party who consents to this Trust Deed and any party who now or in the future acquires a security interest in the Property and who has actual or constructive notice of this Trust Deed hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided in this Trust Deed.
25. Notice of Sale. Beneficiary shall give Grantor reasonable notice of the time and place of any public sale of any personal property or of the time after which any private sale or other intended disposition of the personal property is to be made. Reasonable notice shall mean notice given in accordance with applicable law, and may include, without limitation, only notice required for the nonjudicial sale of the real property.
26. Prepayment Provision. If at any time after default and acceleration of the Indebtedness secured hereby there shall be a tender of payment of the amount necessary to satisfy such Indebtedness by or on behalf of the Grantor, its successors or assigns, the same shall be deemed to be a voluntary prepayment such that the sum required to satisfy such Indebtedness in full shall include, to the extent permitted by law, the additional payment required under the prepayment privilege as stated in the Note. Similarly, should the Property at any time be destroyed or be the subject of any successful condemnation proceeding, the portion of any insurance proceeds or condemnation award, as the case may be, due the Beneficiary shall include the additional payment required under the prepayment privilege as stated in the Note.
27. Waiver: Election of Remedies: Remedies Cumulative. A waiver by either party of a breach of a provision of this Trust Deed shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. Election by Beneficiary to pursue any remedy shall not exclude pursuit of any other remedy, and all remedies of Beneficiary under this Trust Deed are distinct and cumulative and not exclusive to all other rights or remedies under any Loan Document or afforded by law or equity, and may be exercised concurrently, independently, or successively in any order whatsoever. An election to make expenditures or take action to perform an obligation of Grantor shall not affect Beneficiary's right to declare a default and exercise its remedies under this Trust Deed.
28. Successors and Assigns Bound: Joint and Several Liability: Agents: Captions. The covenants and agreement contained in this Trust Deed shall bind, and the rights under this Trust Deed shall inure to, the respective successors and assigns of Beneficiary and Grantor, subject to the provisions of Section 16 of this Trust Deed. This Trust Deed may be assigned in whole or in part to any person, corporation, partnership, loan participant, or other entity (collectively "Assignee") by Beneficiary without notice to or affecting Grantor's liability hereunder, and Beneficiary, in connection with such assignment, participation, or similar arrangement, may make all credit, financial data and other loan documentation furnished and to be furnished by Grantor available to Assignee. If Beneficiary assigns to any Assignee, all of Beneficiary's interest in this Trust Deed, then Beneficiary shall be and is released from any obligations under this Trust Deed. All covenants and agreements of Grantor shall be joint and several. In exercising any rights under this Trust Deed or taking any actions provided for in this Trust Deed, Beneficiary may act through its employees, agents or independent contractors as authorized by Beneficiary. The captions and headings of the sections of this Trust Deed are for convenience only and are not to be used to interpret or define the provisions of this Trust Deed.
29. Notice. Any notice under this Trust Deed shall be in writing. Any notice to be given or document to be delivered under this Trust Deed shall be effective when either delivered in person, or 3 days after deposited as registered or certified mail, postage prepaid, addressed to the party at the address first stated in this Trust Deed or the next business day after deposited with an overnight air courier addressed to the party at the address first stated; provided that any notice pursuant to exercise of the Trustee's power of sale in the event of default shall be sufficient if such notice complies with all provisions of the law of the state in which the Real Property is located applicable to exercise of such powers of sale. Any party may by notice to the others designate a different address.
30. Reconveyance. Upon payment when due of the Indebtedness secured by this Trust Deed, Beneficiary shall request Trustee to reconvey the Property and shall surrender this Trust Deed and all notes evidencing the Indebtedness secured by this Trust Deed to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to the Property. Such person or persons shall pay Trustee's fee, all recording costs including but not limited to recording of a reconveyance document and an appointment of successor trustee documents and other costs incurred in so reconveying the Property.
31. Expenses and Attorney Fees. In the event that Beneficiary or Trustee shall take any action, judicial or otherwise, to enforce the Note or any provision of this Trust Deed or if Beneficiary or Trustee shall be required to appear in any proceeding to protect and maintain the priority of Trustee's title to the trust property, Trustee or Beneficiary (or both) shall be entitled to recover from Grantor all expenses which it may reasonably incur in taking such action, including but not limited to costs incurred in searching records, the cost of title reports and surveyor's reports, and its attorney fees, whether incurred in a suit or action in any bankruptcy proceeding or any appeals from a judgment or decree therein or petition for review, or in connection with nonjudicial action. Grantor shall reimburse Beneficiary or Trustee (or both) for expenses so incurred on demand with interest from the date of expenditure until repaid at a rate equal to the lesser of a rate equal to the Note rate of interest or the highest rate permitted by applicable law.
32. Governing Law. This Trust Deed shall be governed by the law of the state in which the Real Property is located.

33. Severability. In the event that any provision or clause of this Trust Deed, or the Note, or Loan Agreement or Loan Documents conflicts with applicable law, such conflict shall not affect other provisions of this Trust Deed, the Note, the Loan Agreement or Loan Documents which can be given effect without the conflicting provision, and to this end, the provisions of this Trust Deed, the Note, the Loan Agreement and Loan Documents are declared to be severable.

34. Time of Essence. Time is of the essence in the payment and performance of the obligations under and secured by this Trust Deed and the Loan Documents.

35. Entire Agreement: Changes in Writing. The Loan Documents contain the entire agreement of the parties, and any prior conversations and writings are deemed merged in the Loan Documents. No subsequent amendment to or modification of any of the Loan Documents shall be binding upon the parties unless the amendment or modification is in writing and executed by the parties.

36. Counterparts. This Trust Deed may be executed in one or more identical counterparts, and if so executed, each counterpart shall be deemed an original for all purposes, and all such counterparts shall collectively constitute one agreement. For convenience, the signature pages of each counterpart may be removed from that counterpart and attached to a single agreement.

37. Year 2000 Compliance (Y2K). Trustor represents and warrants to Beneficiary that it has fully evaluated and tested any and all date-sensitive computerized systems affecting Trustor's business, including all software, hardware, equipment, goods or systems used by or material to the business operations or financial condition of Trustor, and Trustor hereby represents and warrants to Beneficiary that, to the best of Trustor's knowledge and belief, all such systems are 100% Year 2000 Compliant. Further, Trustor represents to Beneficiary that it has fully evaluated the possible risks and problems associated with the Year 2000 compliance issue as they relate to Trustor's business, and any prospective Guarantor (which is not an individual), or any tenant which occupies (or will occupy) at least 15% of the proposed Project, or whose rental payments will make up at least 15% of Trustor's gross rental income ("Major Tenant"), and has developed and implemented a plan to mitigate Trustor's risks due to any Year 2000 related business interruptions.

For the purposes of the Loan, the term, "Year 2000 Compliant" means, in regard to any entity, that all software, hardware, firmware, equipment, goods or systems used by or material to the business operations or financial condition of such entity, will properly perform date sensitive functions before, during, and after January 1, 2000. Such date sensitive functions shall include, without limitation, (i) interpretation of years greater than 1999, (ii) processing date data from, into, and between dates before January 1, 2000, and dates on or after January 1, 2000, (iii) recognizing numbers such as "99" as an actual date rather than indefinite or unknown information, (iv) recognizing that the year 2000 is a leap year, and (v) transferring data between systems that used different methods to make the system Year 2000 Compliant.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LEND MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER OREGON LAW.

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

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

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

HARDER DEVELOPMENT II, LLC,
an Oregon limited liability company

By: _____

Name: Jon M. Harder

Title: Managing Member

STATE OF OREGON

35932

County of Marion

}
} ss.
}

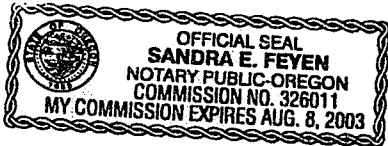
This instrument was acknowledged before me on the 24th day of August 1999, by Jon M. Harder as Managing Member of Harder Development II, LLC, an Oregon limited liability company.

Before Me:

Sandra E. Feyen

Notary Public for Oregon

My Commission Expires: 8-8-2003



Unofficial Copy

EXHIBIT "A"

Property Description

PARCEL 1:

That portion of Tract 40B lying South and Westerly of the U.S.B.R. "A" Canal and Easterly of Washburn Way and all of Tract 40C, ENTERPRISE TRACTS, in the County of Klamath, State of Oregon.

EXCEPTING THEREFROM that portion deeded to Klamath County in Book 335, Page 87, tract deeded to Fred A. Lewis, et ux., in Book 336, Page 157, and parcel deeded to United States of America for canals and laterals recorded June 25, 1909 in Book 27, Page 236 and in Book 38 at Pages 209 and 210, all Deed Records of Klamath County, Oregon, and that portion of Tract 40C described as follows:

Beginning at a one-half inch iron pin on the East right of way line of Washburn Way, said point being North 00 degrees 20' 00" East along the centerline of Washburn Way and along the West line of Section 34 a distance of 332.19 feet and South 89 degrees 33' 03" East a distance of 30.00 feet from the 5/8 inch iron pin marking the West one-quarter corner of Section 34; thence North 00 degrees 20' 00" East along the East right of way line of Washburn Way a distance of 285.00 feet to a one-half inch iron pin; thence South 89 degrees 33' 03" East parallel with the North line of "Mills Gardens" subdivision a distance of 472.43 feet to a one-half inch iron pin; thence continuing South 89 degrees 33' 03" East a distance of 29 feet, more or less, to the Westerly right of way line of the U.S.B.R. "A" Canal; thence Southeasterly along said Westerly line to the North line of "Mills Gardens" subdivision; thence North 89 degrees 33' 03" West along the North line of "Mills Gardens" subdivision (South 89 degrees 45' West by said subdivision plat) a distance of 20.96 feet, more or less, to a two inch iron pipe; thence continuing North 89 degrees 33' 03" West along said subdivision line a distance of 606.40 feet to the point of beginning.

ALSO EXCEPTING THEREFROM any portion lying within the boundaries of Washburn Way.

PARCEL 2:

A tract of land situated in Tracts 40B and 40C, ENTERPRISE TRACTS, in the NW 1/4 of Section 34, Township 38 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, more particularly described as follows:

Beginning at an iron pin located North 0 degrees 24' West a distance of 792.2 feet from the two-inch pipe marking the initial point of "Mills Gardens" subdivision, said initial point being North 0 degrees 24' West a distance of 15.0 feet and North 89 degrees 45' East a distance of 30.0 feet from the West quarter corner of said Section 34 according to the officially recorded plat of said "Mills Gardens" subdivision; thence North 0 degrees 24' West a distance of 85.0 feet to an iron pin; thence North 89 degrees 36' East a distance of 100.0 feet to an iron pin; thence South 0 degrees 24' East a distance of 85.0 feet to an iron pin; thence South 89 degrees 36' West a distance of 100.0 feet, more or less, to the point of beginning.

EXCEPT THEREFROM that portion lying within the boundaries of Washburn Way.

CODE 203 MAP 3809-34BC TL 400
CODE 203 MAP 3809-34BC TL 500
CODE 203 MAP 3809-34BC TL 600