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

M3 This DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS (as the same may be modified, extended, renewed or restated, this "Deed of Trust"), dated as of *May 30* 2001, is granted by **BERTRAM N. and MURIEL J. SINGER**, husband and wife (collectively, "Grantor"), whose address is 5411 Sylvia, Klamath Falls, Oregon 97603, to **ASPEN TITLE & ESCROW, INC.** ("Trustee"), whose address is 525 Main Street, Klamath Falls, Oregon 97601, for the benefit of **CALIFORNIA BANK & TRUST** ("Beneficiary"), whose address is 13545 Barrett Parkway Drive, Suite 335, Ballwin, Missouri 63021.

The following recitals form the basis, and are a material part, of this Deed of Trust:

M5 A. The Rock, LLC dba Gibraltar Mortgage (collectively, "Borrower"), executed and delivered a promissory note (as amended, modified, renewed or extended from time to time, the "Note"), dated the same date as this Deed of Trust, payable to the order of Beneficiary, in the original principal amount of \$60,000. The maturity date of the Note is anticipated to be *May 30*, 2008. Such maturity date, and any other term of the Note, may be extended, amended or modified by agreement of Borrower and the Beneficiary without affecting the validity or priority of the lien created by this Deed of Trust, and without the necessity of amending this Deed of Trust. The Note provides, inter alia, for a variable rate of interest that may increase or decrease from time to time and contains an attorneys' fee clause.

Grantor has made and delivered to Beneficiary its guaranty (the "Guaranty") dated the same date as this Deed of Trust, the terms and provisions of which are hereby incorporated by reference herein, by which Grantor guaranteed all of the payment and performance obligations of Borrower to Beneficiary.

B. The total indebtedness and liabilities to be secured by this Deed of Trust are as follows (all such indebtedness and liabilities or the instruments evidencing same, as applicable, being herein collectively called the "Obligations"):

(i) the aggregate of all principal and interest due under the Note and the Guaranty; plus

(ii) all other amounts payable and all other obligations of the Grantor under the Note, under the Guaranty, under this Deed of Trust, and under any other document or agreement which relates to the Note and Guaranty or any of the security therefor (as any of the foregoing may be amended, modified, extended, renewed, supplemented, or replaced from time to time, all of the foregoing being herein collectively called the "Loan Documents"); plus

(iii) all other present and future amounts which may hereafter be loaned or advanced by Beneficiary to Grantor, or which Grantor may hereafter become obligated to pay Beneficiary, together with interest thereon as therein provided (whether relating to the Loan Documents or otherwise) other than those amounts referred to in (ii) above, but excluding any such amounts which if secured hereby would cause the rate of interest being charged on the amount owed thereunder to be usurious under applicable state or federal law.

C. It has been agreed that the payment and performance of the Obligations shall be secured by a deed of trust and security agreement affecting the Mortgaged Property (as defined below) on the terms and conditions below.

D. THE TOTAL AMOUNT OUTSTANDING AT ANY ONE TIME WHICH IS SECURED BY THIS DEED OF TRUST, EXCLUDING ANY INTEREST AND ANY AMOUNTS ADVANCED BY LENDER FOR THE PROTECTION OF THE SECURITY INTEREST HEREIN GRANTED, SHALL NOT EXCEED \$75,000. This Deed of Trust, including any future advances, shall be governed by the laws of the state in which the land is located, in effect as of the date hereof. The lien of this Deed of Trust shall not be deemed extinguished by virtue of the fact that from time to time the Note may not evidence a debt actually outstanding, or there may be no outstanding Note or other Obligations in existence.

E. The address of the Premises (as defined below) is 5411 Sylvia, Klamath Falls, Oregon.

NOW, THEREFORE, in consideration of the above recitals, \$10.00 and other good and valuable



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+ 5
+ 5

consideration, the receipt and sufficiency of which are hereby acknowledged, to secure the punctual payment by Grantor when due, whether at stated maturity, by acceleration or otherwise, of the Obligations, and the performance and observance of all other covenants, obligations and liabilities of Grantor under this Deed of Trust, as the same may be extended, modified or renewed or repledged, Grantor does hereby GRANT, BARGAIN and SELL, confirm and convey unto Trustee for the benefit of Beneficiary, upon the terms and conditions of this Deed of Trust, WITH POWER OF SALE and right of entry and possession as provided hereinbelow, each and all of the real properties described below (which, together with all other property located therein or described herein, is hereinafter collectively called the "Mortgaged Property") and located in the County of Klamath, State of Oregon.

A. Land. All the estate, right, title and interest of Grantor in, to and under, or derived from, the plots, pieces and parcels of land more particularly described in Exhibit A hereto (the "Land") with the tenements, hereditaments, appurtenances and all the estates and rights of Grantor in and to the Land.

B. Improvements. All buildings and improvements now or hereafter located on the Land (the "Improvements") and all rights, title and interests, if any, of Grantor in and to the streets, roads, sidewalks and alleys abutting the Land, and strips and gores within or adjoining the Land, the air space and right to use said air space above the Land and any transferable development or similar rights appurtenant thereto, all rights of ingress and egress by motor vehicle to parking facilities on or within the Land, all rights of way, all easements now or hereafter affecting or benefiting the Land, royalties and all rights appertaining to the use and enjoyment of the Land, including alley, drainage, mineral, water, well, ditch, reservoir, oil, hydrocarbon and gas rights, and standing timber, trees, crops and agriculture products pertaining to the Land, and all development rights and solar rights.

C. Fixtures. All fixtures and all appurtenances and additions thereto and substitutions or replacements thereof owned by Grantor and now or hereafter attached to the Premises (as defined herein).

D. Equipment. All property, tangible and intangible, and all additions thereto and substitutions or replacements thereof owned by Grantor and now or hereinafter contained in, or used in connection with the Premises or placed on any part thereof though not attached thereto, to the extent the same constitutes real property in the state in which the Mortgaged Property is located (all of the foregoing, including the items hereinafter enumerated, collectively referred to as the "Equipment"), including all removable window and floor coverings, furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator plants, cooking facilities, vacuum cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings and fixtures (the Land, together with the Improvements and the Equipment, are hereinafter collectively referred to as the "Premises").

E. Leases. All existing and future leases, subleases, lettings and licenses of, and all other contracts, bonds and agreements affecting the Premises or any part thereof, now or hereafter entered into (including without limitation all agreements for use and occupancy of the Premises) whether written or oral, and all amendments, modifications, supplements, additions, extensions and renewals thereof, and all guaranties of lessees' performance under same (all of the foregoing hereinafter collectively referred to as the "Leases"), and all now owned and hereafter acquired rights, title and interests of Grantor thereunder, including cash and securities deposited thereunder (as down payments, security deposits or otherwise), the right to receive and collect the rents, security deposits, proceeds, earnings, royalties, receipts, revenues, issues, profits and other income of any nature whatsoever payable thereunder (including without limitation under any existing or future oil, gas, mineral or other lease) and the rights to enforce, whether at law or in equity or by any other means, all provisions and options thereof or thereunder (all of the foregoing hereinafter collectively referred to as the "Rents") and the right to apply the same to the payment and performance of the Obligations.

F. Claims. All rights, dividends and/or claims of any kind whatsoever relating to the Premises (including without limitation damage, secured, unsecured, lien, priority and administration claims); together with the right to take any action or file any papers or process in any court of competent jurisdiction, which may in the opinion of Beneficiary be necessary to preserve, protect, or enforce such rights or claims, including the filing of any proof of claim in any insolvency proceeding under any state, federal or other laws and any rights, claims or awards accruing to or to be paid to Grantor in its capacity as landlord under any Lease.

G. Proceeds. All unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by Grantor and relating to the Premises and all proceeds of the conversion, voluntary or



involuntary, of the Premises into cash or liquidated claims, including proceeds of liability, property and title insurance and all awards and compensation heretofore and hereafter made to the present and all subsequent owners of the Premises by any governmental or other lawful authorities for the taking by eminent domain, condemnation or otherwise, of all or any part of the Premises or any easement therein, including awards for any change of grade of streets.

H. After Acquired Property. All rights, title and interests of Grantor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, any of the foregoing hereafter acquired by, or released to, Grantor or constructed, assembled or placed by Grantor on the Premises and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assemblage, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Grantor, shall become subject to the lien of this Deed of Trust as fully and completely, and with the same effect, as though now owned by Grantor and specifically described herein.

TO HAVE AND TO HOLD the Mortgaged Property unto Trustee and its substitutes and successors forever, IN TRUST for the uses and purposes set forth below.

ARTICLE I

1.01. Security for Obligations. The Mortgaged Property is conveyed to Trustee to secure the payment, when due, and the timely performance and observance of the Obligations.

This Deed of Trust shall be considered a financing statement and a fixture filing pursuant to the provisions of the Uniform Commercial Code (as adopted in the state where the Premises are located) covering the Fixtures, the Equipment and all other items of personal property now owned or hereafter attached to or to be used in connection with the Premises together with any and all replacements thereof, additions thereto, substitutions therefor and products thereof, and Grantor hereby grants Beneficiary a security interest therein to secure payment and performance of the Obligations. For such purposes, Grantor is the debtor and Beneficiary is the secured party. Upon demand, Grantor shall execute and deliver to Beneficiary such other security agreements as Beneficiary may deem appropriate. Grantor hereby authorizes Beneficiary to file financing statements with respect to the personal property collateral and Fixtures at any time, without the signature of Grantor. Grantor shall pay all related filing fees.

ARTICLE II

2.01. Obligations. Grantor shall punctually pay when due, and timely perform and observe, the Obligations.

2.02. Legal Status. Grantor represents and warrants that (i) Grantor has the full power and authority to own the Mortgaged Property and carry out Grantor's business in the state in which the Mortgaged Property is located; and (ii) there is no action, suit or proceeding, judicial, administrative or otherwise, pending or, to the best of Grantor's knowledge, threatened or contemplated against or affecting Grantor or the Mortgaged Property (or any part thereof).

2.03. Warranty of Title. (a) Grantor represents and warrants to Beneficiary that Grantor (i) has good and marketable title to the Premises in fee simple absolute, free and clear of all liens, charges and encumbrances of every kind and character whatsoever, except for this Deed of Trust, which Grantor agrees to pay and perform in a timely manner; (ii) has and will continue to have full power and lawful authority to encumber and convey the Premises as provided herein; and (iii) owns all other Mortgaged Property free and clear of all liens, charges and encumbrances of every kind and character. Grantor covenants that (iv) this Deed of Trust is and will continue to remain a valid and enforceable first priority lien on and security interest in the Mortgaged Property, (v) it will preserve such title and forever warrant and defend the title to the Mortgaged Property unto Trustee and Beneficiary against all lawful claims whatsoever, and (vi) it will forever warrant and defend the validity, enforceability and priority of the lien of this Deed of Trust against the claims of all persons and parties whomsoever.

(b) If there are any prior deeds of trust affecting the Premises, Grantor agrees to pay all amounts owed, and perform all obligations required under such deeds of trust and the indebtedness secured thereby, and further agrees that a default under any prior deed of trust shall be a default under this Deed of Trust and shall entitle Beneficiary to all rights and remedies contained herein or in the Obligations to which Beneficiary would be entitled in



the event of any other default.

2.04. Further Assurances. (a) Grantor covenants that it will, at Grantor's sole cost and expense and at the request of Beneficiary, promptly correct any defect or error which may be discovered in the Loan Documents, and promptly do, execute, acknowledge and deliver, and record and re-record, file and re-file and register and re-register, any and all such instruments as Beneficiary may require from time to time in order to carry out more effectively the purposes of this Deed of Trust. Grantor covenants that it will promptly furnish Beneficiary with evidence satisfactory to Beneficiary of every such recording, filing or registration. Grantor shall promptly comply with all laws, ordinances, regulations and restrictions of any federal, state or local governmental body directly or indirectly affecting the Mortgaged Property or the use of same.

(b) No action or proceeding is or shall be pending or threatened which might materially affect the Mortgaged Property in any way whatsoever. Grantor has not violated and shall not violate any statute, regulation, ordinance, rule of law, contract or other agreement which might materially affect the Mortgaged Property, or Beneficiary's rights or interests in the Mortgaged Property pursuant to this Deed of Trust.

2.05. The Premises.

(a) Repair and Maintenance. Grantor will operate and maintain or cause to be maintained the Premises in good order, repair and operating condition, will promptly make or cause to be made all necessary repairs, restorations, renewals, replacements, additions and improvements thereto, interior and exterior, structural and nonstructural, foreseen and unforeseen, or otherwise necessary to insure that the same as part of the security under this Deed of Trust shall not in any way be diminished or impaired, and will not cause or allow the Premises to be misused, wasted or deteriorated, normal wear and tear excepted. In the event of fire or other casualty, or in the event of a condemnation of a portion of the Premises, Grantor shall repair and restore the Premises to its condition prior to such casualty or condemnation, to the extent possible, promptly and in a workmanlike manner. No part of the Improvements shall be removed, demolished or altered nor shall any new building, structure, facility or other improvement be constructed on the Land nor shall any additions or improvements be made to the Premises without Beneficiary's prior written consent. Without limiting the foregoing, all alterations, additions and improvements made to the Premises shall be subject to the beneficial interest belonging to Beneficiary, shall not be removed without Beneficiary's prior written consent, and shall be made at Grantor's sole expense.

(b) Equipment. Grantor will keep the Premises fully equipped and will replace all worn out or obsolete Equipment with fixtures or personal property comparable thereto when new and will not, without Beneficiary's consent, remove any Equipment or other personal property from the Land or the Improvements unless Grantor replaces the same with an item of equal suitability and value when new, owned by Grantor free and clear of any lien or security interest.

(c) Zoning; Title Matters. Grantor will not, without the prior written consent of Beneficiary, (i) initiate or support any zoning reclassification of the Premises, seek any variance under existing zoning ordinances applicable to the Premises or use or permit the use of the Premises in a manner which would result in such use becoming a non-conforming use under applicable zoning ordinances, (ii) impose any restrictive covenants, easements, rights-of-way or encumbrances upon the Premises, execute or file any subdivision plat affecting the Premises or consent to the annexation of the Premises to any municipality, or (iii) permit or suffer the Premises to be used by the public or any person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication or easement. Grantor is and will continue to observe and comply in all material respects with all applicable federal, state and local zoning and building laws and regulations relating to the Premises, and all rights, licenses, permits, and certificates of occupancy shall be obtained, preserved and, where necessary, renewed. Grantor shall immediately provide Beneficiary with written notice of any proposed changes to the zoning provisions or private covenants affecting the Premises.

(d) Status of the Premises. Grantor represents and warrants that: (i) the Premises are not located in an area identified by the Secretary of Housing and Urban Development, or any successor thereto, as an area having special flood hazards pursuant to the terms of the National Flood Insurance Act of 1968, or the Flood Disaster Protection Act of 1973, as amended, or any successor law or, if the Premises are located in such an area, Grantor will obtain and maintain insurance against damage or loss by flood on such basis and in such amounts as shall be required by Beneficiary; (ii) the Premises are served by all utilities required for the current use thereof (including, without limitation, electricity, water, gas, sanitary and storm sewers and telephone); (iii) all streets necessary to serve



the Land and the Improvements for the current use thereof have been completed and are serviceable and have been dedicated or accepted by the appropriate governmental entities and Grantor has access from public roads to the Land and the Improvements; (iv) there is no condemnation or similar proceeding pending or threatened affecting any part of the Premises; and (v) the Premises have not sustained any loss or damage from fire or other casualty that has not been entirely repaired, and all portions thereof, including the roof, are in a state of good condition and repair.

(e) Environmental. Grantor represents and warrants to Beneficiary that Grantor is in compliance in all respects with all applicable federal, state and local laws and regulations, including without limitation those relating to "Hazardous Materials" or "Hazardous Substances" (as defined under federal law and as supplemented by the definitions thereof in the Indemnity Agreement Regarding Environmental Matters executed by Grantor contemporaneously with this Deed of Trust) and other environmental matters, and neither the federal government nor the state where the Premises are located nor any other governmental or quasi-governmental entity has filed a lien on the Premises, nor are there any governmental, judicial or administrative actions with respect to environmental matters pending, or to the best of Grantor's knowledge, threatened, which involve the Premises. Neither Grantor, nor, to the best of Grantor's knowledge, any other party has used, generated, released, discharged, stored, or disposed of any Hazardous Substances or Materials in connection with the Premises or transported any of same to or from the Premises. Specifically, but not by way of limitation, the Premises have not emitted, do not contain and are not affected by asbestos, polychlorinated biphenyls (PCB's), underground storage tanks, petroleum products, radioactive materials, hazardous substances (as defined under Federal law), hazardous wastes (as defined under Federal law and/or the laws of the State in which the Premises is located), or other pollutants or contaminants and has not been used as a land fill or other waste disposal site. Grantor covenants and agrees that it shall not use, store or dispose of any hazardous substances, hazardous wastes, radioactive materials, explosives, asbestos, or PCB's and shall not store or dispose of any gasoline, petroleum products or any other toxic or hazardous material or other pollutants or contaminants. In the event any such condition is discovered to exist, Grantor shall cause the same to be remediated in compliance with all federal, state and local governmental laws and regulations including without limitation, those laws and regulations relative to the removal, handling and disposal of such substances. The foregoing covenants and obligations shall survive any sale of the Premises by foreclosure or deed in lieu thereof.

(f) Use. The Premises are and Grantor will use and cause the same to be occupied in compliance with all applicable governmental laws, rules, regulations, ordinances, codes and orders, rules of utility companies, requirements of the company providing property insurance for the Premises and restrictions and conditions affecting title to the Mortgaged Property (including without limitation the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq., as amended). Grantor agrees to make any changes or alterations to the Premises as may be required from time to time to cause the same to be in compliance with each of the foregoing. Grantor shall cause the Premises to be used in a manner consistent with the existing use thereof and for no other use unless consented to in writing by Beneficiary.

(g) Forfeiture. Grantor covenants and represents that neither Grantor nor any other person involved with the Mortgaged Property, has committed or been charged with any act or omission affording the federal government or any state or local government the right of forfeiture as against the Mortgaged Property or any part thereof, or any monies paid in performance of its obligations under the Liabilities. Grantor covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Without limiting the foregoing, the filing of formal charges or the commencement of proceedings against Grantor and any part of the Mortgaged Property for which forfeiture is a potential result shall constitute an Event of Default.

2.06. Insurance.

(a) Grantor will cause the Premises to be insured, for the benefit of Trustee and Beneficiary, with such coverages, in such amounts and forms, and from such companies as shall be approved by Beneficiary, and shall obtain such additional coverages or increase the amounts of coverage or modify the forms thereof, as from time to time Beneficiary shall request and in any event shall cause the following insurance to be maintained:

(i) Fire, theft and physical hazard property insurance on an "all risk" basis covering fire and extended coverage risks (including, without limitation, earthquake, flood and tornado) in an amount equal to the full replacement cost of the Improvements and Equipment bearing an agreed amount endorsement. Such insurance shall include explosion insurance if any boilers or similar apparatus are located on the Premises.

(ii) Comprehensive general liability insurance against claims for bodily injury, death or property



damage occurring on, in or about the Premises or as a result of any activity on the Premises during the policy term, with policy limits of not less than One Million Dollars (\$1,000,000) per occurrence and with aggregate limits of not less than One Million Dollars (\$1,000,000) or such greater limits as Beneficiary may from time to time reasonably require.

(iii) Worker's compensation, general liability and automobile liability insurance as required by the laws of the state where the Premises are located to protect Grantor and Beneficiary against claims for injuries sustained in the course of employment at the Premises.

(iv) If all or part of the Premises shall be leased to or occupied by a person or persons other than Grantor, rent loss insurance in an amount necessary to provide full coverage of not less than one hundred percent (100%) of one year's base rental income for all Leases which amount shall be revised annually to reflect any increase or decrease in such base rental income.

(v) Such other insurance, in such amounts and against such risks, as Beneficiary may reasonably require.

(b) All insurance policies required by this Section shall be in form and issued by companies satisfactory to Beneficiary. All insurance policies in respect of the coverages required by this Section shall contain an endorsement naming Beneficiary as mortgagee, loss payee and additional insured, shall be in amounts at least sufficient to prevent co-insurance and all losses thereunder shall be payable to Beneficiary as sole loss payee, and shall provide that no act or omission of Grantor or any other person shall affect the right of Beneficiary to be paid the insurance proceeds pertaining to the loss or damage of the Mortgaged Property. Each policy of insurance required under this Section shall provide that it may not be altered, canceled or otherwise terminated without written notice given to Beneficiary at least thirty (30) days prior to such alteration, cancellation or termination, and shall permit Beneficiary to pay any premium therefor within ten (10) days after receipt of any notice stating that such premium has not been paid when due. The policy or policies of such insurance evidencing the required coverages shall be delivered to Beneficiary. Settlement of any claim under any of the insurance policies referred to in this Section shall require Beneficiary's prior written approval. Grantor shall, immediately upon receipt of any written notice of any failure by Grantor to pay any insurance premium in respect of any insurance required to be maintained under this Section, furnish a copy of such notice to Beneficiary.

(c) Grantor shall not purchase separate insurance policies concurrent in form or contributing in the event of loss with those policies required to be maintained under this Section, unless Beneficiary is included thereon as a named insured, mortgagee and sole loss payee. Grantor shall immediately notify Beneficiary whenever any such separate insurance policy is obtained and shall promptly deliver to Beneficiary the policy or certificate evidencing such insurance. Upon the occurrence of any loss to the Mortgaged Property, Grantor shall give prompt notice of the loss to Beneficiary, describing in reasonable detail the date and nature of the loss.

(d) If Grantor fails to acquire or maintain insurance, Beneficiary (after providing such notice as may be required by law) may in its discretion procure appropriate insurance coverage upon the Mortgaged Property, and the insurance cost shall be added to the principal amount secured hereby, shall bear interest at the rate specified in the Note, and shall be secured hereby. Beneficiary may act as attorney-in-fact for Grantor in making and settling claims under insurance policies, canceling any policy or endorsing Grantor's name on any draft or negotiable instrument drawn by any insurer. All such insurance policies shall be immediately assigned, pledged and delivered to Beneficiary as further security for the Obligations.

2.07. Liens. Grantor will not, without Beneficiary's consent, create, suffer or allow to exist, and shall discharge and release within ten (10) days of the placing thereof, any deed of trust, mortgage, mechanic's lien, tax lien or other voluntary or involuntary lien, security interest or other encumbrance (collectively, "Liens") against or covering the Mortgaged Property, regardless of whether subordinate to the lien of this Deed of Trust. Grantor will pay, bond or otherwise discharge, from time to time when the same shall become due, all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property. Nothing in this Deed of Trust shall be deemed or construed in any way as constituting the consent or request by Trustee or Beneficiary, express or implied, to any contractor, subcontractor, laborer, mechanic or materialman for the performance of any labor or the furnishing of any material for any improvement, construction, alteration or repair of the Premises.

2.08. Taxes and Assessments. Grantor will promptly pay when due and before any penalty or interest may be added thereto, all general and special taxes and assessments, personal property taxes and assessments and any other ad valorem taxes, water and sewer rents, charges and assessments, levies, permits, inspection and license fees and other governmental and quasi-governmental charges and any penalties or interest for non-payment thereof, heretofore or hereafter imposed, or which may become a lien, upon the Mortgaged Property or arising with respect to the occupancy, use or possession thereof (collectively, "Taxes"). Grantor will also pay any penalty, interest or cost for non-payment of Taxes which may become due and payable. Grantor will furnish to Beneficiary proof of payment at the time same is made, and thereafter, upon receipt, validated receipts showing payment in full of all Taxes. Grantor represents and warrants to Beneficiary that the Mortgaged Property constitutes a separate tax parcel from any adjacent land. Upon the request of Beneficiary at any time made, Grantor shall deposit with Beneficiary each month one-twelfth (1/12) of the estimated annual insurance premium, taxes and assessments pertaining to the Mortgaged Property. In the event of an Event of Default, Beneficiary shall have the right, at its sole option, to apply the funds so held to pay any taxes or against the Obligations. Any funds applied may, at Beneficiary's option, be applied in reverse order of the due date thereof.

2.09. Contest. Notwithstanding anything to the contrary contained herein, Grantor shall have the right to contest in good faith and at its own expense the validity or applicability of any duty or obligation described in Sections 2.07 or 2.08, the validity of any Lien, and any Taxes imposed upon the Premises (a "Contest") by an appropriate legal proceeding, which proceeding must operate to prevent the collection of such Impositions or other realization thereon and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same. During the pendency of such Contest, Grantor shall provide security satisfactory to Beneficiary, assuring the discharge of Grantor's obligations that are the subject of such Contest ("Contested Matters") and of any additional interest charge, penalty or expense arising from or incurred as a result of such Contest. If, at any time, payment or performance of such Contested Matters shall become necessary to prevent (i) the delivery of a tax deed conveying the Mortgaged Property because of non-payment or non-performance, (ii) the sale of the Premises to satisfy any lien or claim of lien, or (iii) the imposition of any civil or criminal penalty or liability on Beneficiary or the holders of the Obligations, Grantor shall pay the same in sufficient time to avoid the delivery of such tax deed or the imposition of any such penalty or liability.

2.10. Damage and Destruction.

(a) In the event of any damage to or loss or destruction of the Premises, Grantor shall (i) bear the entire risk of same regardless of the cause, (ii) promptly notify Beneficiary of such event and take such steps as shall be necessary to preserve any undamaged portion of the Premises, and (iii) unless otherwise instructed by Beneficiary, regardless whether the insurance proceeds, if any, shall be sufficient for the purpose or shall be otherwise applied by Beneficiary as provided herein, promptly commence and diligently pursue to completion the restoration, replacement and rebuilding of the Premises to the condition of the Premises affected thereby immediately prior to such damage, loss or destruction in accordance with plans and specifications approved, and with other provisions for the preservation of the security hereunder established, by Beneficiary.

(b) In the event that any portion of the Premises are so damaged, destroyed or lost, and such damage, destruction or loss is covered, in whole or in part, by insurance required by Section 2.06, then, (i) Beneficiary may, but shall not be obligated to, make proof of loss and is hereby authorized and empowered by Grantor to settle, adjust or compromise any claims for damage, destruction or loss thereunder, (ii) each insurance company concerned is hereby authorized and directed to make payment therefor directly to Beneficiary, and (iii) Beneficiary shall have the right to apply the insurance proceeds, first, to reimburse Beneficiary and the holders of the Obligations for all costs and expenses, including adjustors' and attorneys' fees and disbursements, incurred in connection with the collection of such proceeds, and, second, the remainder of such proceeds shall be applied, at Beneficiary's option, in payment of all or any part of the Obligations, in the order and manner determined by Beneficiary (provided that to the extent that any portion of the Obligations shall remain outstanding after such application, such unpaid portion of the Obligations shall continue in full force and effect and Grantor shall not be excused from the payment thereof), or to the cure of any then current default hereunder, or to the restoration, replacement or rebuilding, in whole or in part, of the portion of the Premises so damaged, destroyed or lost. Any insurance proceeds held by Beneficiary to be applied to the restoration, replacement or rebuilding of the Premises shall be so held without payment or allowance of interest thereon and shall be paid out from time to time upon compliance by Grantor with such provisions and requirements as may be imposed by Beneficiary to assure the complete restoration of the Premises (pursuant to plans and specifications acceptable to Beneficiary) in a timely, lien-free, good and workmanlike manner. In the event that Grantor shall have received all or any portion of the insurance proceeds,



Grantor, upon demand from Beneficiary, shall pay to Beneficiary an amount equal to the amount so received by Grantor, to be applied as Beneficiary shall have the right pursuant to this subsection. Notwithstanding anything herein or at law or in equity to the contrary, no insurance proceeds or payments in lieu thereof paid to Beneficiary shall be deemed trust funds, and Beneficiary shall be entitled to dispose of such proceeds as provided in this Section.

(c) Notwithstanding any loss, damage or destruction referred to in this Section, Grantor shall continue to pay and perform the Obligations as provided herein. Any reduction in the Obligations resulting from such application shall be deemed to take effect only on the date of receipt by Beneficiary of such insurance proceeds and application against the Obligations, provided that if prior to the receipt by Beneficiary of such insurance proceeds the Mortgaged Property shall have been sold on foreclosure of this Deed of Trust, or shall have been transferred by deed in lieu of foreclosure of this Deed of Trust, Beneficiary shall have the right to receive the same to the extent of any deficiency found to be due upon such sale, with interest thereon at the Default Rate together with attorneys' fees and disbursements incurred by Beneficiary in connection with the collection thereof.

2.11. Condemnation.

(a) Grantor, promptly upon obtaining knowledge of any pending or threatened institution of any proceedings for the condemnation of the Premises, or of any right of eminent domain, or of any other proceedings arising out of injury or damage to or decrease in the value of the Premises, including a change in grade of any street, will notify Beneficiary of the threat or pendency thereof. Beneficiary may participate in any such proceedings, and Grantor from time to time will execute and deliver to Beneficiary all instruments requested by Beneficiary or as may be required to permit such participation. Grantor shall, at its expense, diligently prosecute any such proceedings, shall deliver to Beneficiary copies of all papers served in connection therewith and shall consult and cooperate with Beneficiary, its attorneys and agents, in the carrying on and defense of any such proceedings; provided that no settlement of any such proceeding shall be made by Grantor without Beneficiary's written consent.

(b) All proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all judgments, decrees and awards for injury or damage to the Premises (collectively, "Awards") are hereby assigned and shall be paid to Beneficiary. Grantor authorizes Beneficiary to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any Awards.

(c) Beneficiary shall have the right to apply any Awards, first, to reimburse Trustee and Beneficiary for all costs and expenses, and, second, the remainder thereof in the manner provided in clause second of Section 2.10(b)(iii). In the event that Grantor shall have received all or any portion of such Awards, Grantor, upon demand from Beneficiary, shall pay to Beneficiary an amount equal to the amount so received by Grantor, to be applied as Beneficiary shall have the right pursuant to this subsection. Notwithstanding anything herein or at law or in equity to the contrary, none of the Awards paid to Beneficiary under this Section shall be deemed trust funds and Beneficiary shall be entitled to dispose of the same as provided in this Section.

(d) Notwithstanding any condemnation, taking or other proceeding referred to in this Section, Grantor shall continue to pay and perform the Obligations as provided herein. Any reduction in the Obligations resulting from such application shall be deemed to take effect only on the date of receipt by Beneficiary of such Awards and application against the Obligations, provided that if prior to the receipt by Beneficiary of such Awards the Mortgaged Property shall have been sold on foreclosure of this Deed of Trust, or shall have been transferred by deed in lieu of foreclosure of this Deed of Trust, Beneficiary shall have the right to receive the same to the extent of any deficiency found to be due upon such sale, with legal interest thereon together with attorneys' fees and disbursements incurred by Beneficiary in connection with the collection thereof.

2.12. Notice Limiting Amount. Grantor covenants that it will not, without the prior written consent of Beneficiary, file of record any notice limiting the maximum principal amount secured by this Deed of Trust.

2.13. Inspection. Grantor shall permit Beneficiary, or its agents, engineers, appraisers, accountants and attorneys, to visit and inspect the Premises and to visit, inspect and make copies of the books and records relative thereto at such times as Beneficiary may request. Grantor shall provide any assistance required by Beneficiary for such purposes. All of the signatures and information contained in Grantor's books and records shall be genuine, true, accurate and complete and kept current and in accordance with generally acceptable accounting principles, consistently applied, for Grantor's type of business, in all respects. Grantor shall, report, in a form acceptable to



Beneficiary, such information as Beneficiary may request regarding Grantor's financial condition or the Mortgaged Property.

2.14. Additional Advances and Disbursements.

(a) Grantor agrees that, if Grantor shall default in any of its obligations hereunder, Beneficiary shall have the right without notice to Grantor to advance all or any part of amounts owing or to perform any or all required actions. No such advance or performance shall be deemed to have cured such default by Grantor or any Event of Default with respect thereto. All sums advanced and all expenses incurred by Beneficiary in connection with such advances or actions, and all other sums advanced or expenses incurred by Beneficiary hereunder or under applicable law (whether required or optional and whether indemnified hereunder or not) shall be part of the Obligations, shall bear interest at the Default Rate (as defined in the Note) and shall be secured by this Deed of Trust.

(b) This Deed of Trust secures not only existing indebtedness, but also future or additional advances made pursuant hereto, regardless of whether such advances are obligatory or optional, up to the maximum amount stated on the front page hereof.

2.15. Other Expenses. Grantor will pay or, on demand, reimburse Beneficiary or any holder of the Obligations for the payment of any and all costs or expenses (including attorneys' fees and disbursements) incurred in connection with (i) any default or Event of Default by Grantor hereunder, (ii) the exercise or enforcement by or on behalf of Beneficiary or any holder of the Obligations of any of its rights or of Grantor's obligations under any of the Loan Documents, and (iii) the granting, administration, enforcement and closing of the transactions contemplated hereunder. Beneficiary, at Beneficiary's option, may expend funds to perform any act required to be taken by Grantor or to exercise any right or remedy of Beneficiary under this Deed of Trust. Upon demand, Grantor shall immediately reimburse Beneficiary for all such amounts expended by Beneficiary together with interest thereon at the rate described in the Note from the date of payment until the date of reimbursement, except where such reimbursement would cause a violation of applicable state law. These sums shall be included in the definition of Obligations herein and shall be secured by the beneficial interest granted herein.

2.16. Indemnity. Grantor agrees to indemnify, defend (by counsel acceptable to Beneficiary) and hold harmless Trustee, Beneficiary, the holders of the Obligations and their respective officers, directors, partners, employees, agents and shareholders (the "indemnified parties") from and against any and all losses, liabilities, suits, damages, claims, causes of action, judgment, settlements, fines, other legal proceedings, penalties and expenses (including attorneys' fees and disbursements) which may be imposed on, incurred by or asserted against any of the indemnified parties resulting from (i) any misrepresentation or breach of any covenant or warranty of Grantor herein or in the Loan Documents, (ii) any Event of Default, (iii) any personal injury, death or property damage arising out of the ownership, use or occupation of the Mortgaged Property (including without limitation any involving hazardous materials or substances), (iv) any condition of the Mortgaged Property or Collateral, including, without limitation, those conditions regulated by environmental, health and/or safety laws, rules, regulations, ordinances or codes, and (v) any transaction in any way connected with the Mortgaged Property, the Collateral or the Loan Documents, except to the extent any such loss, damage, claim, cost or expense is the result of the willful misconduct or gross negligence of the indemnified party. Beneficiary shall not assume or be responsible for the performance of any of Grantor's obligations with respect to the Mortgaged Property under any circumstances whatsoever. Any amount payable under this Section shall be deemed a demand obligation, shall be added to and become a part of the Obligations, shall bear interest at the Default Rate, and shall be secured by this Deed of Trust. The foregoing obligation of Grantor shall survive any foreclosure of the Mortgaged Property under this Deed of Trust or any deed in lieu thereof.

2.17. Transfer Restrictions. Grantor acknowledges that the continuous ownership of the Mortgaged Property by Grantor is a material inducement to Beneficiary to make the loan secured by this Deed of Trust. Any one or more of the following (collectively referred to herein as "Transfers") shall constitute an immediate Event of Default hereunder if Beneficiary's prior written consent thereto has not been obtained: (i) the sale, grant, conveyance, assignment, lease or other transfer, by operation of law or otherwise, voluntary or involuntary, of the Mortgaged Property, or any legal, beneficial or equitable interest therein or the entering into of an agreement, grant of an option or other action which may result in any such transaction; (ii) the sale or transfer (whether voluntary or involuntary or by operation of law or otherwise) of more than twenty percent (20%), in the aggregate, of the issued and outstanding capital stock of Grantor, if Grantor is a corporation; (iii) the sale, assignment or other transfer



(whether voluntary or involuntary or by operation of law or otherwise) of any membership interests of any limited liability company shareholder or member of Grantor (if applicable), or the sale or transfer (whether voluntary or involuntary or by operation of law or otherwise) of any general partnership interest in Grantor, if Grantor is a partnership; (iv) any withdrawal of any member from the Grantor or from any limited liability company which is a member of Grantor or any withdrawal of any general partner from any partnership which is a member of Grantor, whether voluntary or involuntary, by operation of law or otherwise; (v) a merger, consolidation, or other form of reorganization of Grantor, whether voluntary or involuntary, by operation of law or otherwise; (vi) the death or incompetency of any individual comprising Grantor, if Grantor is comprised of individuals; (vii) the further encumbrance, alienation, granting of a lien or granting of any other interest in the Mortgaged Property or any part thereof (including without limitation any partnership or other ownership interest in Grantor), whether voluntary or involuntary; or (viii) Grantor's entry into any easement or other agreement granting rights in or restricting the use or development of the Mortgaged Property. In addition, the execution and delivery of any documentation relating to a transfer of, or the granting of a right to utilize, any development rights appurtenant to the Mortgaged Property shall be deemed a Transfer of the Mortgaged Property. Any person or legal representative of Grantor to whom Grantor's interest in the Mortgaged Property passes by operation of law, or otherwise, shall be bound by the provisions of this Deed of Trust. The provisions of this Section shall apply to each and every such Transfer of all or any portion of the Mortgaged Property or any legal or equitable interest therein, regardless whether or not Beneficiary has consented to, or waived by its action or inaction its rights hereunder with respect to any previous Transfer of all or any portion of the Mortgaged Property or any legal or equitable interest therein.

2.18 Waiver of Offset. All sums payable by Grantor under this Deed of Trust shall be paid without notice, demand, counterclaim, set off, deduction or defense and without abatement, suspension, deferment, diminution or reduction. The Obligations shall in no way be released, discharged or otherwise affected (except as expressly provided in this Deed of Trust) by reason of (i) any damage to or destruction of, or any condemnation or similar taking of all or any portion of, the Mortgaged Property, (ii) any restriction or prevention of, or interference with, any use of all or any portion of the Mortgaged Property, (iii) any title defect or encumbrance, (iv) any eviction from all or any portion of the Mortgaged Property by title paramount or otherwise, (v) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by the Trustee, or by any court, in any such proceeding, (vi) any claim which Grantor has or might have against Beneficiary, (vii) any default or failure on the part of Beneficiary to perform or comply with any of the terms of this Deed of Trust or of any other agreement with Grantor, or (viii) any other occurrence whether similar or dissimilar to the foregoing. Except as expressly provided in this Deed of Trust, Grantor waives all rights now or subsequently conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any Obligation secured by this Deed of Trust.

2.19 Waiver Regarding Leases of Property. Beneficiary shall not be liable for any loss sustained by Grantor resulting from Beneficiary's failure to let the Mortgaged Property after default or from any other act or omission of Beneficiary in managing the Mortgaged Property after default unless such loss is caused by the willful misconduct of Beneficiary. Beneficiary shall not be obligated to perform or discharge any obligation, duty or liability under any lease of the Mortgaged Property. This Deed of Trust (i) shall not operate to place responsibility for the control, care, management or repair of the Mortgaged Property upon Beneficiary, and (ii) shall not operate to make Beneficiary responsible or liable for any waste committed on the Mortgaged Property by the tenants under any lease or other parties, for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss, injury or death to any person.

ARTICLE III

3.01. Assignment of Leases and Rents. Grantor does hereby grant, bargain and sell, transfer, assign and set over to Beneficiary, as further security for the payment of the Obligations, all of Grantor's rights, title and interests in and to the Leases and the Rents payable thereunder and any and all deposits held as security under the Leases, whether before or after foreclosure or during the full period of redemption, if any, and shall, upon demand, deliver to Beneficiary an executed counterpart of each Lease. The assignment of the Leases and Rents, and of the aforesaid rights with respect thereto, is intended to be and is an absolute present assignment from Grantor to Beneficiary and not merely the passing of a security interest. Such assignment and grant shall continue in effect until the Obligations are paid, the execution of this Deed of Trust constituting and evidencing the irrevocable consent of Grantor to the entry upon and taking possession of the Premises by Beneficiary pursuant to such grant, regardless of whether foreclosure has been instituted and without applying for a receiver. Until the occurrence of an Event of Default hereunder, Grantor shall be entitled to collect and receive the Rents and agrees to hold the same in trust, however,



Beneficiary may at any time require Grantor to deposit all Rents into an account maintained by Grantor or Beneficiary at Beneficiary's institution.

Such right of Grantor to collect and receive said Rents shall be automatically revoked upon the occurrence of an Event of Default and thereafter Beneficiary shall have the right and authority to exercise any of the remedies granted to it under this Deed of Trust. In addition, upon such an Event of Default, Grantor shall promptly pay to Beneficiary all rent prepayments and security or other deposits paid to Grantor pursuant to any Lease assigned hereunder. Upon an Event of Default, Beneficiary may at its option take possession of the Mortgaged Property and have, hold, manage, lease and operate the Mortgaged Property on terms and for a period of time that Beneficiary deems proper. Beneficiary may proceed to collect and receive all Rents from the Mortgaged Property, and Beneficiary shall have full power to make alterations, renovations, repairs and/or replacements to the Mortgaged Property as Beneficiary may deem proper. Beneficiary may apply all Rents in its sole discretion to payment of the Obligations or to the payment of the cost of such alterations, renovations, repairs and replacements and any expenses incident to taking and retaining possession of the Mortgaged Property periodically and the management and operation of the Mortgaged Property. Beneficiary may keep the Mortgaged Property properly insured and may discharge any taxes, charges, claims, assessments and other liens which may accrue. The expense and cost of these actions may be paid from the Rents received, and any unpaid amounts shall be added to the principal of the Obligations. These amounts, together with other costs, shall become part of the Obligations secured by this Deed of Trust.

Nothing contained in this Section shall be construed to bind Beneficiary to the performance of any of the covenants, conditions or provisions contained in any Lease or otherwise to impose any obligation on Beneficiary (including any liability under the covenant of quiet enjoyment contained in any Lease or under any applicable law in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Deed of Trust and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Premises), except that Beneficiary shall be accountable for any money actually received pursuant to such assignment. Immediately upon entering into a new Lease, Grantor shall notify Beneficiary in writing of such tenant's name and address.

Grantor shall not take or fail to take any action which may cause or permit the termination or the withholding of any payment in connection with any Lease pertaining to the Mortgaged Property. In addition, Grantor, without Beneficiary's prior written consent, shall not: (a) collect any monies payable under any Lease more than one month in advance; (b) modify any Lease; (c) assign or allow a lien, security interest or other encumbrance to be placed upon Grantor's rights, title and interests in and to any Lease or the amounts payable thereunder; or (d) terminate or cancel any Lease except for the nonpayment of any sum or other material breach by the other party thereto. If Grantor receives at any time any written communication asserting a default by Grantor under a Lease or purporting to terminate or cancel any Lease, Grantor shall promptly forward a copy of such communication (and any subsequent communications) to Beneficiary.

Beneficiary shall be entitled to notify or require Grantor to notify any third party (including without limitation lessees, licensees, governmental authorities and insurance companies) to pay Beneficiary any indebtedness or obligation owing to Grantor with respect to the Mortgaged Property whether or not a default exists under this Deed of Trust. Beneficiary shall be entitled to apply any payments received from third parties to the Obligations. Grantor shall diligently collect such amounts owing to Grantor from third parties until the giving of such notification. Beneficiary shall not be liable to Grantor for any action, error, mistake, omission or delay pertaining to the actions described in this paragraph or any damages resulting therefrom.

ARTICLE IV

4.01. Events of Default. An "Event of Default" as that term is used in this Deed of Trust shall occur if Grantor, borrower, or any guarantor of the Obligations:

- (a) fails to pay any of the Obligations (including without limitation any payment of principal, interest or other amounts due under the Note) when and as the same shall become due; or
- (b) fails to observe or perform any of the Obligations (including without limitation any of the covenants or obligations to be observed or performed under this Deed of Trust or any of the Loan Documents); or



- (c) breaches any representation or warranty of Grantor in this Deed of Trust or in any of the other Loan Documents or in any other present or future agreement; or
- (d) destroys, loses or damages the Mortgaged Property, or any portion thereof, or subjects the Mortgaged Property, or any portion thereof, to seizure, confiscation or condemnation; or
- (e) abandons the Premises or ceases to do business or terminates its business for any reason whatsoever; or
- (f) seeks to revoke, terminate or otherwise limit its liability under any guaranty to Beneficiary; or
- (g) permits any claim of priority to this Deed of Trust or any other document or instrument securing the Obligations by title, lien or otherwise to be upheld by any court of competent jurisdiction or consents to same; or
- (h) fails to cure any default under any Lease within the shorter of thirty (30) days following the giving of notice of default by the lessor thereunder or the applicable grace period set forth therein; or
- (i) notifies Beneficiary of Grantor's election to terminate the operation of this Deed of Trust as security for future advances or future obligations; or
- (j) permits the occurrence of any Transfer; or
- (k) dies, becomes legally incompetent, is dissolved or terminated, becomes insolvent, makes an assignment for the benefit of creditors, fails to pay debts as they become due, files a petition under the federal bankruptcy laws, has an involuntary petition in bankruptcy filed in which Grantor, borrower or any guarantor is named, or has property taken under any writ or process of court; or
- (l) allows goods to be used, transported or stored on the Premises, the possession, transportation, or use of which is illegal; or
- (m) allows any party other than Grantor or borrower to assume or undertake any or all of the Obligations without the written consent of Beneficiary; or
- (n) causes Beneficiary to deem itself insecure due to a significant decline in the value of the Premises, or if Beneficiary, in good faith, for any reason, believes that the prospect of payment or performance of any Obligations is impaired.

4.02. Remedies. Upon the occurrence of any one or more Events of Default, or any Transfer without the consent of Beneficiary, Trustee or Beneficiary may, in addition to any rights or remedies available to it hereunder or under the other Loan Documents and to the extent permitted by applicable law, take such action personally or by its agents or attorneys, with or without entry, and without notice, demand, presentment or protest (each and all of which are hereby waived), as it deems necessary or advisable to protect and enforce its rights and remedies against Grantor and in and to the Mortgaged Property, including any one or more of the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting its other rights or remedies:

- (a) Accelerate Debt. Declare the entire balance of the Obligations to be immediately due and payable, and upon any such declaration, the entire unpaid balance of the Obligations shall become and be immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Grantor, anything in any other Loan Documents to the contrary notwithstanding.
- (b) Foreclosure. Institute a proceeding or proceedings, judicial, non-judicial or otherwise, for the complete or partial foreclosure of this Deed of Trust under any applicable provision of law.
- (c) Power of Sale. To the extent permitted by law, sell the Mortgaged Property, and all estate, right, title, interest, claim and demand of Grantor therein, and all rights of redemption thereof, at one or more sales, as an entirety or in parcels, with such elements of real and/or personal property, at public vendue at such place as may be proper for the conduct of such sale in the jurisdiction in which the Mortgaged Property is located to the highest



bidder for cash at such time and place and upon such terms as it may deem expedient, or as may be required by applicable law, after first giving notice as required by applicable law. In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of the Mortgaged Property, this Deed of Trust shall continue unimpaired as a lien and security interest on the remaining portion of the Mortgaged Property.

(d) Specific Performance. Institute an action, suit or proceeding in equity for the specific performance of any of the provisions contained in the Loan Documents.

(e) Receiver. Apply for the appointment of a receiver, custodian, trustee, liquidator or conservator of the Mortgaged Property, to be vested with the fullest powers permitted under applicable law, as a matter of right and without regard to, or the necessity to disprove, the adequacy of the security for the Obligations or the solvency of Grantor or any other person liable for the payment of the Obligations. Grantor and each other person so liable waives or shall be deemed to have waived such necessity and consents or shall be deemed to have consented to such appointment.

(f) Right of Entry. Enter upon the Premises, and exclude Grantor and its agents and servants wholly therefrom, without liability for trespass, damages or otherwise, and take possession of all books, records and accounts relating thereto and all other Mortgaged Property, and Grantor agrees to surrender possession of the Mortgaged Property and of such books, records and accounts to Trustee or Beneficiary on demand after the occurrence of any Event of Default; and having and holding the same may use, operate, manage, preserve, control and otherwise deal therewith and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers, without interference from Grantor; and upon each such entry and from time to time thereafter may, at the expense of Grantor and the Mortgaged Property, without interference by Grantor and as Beneficiary may deem advisable, (i) insure or reinsure the Premises, (ii) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements thereto and thereon and (iii) in every such case in connection with the foregoing have the right to exercise all rights and powers of Grantor with respect to the Mortgaged Property, either in Grantor's name or otherwise.

(g) Collect Rent. With or without the entrance upon the Premises, collect, receive, sue for and recover in its own name all rents and cash collateral derived from the Mortgaged Property, and after deducting therefrom all costs, expenses and liabilities of every character incurred by Trustee or Beneficiary in collecting the same and in using, operating, managing, preserving and controlling the Mortgaged Property, and otherwise in exercising Trustee's or Beneficiary's rights under subsection (f) of this Section, including all amounts necessary to pay taxes, insurance premiums and other charges in connection with the Premises, as well as compensation for the services of Trustee or Beneficiary and their respective attorneys, agents and employees, to apply the remainder as provided in Section 4.05.

(h) Substitution of Collateral. Release any portion of the Mortgaged Property for such consideration as Beneficiary may require without, as to the remainder of the Mortgaged Property, in any way impairing or affecting the lien or priority of this Deed of Trust, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Obligations shall have been reduced by the actual monetary consideration, if any, received by Beneficiary for such release and applied to the Obligations, and may accept by assignment, pledge or otherwise any other property in place thereof as Beneficiary may require without being accountable for so doing to any other lienholder.

(i) Security Agreement. Exercise any remedies of a secured creditor under the Uniform Commercial Code or any other applicable law.

(j) Interest After Default. If any payment due hereunder or under the other Loan Documents is not paid in full when due, whether by acceleration or otherwise, then the same shall bear interest hereunder at the Default Rate, and such interest shall be added to and become a part of the Obligations and shall be secured hereby.

(k) Set-Off. Set-off Grantor's Obligations against any amounts owed Grantor by Beneficiary including without limitation monies, instruments, and deposit accounts maintained with Beneficiary or any currently existing or future affiliate of Beneficiary.

(l) Other Action. Take any other action, or pursue any other right or remedy, as Trustee or Beneficiary may have under applicable law, and Grantor does hereby grant the same to Trustee or Beneficiary.



(m) **Collection Costs.** To the extent permitted by applicable state law, Grantor agrees to pay Beneficiary's fees and costs, including without limitation fees and costs of attorneys and other agents who are not salaried employees of Beneficiary, which are incurred by Beneficiary in collecting any amount due or enforcing any right or remedy under this Deed of Trust, whether or not suit is brought, including without limitation all fees and costs incurred on appeal, in bankruptcy, and for post-judgment collection actions.

In the event that Trustee or Beneficiary shall exercise any of the rights or remedies set forth in subsections (f) and (g) of this Section, Trustee or Beneficiary shall not be deemed to have entered upon or taken possession of the Mortgaged Property except upon the exercise of its option to do so, evidenced by its demand and overt act for such purpose, nor shall it be deemed a Trustee or Beneficiary in possession by reason of such entry or taking possession. Neither Trustee nor Beneficiary shall be liable to account for any action taken pursuant to any such exercise other than for Rents actually received by Beneficiary, nor liable for any loss sustained by Grantor resulting from any failure to let the Premises, or from any other act or omission of Trustee or Beneficiary except to the extent such loss is caused by the willful misconduct or bad faith of Trustee or Beneficiary.

4.03. Rights Pertaining to Sales. Subject to the provisions or other requirements of law and except as otherwise provided herein, the following provisions shall apply to any sale or sales of all or any portion of the Mortgaged Property under or by virtue of this Article, whether made under the power of sale herein granted or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale:

(a) Trustee or Beneficiary may conduct any number of sales from time to time. The power of sale remedy set forth in Section 4.02(c) hereof shall not be exhausted by any one or more such sales as to any part of the Mortgaged Property which shall not have been sold, nor by any sale which is not completed or is defective in Beneficiary's opinion, until the Obligations shall have been paid in full.

(b) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice. If foreclosure proceedings are initiated but not completed, Grantor will immediately reimburse Trustee for all costs and expenses incurred by Trustee incident to such proceedings, including attorney's fees, trustee fees, cost of procuring evidence of title and the cost of any environmental report or examination.

(c) After each sale, Trustee or an officer of any court empowered to do so shall execute and deliver to the purchaser or purchasers at such sale a good and sufficient instrument or instruments granting, conveying, assigning and transferring all right, title and interest of Grantor in and to the property and rights sold and shall receive the proceeds of said sale or sales and apply the same as herein provided. Each of Trustee and Beneficiary is hereby appointed the true and lawful attorney-in-fact of Grantor, which appointment is irrevocable and shall be deemed to be coupled with an interest, in Grantor's name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, and for that purpose Trustee and Beneficiary may execute all necessary instruments of conveyance, assignment, transfer and delivery, and may substitute one or more persons with like power, Grantor hereby ratifying and confirming all that said attorney or such substitute or substitutes shall lawfully do by virtue thereof. Nevertheless, Grantor, if requested by Trustee or Beneficiary, shall ratify and confirm any such sale or sales by executing and delivering to Trustee, Beneficiary or such purchaser or purchasers all such instruments as Trustee or Beneficiary may request.

(d) Any and all statements of fact or other recitals made in any of the instruments referred to in subsection (c) of this Section given by Trustee or Beneficiary as to nonpayment of the Obligations, or as to the occurrence of any Event of Default, or as to Beneficiary having declared all or any of the Obligations to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and of the property or rights to be sold having been duly given, or as to the refusal, failure or inability to act of Trustee, or as to the appointment of any substitute or successor trustee, or as to any other act or thing having been duly done by Grantor, Beneficiary, or by Trustee, shall be taken as conclusive and binding against all persons as evidence of the truth of the facts so stated and recited. Trustee or Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale so held, including the posting of notices and the conduct of sale, but such acts are to be performed in the name and on behalf of Trustee.

(e) The receipt of Trustee or Beneficiary for the purchase money paid at any such sale, or the receipt of any other person authorized to receive the same, shall be sufficient discharge therefor to any purchaser of any



property or rights sold as aforesaid, and no such purchaser, or its representatives, grantees or assigns, after paying such purchase price and receiving such receipt, shall be bound to see to the application of such purchase price or any part thereof upon or for any trust or purpose of this Deed of Trust or, in any manner whatsoever, be answerable for any loss, misapplication or nonapplication of any such purchase money, or part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(f) Any such sale or sales shall operate to divest Grantor of all right, title, interest, claim and demand whatsoever, whether at law or in equity, of Grantor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Grantor and any and all persons claiming or who may claim the same, or any part thereof or any interest therein, by, through or under Grantor to the fullest extent permitted by applicable law.

(g) Upon any such sale or sales, Beneficiary may bid for and acquire the Mortgaged Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Obligations the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any enforcement proceeding hereunder, and any other sums which Trustee or Beneficiary is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid.

(h) In the event that Grantor, or any person claiming by, through or under Grantor, shall transfer or refuse or fail to surrender possession of the Mortgaged Property after any sale thereof, then Grantor, or such person, shall be deemed a tenant at sufferance of the purchaser at such sale, subject to eviction by means of forcible entry and unlawful detainer proceedings, or subject to any other right or remedy available hereunder or under applicable law.

(i) Upon any such sale, it shall not be necessary for Trustee, Beneficiary or any public officer acting under execution or order of court to have present or constructively in its possession any of the Mortgaged Property.

(j) In the event a foreclosure hereunder shall be commenced by Trustee or Beneficiary, Beneficiary may at any time before the sale of the Mortgaged Property abandon the sale, and may institute suit for the collection of the Obligations and for the foreclosure of this Deed of Trust, or in the event that Beneficiary should institute a suit for collection of the Obligations, and for the foreclosure of this Deed of Trust, Beneficiary may at any time before the entry of final judgment in said suit dismiss the same and require Trustee or Beneficiary to sell the Mortgaged Property in accordance with the provisions of this Deed of Trust.

4.04. Expenses. In any proceeding, judicial or otherwise, to foreclose this Deed of Trust or enforce any other remedy of Trustee or Beneficiary under the Loan Documents, there shall be allowed and included as an addition to and a part of the Obligations in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred in connection with the exercise by Trustee or Beneficiary of any of its rights and remedies provided or referred to in Section 4.02, or any comparable provision of any other Loan Document, together with interest thereon at the Default Rate, and the same shall be part of the Obligations and shall be secured by this Deed of Trust.

4.05. Application of Proceeds. The purchase money, proceeds or avails of any sale referred to in Section 4.02, together with any other sums which may be held by Trustee or Beneficiary hereunder, whether under the provisions of this Article or otherwise (including without limitation any payment made by or on behalf of Grantor), shall, except as herein expressly provided to the contrary, be applied as follows:

First: To the payment of the costs and expenses incurred by Beneficiary, including without limitation compensation to Trustee and attorneys' fees and legal expenses, which Beneficiary, its agents or counsel may incur, and of all expenses, liabilities and advances made or incurred by Trustee or Beneficiary hereunder, including, without limitation, the cost of obtaining title reports and/or insurance, together with interest thereon as provided herein, and all taxes and other charges.

Second: To the payment in full of the monetary Obligations (including principal, interest, premium and fees) in such order as Beneficiary may elect.

Third: To the payment of any other sums secured hereunder or required to be paid by Grantor pursuant to any provision of the Loan Documents.



Fourth: To the extent permitted by applicable law, to be set aside by Beneficiary as adequate security in its judgment for the payment of sums which would have been paid by application under clauses First through Third above to Beneficiary, arising out of an obligation or liability with respect to which Grantor has agreed to indemnify Beneficiary, but which sums are not yet due and payable or liquidated.

Fifth: To the payment of any withholding tax in accordance with applicable Federal, state or local law.

Sixth: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

4.06. Additional Provisions as to Remedies.

(a) No delay or omission by Trustee or Beneficiary to exercise any right or remedy hereunder upon any default or Event of Default shall impair such exercise, or be construed to be a waiver of any such default or Event of Default.

(b) The failure, refusal or waiver (by consent, waiver or otherwise) of Trustee or Beneficiary to assert any right or remedy hereunder upon any default or Event of Default or other occurrence shall not be construed as waiving such right or remedy upon any other or subsequent default or Event of Default or other occurrence.

(c) Neither Trustee nor Beneficiary shall have any obligation to pursue any rights or remedies it may have under any other agreement prior to pursuing its rights or remedies hereunder or under the other Loan Documents.

(d) Acceptance of any payment after the occurrence of any default or Event of Default shall not be deemed a waiver or a cure of such default or Event of Default, and acceptance of any payment less than any amount then due shall be deemed an acceptance on account only.

(e) In the event that Trustee or Beneficiary shall have proceeded to enforce any right or remedy hereunder by foreclosure, sale, entry or otherwise, and such proceeding shall be discontinued, abandoned or determined adversely for any reason, then Grantor and Beneficiary shall be restored to their former positions and rights hereunder with respect to the Mortgaged Property, subject to the lien hereof.

4.07. Waiver of Rights and Defenses. To the full extent Grantor may lawfully do so, Grantor agrees with Beneficiary as follows:

(a) Grantor will not claim or take the benefit of any statute or rule of law now or hereafter in force providing for any appraisal, valuation, stay, extension, moratorium or redemption, or of any statute of limitations, and Grantor, for itself and its heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming an interest in the Mortgaged Property (other than Beneficiary and Trustee), hereby waives and releases all rights of redemption, homestead, dower, valuation, appraisal, notice of intention to mature or declare due the whole of the Obligations, and all rights to a marshaling of the assets of Grantor, including the Mortgaged Property, or to a sale in inverse order of alienation, in the event of foreclosure of the liens and security interests created hereunder.

(b) Grantor shall not have or assert and hereby waives any right under any statute or rule of law pertaining to any of the matters set forth in subsection (a) of this Section, to the administration of estates of decedents or to any other matters whatsoever to defeat, reduce or affect any of the rights or remedies of Trustee or Beneficiary hereunder.

(c) Grantor hereby waives any defense to the recovery by Trustee or Beneficiary hereunder against Grantor or the Mortgaged Property of any deficiency after a nonjudicial sale. Without limiting the foregoing, Grantor waives any defense arising out of any such nonjudicial sale even though such sale operates to impair or extinguish any right of reimbursement or subrogation or any other right or remedy of Grantor against Beneficiary or any subsidiary of Beneficiary.



(d) If Beneficiary institutes an action seeking the recovery of any of the Mortgaged Property by way of a prejudgment remedy in an action against Grantor, Grantor waives the posting of any bond which might otherwise be required.

4.08. Exercise by Trustee. Notwithstanding anything herein to the contrary, Trustee (a) shall not exercise, or waive the exercise of, any of its rights or remedies hereunder (other than its right to reimbursement) except upon the request of Beneficiary, and (b) shall exercise, or waive the exercise of, any or all of such rights or remedies upon the request of Beneficiary and at the direction of Beneficiary as to the manner of such exercise or waiver, provided that Trustee shall have the right to decline to follow any such request or direction if Trustee shall be advised by counsel that the action or proceeding, or manner thereof, so directed may not lawfully be taken or waived.

ARTICLE V

5.01. Release of Lien. If all of the Obligations shall be fully satisfied, paid and performed, then and in that event only all rights and obligations hereunder (except for the rights and obligations set forth in Section 2.16) shall terminate and the Mortgaged Property shall become wholly released and cleared of the liens, security interests, conveyances and assignments evidenced hereby. In such event Beneficiary shall, at the request of Grantor, deliver to Grantor, in recordable form, all such documents as shall be necessary to release the Mortgaged Property from the liens, security interests, conveyances and assignments created or evidenced hereby. Grantor shall be responsible for any costs of recordation.

5.02. No Merger. If Beneficiary acquires title to the Mortgaged Property without expressly releasing this Deed of Trust, this Deed of Trust and the lien and security interest created hereby shall not be destroyed or terminated by the application of the doctrine of merger and, in such event, Trustee and Beneficiary shall continue to have and enjoy all of the rights and privileges of Trustee and Beneficiary hereunder as to each separate estate until such time as Beneficiary expressly elects in writing to release this Deed of Trust.

ARTICLE VI

6.01. Provisions as to Payments, Advances. To the extent that any part of the Obligations is used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Mortgaged Property or to pay in whole or in part the purchase price therefor, Beneficiary shall be subrogated to any and all rights, security interests and liens held by any owner or holder of the same, whether or not the same are released. Grantor agrees that, in consideration of such payment by Beneficiary, effective upon such payment Grantor shall and hereby does waive and release all demands, defenses and causes of action for offsets and payments with respect to the same.

6.02. Severability. Whenever possible, each provision of this Deed of Trust shall be interpreted so as to be effective and valid under applicable state law. If all or any portion of any provision of this Deed of Trust or any other Loan Documents shall be held to be invalid, illegal or unenforceable in any respect or in any jurisdiction, then such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, and such provision shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

6.03. Notices. Any notice, demand, consent, approval, direction, agreement or other communication (any "Notice") required or permitted hereunder or under any other documents evidencing or securing the Note shall be in writing and shall be validly given when received if personally delivered, one (1) business day after deposit with Federal Express or other reputable national overnight delivery service, if sent by such means, or two (2) business days after deposit in the U.S. mails if mailed by United States mail, certified or registered mail, return receipt requested, postage prepaid, addressed to the person entitled to receive the same at their respective addresses set forth on the first page hereof. Any person shall have the right to change, from time to time, its address or addresses for the receipt of Notices by the giving of a Notice thereof as provided herein.

6.04. Right to Deal. In the event that ownership of the Mortgaged Property becomes vested in a person other than Grantor, Beneficiary may, without notice to Grantor, deal with such successor or successors in interest with reference to this Deed of Trust or the Obligations in the same manner as with Grantor, without in any way vitiating or discharging Grantor's liability hereunder or for the payment of the Obligations or being deemed a consent to such vesting. To the extent permissible by applicable law, Grantor authorizes Beneficiary to contact any third



party and make any inquiry pertaining to Grantor's financial condition or any of the Mortgaged Property. Beneficiary shall be entitled to notify or require Grantor to notify any third party to pay Beneficiary any indebtedness or obligation owing to Grantor with respect to the Mortgaged Property whether or not a default exists under this Deed of Trust. Grantor shall diligently collect all such indebtedness until the giving by Beneficiary of such notice. Grantor shall immediately provide Beneficiary with written notice of any actual or threatened action, suit or other proceeding affecting any of the Mortgaged Property.

6.05. Applicable Law and Counterparts. This Deed of Trust shall be governed by, and construed in accordance with, the law of the State in which the Premises are located. This Deed of Trust may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same Deed of Trust.

6.06. Sole Discretion of Trustee and Beneficiary. Whenever Beneficiary's judgment, consent or approval is required hereunder for any matter, or either shall have an option or election hereunder, such judgment, the decision whether or not to consent to or approve the same or the exercise of such option or election shall be in the sole discretion of Beneficiary, as the case may be.

6.07. Provisions as to Covenants and Agreements. All of Grantor's covenants and agreements hereunder shall run with the land and time is of the essence with respect thereto.

6.08. Amendments and Waivers. This Deed of Trust cannot be altered, amended, modified, terminated, waived, released or discharged except in a writing signed by the party against whom enforcement is sought. To the extent permissible under applicable law, any amendments or modifications hereof or of the Obligations shall not affect the priority of the lien of this Deed of Trust. A waiver by Beneficiary on any occasion of any of its rights shall not constitute a waiver on any other occasion. Grantor's obligations under this Deed of Trust shall not be affected if Beneficiary amends, compromises, exchanges, fails to exercise, impairs or releases any of the Obligations belonging to any Grantor, Borrower or third party or any of its rights against any Grantor, borrower or third party or any of the Mortgaged Property. Beneficiary's failure to insist upon strict performance of any of the Obligations shall not be deemed a waiver, and Beneficiary shall have the right at any time thereafter to insist upon strict performance.

6.09. Successors and Assigns. The provisions hereof shall be binding upon Grantor and the heirs, devisees, representatives, successors and permitted assigns of Grantor, including successors in interest of Grantor in and to all or any part of the Mortgaged Property, and shall inure to the benefit of Trustee, Beneficiary, the holders of the Obligations and their respective heirs, successors, legal representatives, substitutes and assigns. Where two or more persons have executed this Deed of Trust, (a) the obligations of such persons shall be joint and several, and (b) all references to the singular shall be read as if in the plural. The term "Beneficiary" shall include any payee of the Obligations or any assignee or transferee of the Beneficiary whether by operation of law or otherwise.

6.10. Agency. Beneficiary may deal with the Mortgaged Property and may issue, or instruct Trustee to issue, as applicable, any release to be given hereunder pursuant to Section 5.01 or grant any consent or approval or take any other action, or instruct Trustee to take any other action, as applicable, required or permitted hereunder, without reference to or the approval of the holders of the Obligations and any third party (including any title insurance company issuing a title insurance policy, or a commitment to issue a title insurance policy, in connection with the Mortgaged Property) may conclusively rely on the due authority of Beneficiary (or Trustee, if so instructed by Beneficiary) to do any or all of the foregoing.

6.11. Trustee Lets Mortgaged Property to Grantor. Trustee hereby lets the Mortgaged Property to Grantor until this Deed of Trust is released and satisfied, or until default be made in payment or performance of the covenants of this Deed of Trust, at a rate of rent equal to one cent per month during the term hereof, payable on demand and Grantor shall and will surrender peaceable possession of the Mortgaged Property, and any and every part thereof to Trustee, immediately upon default and without notice or demand therefor (Grantor hereby waiving the right to any such notice or demand), and Trustee may thereupon rent the Mortgaged Property for the account of Beneficiary, until the Mortgaged Property is sold pursuant to the power of sale granted herein or until foreclosure is had and during any proceeding to redeem and then deliver possession to the purchaser at the Trustee's or foreclosure sale.

6.12. Intentionally Left Blank.



6.13. Non-Usurious. Interest on the indebtedness secured by this Deed of Trust shall not exceed the maximum amount of interest that may be contracted for, charged or received under applicable law. It is the intent of the parties to comply strictly with all applicable usury laws. Any interest collected in excess of that maximum amount shall be credited on the principal of the debt, or if that has been paid, refunded. This section shall control all Loan Documents. On any acceleration or prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment, or if already paid, credited on the principal of the debt, or if that has been paid, refunded.

6.14. Excess Amounts. Nothing in this Deed of Trust shall be interpreted to allow Beneficiary to collect any amounts in excess of that allowed by applicable Federal or state law. Any sums collected which may exceed such allowable amounts shall be presumed a clerical error and shall, within thirty (30) days after Beneficiary's confirmation of such excess, be credited on the principal of the debt, or if already paid, refunded to Grantor.

6.15. Homestead. Notwithstanding anything in this Deed of Trust to the contrary, and to the extent legally permissible, Grantor hereby waives all homestead exemptions in the Mortgaged Property to which Grantor would otherwise be entitled under any applicable law, and Grantor warrants and represents to Beneficiary that neither the Mortgaged Property, nor any portion thereof, is homestead or otherwise exempt from the claims of creditors.

6.16. Stoppel Certificates. Within 10 days after any request by Beneficiary, Grantor shall deliver to Beneficiary, or any intended transferee of Beneficiary's rights with respect to the Obligations, a signed and acknowledged statement specifying (a) the outstanding balance on the Obligations, and (b) whether Grantor possesses any claims, defenses, set-offs or counterclaims with respect to the Obligations and, if so, the nature of same.

6.17. Power of Attorney. Grantor hereby appoints Beneficiary as its attorney-in-fact to endorse Grantor's name on all instruments and other documents pertaining to the Obligations or Deed of Trust. In addition, Beneficiary shall be entitled, but not required, to perform any action or execute any document required to be taken or executed by Grantor under this Deed of Trust. In addition, Beneficiary may commence, intervene in and defend any actual or threatened action, suit or other proceeding affecting any of the Mortgaged Property, and may compromise or settle any claim or controversy affecting any of the Mortgaged Property. Beneficiary shall not be liable to Grantor for any action, error, mistake, omission or delay pertaining to the actions described herein or any damages resulting therefrom. Beneficiary may take any such actions in its own name. Beneficiary's performance of such action or execution of such documents shall not relieve Grantor from any Obligation or cure any default under this Deed of Trust. All powers of attorney described in this Deed of Trust are coupled with an interest and are irrevocable.

ARTICLE VII

7.01. Trustee's Appointment. Grantor agrees that Trustee and any successor or substitute trustee may be an officer, agent, employee or attorney of Beneficiary and any objections to such fact which might be made by Grantor, or its successors or assigns, are hereby waived. Trustee may resign by an instrument in writing addressed to Beneficiary, or Trustee may be removed at any time with or without cause by an instrument in writing executed by Beneficiary. If for any reason Beneficiary shall deem it desirable to appoint a substitute or successor trustee to act instead of the Trustee herein named, then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor trustee, or a substitute trustee, without proceeding other than appointment and designation in writing executed by Beneficiary and the recording of a notice thereof in the real estate records in the county (or city) and state where the Mortgaged Property is located, and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the Obligations have been paid in full. Such appointment and designation by Beneficiary shall be full evidence of the right and authority to make the same and of all facts therein recited. Upon the making of such appointment and designation, all of the estate and title of Trustee in the Mortgaged Property shall vest in the named successor or substitute trustee and it shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to Trustee shall be deemed to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder. Except as otherwise required by applicable law, Trustee shall not perform any act or omit to act hereunder unless, prior to such act or omission, Beneficiary delivers to Trustee direction to so act or omit to act. Grantor hereby ratifies and confirms any and all acts which Trustee herein named or its successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof.



7.02. Exculpation. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or willful misconduct. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by it hereunder.

7.03 Powers of Trustee. Notwithstanding anything in this Deed of Trust to the contrary: (a) With the approval of Beneficiary, Trustee shall have the right to select, employ and consult with counsel. Trustee may, at any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary, and without affecting the personal liability of any person for payment and performance of the Note or the effect of this Deed of Trust upon the remainder of the Mortgaged Property, (1) reconvey any part of the Mortgaged Property without warranty, (2) consent in writing to the making of any map or plat of the Mortgaged Property or any portion thereof, (3) join in granting any easement or creating any restriction affecting the Mortgaged Property, or (4) join in any subordination agreement or other agreement affecting this Deed of Trust or the lien or charge hereof. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. Trustee shall be entitled to reimbursement for actual, reasonable expenses incurred by him in the performance of his duties hereunder. Grantor shall, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and indemnify, defend and save Trustee harmless against, all liability and reasonable expenses that may be incurred by him in the performance of his duties. Grantor's obligations under this Section shall not be reduced or impaired by principles of comparative or contributory negligence.

(b) All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by him hereunder.

(c) Should any deed, conveyance or instrument of any nature be required from Grantor by any successor Trustee to more fully and certainly vest in and confirm to such successor Trustee such estates, rights, powers and duties, then, upon request by such Trustee, all such deeds, conveyances and instruments shall be made, executed, acknowledged and delivered and shall be caused to be recorded and/or filed by Grantor.

ARTICLE VIII

8.01. Fixture Filing. A portion of the Mortgaged Property is or is to become fixtures upon the Premises. To the extent permitted by applicable law, Grantor covenants and agrees that the filing of this Deed of Trust in the real estate records of the county in which the Mortgaged Property is located shall also operate from the time of filing as a fixture filing with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures related to the real estate described herein.

8.02. WAIVER OF JURY TRIAL. TO THE MAXIMUM EXTENT PERMITTED BY LAW, GRANTOR AND BENEFICIARY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS DEED OF TRUST, THE NOTE, OR ANY OTHER LOAN DOCUMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THIS DEED OF TRUST, THE NOTE, OR ANY OTHER LOAN DOCUMENT OR IN ANY WAY RELATING TO THE LOAN OR THE MORTGAGED PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS DEED OF TRUST, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS DEED OF TRUST



WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR BENEFICIARY TO ENTER THIS DEED OF TRUST.

IN WITNESS WHEREOF, the undersigned have executed this Deed of Trust the day first above written.

Bertram N. Singer
BERTRAM N. SINGER
Muriel J. Singer
MURIEL J. SINGER

STATE OF OREGON)
) SS
COUNTY OF KLAMATH)

On this 30 day of May, 2001, before me personally appeared Bertram N. Singer, a person known to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

My commission expires: 11-01-04

M.A. Silveria
Notary Public



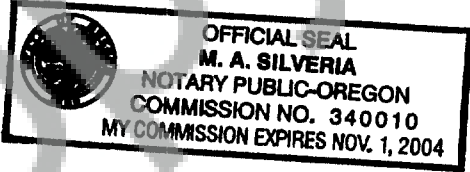
STATE OF OREGON)
) SS
COUNTY OF KLAMATH)

On this 30 day of May, 2001, before me personally appeared Muriel J. Singer, a person known to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

My commission expires: 11-01-04
After Recording, Return to:

M.A. Silveria
Notary Public



California Bank & Trust
Attn: Closing Dept.
13545 Barrett Parkway Drive, Suite 335
Ballwin, MO 63021

EXHIBIT A TO DEED OF TRUST AND SECURITY AGREEMENT
Between California Bank & Trust and Bertram and Muriel Singer
DESCRIPTION OF LAND

Lot 1, Block 12, Tract No. 1006, SECOND ADDITION TO CYPRESS VILLA, in the County of Klamath,
State of Oregon.

State of Oregon, County of Klamath
Recorded 05/31/01, at 11:28 a.m.
In Vol. M01 Page 25427
Linda Smith,
County Clerk Fee\$ 141⁰⁰

Unofficial Copy

MS