

1st 328139

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Recordation Requested By
and after recordation return to:

Katten Muchin Zavis Rosenman
401 S. Tryon Street, Suite 2600
Charlotte, NC 28202-1935
Attention: William P. McMillan, Esq.
Telephone No. 704-444-2000
(File No. 330062-00029)

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DOCUMENT TITLE:

DEED OF TRUST AND SECURITY AGREEMENT

TRANSACTIONS:

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

NAME OF GRANTOR/DEBTOR:

- 1. BI-MART CORPORATION, a California corporation**

NAME OF GRANTEE/BENEFICIARY:

1. **MORGAN STANLEY DEAN WITTER COMMERCIAL FINANCIAL SERVICES, INC.,** a Delaware corporation, as beneficiary and secured party
2. **FIRST AMERICAN TITLE INSURANCE COMPANY,** as deed of trust trustee

ASSESSOR'S PROPERTY TAX OR

PARCEL ACCOUNT NUMBERS: Tax Parcel Number: R530991

$\frac{321}{x^6 x^5 x^4 x^3}$

BI-MART CORPORATION,
as grantor
(Grantor)

to

FIRST AMERICAN TITLE INSURANCE COMPANY,
as trustee
(Trustee)

and

MORGAN STANLEY DEAN WITTER COMMERCIAL FINANCIAL SERVICES, INC.,
as beneficiary
(Lender)

**DEED OF TRUST AND
SECURITY AGREEMENT**

Dated: February 27, 2004

**PREPARED BY AND UPON
RECORDATION RETURN TO:**
Katten Muchin Zavis Rosenman
401 S. Tryon Street, Suite 2600
Charlotte, NC 28202-1935
Attention: William P. McMillan, Esq.
Telephone No. 704-444-2000
(File No. 330062-00029)

THIS DEED OF TRUST AND SECURITY AGREEMENT (this "Security Instrument") is made as of the 27th day of February, 2004, by BI-MART CORPORATION, a California corporation, having its principal place of business at 220 South Seneca Road, Eugene, Oregon 97402, as grantor ("Grantor") to FIRST AMERICAN TITLE INSURANCE COMPANY, as trustee ("Trustee") for the benefit of MORGAN STANLEY DEAN WITTER COMMERCIAL FINANCIAL SERVICES, INC., a Delaware corporation, having an address at 825 Third Avenue, 15th Floor, New York, New York 10022, as beneficiary ("Lender").

RECITALS:

Bi-Mart Acquisition Sub LLC ("Newco Sub") and Lender have entered into a Term Loan Agreement dated as of February 27, 2004 (said Term Loan Agreement, as it may hereafter be amended, modified or restated from time to time, being the "Credit Agreement") whereby Lender is making a term loan to Newco Sub in the amount of Thirty Million and no/100 Dollars (\$30,000,000) (the "Loan") in lawful money of the United States of America, with interest from the date thereof at the rate set forth in the Credit Agreement, principal and interest to be payable in accordance with the terms and conditions provided in the Credit Agreement and the promissory note of even date therewith in the original principal amount of \$30,000,000 made by Newco Sub payable to the order of Lender (the "Note"). Grantor has guaranteed payment of the Note and Newco Sub's obligations under the Credit Agreement pursuant to a Guaranty of even date herewith (the "Guaranty"). Substantially simultaneously with the funding of the Loan, Newco Sub will merge into Grantor, with Grantor being the surviving entity, whereupon Grantor will succeed to the obligations of Newco Sub as maker of the Note and borrower under the Credit Agreement. Grantor is joining in the execution of the Credit Agreement as a guarantor to evidence its agreement to succeed to the obligations of Newco Sub as maker of the Note and borrower under the Credit Agreement upon consummation of the merger of Newco Sub into Grantor.

Pursuant to the Credit Agreement, the Grantor is entering into this Security Instrument in order to grant to the Lender a security interest in the property described herein.

Grantor desires to secure the payment of the Indebtedness (as defined in Article II), and the performance of all of its Obligations (as defined in Article II).

ARTICLE I GRANTS OF SECURITY

Section 1.1 Property Mortgaged. Grantor does hereby mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Trustee, its successors and assigns, for the benefit of Lender, its successors and assigns, and grant a security interest to Lender and Trustee in, the following property, now owned or hereafter acquired by Grantor (collectively, the "Property"):

(a) the real property described in Exhibit A attached hereto and made a part hereof and Grantor's leasehold estate in and to the real property described in Exhibit B attached hereto and made a part hereof (the "Land") and any after acquired title of the Grantor in the real property described on Exhibit B, including the ground lessor's interest therein and all rights, options and privileges of the Grantor as ground lessee under that certain Ground Lease Agreement dated December 11, 1981 between Damascus Development Co., an Oregon corporation, and Grantor (the "Ground Lease") and any and all security deposits or other property of Grantor held by the ground lessor pursuant to the terms of or in connection with the Ground Lease, and all additional lands, estates and development rights hereafter acquired by Grantor together with all of Grantor's fee or leasehold estate in and to all easements, rights of way or use, strips and gores, water rights, air and development rights and all other rights and estates appurtenant thereto;

(b) all of Grantor's fee or leasehold estate in and to the buildings, structures, fixtures, and improvements now or hereafter located on the Land (the "Improvements");

(c) all machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), furniture shelving and racking of every kind and nature whatsoever owned by Grantor, or in which Grantor has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto (collectively, the "Personal Property");

(d) all leases, subleases and other agreements affecting the use, enjoyment or occupancy of the Land and/or the Improvements heretofore or hereafter entered into (the "Leases");

(e) all agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation or operation of the Land and any part thereof and any Improvements;

(f) all books and records relating to or used in connection with the operation of the Property;

(g) all proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property; and

(h) any and all other rights of Grantor in and to the items set forth in Subsections (a) through (g) above, including, without limitation, all proceeds and products thereof.

Section 1.2 Assignment of Leases and Rents. Grantor hereby absolutely and unconditionally assigns to Lender and Trustee Grantor's right, title and interest in and to all current and future Leases and Rents; it being intended by Grantor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2, Grantor shall have a revocable license to collect and receive the Rents.

Section 1.3 Security Agreement. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code as in effect in the state where the Property is located (the "Uniform Commercial Code"). The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Grantor in the Property. By executing and delivering this Security Instrument, Grantor hereby grants to Lender and Trustee, as security for the Obligations (defined in Section 2.3), a security interest in the Personal Property to the full extent that the Personal Property may be subject to the Uniform Commercial Code. Without in any way limiting the generality of the foregoing, this Security Instrument constitutes a fixture filing under the Uniform Commercial Code. A photocopy of this Security Instrument is sufficient as a financing statement and may be filed as a financing statement without Grantor's signature. As to the leasehold estate referenced in Exhibit B, the name of the record owner is stated on Schedule 20.7.

Section 1.4 Conditions to Grant. TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender and Trustee, and for their successors and assigns, forever; IN TRUST, WITH POWER TO SALE, to secure payment to Lender of the Indebtedness at the time and in the manner provided for its payment in the Credit Agreement, the Note, the Guaranty and in this Security Instrument; PROVIDED, HOWEVER, these presents are upon the express condition that, if Grantor shall well and truly pay or cause to be paid to Lender the Indebtedness at the time and in the manner provided in the Credit Agreement, the Note, the Guaranty and this Security Instrument, shall well and truly perform the Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Credit Agreement, these presents and the estate hereby granted shall cease, terminate and be void.

ARTICLE II INDEBTEDNESS AND OBLIGATIONS SECURED

Section 2.1 Indebtedness. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the payment of the

following, in such order of priority as Lender may determine in its sole discretion (the "Indebtedness"):

(a) the debt evidenced by the Note and the Credit Agreement in lawful money of the United States of America and Grantor's guaranty thereof pursuant to the Guaranty;

(b) interest, default interest, late charges and other sums, as provided in the Note, the Credit Agreement, the Guaranty, this Security Instrument or the Other Security Documents (defined below);

(c) all other moneys agreed or provided to be paid by Newco Sub or Grantor in the Note, the Credit Agreement, the Guaranty, this Security Instrument or the Other Security Documents;

(d) all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby;

(e) all sums advanced and costs and expenses incurred by Lender in connection with the Indebtedness or any part thereof, any renewal, extension, or change of or substitution for the Indebtedness or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Newco Sub, Grantor or Lender;

(f) the timely payment of all monetary obligations of Newco Sub and/or Grantor owed to Lender and any of its affiliates and/or subsidiaries; and

(g) all other obligations of Newco Sub or Grantor contained herein and in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Credit Agreement, the Guaranty, this Security Instrument or the Other Security Documents.

Section 2.2 Indebtedness and Obligations. Grantor's obligations for the payment of the Indebtedness and the performance of the other obligations above shall be referred to collectively below as the "Obligations."

Section 2.3 Payments. Unless payments are made in the required amount in immediately available funds at the place as set forth in the Credit Agreement, remittances in payment of all or any part of the Indebtedness shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available as set forth in the Credit Agreement (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Newco Sub and/or Grantor) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the

collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default.

ARTICLE III GRANTOR COVENANTS

Grantor covenants and agrees that:

Section 3.1 Payment of Indebtedness. Grantor will pay or cause to be paid the Indebtedness at the time and in the manner provided in the Credit Agreement, the Note, the Guaranty and in this Security Instrument.

Section 3.2 Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Credit Agreement and (b) any and all of the documents, other than the Credit Agreement or this Security Instrument, now or hereafter executed by Grantor and/or others in favor of Lender which wholly or partially secure or guaranty payment of the Loan (the "Other Security Documents"), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3 Payment of Taxes, etc.

(a) Grantor shall promptly pay all taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Taxes"), all ground rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Other Charges"), and all charges for utility services provided to the Property as same become due and payable. Grantor will deliver to Lender, within thirty (30) days after their respective due dates, evidence satisfactory to Lender that the Taxes and Other Charges have been timely paid.

(b) After prior written notice to Lender and upon Lender's consent, not to be unreasonably withheld, Grantor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes. At Lender's election, Grantor shall deposit with Lender adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, as may be reasonably requested by Lender to insure the payment of any contested Taxes, together with all interest and penalties thereon.

Section 3.4 Escrow Fund. At Lender's option, after the occurrence of an Event of Default, Grantor shall pay to Lender on the first day of each calendar month, together with

payments of debt service due under the Credit Agreement, (a) one-twelfth of an amount which would be sufficient to pay the Taxes payable, or estimated by Lender to be payable, during the next ensuing twelve (12) months and (b) one-twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (the amounts in (a) and (b) above shall be called the "Escrow Fund"). If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Grantor shall promptly pay to Lender, upon demand, an amount which Lender shall reasonably estimate as sufficient to make up the deficiency. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Lender.

Section 3.5 [Intentionally Omitted.]

Section 3.6 Maintenance and Use of Property. Grantor shall cause the Property to be maintained in a good and safe condition and repair and shall not commit or suffer any waste of the Property. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property) without the consent of Lender. Grantor shall promptly repair, replace or rebuild any part of the Property which may be destroyed or become damaged, worn or dilapidated. Without limiting the generality of the foregoing, Grantor shall comply with the provisions of the Post-Closing Agreement dated as of the date hereof executed by Grantor and Lender.

Section 3.7 Compliance With Laws. Grantor shall promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting the Property, or the use thereof ("Applicable Laws"). Grantor shall from time to time, upon Lender's request, provide Lender with evidence reasonably satisfactory to Lender that the Property complies with all Applicable Laws or is exempt from compliance with Applicable Laws. Notwithstanding any provisions set forth herein or in any document regarding Lender's approval of alterations of the Property, Grantor shall not alter the Property in any manner which would materially increase Grantor's responsibilities for compliance with Applicable Laws without the prior written approval of Lender. Grantor shall give prompt notice to Lender of the receipt by Grantor of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws.

Section 3.8 Books and Records. Grantor and Indemnitor(s) (defined in Section 11.4), if any, shall keep adequate books and records of account in accordance with generally accepted accounting principles ("GAAP"), or in accordance with other methods acceptable to Lender in its sole discretion, consistently applied.

Section 3.9 Payment For Labor and Materials. Grantor will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property.

Section 3.10 Performance of Other Agreements. Grantor shall observe and perform each and every term to be observed or performed by Grantor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property, or given by Grantor to Lender for the purpose of further securing an Obligation secured hereby and any amendments, modifications or changes thereto.

Section 3.11 Property Use. The Property shall be used only for commercial purposes and for no other use, without the prior written consent of Lender, which consent shall be at Lender's sole discretion.

ARTICLE IV INSURANCE/CASUALTY/CONDEMNATION/RESTORATION

Section 4.1 Insurance.

(a) Grantor shall obtain and maintain, or cause to be maintained, insurance for Grantor and the Property providing at least the following coverages:

(i) **Property Insurance.** Insurance with respect to the Improvements and building equipment for the full insurable value thereof on a "special form" basis (including fire, extended coverage, vandalism and malicious mischief). The term "full insurable value" to mean the actual replacement cost of the Improvements and building equipment, without deduction for depreciation or normal wear and tear;

(ii) **Liability Insurance.** Commercial general liability insurance, on an "occurrence basis" including bodily injury, death and property damage liability, insurance against any and all claims, including all legal liability to the extent insurable and imposed upon Lender in such amounts as are generally available at commercially reasonable premiums and are generally required by institutional lenders for properties comparable to the Property and otherwise satisfactory to Lender;

(iii) **Umbrella Liability Insurance.** Umbrella liability insurance in an amount satisfactory to Lender per occurrence on terms consistent with the liability insurance policy required under Subsection 4.1(a)(ii); and

(iv) **Workers' Compensation Insurance.** Statutory workers' compensation insurance (or qualified self-insurance program) with respect to any work on or about the Property;

(v) **Business Income Insurance.** Business income and/or loss of "rental income" insurance in an amount sufficient to avoid any co-insurance

penalty and to provide proceeds which will cover a period of not less than eighteen (18) months from the date of casualty or loss;

(vi) Boiler and Machinery Insurance. Broad form boiler and machinery insurance (without exclusion for explosion) covering all boilers or other pressure vessels, machinery, and equipment located in, on or about the Property and insurance against loss of occupancy or use arising from any breakdown in such amounts as are generally required by institutional lenders for properties comparable to the Property;

(vii) Flood Insurance. If required by Subsection 5.2(e) hereof, flood insurance in an amount at least equal to the lesser of (A) the principal balance of the Loan, or (B) the maximum limit of coverage available for the Property under the National Flood Insurance Act of 1968, The Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended;

(viii) Builder's Risk Insurance. At all times during which structural construction, repairs or alterations are being made with respect to the Improvements (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy, and (B) the insurance provided for by Subsection 4.1(a)(i) written on a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to Subsection 4.1(a)(i), (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(ix) Earthquake Insurance. If required by Lender, earthquake insurance in amounts and in form and substance satisfactory to Lender, on terms consistent with the insurance required by Subsection 4.1(a)(i), except that the deductible shall not be in excess of five percent (5%) of the appraised value of the Improvements and building equipment;

(x) Other Insurance. Such other insurance with respect to the Property against loss or damage of the kinds from time to time customarily insured against and in such amounts as are required by institutional lenders for properties comparable to the Property.

(b) All insurance provided for in Subsection 4.1(a) hereof shall be obtained under valid and enforceable policies (the "Policies" or in the singular, the "Policy"), and shall be issued by one or more domestic primary insurers) having (i) a general policy rating of A- or better and a financial class of IX or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company Inc. is no longer available, a

similar rating from a similar or successor service) and (ii) a claims paying ability rating by a credit rating agency approved by Lender (a "Rating Agency") of not less than AA by Standard & Poor's Corp. or such comparable rating by such other Rating Agency. All insurers providing insurance required by this Security Instrument shall be authorized to issue insurance in the state in which the Property is located. The Policy referred to in Subsection 4.1(a)(ii) above shall name Lender as an additional named insured and the Policies referred to in Subsection 4.1(a)(i), (v), (vi), (vii) and (viii), and as applicable (ix), above shall provide that all proceeds be payable to Lender as set forth in hereunder. The Policies referred to in Subsections 4.1(a)(i), (v), (vi) and (vii) shall also contain: (i) a standard "non-contributory mortgagee" endorsement or its equivalent relating, inter alia, to recovery by Lender notwithstanding the negligent or willful acts or omission of Lender; (ii) to the extent available at commercially reasonable rates, a waiver of subrogation endorsement as to Lender; and (iii) an endorsement providing for a deductible per loss of an amount not more than that which is customarily maintained by prudent owners of similar properties in the general vicinity of the Property, but in no event in excess of \$10,000. The Policy referred to in Subsection 4.1(a)(i) above shall provide coverage for contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements together with an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses. All Policies shall contain (i) a provision that such Policies shall not be materially modified, cancelled or terminated, nor shall they expire, without at least thirty (30) days' prior written notice to Lender in each instance; and (ii) include effective waivers by the insurer of all claims for Insurance Premiums (defined below) against any loss payees, additional insureds and named insureds (other than Grantor). Evidence of insurance with respect to all renewal and replacement Policies shall be delivered to Lender not less than twenty (20) days prior to the expiration date of any of the Policies required to be maintained hereunder, which evidence of insurance shall bear notations evidencing payment of applicable premiums (the "Insurance Premiums"). Originals of such replacement Policies or evidence of insurance with respect thereto shall be delivered to Lender promptly after Grantor's receipt thereof but in any case within thirty (30) days after the effective date thereof. If Grantor fails to maintain and deliver to Lender the original Policies or evidence of insurance required by this Security Instrument, upon ten (10) days' prior notice to Grantor, Lender may procure such insurance at Grantor's sole cost and expense. Grantor shall comply with all requirements of the Policies and the insurers.

Section 4.2 Condemnation. Grantor shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the

exercise of such taking), Grantor shall continue to pay the Indebtedness at the time and in the manner provided for its payment in the Credit Agreement, the Note, the Guaranty and in this Security Instrument. Grantor shall cause the award or payment made in any condemnation or eminent domain proceeding, which is payable to Grantor, to be paid directly to Lender.

Section 4.3 Restoration After Casualty/Condemnation. In the event of a casualty or a taking by eminent domain, all insurance proceeds arising from such casualty or the award or payment made in any condemnation or eminent domain proceeding, which is payable to Grantor, shall be paid directly to Lender. Such proceeds shall be applied to the Indebtedness secured by this Security Instrument or to the restoration of the Property at Lender's election in its sole and absolute discretion. In the event Lender shall elect to have the Property restored, Grantor and Lender shall enter into a restoration agreement setting forth the terms and conditions for the restoration of the Property and the disbursement of the insurance or condemnation proceeds over the term of the restoration, all on terms and conditions satisfactory to Lender, in its sole and absolute discretion. In the event Lender shall apply the proceeds to the Indebtedness secured hereby, Lender shall do so in any order or priority it shall elect and Grantor shall remain liable under the Credit Agreement, the Note, this Security Instrument and the Other Security Documents for the full repayment of the Indebtedness remaining in excess of the proceeds applied thereto by Grantor.

ARTICLE V REPRESENTATIONS AND WARRANTIES

Grantor represents and warrants to Lender that:

Section 5.1 Warranty of Title. Grantor has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Grantor possesses an unencumbered fee simple absolute estate in the Land described on Exhibit A and the Improvements thereon, and an unencumbered leasehold estate in the Land described on Exhibit B and the improvements thereon, and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policies insuring the lien of this Security Instrument (the "Permitted Exceptions"). Grantor shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever.

Section 5.2 Status of Property.

(a) Grantor has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(b) The Property and the present and contemplated use and occupancy thereof are in full compliance with all applicable zoning ordinances, building codes, land use laws, Environmental Laws and other similar laws.

(c) The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service. All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public.

(d) All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Applicable Laws.

(e) No portion of the Improvements is 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 Flood Insurance Acts or, if any portion of the Improvements is located within such area, Grantor has obtained and will maintain the insurance prescribed in Section 4.1(a) hereof.

Section 5.3 Separate Tax Lot. The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

Section 5.4 Leases.

- (a) Grantor is the sole owner of the entire lessor's interest in the Leases;
- (b) the Leases are valid and enforceable and in full force and effect;
- (c) no party under any Lease is in default;
- (d) all Rents due have been paid in full;
- (e) there exist no offsets or defenses to the payment of any portion of the Rents and Grantor has no monetary obligation to any tenant under any Lease;
- (f) Grantor has received no notice from any tenant challenging the validity or enforceability of any Lease;
- (g) there are no agreements with the tenants under the Leases other than expressly set forth in each Lease;

(h) no Lease contains an option to purchase, right of first refusal to purchase, or any other similar provision;

(i) no person or entity has any possessory interest in, or right to occupy, the Property except under and pursuant to a Lease; and

(j) all security deposits relating to the Leases reflected on the certified rent roll delivered to Lender have been collected by Grantor.

ARTICLE VI FURTHER ASSURANCES

Section 6.1 Recording of Security Instrument, etc. Grantor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the Other Security Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Grantor will pay all taxes, filing, registration or recording fees, and all expenses incident thereto and to the preparation, execution, acknowledgment and/or recording of any note or deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property. In addition, Grantor will, at the cost of Grantor, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds and/or other instruments or conveyances and assurances as Lender shall, from time to time, require. Grantor, on demand, will execute and deliver and hereby authorizes Lender, following 10 days' notice to Grantor, to execute in the name of Grantor or without the signature of Grantor to the extent Lender may lawfully do so, one or more UCC financing statements, chattel mortgages, fixture filings or other instruments, to evidence more effectively the security interest of Lender in the Property. Grantor grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender pursuant to this Section 6.1.

Section 6.2 Changes in Tax, Indebtedness Credit and Documentary Stamp Laws.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Indebtedness from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Indebtedness or Lender's interest in the Property, or shall require revenue or other stamps to be affixed to the Credit Agreement, the Note, this Security Instrument, or any of the Other Security Documents, Grantor will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Grantor would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option, exercisable

by written notice of not less than ninety (90) days, to declare the Indebtedness immediately due and payable.

(b) Grantor will not claim or demand or be entitled to any credit or credits on account of the Indebtedness for any part of the taxes or other charges assessed against the Property, or any part thereof (the "Taxes or Other Charges"), and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Indebtedness. If such claim, credit or deduction shall be required by law, Lender shall have the option, exercisable by written notice of not less than ninety (90) days, to declare the Indebtedness immediately due and payable.

Section 6.3 Estoppel Certificates.

(a) After request by Lender, Grantor, within ten (10) days, shall furnish Lender or any proposed assignee with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Loan, (ii) the unpaid principal amount of the Loan, (iii) the rate of interest of the Loan, (iv) the terms of payment and maturity date of the Loan, (v) the date installments of interest and/or principal were last paid; (vi) whether all Leases are in full force and effect and have not been modified (or if modified, setting forth all modifications), (vii) the date to which the Rents thereunder have been paid pursuant to the Leases; (viii) whether or not, to the best knowledge of Grantor, any of the lessees under the Leases are in default under the Leases, and, if so, describing all such defaults; and (ix) any other such information related to the Leases, the obligations secured hereby, the Property or this Security Instrument as is reasonably and customarily required by commercial lenders making loans reasonably comparable to the Loan. In addition, Grantor shall use its best efforts to deliver to Lender, promptly upon request, duly executed estoppel certificates from any one or more lessees as required by Lender attesting to such facts regarding the Lease as Lender may reasonably require.

(b) Upon any transfer or proposed transfer contemplated by Section 15.1 hereof, at Lender's request, Grantor and any Indemnitor(s) shall provide an estoppel certificate to the Investor (defined in Section 15.1) or any prospective Investor in such form, substance and detail as Lender, such Investor or prospective Investor may require.

ARTICLE VII DUE ON SALE/ENCUMBRANCE

Section 7.1 No Sale/Encumbrance. Grantor agrees that Grantor shall not, without the prior written consent of Lender, sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Property or any part thereof or any interest therein or any direct or indirect interest in Grantor or permit the Property or any part thereof or any interest

therein or any direct or indirect interest in Grantor to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred, other than pursuant to Leases of space in the Improvements to tenants approved by Lender.

Section 7.2 Sale/Encumbrance Defined. A sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer within the meaning of this Article 7 shall be deemed to include, but not be limited to, (a) an installment sales agreement wherein Grantor agrees to sell the Property or any part thereof for a price to be paid in installments; (b) an agreement by Grantor leasing all or any part of the Property without Lender's prior written consent or a sale, assignment or other transfer of, or the grant of a security interest in, Grantor's right, title and interest in and to any Leases or any Rents; (c) if Grantor, any Indemnitor, or any general or limited partner or member of Grantor or any Indemnitor is a corporation, any merger, consolidation or voluntary or involuntary sale, conveyance, transfer or pledge of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; (d) if Grantor or any Indemnitor or any general or limited partner or member of Grantor or any Indemnitor is a limited or general partnership or joint venture, the change, removal or resignation of a general partner or the transfer or pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest or the voluntary or involuntary sale, conveyance, transfer or pledge of limited partnership interests (or the limited partnership interests of any limited partnership directly or indirectly controlling such limited partnership by operation of law or otherwise); and (e) if Grantor, any Indemnitor or any general or limited partner or member of Grantor or any Indemnitor is a limited liability company, the change, removal or resignation of a managing member (or if no managing member, any member or non-member manager) or the transfer of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest or the voluntary or involuntary sale, conveyance, transfer or pledge of membership interests (or the membership interests of any limited liability company directly or indirectly controlling such limited liability company by operation of law or otherwise); provided, however, nothing contained in this Section 7.2 shall be construed to prohibit the consummation of the merger of Newco Sub into Grantor or the ESOP Transaction (as defined in the Credit Agreement).

ARTICLE VIII DEFAULT

Section 8.1 Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default":

- (a) if any portion of the Indebtedness is not paid when due or if the entire Indebtedness is not paid when due;

(b) if any of the Taxes or Other Charges are not paid when the same is due and payable;

(c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Lender upon request;

(d) if Grantor violates or does not comply with any of the provisions of Article 7;

(e) if any representation or warranty of Grantor, any Indemnitor, or any member, general partner, principal or beneficial owner of any of the foregoing, made herein or in the Environmental Indemnity (defined below) or in any guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material respect when made;

(f) if

(i) Grantor or any managing member, general partner or major shareholder of Grantor, or Indemnitor or any managing member or general partner or major shareholder thereof, shall commence any case, proceeding or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, liquidation or other relief with respect to it or its debts, or seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets,

(ii) there shall be commenced against Grantor or any managing member, general partner or major shareholder of Grantor, or Indemnitor or any managing member, general partner or major shareholder thereof, any case, proceeding or other action of a nature referred to in clause (i) above which results in the entry of an order for relief or any such adjudication or appointment or remains undismissed, undischarged or unbonded for a period of sixty (60) days;

(iii) the Grantor or any managing member, general partner or major shareholder of Grantor, or Indemnitor or any managing member, general partner or major shareholder thereof, shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(g) if

(i) Grantor shall be in default beyond applicable notice and grace periods under any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property whether it be superior or junior in lien to this Security Instrument, or

(ii) Grantor or any Indemnitor shall fail to pay any principal of, or premium or interest on, the Loan (other than the Indebtedness which is otherwise provided for under Section 8.1(a) hereinabove), when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to the Loan; or

(iii) any other event shall occur or condition shall exist under any agreement or instrument relating to the Loan and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of the Loan; or the Loan shall be declared to be due and payable, or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or an offer to prepay, redeem, purchase or defease the Loan shall be required to be made, in each case prior to the stated maturity thereof; or

(iv) the Grantor or any Indemnitor shall fail to perform or observe any term, covenant, agreement or obligation to be kept, performed or owed to the Lender or any of its affiliates pursuant to any agreement, instrument or document (exclusive of the transactions contemplated by this Security Instrument, the Credit Agreement, the Note or any of the Other Security Documents);

(h) if the Property becomes subject to any mechanic's, materialman's or other lien other than a lien for local real estate taxes and assessments not then due and payable and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days;

(i) if any federal tax lien is filed against Grantor, any member or general partner of Grantor, any Indemnitor or any managing member or general partner thereof, or the Property and same is not discharged of record within thirty (30) days after same is filed;

(j) if any default by any Indemnitor occurs under any guaranty or indemnity executed in connection herewith (including the Environmental Indemnity, defined in Section 11.4) and such default continues after the expiration of applicable grace periods, if any;

(k) if Grantor shall fail to deliver to Lender, within ten (10) days after request by Lender, the estoppel certificates required pursuant to Section 6.3;

(l) if an Event of Default occurs under the Credit Agreement or if Grantor or any Indemnitor shall continue to be in default under any other term, covenant or condition of the Credit Agreement, the Note, this Security Instrument, the Guaranty or any of the Other Security Documents;

(m) Lender fails to have a legal, valid, binding and enforceable first priority lien on any of the Land, the Improvements, the Fixtures and Personal Property or any constituent component of the Property;

(n) if Grantor shall fail to observe or perform any term, covenant, condition or agreement in the Ground Lease beyond any cure period contained therein, or if the Ground Lease shall be cancelled or terminated for any reason.

ARTICLE IX RIGHTS AND REMEDIES

Section 9.1 Remedies. Upon the occurrence of any Event of Default, Grantor agrees that Lender may or acting by or through Trustee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Grantor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender or Trustee may determine, in their sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender or Trustee:

(a) declare the entire unpaid Indebtedness to be immediately due and payable;

(b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law;

(c) with or without entry, to the extent permitted and pursuant to the procedures provided by Applicable Law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Indebtedness then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Indebtedness not then due, unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Grantor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, in

one or more parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Credit Agreement or the Note or in the Other Security Documents;

(f) recover judgment on the Loan either before, during or after any proceedings for the enforcement of this Security Instrument or the Other Security Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Indebtedness and without regard for the solvency of Grantor, Indemnitor or of any person, firm or other entity liable for the payment of the Indebtedness;

(h) subject to any Applicable Law, the license granted to Grantor under Section 1.2 shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Grantor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Grantor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Grantor agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may

(i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat;

(ii) make alterations, additions, renewals, replacements and improvements to or on the Property;

(iii) exercise all rights and powers of Grantor with respect to the Property;

(iv) require Grantor to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Grantor;

(v) require Grantor to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Grantor may be evicted by summary proceedings or otherwise; and (vi) apply the receipts from

the Property, the Escrow Fund, if any, and all other monies then held by Lender to the payment of the Indebtedness, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limitation, the right to take possession of the Personal Property or any part thereof, and to take such other measures as Lender or Trustee may deem necessary for the care, protection and preservation of the Personal Property. Any notice of sale, disposition or other intended action by Lender or Trustee with respect to the Personal Property sent to Grantor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Grantor;

(j) surrender the Policies maintained pursuant to Article IV hereof, collect the unearned Insurance Premiums and apply such sums as a credit on the Indebtedness in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Grantor hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Grantor to collect such Insurance Premiums; or

(k) pursue such other remedies as Lender may have under Applicable Law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section 9.1 to the contrary, if any Event of Default as described in clause (i) or (ii) of Subsection 8.1(f) shall occur, the entire unpaid Indebtedness shall be automatically due and payable, without any further notice, demand or other action by Lender.

Section 9.2 Application of Proceeds. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Credit Agreement, the Note, this Security Instrument or the Other Security Documents, may be applied by Lender to the payment of the Indebtedness in such priority and proportions as Lender in its discretion shall deem proper.

Section 9.3 Right to Cure Defaults. Upon the occurrence of any Event of Default or if Grantor fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Grantor and without releasing Grantor from any obligation hereunder, make or do the same in such manner and to

such extent as Lender may deem necessary to protect the security hereof. Lender or Trustee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Indebtedness. The cost and expense of any cure hereunder (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 9.3, shall constitute a portion of the Indebtedness secured by this Security Instrument and shall be due and payable to Lender upon demand together with interest accrued thereon at the Default Rate, as defined in the Credit Agreement.

Section 9.4 Recovery of Sums Required To Be Paid. Lender or Trustee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Indebtedness as the same become due, without regard to whether or not the balance of the Loan shall be due, and without prejudice to the right of Lender or Trustee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Grantor existing at the time such earlier action was commenced.

Section 9.5 Examination of Books and Records. Lender, its agents, accountants and attorneys shall have the right, upon prior written notice to Grantor if no Event of Default exists, to examine and audit, during reasonable business hours, the records, books, management and other papers of Grantor and its affiliates or of any Indemnitor, wherever located, which pertain to their financial condition or the income, expenses and operation of the Property.

Section 9.6 Other Rights, Etc.

(a) The failure of Lender or Trustee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Grantor shall not be relieved of Grantor's obligations hereunder by reason of

(i) the failure of Lender or Trustee to comply with any request of Grantor, any Guarantor or any Indemnitor to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Credit Agreement, the Note or the Other Security Documents,

(ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Indebtedness or any portion thereof, or

(iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Credit Agreement, the Note, this Security Instrument or the Other Security Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Grantor, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Indebtedness to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender or Trustee may take action to recover the Indebtedness, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender or Trustee thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender or Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Neither Lender nor Trustee shall be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 9.7 Right to Release Any Portion of the Property. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lien holder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 9.8 Violation of Laws. If the Property is not in compliance with Applicable Laws, Lender may impose additional requirements upon Grantor in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 9.9 Right of Entry. Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 9.10 Subrogation. If any or all of the proceeds of the Loan have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such Indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of

the Indebtedness, the performance and discharge of Grantor's obligations hereunder, under the Credit Agreement, the Note and the Other Security Documents and the performance and discharge of the Obligations.

ARTICLE X ENVIRONMENTAL MATTERS

Section 10.1 Environmental Representations and Warranties. Grantor represents and warrants, based upon information that Grantor knows or should reasonably have known, that: (a) there are no Hazardous Materials (defined below) or underground storage tanks in, on, or under the Property, except those that are both (i) in compliance with Environmental Laws (defined below) and with permits issued pursuant thereto (if such permits are required), if any, and (ii) in amounts not in excess of that necessary to operate the Property; (b) there are no past, present or threatened Releases (defined below) of Hazardous Materials in violation of any Environmental Law and which would require remediation by a governmental authority in, on, under or from the Property; (c) there is no threat of any Release of Hazardous Materials migrating to the Property; (d) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property; (e) Grantor does not know of, and has not received, any written or oral notice or other communication from any person or entity (including but not limited to a governmental entity) relating to Hazardous Materials in, on, under or from the Property; and (f) Grantor has truthfully and fully provided to Lender, in writing, any and all information relating to environmental conditions in, on, under or from the Property known to Grantor or contained in Grantor's files and records, including but not limited to any reports relating to Hazardous Materials in, on, under or migrating to or from the Property and/or to the environmental condition of the Property. "Environmental Law" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other government directives or requirements, as well as common law, relating to protection of human health or the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, that apply to Grantor or the Property and relate to Hazardous Materials. "Hazardous Materials" shall mean petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant" or "pollutant" within the meaning of any Environmental Law. "Release" of any Hazardous Materials includes but is not limited to any release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating, injecting,

pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials.

Section 10.2 Environmental Covenants. Grantor covenants and agrees that so long as Grantor owns, manages, is in possession of, or otherwise controls the operation of the Property:

- (a) all uses and operations on or of the Property, whether by Grantor or any other person or entity, shall be in compliance with all Environmental Laws and permits issued pursuant thereto;
- (b) there shall be no Releases of Hazardous Materials in, on, under or from the Property;
- (c) Grantor shall not, and shall not permit any of its offices, partners, employees, agents, contractors, licensees, tenants, occupants or others to, generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, process or in any manner deal with any Hazardous Material on the Property, except in accordance with all Environmental Laws applicable thereto;
- (d) Grantor shall keep the Property free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Grantor or any other person or entity (the "Environmental Liens");
- (e) Grantor shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to Section 10.3 below, including but not limited to providing all relevant information and making knowledgeable persons available for interviews;
- (f) Grantor shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any reasonable written request of Lender, upon Lender's reasonable belief that the Property is not in full compliance with all Environmental Laws, and share with Lender the reports and other results thereof, and Lender and other Indemnified Parties shall be entitled to rely on such reports and other results thereof;
- (g) Grantor shall, at its sole cost and expense, comply with all reasonable written requests of Lender to
 - (i) reasonably effectuate remediation of any Hazardous Materials in, on, under or from the Property; and
 - (ii) comply with any Environmental Law;

(h) Grantor shall not allow any tenant or other user of the Property to violate any Environmental Law; and

(i) Grantor shall immediately notify Lender in writing after it has become aware of (A) any presence or Release or threatened Releases of Hazardous Materials in, on, under, from or migrating towards the Property; (B) any non-compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien; (D) any required or proposed remediation of environmental conditions relating to the Property; and (E) any written or oral notice or other communication of which Grantor becomes aware from any source whatsoever (including but not limited to a governmental entity) relating in any way to Hazardous Materials. Any failure of Grantor to perform its obligations pursuant to this Section 10.2 shall constitute bad faith waste with respect to the Property.

Section 10.3 Lender's Rights. Lender and any other person or entity designated by Lender, including but not limited to any representative of a governmental entity, and any environmental consultant, and any receiver appointed by any court of competent jurisdiction, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Grantor shall cooperate with and provide access to Lender and any such person or entity designated by Lender. The costs, expenses and fees of Lender for such entry and any inspection, audits, samples, analyses and processes shall be paid and reimbursed by the Grantor upon demand by Lender. Any such sum paid by Lender, with the interest thereon at the rate provided to be paid on the Indebtedness, shall be a lien on the Property prior to any claim, lien, right, title or interest in, to or on the Property, attaching or accruing subsequent to the lien of this Security Instrument, and shall be deemed to be secured by this Security Instrument and evidenced by the Credit Agreement.

ARTICLE XI INDEMNIFICATIONS

Section 11.1 General Indemnification. Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties (defined below) from and against any and all Losses (defined below) imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following:

(a) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways;

(b) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways;

(c) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof;

(d) any failure of the Property to be in compliance with any Applicable Laws;

(e) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; or

(f) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan secured by this Security Instrument.

Any amounts payable to Lender by reason of the application of this Section 11.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid. The term "Losses" shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement of whatever kind or nature (including but not limited to attorneys' fees and other costs of defense). The term "Indemnified Parties" shall mean (a) Lender, (b) any servicer or prior servicer of the Loan, (c) the officers, directors, shareholders, partners, members, employees and trustees of any of the foregoing, and (d) the heirs, legal representatives, successors and assigns of each of the foregoing.

Section 11.2 Mortgage and/or Intangible Tax. Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Credit Agreement, the Note or any of the Other Security Documents.

Section 11.3 Duty to Defend: Attorneys' Fees and Other Fees and Expenses. Upon written request by any Indemnified Party, Grantor shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of Indemnified Parties, their attorneys shall control the resolution of any claim or proceeding. Upon demand, Grantor shall

pay or, in the sole discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

Section 11.4 Environmental Indemnity. Simultaneously with this Security Instrument, Grantor and any other person(s) or entity(ies) identified therein (collectively, the "Indemnitors") have executed and delivered that certain environmental indemnity agreement dated the date hereof to Lender (the "Environmental Indemnity").

ARTICLE XII WAIVERS

Section 12.1 Waiver of Counterclaim. Grantor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Note, the Credit Agreement, any of the Other Security Documents, or the Obligations.

Section 12.2 Marshaling and Other Matters. Grantor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshaling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Grantor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Grantor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by Applicable Laws.

Section 12.3 Waiver of Notice. Grantor shall not be entitled to any notices of any nature whatsoever from Lender or Trustee except (a) with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender or Trustee to Grantor and (b) with respect to matters for which Lender or Trustee is required by Applicable Laws to give notice, and Grantor hereby expressly waives the right to receive any notice from Lender or Trustee with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender or Trustee to Grantor.

Section 12.4 Waiver of Statute of Limitations. Grantor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Indebtedness or performance of the Obligations.

Section 12.5 Sole Discretion of Lender. Wherever pursuant to this Security Instrument (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that

arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole discretion of Lender, except as may be otherwise expressly and specifically provided herein.

Section 12.6 WAIVER OF TRIAL BY JURY. GRANTOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE CREDIT AGREEMENT, THE APPLICATION FOR THE LOAN EVIDENCED BY THE CREDIT AGREEMENT, THE NOTE, THE CREDIT AGREEMENT, THIS SECURITY INSTRUMENT OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

ARTICLE XIII NOTICES

Section 13.1 Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person, (ii) one (1) Business Day (defined below) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Grantor or Lender, as the case may be, at the addresses set forth on the first page of this Security Instrument or addressed as such party may from time to time designate by written notice to the other parties.

Notices to Grantor shall be addressed to: Bi-Mart Corporation, 220 South Seneca Road, Eugene, Oregon 97402, Attention of Dave Zientara, with a copy to : Steel Rives LLP, 900 SW Fifth Ave., Suite 2600, Portland, Oregon 97204-1229, or fax number (503) 220-2480, Attention: Richard C. Josephson. Grantor's facsimile number is (541) 686-0681. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications. For purposes of this Subsection, "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in New York, New York. Receipt (or non-receipt) by those who are named as getting a copy of a notice under this Security Instrument does not affect the effective date of the notice to a party under this Security Instrument.

ARTICLE XIV APPLICABLE LAW

Section 14.1 Choice of Law. The grants of security, the enforcement of this Security Instrument and all other terms and provisions of this Security Instrument which, by applicable law, are subject to the laws of the state where the Property is located, shall be governed by the

laws of such state. All of the other term, provisions and conditions of this Security Instrument, the Note, the Credit Agreement and the Other Security Documents shall be governed by the laws of the State of New York. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Applicable Laws, whether of the state where the Property is located or the State of New York.

Section 14.2 Usury Laws. It is the unequivocal intention of the parties that the law of the State of New York shall apply to usury matters. This Security Instrument is subject to the express condition that at no time shall Grantor be obligated or required to pay interest on the Indebtedness at a rate which could subject the owner of the indebtedness secured by this Security Interest to either civil or criminal liability as a result of being in excess of the maximum interest rate which Grantor is permitted by applicable law to contract or agree to pay. If by the terms of the Credit Agreement or the Note, Grantor is at any time required or obligated to pay interest on the Indebtedness at a rate in excess of such maximum rate, the rate of interest under the Credit Agreement and the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Loan. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding.

ARTICLE XV SECONDARY MARKET

Section 15.1 Transfer of Loan. Lender may, at any time, sell, transfer or assign the Credit Agreement, the Note, the Guaranty, this Security Instrument and the Other Security Documents, and any or all servicing rights with respect thereto, or grant participations therein (the "Participations") or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"). Lender may forward to each purchaser, transferee, assignee, servicer, participant, or investor in such Participations or Securities (collectively, the "Investor") or any Rating Agency rating such Securities, each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Indebtedness and to Grantor, any Indemnitor(s) and the Property, whether furnished by Grantor, any Indemnitor(s) or otherwise, as Lender determines necessary or desirable.

Grantor irrevocably waives any and all rights it may have under Applicable Laws to prohibit such disclosure, including but not limited to any right of privacy.

Section 15.2 Cooperation. Grantor and any Indemnitor agree to cooperate with Lender in connection with any transfer made or any Securities created pursuant to this Article XV, including, without limitation, the taking, or refraining from taking, of such action as may be necessary to satisfy all of the conditions of any Investor, the delivery of an estoppel certificate required in accordance with Subsection 6.3 hereof and such other documents as may be reasonably requested by Lender and the execution of amendments to the Credit Agreement, the Note, this Security Instrument and Other Security Documents and Grantor's organizational documents as reasonably requested by Lender. Grantor shall also furnish and Grantor and any Indemnitor consent to Lender furnishing to such Investors or such prospective Investors or such Rating Agency any and all information concerning the Property, the Leases, the financial condition of Grantor and any Indemnitor as may be requested by Lender, any Investor, any prospective Investor or any Rating Agency in connection with any sale, transfer or Participations or Securities.

ARTICLE XVI COSTS

Section 16.1 Performance at Grantor's Expense. Grantor acknowledges and confirms that Grantor shall be responsible for payment on demand by Lender of all costs imposed by Lender in connection with, or arising from, certain administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of the Loan, (b) the release or substitution of collateral therefor, (c) obtaining certain consents, waivers and approvals with respect to the Property, or (d) the review of any Lease or proposed Lease or the preparation or review of any subordination, non-disturbance agreement (the occurrence of any of the above shall be called an "Event"). Grantor shall permit the Lender, at Grantor's expense, to have the Property appraised or reappraised by a real estate appraiser selected by the Lender (whether said appraiser is staff or fee), in the event that (i) the Lender shall have reasonably determined that the condition of the Property shall have materially diminished; (ii) an Event of Default shall have occurred and be continuing under any of the Loan Documents; or (iii) such reappraisal shall be required by an insurance carrier or a regulatory authority having jurisdiction over the Lender. The Grantor shall reimburse Lender for any reasonable fees, costs, expenses or charges incurred by Lender in engaging any such appraiser or reviewing and documenting such appraisal or reappraisal and such fees shall be part of the Indebtedness. The Grantor agrees to provide any information as reasonably requested by Lender in order to perform the appraisal or reappraisal, and permit any appraiser designated by Lender to enter the Property at any reasonable time for the purpose of conducting the appraisal or reappraisal.

Section 16.2 Legal Fees for Enforcement.

(a) Grantor shall pay all reasonable legal fees incurred by Lender in connection with (i) the preparation of the Note, the Credit Agreement, the Guaranty, this Security Instrument and the Other Security Documents and (ii) the items set forth in Section 16.1 above, and

(b) Grantor shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property, whether or not any legal proceeding is commenced hereunder or thereunder, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Grantor.

ARTICLE XVII DEFINITIONS

Section 17.1 General Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Grantor" shall mean "each Grantor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent owner of the indebtedness secured by this Security Instrument," the word "Trustee" shall mean "Trustee and any substitute Trustee of the estates, properties, powers, trusts and rights conferred upon the Trustee pursuant to this Security Instrument," the word "person" shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

Section 17.2 Headings, etc. The headings and captions of various Articles and Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

ARTICLE XVIII MISCELLANEOUS PROVISIONS

Section 18.1 No Oral Change. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Grantor or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 18.2 Liability. If Grantor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Grantor and Lender and their respective successors and assigns forever.

Section 18.3 Inapplicable Provisions. If any term, covenant or condition of the Credit Agreement or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Credit Agreement and this Security Instrument shall be construed without such provision.

Section 18.4 Duplicate Originals; Counterparts. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 18.5 Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 18.6 No Consequential Damages. The Grantor agrees not to assert any claim against the Lender or any of its directors, officers, employees, attorneys and agents, on any theory of liability, for special, indirect, consequential or punitive damages arising out of or otherwise relating to this Security Instrument, the Credit Agreement, the Note or any of the Other Security Documents or any of the transactions contemplated herein and therein.

ARTICLE XIX STATE PROVISIONS

As set forth on schedule 20.7 attached hereto and incorporated herein by this reference.

ARTICLE XX DEED OF TRUST PROVISIONS

Section 20.1 Concerning The Trustee. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at

any time upon giving thirty (30) days' notice to Grantor and to Lender. Lender may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Lender may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Lender. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

Section 20.2 Trustee's Fees. Grantor shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

Section 20.3 Certain Rights. With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Credit Agreement, the Note, this Security Instrument or the Other Security Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (iii) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or 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 bad faith, and (iv) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

Section 20.4 Retention of Money. 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 applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

Section 20.5 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute trustee to more fully and certainly vest in and confirm to the Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by the Trustee or substitute trustee, any and 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.

Section 20.6 Succession Instruments. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in the Trustee's place.

Section 20.7 Additional Provisions and State-Specific Provisions. The parties have attached Schedule 20.7 with additional terms and state-specific provisions, which schedule is incorporated fully herein by this reference.

ARTICLE XXI

SPECIAL LEASEHOLD PROVISIONS

Section 21.1 Grantor will: (i) pay the rent reserved by the Ground Lease as the same becomes due and payable; (ii) promptly perform and observe all of the covenants, agreements, obligations and conditions required to be performed and observed by the Grantor under the Ground Lease, and do all things necessary to preserve and keep unimpaired its rights thereunder; (iii) promptly notify Lender in writing of the commencement of a proceeding under the federal bankruptcy laws by or against Grantor or the ground lessor under the Ground Lease; (iv) if any of the indebtedness secured hereby remains unpaid at the time when notice may be given by the Lender under the Ground Lease of the exercise of any right to renew or extend the term of the Ground Lease, promptly give notice to the ground lessor of the exercise of such right of extension or renewal; (v) in case any proceeds of insurance upon the Property or any part thereof are deposited with any person other than Lender, promptly notify Lender in writing of the name and address of the person with whom such proceeds have been deposited and the amount so deposited; (vi) promptly notify the Lender in writing

of the receipt by the Grantor of any notice (other than notices customarily sent on a regular periodic basis) from the ground lessor under the Ground Lease and of any notice noting or claiming any default by the Grantor in the performance or observance of any of the terms, covenants, or conditions on the part of the Grantor to be performed or observed under the Ground Lease; (vii) promptly notify the Lender in writing of the receipt by the Grantor of any notice from the ground lessor of any termination of the Ground Lease pursuant to the provisions of the Ground Lease; (viii) promptly cause a copy of each such notice received by the Grantor from the ground lessor under the Ground Lease to be delivered to the Lender, and (ix) promptly notify Lender in writing of any request made by either party to the Ground Lease to the other party thereto for arbitration or appraisal proceedings pursuant to the Ground Lease, and of the institution of any arbitration or appraisal proceedings and promptly deliver to Lender a copy of the determination of the arbitrators or appraisers in each such proceeding.

Section 21.2 Grantor will not surrender the Ground Lease or Grantor's leasehold estate and interest therein, nor terminate or cancel the Ground Lease; and will not, without the prior written consent of Lender modify, change, supplement, alter or amend the Ground Lease, either orally or in writing, and as further security for the repayment of the indebtedness hereby secured and for the performance of the covenants, agreements, obligations and conditions herein and in the Ground Lease contained, Grantor hereby assigns to Lender all of its rights, privileges and prerogatives as ground lessee under the Ground Lease to terminate, cancel, modify, change, supplement, alter or amend the Ground Lease and any such termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease, without the prior written consent thereto by Lender, shall be void and of no force and effect. Without limiting the generality of the foregoing, Grantor will not reject the Ground Lease pursuant to 11 U.S.C. Section 365(a) or any successor law, or allow the Ground Lease to be deemed rejected by inaction and lapse of time, and will not elect to treat the Ground Lease as terminated by the ground lessor's rejection of the Ground Lease pursuant to 11 U.S.C. Section 365(h)(1) or any successor law, and as further security for the repayment of the indebtedness secured hereby and for the performance of the covenants, agreements, obligations and conditions herein and in the Ground Lease contained, Grantor hereby assigns to Lender all of its rights, privileges and prerogatives of Grantor and Grantor's bankruptcy trustee to deal with the Ground Lease, which right may arise as a result of the commencement of a proceeding under the federal bankruptcy laws by or against Grantor or ground lessor under the Ground Lease, including, without limitation, the right to assume or reject, or to compel the assumption or rejection of the Ground Lease pursuant to 11 U.S.C. Section 365(a) or any successor law, the right to seek and obtain extensions of time to assume or reject the Ground Lease, the right to elect whether to treat the Ground Lease as terminated by the ground lessor's rejection of the Ground Lease or to remain in possession of the Property and offset damages pursuant to 11 U.S.C. Section 365(b)(1) or any successor law; and any exercise of such rights, privileges or prerogatives by Grantor or Grantor's bankruptcy trustee without the prior written consent thereto by Lender shall be void and of no force and effect. No release or forbearance of any of Grantor's obligations as ground lessee under the Ground

Lease, whether pursuant to the Ground Lease or otherwise, shall release Grantor from any of its obligations under this Security Instrument, including, but not limited to, Grantor's obligations with respect to the payment of rent as provided for in the Ground Lease and the observance and performance of all of the covenants, agreements, obligations and conditions contained in the Ground Lease to be observed and performed by the ground lessee thereunder. Grantor hereby expressly grants to Lender, and agrees that Lender shall have, the absolute and immediate right (notwithstanding any cure periods applicable to acceleration of the Note or exercise of remedies provided for herein) to enter in and upon the Property or any part thereof, to such extent and as often as Lender, in its sole discretion, deems necessary or desirable in order to prevent or to cure any such default by Grantor. Lender may immediately pay and expend such sums of money (notwithstanding any cure periods applicable to acceleration of the Note or exercise of remedies provided for herein) as Lender, in its sole discretion, deems necessary to prevent or cure any such default by Grantor, and Grantor hereby agrees to pay to Lender, immediately and without demand, all such sums so paid and expended by Lender, together with interest thereon from the date of each such payment at the Default Rate as specified in the Note. All sums so paid and expended by Lender, and the interest thereon, shall be added to and be secured by the lien of this Security Instrument. Unless Lender shall otherwise expressly consent in writing, the fee title to the real property demised by the Ground Lease and the leasehold estate thereunder shall not merge, but shall always remain separate and distinct, notwithstanding the union of such estates either in the Grantor or in a third party by purchase or otherwise.

Section 21.3 The Grantor will, within ten (10) days after written demand from the Lender, use its best efforts to obtain from the ground lessor under the Ground Lease and deliver to the Lender a certificate stating that such ground lease is in full force and effect, is unmodified, that no notice of termination thereon has been served on the Grantor, stating the date to which the net rent has been paid and stating whether or not there are any defaults thereunder and specifying the nature of such defaults, if any.

Section 21.4 The Grantor will furnish to the Lender, upon demand, proof of payment of all items which are required to be paid by the Grantor pursuant to the Ground Lease.

[NO MORE TEXT ON THIS PAGE]

IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by Grantor the day and year first above written.

WITNESS/ATTEST:

BI-MART CORPORATION, a California corporation

Jason Dalton
Name: JASON DALTON
Title: Attesting Witness

By: *Marty Smith*
Name: Marty Smith
Title: President

STATE OF OREGON

COUNTY OF Multnomah

This instrument was acknowledged before me on February 27 2004, the undersigned officer, personally appeared Marty Smith, as President, of BI-MART CORPORATION, a California corporation on behalf of said corporation.

Rene Alvin
Notary Public

My commission expires: 9-12-05

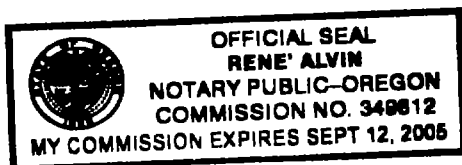


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

See attached.

Property #668 - Coos Bay, OR

**EXHIBIT A
LEGAL DESCRIPTION**

Lots 1 through 40, inclusive, Block 28, Railroad Addition to Marshfield, Coos County, Oregon together with any portion of the vacated alley that would inure to said property by operation of law.

15139

Property #660 – Prineville, OR

**EXHIBIT A
LEGAL DESCRIPTION**

Parcel One (1) of Partition Plat No. 2003-33, Recorded August 1, 2003 in Partitions MF No. 182431, Records of Crook County, Oregon, Located in Government Lot 3 and Government Lot 4 of Section 4, Township 15 South, Range 16 East of the Willamette Meridian, Crook County, Oregon.

Property #671 – LaPine, OR

**EXHIBIT A
LEGAL DESCRIPTION**

PARCEL 1:

All of that portion of the East Half of the Northwest Quarter of the Southwest Quarter of the Southwest Quarter ($E\frac{1}{2} NW\frac{1}{4} SW\frac{1}{4} SW\frac{1}{4}$) Lying Easterly of Huntington Road; and the Northwest Quarter of the Northeast Quarter of the Southwest Quarter of the Southwest Quarter ($NW\frac{1}{4} NE\frac{1}{4} SW\frac{1}{4} SW\frac{1}{4}$); and the South Half of the Northeast Quarter of the Southwest Quarter of the Southwest Quarter ($S\frac{1}{2} NE\frac{1}{4} SW\frac{1}{4} SW\frac{1}{4}$), all in Section 11, TOWNSHIP 22 SOUTH, RANGE 10, EAST OF THE WILLAMETTE MERIDIAN, Deschutes County, Oregon.

PARCEL 2:

The West Half ($W\frac{1}{2}$) of Government Lot 1 in Section 11 of TOWNSHIP 22 SOUTH, RANGE 10, EAST OF THE WILLAMETTE MERIDIAN, Deschutes County, Oregon.

PARCEL 3:

That portion of the East Half ($E\frac{1}{2}$) of Government Lot 1 and that portion of Government Lot 3 in Section 11, TOWNSHIP 22 SOUTH, RANGE 10, EAST OF THE WILLAMETTE MERIDIAN, Deschutes County, Oregon, lying Westerly of the Dalles-California Highway U.S. Highway 97.

PARCEL 4:

That portion of Government Lot 2 in Section 11, TOWNSHIP 22 SOUTH, RANGE 10, EAST OF THE WILLAMETTE MERIDIAN, Deschutes County, Oregon, lying Westerly of the Dalles-California Highway U.S. Highway 97.

ALSO: THAT PARCEL DESCRIBED IN DEED FROM GREG SMITH TO BI-MART CORPORATION RECORDED FEBRUARY 6, 2004, DOCUMENT 2004-06271, DESCHUTES COUNTY OFFICIAL RECORDS.

EXCEPT: THAT PARCEL DESCRIBED IN DEED FROM BI-MART CORPORATION TO GREG SMITH RECORDED FEBRUARY 6, 2004, DOCUMENT NO. 2004—06273, DESCHUTES COUNTY OFFICIAL RECORDS.

THE ABOVE PARCELS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER ($SW\frac{1}{4} NE\frac{1}{4} SW\frac{1}{4} SW\frac{1}{4}$) OF SECTION 11, TOWNSHIP 22 SOUTH, RANGE 10 EAST OF THE WILLAMETTE MERIDIAN AND RUNNING THENCE ALONG THE SOUTH LINE OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER ($N\frac{1}{2} SW\frac{1}{4} SW\frac{1}{4}$) OF SAID SECTION 11 NORTH $89^{\circ}51'00''$ WEST, 546.12 FEET TO THE EAST MARGIN OF HUNTINGTON ROAD (30.00 FEET FROM CENTERLINE); THENCE ALONG SAID EAST MARGIN NORTH $0^{\circ}13'36''$ EAST,

657.78 FEET TO A POINT ON THE NORTH LINE OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (N1/2 SW1/4 SW1/4) OF SAID SECTION 11; THENCE ALONG SAID NORTH LINE SOUTH 89°37'13" EAST, 543.81 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (NW1/4 NE1/4 SW1/4 SW1/4) OF SAID SECTION 11; THENCE ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (NW1/4 NE1/4 SW1/4 SW1/4) OF SAID SECTION 11 SOUTH 0°02'39" WEST, 327.77 FEET TO THE NORTH LINE OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (S1/2 NE1/4 SW1/4 SW1/4) OF SAID SECTION 11; THENCE ALONG SAID LAST MENTIONED NORTH LINE SOUTH 89°43'45" EAST, 326.47 FEET TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (SW1/4 SW1/4) OF SAID SECTION 11; THENCE ALONG SAID LAST MENTIONED EAST LINE NORTH 0°04'11" EAST, 327.14 FEET TO THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHWEST QUARTER (S1/2 SW1/4) OF SAID SECTION 11; THENCE ALONG SAID LAST MENTIONED NORTH LINE SOUTH 89°37'13" EAST, 616.44 FEET TO THE WEST MARGIN OF U.S. HIGHWAY NO. 97 (200.00 FEET FROM CENTERLINE); THENCE ALONG SAID WEST MARGIN SOUTH 30°45'21" WEST, 757.32 FEET TO THE SOUTH LINE OF THE NORTH HALF OF THE OF THE SOUTH HALF OF THE SOUTHWEST QUARTER (N1/2 S1/2 SW1/4) OF SAID SECTION 11; THENCE ALONG SAID LAST MENTIONED SOUTH LINE NORTH 89°51'00" WEST, 346.05 FEET TO THE NORTHEAST CORNER OF LOT 1 OF BLUEWOOD, AS PLATTED AND RECORDED IN DESCHUTES COUNTY, OREGON; THENCE LEAVING THE NORTH LINE OF SAID PLAT OF BLUEWOOD RUN NORTH 71°49'51" WEST, 113.85 FEET; THENCE ALONG THE ARC OF A 515.00 FOOT RADIUS CURVE TO THE RIGHT, THE CHORD OF WHICH BEARS SOUTH 45°48'46" WEST, 24.38 FEET, A DISTANCE OF 24.38 FEET; THENCE ALONG THE ARC OF A 170.00 FOOT RADIUS CURVE TO THE LEFT, THE CHORD OF WHICH BEARS SOUTH 23°36'20" WEST, 135.92 FEET, A DISTANCE OF 139.83 FEET TO A POINT ON THE WEST LINE OF LOT 1 OF SAID PLAT OF BLUEWOOD; THENCE ALONG THE WEST LINE OF SAID LOT 1 NORTH 0°02'31" EAST, 106.51 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE LEAVING THE WEST LINE OF SAID LOT 1 AND RUNNING ALONG THE SOUTH LINE OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (S1/2 NE1/4 SW1/4 SW1/4) OF SAID SECTION 11, NORTH 89°51'00" WEST, 30.00 FEET TO THE POINT OF BEGINNING, IN DESCHUTES COUNTY OREGON

THE BEARINGS AND DISTANCES IN THE FOREGOING DESCRIPTION ARE BASED ON SURVEY NUMBER CS15553 RECORDED IN DESCHUTES COUNTY SURVEYORS OFFICE.

Property #610 – Grants Pass, OR

**EXHIBIT A
LEGAL DESCRIPTION**

Real property in the County of Josephine, State of Oregon, described as follows:

Beginning at the Northeast corner of the Northwest Quarter of the Southeast Quarter of Section 19, Township 36 South, Range 5 West, Willamette Meridian in Josephine County, Oregon; thence South 89° 41' 30" East 18.53 feet to the West right of way line of Sixth Street; thence along said right of way line South 2° 18' 48" West 192.08 feet; thence South 80° 58' 38" West 519.17 feet to the East right of way line of Tussey Lane; thence along said East right of way line North 0° 09' 05" East 276.14 feet; thence South 89° 41' 32" East 501.25 feet back to the point of beginning.

Tax Parcel Number: R313622

Exhibit "A"

Real property in the County of Klamath, State of Oregon, described as follows:

A tract of land being a portion of Tract 805 of Enterprise Tracts, situated in the Northeast quarter of Section 4, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a 5/8 inch iron pin with aluminum cap being on the South line of said Tract 805, said iron pin being South 89°51'00" West 20.00 feet from the Southeast corner of said Tract 805, and on the Westerly right of way line of Washburn Way; thence North 00°03'30" East, along the Westerly right of way line of Washburn Way (North 00°03'30" East by M-73 on page 3750) 238.00 feet; thence North 55°46'50" West (North 55°50" West by M-73 on page 3750) 257.48 feet; thence North 34°13'10" East (North 34°09'30" East by M-73, page 3753) 25.00 feet; thence North 55°46'50" West (North 55°50'30" West by M-73, page 3753) 50.00 feet; thence North 34°13'10" East (North 34°09'30" East by M-73 on page 3753) 110.00 feet to the Southwesterly right of way line of South Sixth Street; thence North 55°46'50" West, along said South Sixth Street (North 55°50'30" West by M73, Page 3753 and North 55°50" West by M-73, page 3750) 50.00 feet; thence South 34°13'10" West (South 34°09'50" West by M-73 on page 3753 and South 34°10' West by M-73, Page 3750) 400.00 feet; thence South 55°46'50" East (South 55°50'30" East by M-73, page 3753 and South 55°50' East by M-73 on page 3750) 27.00 feet; thence South 00°34'05" East 205.84 feet (South, 205 feet, more or less, by M-73 on page 3750) to the South line of said tract 805; thence North 89°51'00" East, along said South line (North 89°47' East by M-73 on page 3750) 420.00 feet to the point of beginning.

Tax Parcel Number: R530991



**EXHIBIT A
LEGAL DESCRIPTION**

A parcel of land in the Northeast ¼, Southeast ¼, Section 33, in Township 17 South, Range 2 West of the Willamette Meridian, more particularly described as follows:

Beginning at a point being North 89° 51' 05" West 25.00 feet and South 0° 02' 35" West 30.00 feet from the Northwest corner of the S. D. Gager Donation Land Claim No. 45, in Township 17 South, Range 2 West of the Willamette Meridian, said point also being on the South margin of North "A" Street; thence along said South margin South 89° 51' 05" East 340.17 feet; thence leaving said South margin South 0° 08' 55" West 393.06 feet to a point on the North margin of McKenzie Highway; thence along said North margin North 89° 44' 00" West 149.45 feet; thence leaving said North margin North 0° 02' 35" East 130.39 feet; thence North 89° 44' 00" West 165.00 feet; thence North 0° 02' 35" East 68.80 feet; thence North 89° 51' 05" West 25.00 feet; thence North 0° 02' 35" East 193.23 feet to the Point of Beginning, in Lane County, Oregon.

**EXHIBIT A
LEGAL DESCRIPTION**

Beginning at the intersection of the north line of Sixth Street and the west line of Elm Street, as shown on the plat of Junction City, as platted and recorded in Book H, page 749, Deed records of Lane County, Oregon; thence northerly, along said west line to the south line of Ninth street; thence westerly, along said south line to a point that is 35 feet easterly measured at right angles from the centerline of main track of the Union Pacific Railroad Company; thence southerly, parallel to and 35 feet easterly of said centerline to the north line of Sixth street extended; thence easterly, along said north line to the point of beginning, in Lane county, Oregon.

And being more particularly described as follows:

Beginning at the intersection of the north line of Sixth Street and the west line of Elm Street, as shown on the plat of Junction City, as platted and recorded in Book H, page 749, deed records of Lane County, Oregon and running thence along said west line North 02°00'00" West, 870.10 feet to the south line of Ninth Street; thence along said south line South 87°54'19" West, 234.72 feet to a point that is 35.00 feet easterly measured at right angles from the centerline of the main track of the Union Pacific Railroad Company; thence running parallel to and 35.00 feet easterly of said centerline South 02°00'00" East, 869.71 feet to the north line of Sixth Street extended; thence along said north line North 87°59'54" East, 234.72 feet to the point of beginning, in Lane County, Oregon.

The bearings in the foregoing description are based on that boundary survey for Bi-Mart Corporation recorded in the Lane County Surveyor's Office as CSF No. 37298, recorded December 14, 2001.

Property #645 and 675- Eugene, OR

**EXHIBIT A
LEGAL DESCRIPTION**

Beginning at the intersection of the centerline of Seneca Road with the centerline of 7th Place West, said point being 2859.11 feet North 89° 17' 12" West from the Southwest corner of the Prior F. Blair Donation Land Claim No. 39, Township 17 south, Range 4 West of the Willamette Meridian; and run thence, along the centerline of said 7th Place West, 40.00 feet to the Southerly extension of the East right-of-way line of said Seneca Road; thence North 0° 28' 30" East, along said Southerly extension, 30.00 feet to the Point of Beginning; from said Point of Beginning, continue North 0° 28' 30" East, along the East right-of-way line of said Seneca Road, 712.65 feet to the South line of that certain tract of land described in Instrument to Clifford W. Updegrave recorded July 17, 1978, Reception No. 78-49097, Lane County Official Records; thence South 89° 03' 37" East, along the South line of that last mentioned tract, 440.01 feet to a point 440.00 feet Easterly from, when measured perpendicular to, the East right-of-way line of said Seneca Road; thence South 0° 28' 30" West, parallel with said East right-of-way line, 710.91 feet to the North right-of-way line of 7th Place West, thence North 89° 17' 14" West, along said North right-of-way line, 440.00 feet to the Point of Beginning, in Lane County, Oregon.

Property #633 -- Salem, OR

**EXHIBIT A
LEGAL DESCRIPTION**

Real property in the County of Marion, State of Oregon, described as follows:

Beginning at a point on the Westerly right of way line of Lancaster Drive, which point is North 00° 06' 30" East 389.40 feet and North 89° 55' 02" West 40.00 feet from the Southeast corner of the Towner Savage Donation Land Claim No. 37. in Township 7 South, Range 2 West of the Willamette Meridian in Marion County, Oregon; thence North 89° 55' 02" West a distance of 334.77 feet; thence North 00° 04' 58" East a distance of 21.88 feet; thence North 89° 55' 02" West a distance of 241.05 feet to a point on the Easterly right of way line of Coral Avenue; thence North 00° 04' 58" East along said Easterly right of way line a distance of 200.00 feet; thence South 89° 55' 02" East a distance of 575.93 feet to a point on the Westerly right of way line of said Lancaster Drive; thence South 00° 06' 30" West along said Westerly right of way line a distance of 221.88 feet to the point of beginning.

Tax Parcel Numbers: R59868 and P119220.

Property #629 – Portland, OR

**EXHIBIT A
LEGAL DESCRIPTION**

Lots 1 and 2, SUTTER HILL SUBDIVISION, in the City of Portland, County of Multnomah and State of Oregon, being more particularly described as follows:

Beginning at the Southwest corner of Lot 1, Sutter Hill Subdivision, as platted and recorded in Volume 1214, Pages 51 and 52, Multnomah County Records, and running thence North 16°15'34" East, 248.85 feet; thence South 73°44'26" East, 104.68 feet; thence North 16°15'34" East, 228.00 feet; thence South 73°44'26" East, 199.67 feet; thence North 16°15'34" East, 156.00 feet to the South right-of-way line of S.E. Powell Valley Road; thence along said right-of-way line South 73°44'26" East, 26.00 feet; thence leaving said right-of-way line run South 16°15'34" West, 156.00 feet; thence South 73°44'26" East, 121.00 feet; thence South 16°15'34" West, 184.41 feet; thence North 73°44'26" West, 175.35 feet; thence South 16°15'34" West, 269.04 feet to the North margin of S.E. Naegeli Drive; thence along said North margin along the arc of a 630.00 foot radius curve to the left, the chord of which bears North 78°35'12" West, 276.99 feet, a distance of 279.27 feet to the point of beginning, in Portland, Multnomah County, Oregon.

TOGETHER WITH those easement rights set forth in that certain "Declaration of Restrictions and Grant of Easements recorded February 19, 1981 in Book 1504, page 417, as amended by First Amendment to Declaration of Restrictions and Grant of Easements recorded October 8, 1981 in Book 1554, page 1655.

ALSO TOGETHER WITH those rights as set forth in that certain Common Area Maintenance Agreement recorded February 19, 1981 in Book 1504, page 445, as amended by First Amendment to Common Area Maintenance Agreement recorded October 8, 1981 in Book 1554, page 1666.

FURTHER TOGETHER WITH those access rights as set forth in that certain Revocable Access Agreement recorded March 13, 1984 in Book 1732, page 2021.

Property #632 - Aloha, OR

**EXHIBIT A
LEGAL DESCRIPTION**

A portion of those certain tracts of land in the Southeast one-quarter of Section 13 and the Northeast one-quarter of Section 24, Township 1 South, Range 2 West, of the Willamette Meridian, in the County of Washington and State of Oregon, conveyed to Jack Strasburg, et ux, by Deed recorded in Book 357, Page 622, Washington County, Oregon Deed Records, and conveyed to Basil A. Chitty by Deed recorded in Book 123, Page 120, said Deed Records, said tract being more particularly described as follows:

Beginning at the Southwest corner of said Strasburg Tract and running thence South 00°48' West along the Southerly extension of the West line of said Strasburg Tract 37.40 feet; thence South 89°12' East 106.00; thence North 00°48' East 72.02 feet; thence South 89°14'57" East 100.00 feet; thence North 00°48' East 79.26 feet; thence South 89°12' East 240.12 feet to a point which bears Westerly 45.00 feet (when measured at right angles) from the centerline of S.W. 185th Avenue (County Road No. 481); thence North 00°48' East parallel with the said centerline 187.97 feet to a point on the South line of that certain tract of land conveyed to Period Homes, Inc. by Deed recorded in Book 536, Page 502, said Deed Records; thence North 88°37'00" West 446.14 feet to a point on the West line of said Strasburg Tract; thence South 00°48' West along said West line 306.47 feet to the point of beginning.

Property #635 – Forest Grove, OR

**EXHIBIT A
LEGAL DESCRIPTION**

The following property in the Southwest quarter of Section 32, Township 1 North, Range 3 West of the Willamette Meridian, in the City of Forest Grove, County of Washington and State of Oregon, described as follows:

Beginning at a point 2132.13 feet (32.305 chains) East of a stone (now an iron rod) in the center of Seventh Street (now Hawthorne Street) in the City of Forest Grove, where the same crosses the Willamette Baseline on the South line of Section 32, Township 1 North, Range 3 West of the Willamette Meridian, in the City of Forest Grove, County of Washington and State of Oregon, and running thence North 385.44 feet (5.84 chains); thence East 441.54 feet (6.69 chains); thence South 385.44 feet (5.84 chains); thence West 441.54 feet (6.69 chains) to the point of beginning.

EXCEPTING THEREFROM the Southerly 30.00 feet lying within the boundaries of Tualatin Valley Highway.

EXHIBIT A **LEGAL DESCRIPTION**

A parcel of land located in the City of Newberg, County of Yamhill, State of Oregon more particularly described as follows:

BEGINNING at an iron rod on the North line of U.S. Highway 99 West said iron rod bears South 0°01'15" East, 2257.05 feet and South 65°58'20" West 223.20 feet from the Northeast corner of the Richard Everest and Wife Donation Land Claim No.52 in Section 16, Township 3 South, Range 2 West, Willamette Meridian, Yamhill County, Oregon and running thence South 65°58'20" West along the said North line of U.S. Highway 99 West, 172.46 feet to an iron rod; thence North 24°01'40" West, 40.42 feet to an iron rod; thence North 0°01'15" West, 243.35 feet to an iron rod; thence South 89°43'10" West 137.03 feet to an iron rod; thence South 00°01'15" East, 232.00 feet to the Northeast corner of a tract of land as described in Volume 176, Page 0007, Yamhill County, Oregon Deed Records; thence North 89°49'10" West along the North line of said tract of land as described in Film Volume 176, Page 0007, 100.97 feet to the Southeast corner of a tract of land as described in Film Volume 133, Page 0001, of said Deed Records; thence North 0°01'15" West along the East line of said tract of land as described in Volume 133, Page 0001, 217.80 feet to the Northeast corner thereof; thence South 89°43'10" West along the North line of said tract of land described in Volume 133, Page 0001, 90.00 feet to a point on the East line of Deborah Road; thence North 0°01'15" West along the said East line of Deborah Road 369.66 feet to an iron rod at the intersection of said East line and the South line of Haworth Avenue; thence North 89°43'10" East along the said South line of Haworth Avenue, 502.00 feet to an iron rod; thence South 0°01'15" East, 567.17 feet to the **POINT OF BEGINNING**.

EXCEPTING THEREFROM a parcel of land located in the City of Newberg, County of Yamhill, State of Oregon more particularly described as follows:

BEGINNING at an iron rod on the North line of U.S. Highway 99 West said iron rod bears South 0°01'15" East, 2257.05 feet and South 65°58'20" West, 223.20 feet from the Northeast corner of said Richard Everest and Wife Donation Land Claim No.52 in Section 16, Township 3 South, Range 2 West, Willamette Meridian, Yamhill County, Oregon and the **TRUE POINT OF BEGINNING**; running thence South 65°58'20" West along the said North line of U.S. Highway 99 West 172.46 feet to an iron rod; thence North 24°01'40" West, 40.42 feet to an iron rod; thence North 0°01'15" West, 243.35 feet to an iron rod; thence North 89°43'10" East, 174 feet to an iron rod; thence South 0°10'15" East, 210.89 feet to the **POINT OF BEGINNING**.

ALSO EXCEPTING THEREFROM a parcel of land located in the County of Yamhill, State of Oregon, more particularly described as follows:

BEGINNING at a point that bears South 0°01'15" East, 2257.05 feet and South 65°58'20" West, 395.66 feet; North 24°01'40" West, 40.42 feet, North 0°01'15" West, 243.35 feet; South 89°43'10" West, 137.03 feet and South 0°01'15" East, 13.38 feet from the Northeast corner of the Richard Everest and Wife Donation Land Claim No.52 in Section 16, Township 3 South, Range 2 West of the Willamette Meridian in Yamhill County, Oregon, and the **TRUE POINT OF BEGINNING**; thence South 0°01'15" East, 218.62 feet to the Northeast corner of a tract of land as described in Volume 176, Page 0007, Yamhill County Deed Records; thence North 89°49'10" West along the North line of said tract of land as described in Volume 176,

Page 0007, 100.97 feet to the Southeast corner of a tract of land as described in Volume 133, Page 0001, of said Deed Records; thence North 0°01'15" West along the East line of said tract of land as described in Volume 133, Page 0001, 217.80 feet to the Northeast corner thereof; thence North 89°43'10" East, 100.97 feet to the TRUE POINT OF BEGINNING.

TOGETHER WITH an easement for ingress and egress and utility purposes, described as follows: A parcel of land located in the City of Newberg, County of Yamhill, State of Oregon more particularly described as follows: BEGINNING at an iron rod on the North line of U.S. Highway 99 West said iron rod bears South 0°01'15" East, 2257.05 feet and South 65°58'20" West, 351.66 feet from the Northeast corner of the Richard Everest and Wife Donation Land Claim No. 52 in Section 16, Township 3 South, Range 2 West, Willamette Meridian, Yamhill County, Oregon and running thence South 65°58'20" West along the said North line of U.S. Highway 99 West, 44 feet to an iron rod; thence North 24°01'40" West, 40.42 feet to an iron rod; thence North 0°01'15" West, 243.35 feet to an iron rod; thence North 89°43'10" East, 30 feet; thence South 0°01'15" East, 202.69 feet; thence South 24°01'40" East, 65.58 feet to the POINT OF BEGINNING.

EXHIBIT B**DESCRIPTION OF GROUND LEASED PROPERTY**

The Ground Lease Agreement is evidenced of record as follows:

That certain Ground Lease Agreement, dated as of December 11, 1981, originally between Damascus Development Co., an Oregon corporation, as landlord/lessor, and The Bi-Mart Company, an Oregon corporation, as tenant/lessee, as disclosed by a memorandum of ground lease recorded on February 2, 1982, as Book 1576, page 2335, Official Records of Multnomah County, Oregon.

A memorandum of such lease was also recorded September 13, 1984, in Book 1774, page 823.

The lessee's interest under such Ground Lease Agreement has been assigned to Bi-Mart Corporation, a California corporation (and the Grantor under this Security Instrument), which acquired its interest as USEACQ CORPORATION II, a California corporation, by assignment recorded July 6, 1988, as Book 2118, page 729.

A document recorded October 27, 1997 as Fee No. 97161296, Official Records of Multnomah County, Oregon, provides that the lease was subordinated to the document recorded October 27, 1997, as Fee No. 97161293, Official Records of Multnomah County, Oregon.

The name of the current record owner of the real property is: **COLLEGE SQUARE CENTER, LLC, an Oregon limited liability company.**

The legal description of the land that is leased under such Ground Lease Agreement is:

See attached.

Property #630 - Gresham, OR

LEGAL DESCRIPTION

A parcel of land situated in the Northwest one-quarter of Section 2, Township 1 South, Range 3 East, of the Willamette Meridian, in the City of Gresham, County of Multnomah and State of Oregon. Said parcel of land being more particularly described as follows:

Commencing at the Northwest corner of said Section 2; thence North $89^{\circ}40'30''$ East, along the North boundary of said Section 2, a distance of 864.42 feet to a point; thence South $00^{\circ}20'00''$ East a distance of 40.00 feet to a point on the South boundary of Southeast Stark Street, said point also being the true point of beginning of the parcel of land herein described; thence South $00^{\circ}20'00''$ East, along the West boundary of the plat of BRIGADOON, a distance of 848.68 feet to a point marked by a $\frac{1}{4}$ inch iron rod, with a plastic yellow cap stamped "Carlile L.S. 921"; thence South $89^{\circ}40'30''$ West, parallel to said North boundary of said Section 2, a distance of 444.44 feet to a point on the East boundary of that parcel of land conveyed to Multnomah County and recorded June 15, 1982 in Book 1601, page 1082, Multnomah County Deed Records, said point also being 40.00 feet East of, when measured at right angles, the centerline of Southeast 242nd Drive; thence North $00^{\circ}36'51''$ West, parallel to and 40.00 feet East of, when measured at right angles, said centerline of said 242nd Drive, and along the East boundary of said Multnomah County Tract, a distance of 828.58 feet to a point of curve; thence continuing along said Multnomah County Tract, along a 20.00 foot radius curve to the right, through a central angle of $90^{\circ}17'21''$, an arc distance of 31.52 feet (the long chord bears North $44^{\circ}31'50''$ East, a distance of 28.36 feet) to a point that is 40.00 feet South of, when measured at right angles, the centerline of Southeast Stark Street, and at the Southwest corner of that parcel of land conveyed to Multnomah County and recorded June 15, 1982 in Book 1601, page 1077, Multnomah County Deed Records; thence North $89^{\circ}40'30''$ East, parallel to and 40.00 feet South of, when measured at right angles, said centerline of said Stark Street, and along the South boundary of said Multnomah County Tract, a distance of 428.50 feet to the true point of beginning of the parcel of land herein described.

SCHEDULE 20.7
ADDITIONAL PROVISIONS AND STATE SPECIFIC PROVISIONS

This Schedule is attached to and incorporated in the Deed of Trust and Security Agreement (hereinafter, the "Security Instrument") to which this schedule is attached, in order to clarify, supplement and amend certain provisions of the Security Instrument, as follows:

1. ADDITIONAL PROVISIONS.

(A) FIXTURES and PERSONAL PROPERTY. The fixtures and Personal Property which are included in the description of the "Property" include all fixtures, racking, shelving, equipment and appliances used in the operation of the Improvements as buildings, such as heating and air conditioning systems and other building systems used to provide utility services, heating, air conditioning and ventilation, life safety, or other services thereto, but not the following (the "Excluded Items"): (a) subject to any applicable limitations in the Credit Agreement, any leased equipment or personal property as to which the lease to Grantor prohibits Grantor from granting a security interest or makes the granting of a security interest an event of default, and (b) pharmacy script files, accounts receivable, inventory, and equipment that is subject to any prior capital lease or purchase money financing.

(B) CERTAIN RESTRICTIONS. The requirement that Grantor provide evidence of payment of Other Charges (in Section 3.3(a)) is inapplicable unless Lender requests such evidence. Evidence of payment of Taxes will be submitted to Lender not more frequently than annually. Grantor will not be restricted, or need to obtain Lender's consent or approval of tenants, for leases from time to time of portions of the Property that are "Immaterial Leases." The term "Immaterial Leases" means leases and occupancy agreements entered into by Grantor in the ordinary course of business which meet each of the following requirements: (a) the lease covers less than ten percent (10%) of the building area on the Property; and (b) the lease is expressly subordinate to the lien of any mortgage on the Property and is terminable by Lender in connection with any foreclosure of this Security Instrument. Grantor will not do structural repairs or alterations or otherwise do actions restricted by Section 3.6, without Lender's prior written consent, which will not be unreasonably withheld so long as no Event of Default is outstanding and continuing under this Security Instrument, the action would not impair Lender's collateral position with respect to the Property, the action is non-structural in nature, and the aggregate cost of all such actions as to any single parcel of the Property does not exceed \$200,000 so long as any portion of the Indebtedness remains outstanding.

(C) RIGHT TO CONTEST. Grantor may withhold payment for labor and materials (referenced in Section 3.9) if Grantor is contesting the amount or obligation to pay, in good faith, by appropriate action. After prior written notice to Lender, Grantor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of payment for labor and materials (referenced in Section 3.9), provided that (i) no Event of Default has occurred and is continuing under the Note, this Security Instrument or any of the other Loan Documents, (ii) such proceeding shall suspend the collection of such bills and costs from Grantor and from the Property or Grantor shall have paid all of such bills and costs under protest, (iv) such

proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Grantor is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, (vi) Grantor shall have set aside and deposited with Lender adequate reserves for the payment of such bills and costs, together with all interest and penalties thereon, unless Grantor has paid all of such bills and costs under protest, and (vii) Grantor shall have furnished the security as may be required in the proceeding, or as may be requested by Lender to insure the payment for such labor and materials, together with all interest and penalties thereon.

(D) INSURANCE GENERALLY. The insurance provisions set forth in this instrument are subject to the following: (1) the property insurance required under Section 4.1(a)(i) will cover the Improvements and building equipment, but exclude footings and foundations that are not insurable, (2) terrorism coverage will not be required unless it is available at commercially reasonable rates and is generally carried by similarly situated businesses; (3) terrorism coverage will be deemed to be at "commercially reasonable rates" if the cost of obtaining it (by an addition to an existing policy or separate policy) does not exceed 25% of the cost of the existing policy without terrorism coverage, (4) by acceptance of this instrument, Lender approves the companies, insurance policies and coverages currently maintained by Grantor as being acceptable for purposes of meeting the insurance requirements in Section 4.1, subject to issuance of certificates of insurance with additional insured and/or loss payee endorsements naming Lender as may be required with respect to such insurance policies and so long as the insurers continue to meet the minimum requirements specified in the Security Instrument.

(E) BLANKET INSURANCE COVERAGES. Notwithstanding anything to the contrary in Section 4, any insurance which Grantor is required to obtain to comply with the insurance requirements in this instrument may be carried under a "blanket" policy or policies covering other properties or liabilities of Grantor, provided that such "blanket" policy or policies otherwise comply with the provisions of this section. In the event any such insurance is carried under a blanket policy, Grantor shall deliver to Lender evidence of the issuance and effectiveness of the policy, the amount and character of the coverage with respect to the Property and the presence in the policy of provisions of the character required in Section 4, including, without limitation, specific allocation of coverage for each parcel of the Property and evidence that the Lender is named insured or loss payee as required by the Security Instrument.

(F) PROCEEDS FROM CASUALTY OR CONDEMNATION. The proceeds of any insurance (other than proceeds of business interruption insurance) payable in respect of a casualty event or as a result of a condemnation will be handled and applied as set forth in Sections 4.2, 4.3 and this Schedule. Notice of casualty will be given to Lender as to any casualty for which the estimated cost of restoration would exceed \$100,000 or would take more than sixty (60) days to repair. Payment of such proceeds may be made to Grantor, unless the amount of proceeds is greater than \$100,000, in which event the proceeds will be paid to Lender and held and applied as provided in the Security Instrument.

(G) **TRANSFERS.** The restrictions on transfer in Section 7.1 will not be applicable to any merger, consolidation, transfers of stock or ownership or control and other matters that are specifically permitted in the Credit Agreement (which will supersede and control as to such matters).

(H) **HAZARDOUS MATERIALS.** The representations concerning present or past use of Hazardous Materials in Section 10.1 will not apply to "Permitted Substances." The term "Permitted Substances" means (1) items held in inventory for sale, and commercial cleaners and other materials which may be "Hazardous Materials" under applicable Environmental Laws but which meet the requirements of Section 10.1(a)(I) and (II), and (2) Hazardous Materials in "de minimis" quantities that do not require any remediation and are not the subject of a present or potential future environmental claim. The restrictions in Section 10 and the requirements for notice in Section 10.2(I) will not apply to Hazardous Materials which are Permitted Substances if they are not reasonably likely to have a Material Adverse Effect and/or are not reasonably likely to lead to the imposition on Grantor, Lender or the Property of any material liability or lien or that would have a Material Adverse Effect.

(I) **MULTIPLE LENDERS; APPOINTMENT OF AGENT.** If there are more than two Lenders during the term of the Credit Agreement, the Lenders will appoint Lender or another agent for purposes of rendering any decision or giving or denying any consent or approval required of Lender or Lenders pursuant to this instrument.

2. **STATE SPECIFIC PROVISIONS.**

(A) **STATUTORY RECITALS. USE AND NATURE OF TRANSACTION.** As to any portion of the Property that is in Oregon, Borrower warrants that this Security Instrument is not and will not at any time constitute a residential trust deed (as that term is defined in ORS 86.705 or its successor statutes). As to any portion of the Property that is in Washington, Borrower warrants that the Trust Property is not used principally for agricultural or farming purposes. Borrower warrants that Borrower, and each guarantor and indemnitor of obligations of Borrower, is engaging in this transaction exclusively for business, commercial or investment purposes.

(B) **SECURITY AGREEMENT; FIXTURE FILING.** For purposes of provisions of this Security Instrument related to the creation and enforcement of this Security Instrument as a security agreement and as a fixture filing, Grantor is the debtor and Lender is the secured party. The mailing address of the debtor (the Grantor herein) and of the secured party (the Lender herein) from which information concerning security interests hereunder may be obtained is as set forth on page one of the Security Instrument. As to the leasehold parcel described on Exhibit B, the name of the record owner of the real property is: COLLEGE SQUARE CENTER, LLC, an Oregon limited liability company.

(C) **NOTICES CONCERNING WRITTEN AGREEMENTS (WASHINGTON).** Grantor acknowledges its receipt and understanding of the following notices (without affecting the parties' agreement that the applicable law that governs this instrument will be the laws of the State of New York):

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FOREBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

(D) STATUTORY NOTICE CONCERNING WRITTEN AGREEMENT (OREGON). The following notice is provided to comply with ORS 41.580 (without affecting the parties' agreement that the applicable law that governs this instrument will be the laws of the State of New York):

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

(E) STATUTORY NOTICE CONCERNING FORCED PLACE INSURANCE (OREGON). ORS 746.201 (if it were deemed to be applicable) may require that the following notice be provided, in loans in which the lender has the right to purchase insurance in the event the Grantor fails to carry insurance, and (by execution of this instrument) Grantor acknowledges its receipt and understanding of the following notice:

"WARNING

Unless you (Grantor) provide us (Lender) with evidence of the insurance coverage as required by our contract or loan agreement, we may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the collateral becomes damaged, the coverage we purchase may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere.

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

The coverage we provide may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law."

(F) MATURITY DATE. The scheduled maturity date of the obligations secured hereby is: February 27, 2014.

(G) COUNTERPART RECORDATION; MULTI-STATE TRANSACTION. This instrument may be executed in counterparts in order to permit concurrent recording in each of the states in which any part of the Property is situated. All counterparts are identical (except that on the recorded counterparts of this Security Instrument, the parties may attach only the legal description of the Property that is situated within the State or County in which this Security Instrument is being recorded, and not the legal descriptions of all of the Property). All counterparts shall in all respects be deemed to be original documents and only one such counterpart needs to be deposited, produced or introduced in making proof or in any proceeding (judicial or nonjudicial) where production, deposit or introduction of this Security Instrument is necessary or desirable.

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