

05 MAR 31 PM 3:03

MTZ-68520

Vol M05 Page 22040

After recording return to:

UNITED COMMERCIAL BANK  
COMMERCIAL BANKING DIVISION  
555 Montgomery Street  
SAN FRANCISCO, CA 94111  
Attn: Michelle Lew, FVP

State of Oregon, County of Klamath  
Recorded 03/31/2005 3:03 P m  
Vol M05 Pg 22040-65  
Linda Smith, County Clerk  
Fee \$ 146.00 # of Pgs 26  
128 NIS

**DEED OF TRUST, ASSIGNMENTS, FIXTURE FILING AND SECURITY  
AGREEMENT; REQUEST FOR NOTICE**

**This is not a Construction Deed of Trust**

**Trustor:** Shilo Inn, Klamath Falls,

**Trustee:** Tigor Title Insurance Company

**Beneficiary:** United Commercial Bank

**Statutory Notice:**

- A. The address of the entity holding a lien or other interest created by this instrument is:

UNITED COMMERCIAL BANK  
COMMERCIAL BANKING DIVISION  
555 Montgomery Street  
SAN FRANCISCO, CA 94111  
Attn: Michelle Lew, FVP

- B. The tax account number(s) of the Property subject to the lien or in which the interest is created:

\_\_\_\_\_

146.00  
+20 Am

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**DEED OF TRUST, ASSIGNMENTS, FIXTURE FILING AND SECURITY AGREEMENT;  
REQUEST FOR NOTICE**

**This is not a Construction Deed of Trust**

This Deed of Trust, Assignments, Fixture Filing and Security Agreement ("Deed of Trust") is made this 28th day of March, 2005, among **Shilo Inn, Klamath Falls, LLC, an Oregon Limited Liability Company** ("Borrower") or ("Trustor") whose address is 11600 SW Shilo Lane, Portland, OR 97225-5995; and whose organization identification number, if any, is 749269-82 Ticor Title Insurance Company ("Trustee"); and United Commercial Bank ("Lender") or ("Beneficiary"), whose address appears above.

Borrower, in consideration of the indebtedness referred to below and the trust hereby created, irrevocably grants, transfers, conveys, and assigns to Trustee, in trust for the benefit of Lender, with power of sale, and right of entry and possession the real property located in the City of Klamath Falls, County of Klamath, State of Oregon, described in Exhibit A- attached hereto and incorporated by reference as though set forth in full, and is commonly known as **2500 Almond Street, Klamath Falls, Oregon, 97601**.

TOGETHER WITH all Borrower's now held and hereafter acquired right, title and interest in and to:

- (a) all right, title and interest (including any claim or demand or demand in law or equity) which Borrower now has or may hereafter acquire in or to such property; all easements, rights, privileges, tenements, hereditaments and appurtenances thereunto belonging or in anyway appertaining; all of the estate, right, title, interest, claim, demand, reversion or remainder whatsoever of Trustor therein or thereto, either at law or in equity, in possession or expectancy, now or hereafter acquired; all crops growing or to be grown on such property; all development rights or credits and air rights; all water and water rights (whether or not appurtenant to such property) and shares of stock pertaining to such water or water rights, ownership of which affects such property; all minerals, oil, gas, and other hydrocarbon substances and rights thereto in, on, under, or upon such property and all royalties and profits from any such rights or shares of stock; and all adjacent lands within enclosures or occupied by buildings partly situated on such property;
- (b) all buildings, structures, improvements, fixtures and appurtenances now and hereafter placed on such property, including, without limitation, all apparatus and equipment, whether or not physically affixed to the land or any building, used to provide or supply air-cooling, air conditioning, heat, gas, water, light, power, refrigeration, ventilation, laundry, drying, dish washing, garbage disposal or other services; and all elevators, escalators and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, partitions, ducts, compressors, plumbing, ovens, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, paneling, rugs, attached floor coverings, furniture, pictures, antennas, pools and spas and pool and spa operation and maintenance equipment and apparatus, trees and plants located on such property, all of which, including replacements and additions thereto, (the "Improvements") shall conclusively be deemed to be affixed to and be part of the real property conveyed to Trustee hereunder.
- (c) all intangible property and rights relating to the aforesaid property or the operation thereof or used in connection therewith including, without limitation, permits, licenses, plans, specifications, construction contracts, subcontracts, bids, deposits for utility services installations, refunds due Borrower, trade names, trademarks and service marks.
- (d) all of the right, title and interest of Trustor in and to the land lying in the bed of any street, road, highway or avenue in front of or adjoining the Property.

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- (e) any and all award and awards heretofore made or hereafter to be made by any governmental authorities to the present and all subsequent owners of the Property which may be made with respect to the Property as a result of the exercise of the right of eminent domain, the alteration of the grade of any street or any other injury to or decrease of value of the Property, which said award or awards are hereby assigned to Beneficiary and Beneficiary, at its option, is hereby authorized, directed and empowered to collect and receive the proceeds of any such award or awards from the authorities making the same and to give proper receipts and acquittances therefore, and to apply the same as hereinafter provided; and Trustor hereby covenants and agrees to and with Beneficiary, upon request by Beneficiary, to make, execute and deliver, at Trustor's expense, any and all assignments and other instruments sufficient for the purpose of assigning the aforesaid award or awards to Beneficiary free, clear and discharged of any and all encumbrances of any kind or nature whatsoever;
- (f) all certificates of deposit of Trustor in the possession of Beneficiary and all bank accounts of Trustor with Beneficiary, and the proceeds therefrom and all deposits of Trustor with any governmental entity and/or public utility company which relates to the ownership of the Property;
- (g) all leases and rents of the Property or any part thereof now or hereafter entered into and all right, title and interest of Trustor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder (whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms), all rights to all insurance proceeds and unearned insurance premiums arising from or relating to the Mortgaged Property, all other rights and easements of Trustor now or hereafter existing pertaining to the use and enjoyment of the Premises and all right, title and interest of Trustor in and to all declarations of covenants, conditions and restrictions as may affect or otherwise relate to the Property;
- (h) if the Property includes a leasehold estate, all of Trustor's right, title and interest in and to the lease (the "Lease") more particularly described in Exhibit A attached hereto including, without limitation, the right to surrender, terminate, cancel, waive, change, supplement, grant subleases of, alter or amend the Lease; and
- (j) all replacements, substitutions, cash and non-cash proceeds of all the foregoing.

Borrower agrees to execute and deliver, from time to time, such further instruments, including but not limited to, Security Agreements, Assignments, and UCC Financing Statements, as may be requested by Lender to confirm the lien of this Deed of Trust on any of the aforementioned property.

All property, both real and personal, conveyed to Trustee hereunder shall be referred to herein as "Property" or "Mortgaged Property."

Borrower further irrevocably grants, transfers and assigns to Lender the rents, income, issues, license fees, prepaid municipal and utility fees, bonds, revenues, inventory, accounts, profits and other benefits to which Trustor or the record title owner of the Property may now or hereafter be entitled from or which are derived from the Property, including without limitation sale proceeds of the Property and any room rentals, or space sales or rentals from the Property, and all cash and noncash proceeds thereof absolutely and unconditionally, and not merely as additional collateral security for the indebtedness secured by this Deed of Trust. Such assignment of rents, income, issues, license fees and profits is absolute for all purposes.

#### FOR THE PURPOSE OF SECURING:

- (1) Payment of the sum of **\$8,000,000.00 (United States Dollars Eight Million and 00/100)** with interest thereon, in accordance with the terms of a promissory note of even date herewith, given by Borrower and made payable to Lender or order, and all modifications, extensions or renewals thereof (the "Note") unless payment of interest at such rate would be contrary to applicable law, in which event such amount shall bear interest at the highest rate which may be collected from Borrower under applicable law; The maturity date of the Note is April 5.2015

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- (2) Payment of such additional sums, with interest thereon,
- (a) as may hereafter be borrowed from Lender by the Borrower or the then record title owner of the Property and evidenced by a promissory note or notes reciting that it or they are so secured and all modifications, extensions, or renewals thereof;
  - (b) as may be incurred, paid or advanced by Lender, or as may otherwise be due to Trustee or Lender, under any provision of this Deed of Trust and any modification, extension or renewal hereof; and
  - (c) as may otherwise reasonably be paid or advanced by Lender to protect the security or priority of this Deed of Trust.
- (3) Performance of each obligation, covenant and agreement of Borrower contained in the Note, this Deed of Trust, or any other document executed by Borrower in connection with the loan(s) secured hereby, whether set forth therein or incorporated therein by reference;
- (4) Compliance with, and performance by Borrower of, each and every monetary provision of all covenants, conditions and restrictions, if any, pertaining to the Property and upon written request of Lender, the enforcement by Borrower of any covenant by third parties to pay maintenance or other charges, if the same have not been paid or valid legal steps taken to enforce such payment within ninety (90) days after such written request is made;
- (5) If the loan(s) secured hereby or any part thereof are for the purpose of constructing improvements on the Property, performance of each obligation, covenant and agreement of Borrower contained in any Construction Loan Agreement between Borrower and Lender of even date, and all other documents relating to such construction, all of which are incorporated herein by this reference (collectively, the "Construction Loan Agreement");
- (6) If the Property consists of or includes a leasehold estate, compliance with and performance of each obligation, covenant and agreement of Borrower arising under, or contained in, the instrument(s) creating any such leasehold;
- (7) Performance of all agreements of Borrower to pay fees and charges to Lender whether or not herein set forth;
- (8) Payment of charges, as allowed by law, when such charges are made for any statement regarding the obligation secured hereby.

TO MAINTAIN AND PROTECT THE SECURITY OF THIS DEED OF TRUST, TO SECURE THE FULL AND TIMELY PERFORMANCE BY BORROWER OF EACH AND EVERY OBLIGATION, COVENANT AND AGREEMENT OF BORROWER UNDER THE NOTE AND THIS DEED OF TRUST AND AS ADDITIONAL CONSIDERATION FOR THE OBLIGATION(S) EVIDENCED BY THE NOTE, BORROWER HEREBY COVENANTS, REPRESENTS AND AGREES AS FOLLOWS:

1. Payment of Principal and Interest. Borrower will promptly pay, when due, such installments and such prepayment, late payment and other charges as are provided in the Note and such other amounts as are provided hereunder or under the Construction Loan Agreement, if any.
2. Repair and Maintenance of the Property. Borrower will: (a) keep the Property in good condition and repair; (b) not substantially alter, remove or demolish the Property or any building or other improvements thereon, except when incident to the replacement of fixtures, equipment, machinery or appliances with items of like kind; (c) restore and repair the equivalent of its original condition, all or any part of the Property which may be damaged or destroyed, including, but not limited to, damage from termites and dry rot, soil subsidence and construction defects, whether or not insurance proceeds are available to cover any part of the cost of such restoration and repair and regardless of whether Lender permits the use of any insurance proceeds to be used for restoration pursuant to Section 13 hereof; (d) pay when due all claims for labor performed and materials furnished in

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connection with the Property and not permit any mechanic's or materialman's lien to arise against the Property or furnish loss or liability under such mechanic's lien claims; (e) comply with all laws affecting the property or requiring that any alterations, repairs, replacements, or improvements be made thereon; (f) not commit or permit waste on or to the Property, or commit, suffer or permit any act or violation of law to occur upon the Property; (g) not abandon the Property; (h) cultivate, irrigate, fertilize, fumigate and prune; (i) if required by Lender, provide for management satisfactory to Lender under a management contract approved by Lender; (j) notify the Lender in writing of any condition at and/or on the Property which may have a significant and measurable effect on its market value; and (k) if the Property is rental Property, generally operate and maintain the Property in such manner as to realize the maximum rental potential thereof and do all other things which the character or use of the Property may reasonably render necessary to maintain the Property in the same condition (reasonable wear and tear expected) as it was at the date of this Deed of Trust.

3. Use of Property. Unless otherwise required by applicable law or unless Lender otherwise consents in writing, Borrower will not allow changes in the use of the Property from that which is contemplated by Borrower and Lender at the time of execution of this Deed of Trust, as specified in the loan application and other documents executed by Borrower in connection with obtaining the loan secured hereby. Borrower will not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.
  
4. Insurance. Borrower shall keep the Mortgaged Property insured with an all-risk special forms primary policy insuring against loss or damage by fire and other perils listed in the latest version of ISO form CP130 with extended coverage and against any other risks or hazards, including but not limited to flood, pollution and earthquake, which, in the opinion of Lender, should be insured against, in an amount not less than one hundred percent (100%) of the full insurable value thereof on a replacement cost basis, with an inflation guard endorsement, with a company or companies which are rated by A.M. Best's as Class A, Category VIII or better and in such form and with such endorsements as may be approved or required by Lender. All losses under any insurance covering the Mortgaged Property, whether required by Lender or not, shall be payable to Lender and shall be applied in the manner provided in Section 13 hereof. Borrower shall also carry comprehensive general public liability insurance against any loss, liability or damage on, about or relating to the Property, naming Lender as additional insured, in such form and amounts and with such companies as are satisfactory to Lender. Borrower shall also carry insurance against flood if required by the Federal Flood Disaster Protection Act of 1973 and regulations issued thereunder. All hazard, earthquake and flood loss insurance policies shall be endorsed with a standard noncontributory mortgagee clause in favor of and in form acceptable to Lender, may not be canceled or modified unless the insurer gives not less than thirty (30) days prior written notice to Lender, shall contain an agreed value clause sufficient to eliminate any risk of co-insurance and shall provide that any loss payable thereunder shall be payable notwithstanding any act or negligence of Trustor or Beneficiary which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment and notwithstanding (i) occupancy or use of the Mortgaged Property for purposes more hazardous than permitted by the terms of such policy, (ii) any foreclosure or other action or proceeding taken by the Trustee or Beneficiary pursuant to this Deed of Trust upon the happening of an event of default or (iii) any change in title or ownership of the Mortgaged Property. All of the above-mentioned insurance policies or certificates of such insurance satisfactory to Lender, together with receipts for the payment of premiums thereon, shall be delivered to and held by lender, which delivery shall constitute assignment to Lender of all return premiums to be held as additional security hereunder. Certified copies of all renewal and replacement policies shall be delivered to Lender at least thirty (30) days before the expiration of the expiring policies. Lender shall not by the fact of approving, disapproving, accepting, preventing, obtaining, or failing to notify Borrower or to obtain any insurance, incur any liability for or with respect to the existence of insurance, the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and Borrower hereby expressly assumes full responsibility therefore and all liability, if any, with respect thereto.

Borrower hereby assigns to Lender all unearned premiums on any policy of insurance provided for herein, and agrees that any and all unexpired insurance and any unpaid proceeds thereof shall inure to the benefit of, and pass to, the purchaser of the property conveyed at any trustee's sale held hereunder or the grantee of any deed in lieu of foreclosure.

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The following warning is provided pursuant to Oregon law.

**WARNING**

Unless you provide us 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 purchase 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.

5. Taxes and Other Sums Due. Borrower will promptly pay, satisfy and discharge: (a) all general and special taxes, and assessments, water and sewer district charges, rents and premiums affecting the property before they become due; however, taxes payable in installments shall be paid by the due date of each installment; (b) such other amounts, chargeable against Borrower or the Property, as Lender reasonably deems necessary to protect and preserve the Property, this Deed of Trust, or Lender's security for the performance of Borrower's obligations under the Note; (c) all encumbrances, charges and liens on the Property, with interest thereon, which in the judgment of Lender are, or appear to be, prior or superior to the lien of this Deed of Trust or to obtain protection against such lien or charge by title insurance endorsement or surety company bond; (d) such other charges as Lender deems reasonable for services rendered by Lender at Borrower's request; and (e) all costs, fees and expenses incurred by Lender in connection with this Deed of Trust, whether or not specified herein.

Upon request by Lender, Borrower will promptly furnish Lender with all notices of sums due for any amounts specified in subparagraphs 5(a) hereof, and upon payment, with any written evidence of such payment. Should Borrower fail promptly to make any payment required hereunder, Lender may (but is not obligated to) make such payment. Borrower will notify Lender immediately upon receipt by Borrower of notice of any increase in the assessed value of the Property and agrees that Lender, in the name of Borrower, may (but is not obligated to) contest by appropriate proceedings such increase in assessment. Without the prior written consent of Lender, Borrower will not allow any lien inferior to the lien of this Deed of Trust to be perfected against the Property and will not permit any improvement bond for any unpaid special assessment to issue.

6. Construction Loan Provisions. If the loan secured hereby, or any part thereof, is obtained for the purpose of constructing improvements on the Property, Borrower will comply with all provisions of the Construction Loan Agreement. All sums advanced by lender under the Construction Loan Agreement and all sums disbursed by Lender to protect and preserve the Property, this Deed of Trust or Lender's security for the performance of Borrower's obligations under the Note (prior to the completion of the improvements specified in the Construction Loan Agreement and up to the principal amount of the Note) shall be and be deemed to be disbursements under the Construction Loan Agreement and an indebtedness of Borrower secured by this Deed of Trust.

At Lender's request, Borrower will execute and deliver to Lender, in such form as Lender may direct, assignments of any and all rights or claims of Borrower which relate to the construction of improvements on the Property against any party supplying labor, materials or services in connection with such construction. In the event of a breach by Borrower of any obligation, covenant or agreement contained in the Construction Loan Agreement, Lender shall have the right, at its option and to the extent permitted by applicable law, without prior notice, to declare all sums secured hereby, regardless of their stated due date(s), immediately due and payable, and to exercise any or all rights or remedies provided in the Construction Loan Agreement or this Deed of



Trust, or both.

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7. Leasehold Provisions. In the event that the security for this Deed of Trust is a leasehold estate, this Deed of Trust shall be a lien upon all present and future right, title, estate, and interest of Borrower in the real property and improvements covered by said leasehold interest and upon all property interests acquired by Borrower as a result of the exercise of any option contained in said leasehold or as amended, in the same manner and to the same extent as if the real property encompassed in the lease and option agreements had been held in fee by Borrower at the time of the execution of this Deed of Trust, and Borrower agrees not to amend, change, or modify its leasehold interest, or any of the terms thereof, or to exercise any option to purchase, or agree to do so, without the prior written consent of Lender being had and obtained. In the event of a violation of this provision, Lender shall have the right, at its option, to declare all sums secured hereby immediately due and payable. Consent to any amendment, change, modification, or a waiver of the right to require such consent in one instance shall not be a waiver of the right to require such consent at a subsequent time. The term "the Property" as used in this Deed of Trust, shall be deemed to mean such leasehold estate or any other present or future interest of the Borrower in the Property whenever the context requires.
8. Compliance with Master Lease. In the event that the security for this Deed of Trust is a leasehold estate, Borrower covenants and agrees as follows: (i) to promptly and faithfully observe, perform and comply with all the terms, covenants and provisions thereof on its part to be observed, performed and complied with, at the times set forth therein, without any allowance for grace periods, if any; (ii) not to do, permit, suffer or refrain from doing anything, as a result of which, there could be a default under or breach of any of the terms thereof; (iii) not to cancel, surrender, modify, amend or in any way alter or permit the alteration of any of the terms thereof; (iv) to give Beneficiary immediate notice of any default by anyone thereunder and to promptly deliver to Beneficiary copies of each notice of default and all other notices, communications, plans, specifications and other similar instruments received or delivered by Trustor in connection therewith; (v) to furnish to Beneficiary such information and evidence as Beneficiary may reasonably require concerning Trustor's due observance, performance and compliance with the terms, covenants and provisions thereof; (vi) that any default of the tenant thereunder shall constitute an event of default under this Deed of Trust; and (vii) to give immediate written notice to Lender of the commencement of any remedial proceedings under the Lease by any party thereto and, if required by Lender, shall permit Lender as Borrower's attorney-in-fact to control and act for Borrower in any such remedial proceedings. Borrower hereby expressly transfers and assigns to Lender the benefit of all covenants contained in the Lease, whether or not such covenants run with the land, but Lender shall have no liability with respect to such covenants nor any other covenants contained in the Lease.

With respect to the Lease, Trustor hereby warrants and represents as follows: (i) the Lease is in full force and effect, unmodified by any writing or otherwise, except as specifically set forth in Exhibit A; (ii) all rent, and additional rent and other charges reserved therein have been paid to the extent they are payable to date hereof; (iii) Trustor enjoys the quiet and peaceful possession of the property demised thereby; (iv) Trustor is not in default under any of the terms thereof and, to the best of its knowledge, there are no circumstances which, with the passage of time or the giving of notice or both, would constitute an event of default thereunder; (v) to the best of Trustor's knowledge the landlord under the Lease is not in default under any of the terms or provisions thereof on the part of the landlord to be observed or performed.

In the event Borrower files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors, upon demand by Lender, Borrower covenants to transfer and assign to Lender its leasehold estate and the lease in lieu of rejection of the lease by Borrower and covenants to assign to Lender its right to accept or reject the lease and to apply for any extension of time within which to accept or reject the lease. These assignments to Lender shall be automatic upon demand by Lender. If Lender demands the assignment of the lease hereunder, Lender covenants to cure any defaults outstanding under the lease after the lease is assigned to Lender.

In the event of any default by Trustor in the performance of any of its obligations under the Lease, including, without limitation, any default in the payment of rent and other charges and impositions made payable by the tenant thereunder, then, in each and every case, Beneficiary may, at its option and without notice, cause the default or defaults to be remedied and otherwise exercise any and all of the rights of Trustor thereunder in the

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name of and on behalf of the Trustor. Trustor shall, on demand, reimburse Beneficiary for all advances made and expenses incurred by Beneficiary incurring any such default (including, without limitation, reasonable attorneys' fees), together with interest thereon computed at the rate provided for in the Note from the date that an advance is made or expense is incurred, to and including the date the same is paid. Lender shall have no duty to prevent the termination of the leasehold estate by the lessor. If the leasehold estate is terminated by the lessor, Lender shall have the right, at its option, to declare all sums secured hereby immediately due and payable and immediately bring an action on the Note, provided there is no other real property security for the Note.

Trustor shall give Beneficiary notice of its intention to exercise each and every option to extend the term of the Lease, at least twenty (20) but not more than sixty (60) days prior to the expiration of the time to exercise such option under the terms thereof. If Trustor intends to extend the term of the Lease, it shall deliver to Beneficiary with the notice of such decision, a copy of the notice of extension delivered to the landlord thereunder. If Trustor does not intend to extend the term of the Lease, Beneficiary may, at its option, exercise the option to extend in the name and on behalf of Trustor. In any event, Trustor hereby appoints Beneficiary its attorney-in-fact to execute and deliver, for and in the name of Trustor, all instruments and agreements necessary under the Lease or otherwise to cause any extension of the term thereof. This power, being coupled with an interest, shall be irrevocable as long as any amounts secured hereby remain unpaid.

It is hereby agreed that the fee title, the leasehold estate and the subleasehold estate in the property demised by the Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates in either the landlord thereunder, Trustor or a third party, whether by purchase or otherwise. If Trustor acquires the fee title or any other estate, title or interest in the property demised by the Lease, or any part thereof, the lien of this Deed of Trust shall attach to, cover and be a lien upon such acquired estate, title or interest and same shall thereupon be and become a part of the Mortgaged Property with the same force and effect as if specifically encumbered herein. Trustor agrees to execute all instruments and documents which Beneficiary may reasonably require to ratify, confirm and further evidence Beneficiary's lien on the acquired estate, title or interest. Furthermore, Trustor hereby appoints Beneficiary its true and lawful attorney-in-fact to execute and deliver all such instruments and documents in the name and on behalf of Trustor. This power, being coupled with an interest, shall be irrevocable as long as any amounts secured hereby remain unpaid.

If the Lease is canceled or terminated, and if Beneficiary or its nominee shall acquire an interest in any new lease of the property demised thereby, Trustor shall have no right, title or interest in or to the new lease or the leasehold estate created by such new lease.

Trustor shall use its best efforts to obtain and deliver to Beneficiary within twenty (20) days after written demand by Beneficiary, an estoppel certificate from the landlord under the Lease setting forth (i) the name of the tenant thereunder, (ii) that the Lease has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification), (iii) the basic rent payable under the Lease, (iv) the date to which all rental charges have been paid by the tenant under the Lease, and (v) whether there are any alleged defaults of the tenant under the Lease and, if there are, setting forth the nature thereof in reasonable detail.

Notwithstanding anything to the contrary contained herein, this Deed of Trust shall not constitute an assignment of the Lease within the meaning of any provision thereof prohibiting its assignment and Beneficiary shall have no liability or obligation thereunder by reason of its acceptance of this Deed of Trust. Beneficiary shall be liable for the obligations of the tenant arising under the Lease for only that period of time which Beneficiary is in possession of the Premises or has acquired, by foreclosure or otherwise, and is holding all of Trustor's right, title and interest therein.

9. Leases of the Property by Borrower. At Lender's request Borrower will furnish Lender with executed copies of all leases of the Property or any portion thereof then in force. Copies of all leases hereafter entered into by Borrower shall be provided to Lender on an ongoing basis.

At Lender's request, Borrower will assign to Lender, by written instrument satisfactory to Lender, all leases of



the property, and all security deposits made by tenants in connection with such leases. Upon assignment to Lender of any such lease, Lender will succeed to all rights and powers of Borrower with respect to such lease, and Lender, in Lender's sole discretion, shall have the right to modify, extend or terminate such lease and to execute other further leases with respect to the Property that is subject to such assigned lease.

10. Statement of Obligation. Except as otherwise provided by applicable law, at Lender's request, Borrower will promptly pay to Lender the greater of \$65 or such fee as may then be provided by law as the maximum charge for each statement of obligation, Lender's statement, Lender's demand, beneficiary statement, payoff statement, or other statement regarding the condition of, or balance owing, under the Note or secured by this Deed of Trust.
11. Funds for Taxes and Insurance. If Borrower is in default under this Deed of Trust or under any of the related agreements, regardless of whether the same has been cured, then thereafter at any time Lender may, at its option to be exercised upon thirty (30) days written notice to Borrower, require the deposit with Lender or its designee by Borrower, at the time of each payment of an installment of interest or principal under the Note, of an additional amount sufficient to discharge the obligations of Borrower under Sections (4) and (5) hereof as and when they become due. The determination of the amount payable and of the fractional part thereof to be deposited with Lender shall be made by Lender in its sole discretion. These amounts shall be held by Lender or its designee not in trust and not as agent of Borrower and shall not bear interest, and shall be applied to the payment of any of the obligations under the Note and this Deed of Trust in such order or priority as Lender shall determine. If at any time within thirty (30) days prior to the due date of the aforementioned obligations the amounts then on deposit therefore shall be insufficient for the payment of the obligations under Sections (4) and (5) in full, Borrower shall within ten (10) days after demand deposit the amount of the deficiency with Lender. If the amounts deposited are in excess of the actual obligations for which they were deposited, Lender may refund any such excess, or, at its option, may hold the same in a reserve account, not in trust and not bearing interest, and reduce proportionately the required monthly deposits for the ensuing year. Nothing herein contained shall be deemed to affect any right or remedy of Lender under any other provision of this Deed of Trust or under any statute or rule of law to pay any such amount and to add the amount so paid to the indebtedness hereby secured. Lender shall have no obligation to notify Borrower of any matters relative to the insurance or taxes for which the fund is established pursuant hereto, to pay insurance premiums or taxes, or to obtain insurance.

All amounts so deposited shall be held by Lender or its designee as additional security for the sums secured by this Deed of Trust and upon the occurrence of a default hereunder Lender may, in its sole and absolute discretion and without regard to the adequacy of its security hereunder, apply such amounts or any portion thereof to any indebtedness secured hereby and such application shall not be construed to cure or waive any default or notice of default hereunder.

If Lender requires deposits to be made pursuant to this Section (11), Borrower shall deliver to Lender all tax bills, bond and assessment statements, statements or insurance premiums, and statements for any other obligations referred to above as soon as such documents are received by Borrower.

If Lender sells or assigns this Deed of Trust, Lender shall have the right to transfer all amounts deposited under this Section (11) to the purchaser or assignee, and Lender shall thereupon be relieved and have no further liability hereunder for the application of such deposits, and Borrower shall look solely to such purchaser or assignee for such application and for all responsibility relating to such deposits.

12. Assignment of Causes of Action, Awards and Damages. All causes of action, and all sums due or payable to Borrower for injury or damage to the Property, or as damages incurred in connection with the transactions in which the loan(s) secured hereby was made, including causes of action and damages for breach of contract, fraud, concealment, or other torts, compensation for any conveyance in lieu of condemnation, are hereby assigned, and all proceeds from such causes of action and all such sums shall be paid to Lender for credit upon the obligations secured hereby. Borrower will notify Lender immediately upon receipt by Borrower of notice that any such sums have become due or payable and, immediately upon receipt of any such sums, will promptly remit same to Lender.

After deducting all expenses, including reasonable attorneys' fees, incurred by Lender in recovering or collecting any sums hereunder, Lender may apply or release the balance of any monies received by it hereunder, or any part thereof, as it elects. Lender, at Lender's option, may appear in and prosecute in its own name any action or proceeding to enforce any cause of action assigned to it hereunder and may make any compromise or settlement thereof whatsoever. Borrower covenants that Borrower will execute and deliver to Lender such further assignments of any such compensation awards, damages and/or causes of action as Lender may, from time to time, request. If Lender fails or does not elect to prosecute any such action or proceeding and Borrower elects to do so, Borrower may conduct the same at its own expense and risk.

13. Condemnation and Insurance Proceeds

- (a) The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of or damage or injury to the Mortgaged Property, or any part thereof, or for conveyance in lieu of condemnation, are hereby assigned to and shall be paid to Lender, who shall hold them in a non-interest bearing general account, regardless of whether Lender's security is impaired. In addition, all causes of action, whether accrued before or after the date of this Deed of Trust, of all types for damages or injury to the Mortgaged Property or any part thereof, or in connection with any transaction financed by funds loaned to Borrower by Lender and secured hereby, or in connection with or affecting the Mortgaged Property or any part thereof, including within limitation causes of action arising in tort or contract or in equity, are hereby assigned to Lender as additional security, and the proceeds thereof shall be paid to Lender. Lender may at its option appear in and prosecute in its own name any action or proceeding to enforce any such cause of action and may make any compromise or settlement thereof. Borrower, immediately upon obtaining knowledge of any casualty damage to the Mortgaged Property or damage in any other manner in excess of \$5,000.00 or knowledge of the institution of any proceeding relating to condemnation or other taking of or damage or injury to the Mortgaged Property or any portion thereof, will immediately notify Lender in writing. Lender, in its sole discretion, may participate in any such proceedings and may join Borrower in adjusting any loss covered by insurance.
- (b) All compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action and payment which Borrower may receive or to which Lender may become entitled with respect to the Mortgaged Property in the event of any damage or injury to the Mortgaged Property other than by way of a partial condemnation or other partial taking of the Mortgaged Property shall be paid over to Lender and shall be applied first toward reimbursement of all costs and expenses of Lender in connection with recovery of the same and with disbursing the same, and then shall be applied, as follows:
  - 1. Lender shall consent to the application of such payments to the restoration of the Mortgaged Property so damaged if and only if Borrower fulfills all of the following conditions (a breach of one of which shall constitute a default under this Deed of Trust, the Note, and any Related Agreement); (a) that Borrower is not in default under any of the terms, covenants, and conditions of the Note and this Deed of Trust; (b) that all then existing leases affected in any way by such damage shall continue in full force and effect; (c) the Lender is satisfied that the insurance or award proceeds, plus any sums added thereto by Borrower, shall be sufficient to fully restore and rebuild the Mortgaged Property pursuant to then current building codes; (d) within sixty (60) days of the damage to the Mortgaged Property, Borrower presents to Lender a restoration plan satisfactory to Lender and any local planning department, which includes cost estimates and schedules; (e) construction and completion of restoration and rebuilding of the Mortgaged Property shall be completed in accordance with plans and specifications and drawings submitted to Lender within thirty (30) days of receipt by Lender of the restoration plan and thereafter approved by Lender, which plans, specifications and drawings shall not be substantially modified, changed or revised without the Lender's prior written consent; (f) within three (3) months of such damage, Borrower and a licensed contractor satisfactory to Lender enter into a fixed price or guaranteed maximum price contract satisfactory to Lender,

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providing for complete restoration in accordance with such restoration plan for an amount no to exceed the amount of funds held or to be held by Lender; (g) all restoration of the Improvements so damaged or destroyed shall be effected with reasonable promptness and shall be of a value at least equal to the value of the Improvements so damaged or destroyed prior to such damage or destruction; (h) Lender shall have reasonably determined that there is an identified source (whether from income from the Mortgaged Property, rental loss insurance or another source) sufficient to pay all debt service and operating expenses of the Mortgaged Property during the restoration of required above; and (i) any and all monies which are made available for restoration and rebuilding hereunder shall be disbursed, at the sole discretion of Lender, through Lender, the Trustee, or a title insurance or trust company satisfactory to Lender, in accord with standard construction lending practices, including a reasonable fee payable to Lender out of such monies and, if requested by Lender, mechanics lien waivers and title insurance date-downs, and the provision of payment and performance bonds by Borrower, or in any other manner approved by Lender in Lender's sole discretion; or

2. If less than all of conditions (a) through (d) in Subsection (1) above are satisfied, then such payments shall be applied in the sole and absolute discretion of Lender (a) to the payment or prepayment, with any applicable prepayment premium, of any indebtedness secured hereby in such order as Lender may determine, or (b) to the reimbursement of Borrower's expenses incurred in the rebuilding and restoration of the Mortgaged Property. In the event Lender elects under this Subsection (2) to make any monies available to restore the Mortgaged Property, then all of conditions (a) through (i) in Subsection (1) above shall apply, except such conditions which Lender, in its sole discretion, may waive.
- (c) If any material part of the Mortgaged Property is damaged or destroyed and the loss, measured by the replacement cost of the Improvements according to then current building codes, is not adequately covered by insurance proceeds collected or in the process of collection, Borrower shall deposit with Lender, within ten (10) days of the Lender's request therefore, the amount of the loss not so covered.
- (d) All compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action and payments which Borrower may receive or to which Borrower may become entitled with respect to the Mortgaged Property in the event of a total condemnation or other total taking of the Mortgaged Property shall be paid over to Lender and shall be applied first toward reimbursement of all costs and expenses of Lender in connection with recovery of the same, and then shall be applied to the payment of any indebtedness secured hereby in such order as Lender may determine, until the indebtedness secured hereby has been paid and satisfied in full. Any surplus remaining after payment and satisfaction of the indebtedness secured hereby shall be paid to Trustor as its interest may then appear.
- (e) All compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action and payments which Borrower may receive or to which Borrower may become entitled with respect to the Mortgaged Property in the event of a partial condemnation or other partial taking of the Mortgaged property, unless Borrower and Lender otherwise agree in writing, shall be applied to the sums secured by this Deed of Trust, whether or not then due, including but not limited to principal, accrued interest, and advances, and in such order or combination as Lender may determine, in the same proportion that original principal balance of the Note bore to the fair market value of the Property immediately prior to the date the Deed of Trust was recorded, with the balance of the proceeds paid to Borrower. Any dispute as to the fair market value of the Property shall be settled by arbitration in accordance with the Real Estate Valuation Arbitration Rules of the American Arbitration Association.
- (f) Any application of such amounts or any portion thereof to any indebtedness secured hereby shall not be construed to cure or waive any default or notice of default hereunder or invalidate any act done pursuant to any such default or notice.

14. Defense of Deed of Trust; Litigation. Borrower will give Lender immediate written notice of any action or

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judicial proceeding (including, with limitation, any judicial or non-judicial proceeding to foreclose the lien of a junior or senior mortgage or deed of trust) affecting or purporting to affect the Property, this Deed of Trust, Lender's security for the performance of Borrower's obligations under the Note, or the rights or powers of Lender or Trustee under the Note or this Deed of Trust. Notwithstanding any other provision of this Deed of Trust, Borrower hereby agrees that Lender or Trustee may (but neither is obligated to) commence, appear in, prosecute, defend, compromise and settle, in Lender's or Borrower's name, and as attorney-in-fact for Borrower, and incur necessary costs and expenses, including reasonable attorneys' fees, in so doing, any action or proceeding, whether judicial or non-judicial, reasonably necessary to preserve or protect, or affecting or purporting to affect, the Property, this Deed of Trust, Lender's security for the performance of Borrower's obligations under the Note or this Deed of Trust and that if neither Lender nor Trustee elects to do so, Borrower will commence, appear in, prosecute and defend any such action or proceeding. Borrower will pay all costs and expenses of Lender and Trustee, including costs of evidence of title and reasonable attorneys' fees, in any such action or proceeding in which Lender or Trustee may appear or for which legal counsel is sought, whether by virtue of being made a party defendant or otherwise; and whether or not the interest of Lender or Trustee in the Property is directly questioned in such action or proceeding, including, without limitation, any action for the condemnation or partition of all or any portion of the Property and any action brought by Lender to foreclose this Deed of Trust or to enforce any of its terms or provisions.

15. Application of Payments. Except as otherwise expressly provided by applicable law or any other provision of this Deed of Trust and Construction Loan Agreement, if applicable, all payments received by Lender from Borrower under the Note or this Deed of Trust shall be applied by Lender in the following order: (1) costs, fees, charges, and advances paid or incurred by Lender or payable to Lender and interest thereon pursuant to any provision of the Note, this Deed of Trust, the Construction Loan Agreement, if any, and any other loan documents securing the Note, in such order as Lender, in Lender's sole discretion, elects, (2) interest payable under the Note, and (3) principal payable under the Note.
16. Failure of Borrower to Comply with Deed of Trust. Should Borrower fail to make any payment or do any act required by this Deed of Trust, or should there be any action or proceeding (including, without limitation, any judicial or non-judicial proceeding to foreclose the lien of a junior or senior mortgage or deed of trust) affecting or purporting to affect the Property, this Deed of Trust, Lender's security for the performance of Borrower's obligations under the Note, or the rights or powers of Lender or Trustee under the Note, or this Deed of Trust, Lender or Trustee may (but are not obligated to): (a) make any such payment or do any such act in such manner and to such extent as either deems necessary to preserve or protect the Property, this Deed of Trust, or Lender's security for the performance or Borrower's obligations under the Note, Lender and Trustee being authorized to enter upon the Property for any such purpose; and (b) in exercising any such power, pay necessary expenses, employ attorneys and pay reasonable attorneys' fees incurred in connection therewith, without notice to or demand upon Borrower and without releasing Borrower from any obligation hereunder.
17. Sums Advanced To Bear Interest And To Be Secured By The Deed Of Trust. At Lender's request, Borrower will immediately pay any sum advanced or paid by Lender or Trustee under any provision of this Deed of Trust. Until so repaid, all such sums and all other sums payable to Lender or Trustee shall be added to, and become a part of, the indebtedness secured hereby and bear interest from the date of advancement or payment by Lender or Trustee at the same rate as such indebtedness, unless payment of interest at such rate would be contrary to applicable law. All sums advanced by Lender under any provision of this Deed of Trust, whether or not required to be advanced by Lender under the terms hereof, shall conclusively be deemed to be mandatory advances required for the preservation and protection of this Deed of Trust and Lender's security for the performance of Borrower's obligations under the Note, and shall be secured by this Deed of Trust to the same extent and with the same priority as the principal and interest payable under the Note.
18. Inspection of the Property. Lender may make, or authorize other persons, including but not limited to appraisers and prospective purchasers at any foreclosure sale commenced by Lender, to make entries upon or inspections of the Property at reasonable times and for reasonable durations, and Borrower shall permit all such entries and inspections to be made.
19. Financial Statements; Offset Certificates.

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- (a) Borrower, without expense to Lender, shall, upon receipt of written request from Lender, furnish to Lender (1) an annual statement of the operation of the Property prepared and certified by Borrower, showing in reasonable detail satisfactory to Lender total rents received and total expenses together with an annual balance sheet, rent roll and profit and loss statement, within 120 days after the close of each fiscal year of Borrower, beginning with the fiscal year first ending after the date of delivery of this Deed of Trust.
  - (b) Borrower, within three (3) days after a request by Lender in person or within five (5) days after Lender's request by mail, shall furnish Lender or any third party a written statement duly acknowledged of all amounts due on any indebtedness secured hereby, whether for principal or interest on the Note or otherwise, and stating whether any offsets or defenses are claimed by Borrower to exist against the indebtedness secured by this Deed of Trust and covering other matters with respect to any such indebtedness as Lender may reasonably require.
  - (c) Borrower will keep adequate records and books of account in accordance with generally accepted accounting principles and practices and will permit Beneficiary, by its agents, accountants and attorneys, to examine Borrower's records and books of account and to discuss the affairs, finances and accounts of Borrower with the officers [or general partners] of Borrower, at such reasonable times as may be requested by Beneficiary.
  - (d) Borrower, its general partners or controlling shareholders and all guarantors of the Note (collectively, "Guarantor"), if any, will deliver to Beneficiary with reasonable promptness after the close of their respective fiscal years a balance sheet and statement of profit and loss, prepared by an independent certified public accountant satisfactory to Beneficiary, setting forth in each case, in comparative form, figures for the preceding year which statements shall be accompanied by the unqualified opinion of such accountant as to the accuracy thereof. Throughout the term of this Deed of Trust, Borrower and Guarantor, if any, with reasonable promptness, will deliver to Beneficiary such other information with respect to Borrower or Guarantor as Beneficiary may from time to time request. All financial statements of Borrower or Guarantor shall be prepared in accordance with generally accepted accounting principles and practices applied on a consistent basis and shall be delivered in duplicate. At the time of the delivery of such statements, and at any other time upon five (5) days' prior written request of Beneficiary, Borrower shall deliver to Beneficiary a certificate of the principal financial or accounting officer [or a general partner] of Borrower, dated within three (3) days of delivery of such statements, or the date of such request, as the case may be, setting forth the amount of principal and interest due on the Note, whether any offset or defense exists against such indebtedness and stating that such person knows of no event of default or prospective event of default which has occurred and is continuing, or, if any such event of default or prospective event of default has occurred and is continuing, specifying the nature and period of existence thereof and what action Borrower has taken or proposes to take with respect thereto, and except as otherwise specified, stating that Borrower has fulfilled all its obligations under this Deed of Trust which are required to be fulfilled on or prior to the date of such certificate.
20. Estoppel Certificates. Within ten (10) days after any request by Lender for such information, Borrower shall execute and deliver to Lender, and any third party designated by Lender, in recordable form, a certificate reciting that the Note and this Deed of Trust are unmodified and in full force and effect, or that the Note and this Deed of Trust are in full and effect as modified and specifying all modifications asserted by Borrower.

Such certificate shall also recite the amount(s) of principal, interest and other sums payable under the Note and/or this Deed of Trust which remain unpaid, the date(s) through which payments due and owing under the Note and/or this Deed of Trust have been paid, the amount(s) of any payments theretofore made under the Note and/or this Deed of Trust, and a detailed statement of any right of set-off, counterclaim or other defense which Borrower contends exists, against any indebtedness secured hereby or any obligation of Borrower hereunder.

Should Borrower fail to execute and deliver such certificate within such ten (10) day period; (a) the Note and

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this Deed of Trust shall, as to Borrower, conclusively be deemed to be either in full force and effect, without modification, or in full force and effect, modified in the manner and to the extent specified by Lender, whichever Lender reasonably and in good faith may represent; and (b) Borrower shall conclusively be deemed irrevocably to have constituted and appointed Lender as Borrower's special attorney in fact to execute and deliver such certificate to any third party.

Borrower and Lender hereby expressly agree that any certificate executed and delivered by Borrower, or any representation in lieu of a certificate made by Lender hereunder, may be relied upon by any prospective purchaser of the estate, or any prospective assignee of any interest of Lender in the Note and other indebtedness secured by this Deed of Trust or in the Property, and any other person, without independent investigation or examination to determine the accuracy, reasonableness or good faith of the recitals contained therein.

The exercise by Lender of any right or remedy provided by this section shall not constitute a waiver of, or operate to cure any default by Borrower hereunder, or preclude any other right or remedy which is otherwise available to Lender under this Deed of Trust or applicable law.

21. Right To Collect And Receive Rents, Profits, And Deposits. Notwithstanding any other provisions hereof, Lender hereby grants permission to Borrower to collect and retain the rents, income, issues, license fees and profits of the Property as they become due and payable; however, such permission to Borrower shall be automatically revoked upon default by Borrower in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, and Lender shall have the right, with or without taking possession of the Property affected hereby, to collect all rents, issues, royalties, and profits and shall be entitled to and may, without notice, and irrespective of whether declaration of default has been delivered to Trustee, and without regard to the adequacy of the security for the indebtedness secured hereby, either personally or by attorney or agent, without bringing any action or proceeding, or by receiver appointed by the Court, to enter into possession and hold, occupy, possess, and enjoy the Property, make, cancel, enforce, and modify leases, obtain and eject tenants, and set and modify rents and terms of rents, and to sue, and to take, receive and collect all or any part of the said rents, issues, royalties and profits of the Property affected hereby, and after paying such costs of maintenance, and operation of the Property, and of collection, including attorneys' fees, as in its judgment it may deem proper, to apply the balance upon the entire indebtedness then secured hereby. The acceptance of such rents, issues, royalties, license fees and profits shall not constitute a waiver of any other right which Trustee or Lender may enjoy under this Deed of Trust or under the laws of Oregon. Failure of or discontinuance by Lender at any time, or from time to time, to collect any such rents, issues, royalties or profits shall not in any manner affect the subsequent enforcement by Lender at any time, or from time to time, of the right, power, and authority to collect the same. The receipt and application by Lender of all such rents, issues, royalties, and profits pursuant hereto, after execution and delivery of declaration of default and demand for sale as hereinafter provided or during the pendency of Trustee's sale proceedings hereunder, shall not cure such breach or default nor affect said sale proceedings, or any sale made pursuant thereto, but such rents, issues, royalties, and profits, less all costs of operation, maintenance, collection and reasonable attorneys' fees, when received by Lender, shall be applied in reduction of the entire indebtedness from time to time, secured hereby, in such order as Lender may determine. Nothing contained herein, nor the exercise of the right by Lender to collect, shall be, or be construed to be, an affirmation by Lender of any tenancy, lease, or option, nor an assumption by Lender of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Deed of Trust to, any such tenancy, lease, or option.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this instrument. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law.

It is expressly understood and agreed by Borrower that Lender shall have no liability to Borrower or any other person for Lender's failure or inability to collect rentals, income, or receipts from the Property or for failing to

collect such rentals or other income in an amount which is equal to the fair market rental value of the Property. It is understood and agreed that neither the absolute assignment of rents, issues, royalties and profits to Lender nor the exercise by Lender of any of its rights or remedies under this Deed of Trust shall be deemed to make Lender a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment, or operation of all or any portion thereof, unless and until Lender, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Property by any court at the request of Lender or by agreement with Borrower, or the entering into possession of the Property or any part thereof by such receiver, be deemed to make Lender a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any portion thereof.

22. Uniform Commercial Code Security Agreement. This Deed of Trust is intended to be and shall constitute a security agreement pursuant to the Oregon Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Oregon Uniform Commercial Code, and Borrower hereby grants Lender a security interest in those items. Borrower agrees that Lender may file this Deed of Trust, or a reproduction thereof, in the real estate records or other appropriate index or in the Office of the Secretary of State of the State of Oregon, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Deed of Trust or executed duplicate original of this Deed of Trust, or a copy certified by a County Recorder in the State of Oregon or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, upon Lenders request, any UCC financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Deed of Trust in such form as Lender may require to perfect a security interest with respect to the items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements which Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created pursuant to the Oregon Uniform Commercial Code any other security interest in the items, including replacements and additions thereto. Upon Borrower's breach of any covenant or agreement of Borrower contained in this Deed of Trust, including the covenants to pay when due all sums secured by this Deed of Trust, Lender shall have the remedies of a secured party under the Oregon Uniform Commercial Code and, at Lender's option, may also invoke the remedies provided in paragraph 28 of this Deed of Trust as to such items. In exercising any of these remedies, Lender may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Oregon Uniform Commercial Code or of the remedies provided in paragraph 28 of this Deed of Trust.

The Borrower will not cause or permit any change to be made in its name, identity or corporate or partnership structure unless the Borrower shall have first notified the Lender in writing of such change at least 30 days prior to the effective date of such change, and shall have first taken all action required by the Lender for the purpose of perfecting or protecting the lien and security interest of the Lender. The Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of the Borrower) and will continue to be the address of the Borrower set forth on the inside first page of the Deed of Trust (unless the Borrower notifies the Lender in writing at least 30 days prior to the date of such change). The Borrower's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the first page of this Deed of Trust. The Borrower shall promptly notify the Lender of any change in its organizational identification number. If the Borrower does not now have an organizational identification number and later obtains one, the Borrower promptly shall notify the Lender of such organizational identification number.

23. Misrepresentation or Nondisclosure. Borrower has made certain written representations and disclosures in order to induce Lender to make the loan which is evidenced by the Note. In the event that Borrower has made any material misrepresentation or failed to disclose any material fact, such disclosure or nondisclosure shall constitute a default by Borrower hereunder and Lender, at Lender's option, and to the extent permitted by

applicable law, may, without prior notice, declare all sums secured hereby, irrespective of their stated due date(s), immediately due and payable, and may exercise all rights and remedies provided in this Deed of Trust.

24. Waiver of Statute of Limitations. Borrower hereby waives the right to assert any statute of limitations as a defense to the Note, this Deed of Trust and any obligation secured hereby, to the fullest extent permitted by applicable law.
25. Acceleration on Insolvency of Borrower. In the event that: (a) Borrower fails to pay its debts generally as they come due or files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors; (b) an involuntary petition is filed against Borrower under any bankruptcy or similar statute and such petition is not set aside or withdrawn or is still in effect within sixty (60) days from the date of such filing; or (c) a custodian, receiver, trustee (or other similar official) is appointed to take possession, custody or control of any of the properties of Borrower; or (d) the Property becomes subject to the jurisdiction of a Federal Bankruptcy Court or successor thereof, or any similar state court; or (e) Borrower makes an assignment for the benefit of Borrower's creditors; or (f) a portion of Borrower's assets is attached, executed upon or judicially seized in any manner and such seizure is not discharged within ten (10) days, Lender, at Lender's option, and to the extent permitted by applicable law, may, without prior notice, declare all sums secured hereby, irrespective of their stated due date(s), immediately due and payable and may exercise all rights and remedies provided in this Deed of Trust including those provided in paragraph 28 hereof.
26. (a) Acceleration On Transfer Or Encumbrance Of The Property. In the event that Borrower sells, contracts to sell, gives an option to purchase, conveys, leases with an option to purchase, encumbers or alienates the Property, or any interest therein, or suffers his title to, or any interest in, the Property to be divested, whether voluntarily or involuntarily; or in the event of a sale or transfer of beneficial interests in Borrower (if Borrower is a corporation, partnership, association, trust or other legal entity) equal to twenty-five percent (25%) or more of the beneficial ownership interests of Borrower outstanding at the date of this Deed of Trust, or changes or permits to be changed the character or use of the Property, or drills or extracts or enters into any lease for the drilling or for extracting of oil, gas, or other hydrocarbon substances or any mineral of any kind or character on the Property; or if title to such property be subject to any lien or charge, voluntary or involuntary, contractual or statutory, without the written consent of Lender being first had and obtained, Lender, at Lender's option, may, without prior notice, declare all sums secured hereby, irrespective of their stated due date(s), immediately due and payable and may exercise all rights and remedies provided in this Deed of Trust, including those provided in paragraph 28 thereof.
- (b) Replacement Property - Lien Property. Notwithstanding the above provisions of paragraph 26(a), Borrower may from time to time replace items of personal property and fixtures constituting a part of the Property, provided that: (1) the replacements for such items or personal property or fixtures are of equivalent value and quality; and (2) Borrower has good and clear title to such replacement property free and clear of any and all liens, encumbrances, security interests, ownership interests, claims of title (contingent or otherwise), or charges of any kind, or the rights of any conditional sellers, vendors or any other third parties in or to such replacement property have been expressly subordinated at no cost to the Lender to the lien of the Deed of Trust in a manner satisfactory to Lender; and (3) at the option of Lender, Borrower provides at no cost to Lender; satisfactory evidence that the Deed of Trust constitutes a valid and subsisting lien on and security interest in such replacement property of same priority this Deed of Trust has on the Property and is not subject to being subordinated or the priority thereof affected under any applicable law, including but not limited to the provisions of the Oregon Uniform Commercial Code.
27. Obligation To Inform Lender Of Bankruptcy, Insolvency, Transfer Of Encumbrance. Borrower will notify Lender in writing, at or prior to the time of the occurrence of any event described in paragraphs 25 or 26 hereof, of such event and will promptly furnish Lender with any and all information concerning such event which lender may request.
28. Acceleration And Sale On Default. In the event of a default by Borrower in the payment of any indebtedness secured hereby or in the performance of any obligation hereunder, Lender, at Lender's option, may declare all



sums secured hereby immediately due and payable by delivering to Trustee a written affidavit or declaration of default and demand for sale, executed by Lender and reciting facts demonstrating such default by Borrower, together with a written notice of default and election and election to sell Property. Lender shall also deposit with Trustee the Note, this Deed of Trust and documents evidencing any additional advances or expenditures secured hereby. Upon receipt by Trustee of such affidavit or declaration of default and such notice of default and election to sell, Trustee shall accept election to sell as true and conclusive all facts and statements contained in such affidavit or declaration of default and shall cause such notice of default and election to sell to be recorded as required by applicable law. Upon the expiration of such period as may then be required by applicable law following recordation of such notice of default, and after notice of sale has been given in the manner and for the period required by applicable law, Trustee, without demand on Borrower, shall sell the Property at the time and place fixed in such notice of sale, either as a whole or in separate parcels, and in such order as Trustee may determine or Lender may direct (Borrower hereby waives any right Borrower may have under applicable law to direct the order of sale), at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale; provided, however, that Lender may offset its bid at such sale to the extent of the full amount owing to Lender under the Note and this Deed of Trust, including, without limitation, Trustee's fees and expenses of sale and costs, expenses and attorneys' fees incurred by or on behalf of Lender in connection with collecting, litigating or otherwise enforcing any right under the Note or this Deed of Trust. Trustee may postpone the sale of all or any portion of the Property by public announcement made at the initial time and place of sale, and from time to time thereafter by public announcement made at the time and place of sale fixed by the preceding postponement. Trustee shall deliver to the purchaser at such public auction its deed conveying the Property sold, but without any covenant or warranty, express or implied. The recital in such deed of any matter of fact shall be conclusive proof of the truthfulness thereof. Any person, including Borrower, Trustee or Lender, may purchase at such sale.

The proceeds or avails of any sale made under or by virtue of this Deed of Trust, together with any other sums which then may be held by the Trustee or Beneficiary or any other person secured by this Deed of Trust shall be applied as follows:

FIRST: To the payment of the costs and expenses of such sale, including Trustee's fees, costs of title evidence and reasonable compensation to Beneficiary, its agents, attorneys and counsel, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by the Trustee or Beneficiary under this Deed of Trust, together with interest at the rate set forth the Note, on all advances made by the Trustee or Beneficiary and all taxes or assessments, except any taxes, assessments or other charges subject to which the Property shall have been sold.

SECOND: To the payment of the whole amount then due, owing or unpaid upon the Note [or under the Loan Agreement] for interest and principal, with interest on the unpaid principal at the rate set forth in the Note], or the Loan Agreement as the case may be], from and after the happening of any Event of Default, from the due date of any such payment of principal until the same is paid.

THIRD: To the payment of any other sums required to be paid by Trustor pursuant to any provision of this Deed of Trust or of the Note [or the Loan Agreement].

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

29. Waiver of Marshaling. Notwithstanding the existence of interests in the Property other than that created by the Deed of Trust, and notwithstanding any other provision of this Deed of Trust, in the event of a default by Borrower in the payment of any indebtedness secured hereby or in the performance of any obligation hereunder, Lender shall have the right, in Lender's sole discretion, to determine the order in which the Property shall be subjected to the remedies provided herein and to determine the order in all or any part of the indebtedness secured hereby is satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower and any person who now has or hereafter acquires any interest in the Property with actual or constructive notice hereof waives any and all right to require a marshaling of assets in connection with the exercise of any of the remedies provided herein or otherwise provided by applicable law.

30. Environmental Matters. Borrower represents and warrants to Lender that:

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- a. The Property and Borrower are not in violation of or subject to any existing, pending, or threatened investigation by any governmental authority under any law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or the environment (collectively referred to as "Environmental Laws"), including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Sections 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 et seq., the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 et seq., the Clean Air Act, 42 U.S.C. Sections 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., the Refuse Act, 33 U.S.C. Sections 407 et seq., the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. Sections 11001 et seq., and the provisions of the Oregon Hazardous Waste and Hazardous Materials Law, ORS Chapter 465 and ORS Chapter 466.
- b. Borrower has not and is not required by any Environmental Law to obtain any permits or license to construct or use the Property or the Improvements.
- c. Borrower has conducted an appropriate inquiry into previous uses and ownership of the Property, and after such inquiry determined that no Hazardous Substance (as defined below) has been disposed of, transported or released on or at the Property.
- d. No part of the Property is being used or, to the knowledge of Borrower, has been used at any previous time for the disposal, storage, treatment, processing, transporting or other handling of Hazardous Substances, nor is any part of the Property affected by any Hazardous Substance contamination.
- e. To the best of Borrower's knowledge and belief, no property adjoining the Property is being used, or has ever been used at any previous time for the disposal, storage, treatment, processing or other handling of Hazardous Substances nor is any other property adjoining the Property affected by Hazardous Substances contamination.
- f. No investigation, administrative order, consent order and agreement, litigation or settlement with respect to Hazardous Substances or Hazardous Substances contamination is proposed, threatened, anticipated or in existence with respect to the Property. The Property is not currently on, and to Borrower's knowledge, after diligent investigation and inquiry, has never been on, any federal or state "Superfund" or "Superlien" list.
- g. Neither Borrower nor, to the best of Borrower's knowledge and belief, any tenant of any portion of the Property has received any notice from any governmental authority with respect to any violation of any Environmental Laws.
- h. The use which Borrower makes and intends to make of the Property will not result in the disposal or release of any Hazardous Substances on, in or to the Property.
- i. Borrower shall not cause any violation of any Environmental Laws, nor permit any tenant of any portion of the Property to cause such a violation, nor permit any environmental liens to be placed on any portion of the Property.

The term "Hazardous Substance" shall include: (i) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" in CERCLA, RCRA, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., and in the regulations promulgated pursuant to said laws; (ii) those substances defined as "hazardous waste" under ORS 466.005, and in the regulations promulgated pursuant to said laws; (iii) those substances defined as toxic substances under ORS 465.003; (iv) those substances listed in the United States

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Department of Transportation Table (49 CFR 172.101 and amendments thereto); (v) asbestos containing materials; (vi) polychlorinated biphenyl; (vii) underground storage tanks, whether empty, filled or partially filled with any substance; and (viii) such other substances, materials and wastes which are or become regulated under applicable local, state or federal law, or which are classified as hazardous or toxic under federal, state, or local laws or regulations or which, even if not so regulated, are known to pose a hazard to the health and safety of the occupants of the Property or of property adjacent to the Property.

The foregoing representations and warranties shall be continuing and shall be true and correct for the period from the date hereof to the release of this Deed of Trust (whether by payment of the indebtedness secured hereby or foreclosure or action in lieu thereof), and these representations and warranties shall survive such release.

Neither Borrower nor any third party will use, generate, manufacture, store, release, discharge, or dispose of any Hazardous Substance on, under or about the Property, or transport any Hazardous Substance to or from the Property.

Borrower shall give prompt written notice to Lender of:

- (1) any proceeding or inquiry by any governmental authority) with respect to the presence or threatened presence of any Hazardous Substance on the Property;
- (2) all claims made or threatened by any third party against Borrower or the Property relating to any loss or injury resulting from any Hazardous Substance; and
- (3) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Environmental Law as defined in subparagraph (a) above.

Lender shall have the right, at its option, to join and participate in, as a party if it so elects, any legal proceedings or actions initiated by or against Borrower and/or the Property in connection with any Environmental law.

Borrower shall indemnify and hold harmless Lender, its directors, officers, employees, agents, successors and assigns from and against, any loss, damages, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under or about the Property, or any order, consent decree or settlement relating to the cleanup of a Hazardous Substance, or any claims of loss, damage, liability, expense or injury relating to or arising from, directly or indirectly, any disclosure by Lender to anyone of information, whether true or not, relative to a Hazardous Substance and/or Environmental Law violation, including without limitation, attorneys' fees. This indemnity shall survive the release of this Deed of Trust (whether by payment of the indebtedness secured hereby or foreclosure or action in lieu thereof).

From time to time, but not more often than once in any twelve month period, Lender may request and Borrower shall provide at its sole cost and expense within 45 days of written request by Lender a report from a qualified engineering firm or other qualified consultant acceptable to Lender with respect to an investigation and audit of the Property ("environmental audit") which environmental audit report shall be addressed to Lender and based on a thorough review of past and present uses, occupants, ownership and tenancy of the Property and/or adjacent properties; soils and/or test boring reports from the construction of the Property; liaison with local, state or federal agencies regarding known or suspected Hazardous Substances contamination, use, generation, or storage on the Property or other

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properties in the area; review of aerial photographs; and visual site inspection noting unregulated fills, storage tanks or areas, ground discoloration or soil odors; and other investigative methods deemed necessary by the consultant to enable the consultant to report that there is no apparent or likely contamination of the Property by Hazardous Substances, whether such source of contamination is the Property or another property in the area; and Borrower shall, if deemed reasonably necessary to further investigate suspected or likely contamination, provide supplemental reports to Lender by acceptable qualified consultants of the analysis of core drilling or ground water supplies from the Property, showing no contamination by Hazardous Substances.

In the event the environmental audit discloses matters not acceptable to Lender, Borrower shall cure such matters in a manner acceptable to Lender within a period of 180 days following such audit or supplemental report. Failure to cure such matters shall be a default under the Note and this Deed of Trust and Lender may, without prior notice, declare all sums secured hereby, irrespective of their stated due date(s), immediately due and payable, and may exercise all rights and remedies provided in this Deed of Trust.

31. Remedies Cumulative. Each remedy provided by this Deed of Trust is separate and distinct and is cumulative to all other rights and remedies provided hereby or by applicable law, and each may be exercised concurrently, independently or successively, in any order whatsoever.
32. Trustee. The Trustee shall be deemed to have accepted the terms of this trust when this Deed of Trust, duly executed and acknowledged is made a public record as provided by law. Trustee shall not be obligated to notify any party hereto of any pending sale under any other Deed of Trust or of any action or proceeding in which Borrower, Lender or Trustee is a party, unless such sale relates to or reasonably might affect the Property, this Deed of Trust, Lender's security for the performance of Borrower's obligations under the Note or the rights or powers of Lender or Trustee under the Note or this Deed of Trust, or unless such action or proceeding has been instituted by Trustee against the Property, Borrower or Lender.
33. Power Of Trustee To Reconvey Or Consent. At any time, without liability therefore and without notice to Borrower, upon written request by Lender and presentation of the Note and this Deed of Trust to Trustee for endorsement, and without altering or affecting the personal liability of borrower or any other person for the payment of the indebtedness secured hereby, or the lien of this Deed of Trust upon the remainder of the Property as security for the repayment of the full amount of the indebtedness then or thereafter secured by this Deed of Trust or any right or power of Lender or Trustee with respect to the remainder of the Property, Trustee may: (a) reconvey or release any part of the Property from the lien of this Deed of Trust; (b) approve the preparation or filing of any map or plat with respect to the Property; (c) join in the granting of any easement burdening the Property; or (d) enter into any extension or subordination agreement affecting the Property or the lien of this Deed of Trust.
34. Reconveyance. Upon written request of Lender reciting that all sums secured hereby have been paid, surrender of the Note and this Deed of Trust to Trustee for cancellation and retention by Trustee, and payment by Borrower of any reconveyance fees customarily charged by the Trustee, Trustee shall reconvey, without warranty, the Property then held by Trustee hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Such request and reconveyance shall operate as a reassignment of the rents, income, issues and profits assigned herein to Lender.
35. Substitution of Trustee. Lender, at Lender's option, may from time to time, by written instrument, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, when executed and acknowledged by Lender and recorded in the office of the Recorder of the county or counties in which the Property is located, shall constitute conclusive proof of the proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the predecessor Trustee, succeed to all right, title, estate, powers and duties of such predecessor Trustee, including without limitation, the power to reconvey the Property. To be effective, such instrument must contain the name of the original Borrower, Trustee, and Lender hereunder, the

book and page at which, and the county or counties in which, this Deed of Trust is recorded and the name and address of the substitute Trustee. If any notice of default has been recorded hereunder, this power of substitution cannot be exercised until all costs, fees and expenses of the then acting Trustee have been paid. Upon such payment, the then acting Trustee shall endorse receipt thereof upon the instrument of substitution. The procedure herein provided for substitution of Trustees shall not be exclusive of other provisions for substitution provided by applicable law.

36. No Waiver By Lender. No waiver by Lender of any right or remedy provided by the Note, this Deed of Trust or applicable law shall be effective unless such waiver is in writing and subscribed by Lender. Waiver by Lender of any right or remedy granted to Lender under the Note or any provision thereof, this Deed of Trust or applicable law as to any transaction or occurrence shall not be deemed a waiver of any future transaction or occurrence. The acceptance of payment of any sum secured hereby after its due date; or the payment by lender of any indebtedness or the performance by Lender of any obligation of borrower under the Note or this Deed of Trust, upon the failure of borrower to do so; or the addition of any payment so made by Lender to the indebtedness secured hereby; or the exercise of Lender's right to enter upon the Property and receive and collect the rents, income, issues and profits therefrom; or the assertion by Lender of any other right or remedy provided by the Note or this Deed of Trust, shall not constitute a waiver of Lender's right to require prompt performance of all other obligations, covenants and agreements of Borrower under the Note and this Deed of Trust, or to exercise any other right or remedy provided by the Note or this Deed of Trust for any failure by Borrower timely and fully to perform its obligations, covenants and agreements under the Note and this Deed of Trust. Lender may, without notice to or consent from Borrower, any guarantor of Borrower's obligations under the Note and this Deed of Trust, or any holder or claimant of a lien or other interest in the Property which is junior to the lien of this Deed of Trust, and without incurring liability to Borrower or any other person by so doing, to waive any right or remedy provided by the Note, this Deed of Trust or applicable law.
37. Consents And Modifications; Borrower And Lien Not Released. Notwithstanding Borrower's default in the payment of any indebtedness secured hereby or in the performance of any obligation hereunder or Borrower's breach of any obligation, covenant or Agreement contained in the Note or in this Deed of Trust, Lender, at Lender's option, without notice to or consent from Borrower, any guarantor of Borrower's obligations under the Note and this Deed of Trust, or any holder or claimant of a lien or interest in the Property which is junior to the lien of this Deed of Trust, and without incurring liability to Borrower or any other person by so doing, may from time to time: (a) extend the time for payment of all or any portion of Borrower's indebtedness under the Note and this Deed of Trust; (b) accept a renewal note or notes, or release any person from liability, for all or any portion of such indebtedness; (c) agree with Borrower to modify the terms and conditions of payment of the Note and this Deed of Trust; (d) reduce the amount of the monthly installments due under paragraph 11 of this Deed of Trust; (e) reconvey or release other or additional security for the repayment of Borrower's indebtedness under the Note and this Deed of Trust; (f) approve the preparation or filing of any map or plat with respect to the Property; (g) enter into any extension or subordination Agreement affecting the property or the lien of this Deed of Trust; and (h) agree with Borrower to modify the term, the rate of interest or period of amortization of the Note or alter the amount of the monthly installments payable thereunder. No action taken by Lender under the provisions of this paragraph shall be effective unless in writing, subscribed by Lender, and, except as expressly provided in such writing, no such action shall impair or affect: the obligation of Borrower to pay all sums secured by this Deed of Trust and to observe all obligations, covenants and agreements of Borrower contained in the Note and in this Deed of Trust; or the guaranty of any person, corporation, partnership or other entity of the payment of the indebtedness secured hereby; or the lien or priority of the lien of this Deed of Trust. Upon request by Lender, Borrower will promptly pay Lender a reasonable service charge, together with all insurance premiums and attorneys' fees as may have been advanced by Lender, for any action taken by Lender under this paragraph.
38. Consents And Approvals To Be In Writing. Whenever the consent or approval of Lender is specified as a condition of any provision of this Deed of Trust, such consent or approval by Lender shall not be effective unless such consent or approval is in writing, subscribed by Lender.
39. Waiver Of Right Of Offset. No portion of the indebtedness secured by this Deed of Trust shall be or be deemed to be offset or compensated by all or any part of any claim, cause of action, counterclaim or cross-claim,

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whether liquidated or un-liquidated, which Borrower may have or claim to have against Lender.

40. Obligations Of Borrower Joint And Several. If more than one person is named as Borrower, each obligation of Borrower hereunder shall be the joint and several obligation of each such person. Any Borrower who is a married person expressly agrees that the indebtedness secured by this Deed of Trust may be satisfied by recourse to the separate property of such Borrower.
41. Future Advances. Upon request by Borrower, Lender, at Lender's option, may make future advances to Borrower. All such future advances, with interest thereon, shall be added to, and become a part of, the indebtedness secured by this Deed of Trust when evidenced by promissory note(s) reciting that such note(s) are secured hereby.
42. Notices. Except for any notice required by applicable law to be given in another manner: (a) all notices provided in the Note or in this Deed of Trust shall be in writing; (b) each such notice to Borrower shall be given by mailing such notice by first-class mail, to Borrower's address specified herein, or to such other address as Borrower may designate by notice given to Lender in the manner provided herein; and (c) each such notice to Lender shall be given by mailing such notice by certified mail, return receipt requested, to Lender's address specified herein, or to such other address as Lender may designate by notice given to Borrower in the manner provided herein. All notices provided for in the Note and this Deed of Trust shall be deemed to have been given to Borrower or Lender if given in the manner specified herein.
43. Severability. If any paragraph, clause or provision of the Note or this Deed of Trust is construed or interpreted by a court of competent jurisdiction to be void, invalid or unenforceable, such decision shall affect only those paragraphs, clauses or provisions so construed or interpreted and shall not affect the remaining paragraphs, clauses and provisions of the Note or this Deed of Trust.
44. General Provisions.
  - (a) Subject to the provisions of paragraphs 25 and 26 of this Deed of Trust, this Deed of Trust applies to, inures to the benefit of, and binds, the respective heirs, legatees, devisees, administrators, executors, successors and assigns of each of the parties hereto.
  - (b) As used herein, the term "Lender" shall mean and include the owner and holder (including a pledgee) of any Note or obligation secured hereby, whether or not named as Lender herein, and the heirs, legatees, devisees, administrators, executors, successors and assigns of any such person.
  - (c) As used herein, the term "Borrower" shall mean and include the obligor under the Note, whether or not named as Borrower herein, and subject to the provisions of paragraphs 25 and 26 of this Deed of Trust, the heirs, legatees, devisees, administrators, executors, successors and interest to the property and assigns of any such person.
  - (d) As used herein, the word "person" shall mean and include natural persons, corporations, partnerships, unincorporated associations, joint ventures and any other form of legal entity.
  - (e) As used herein, the word "Property" shall mean and include the Property and any part thereof.
  - (f) As used herein and unless the context otherwise provides, the words "herein," "hereunder" and "hereof" shall mean and include this Deed of Trust as a whole, rather than any particular provision hereof.
  - (g) In exercising any right or remedy, or taking any action provided herein, Lender may act through its employees, agents or independent contractors, as authorized by Lender.
  - (h) Wherever the context so requires herein, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa.

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- (i) Captions and paragraph headings used herein are for convenience only, are not a part of this Deed of Trust and shall not be used in construing it.
  - (j) All references to "attorney fees", "legal fees", "counsel fees" or the like mean attorney fees incurred before trial, at trial, on appeal or in any bankruptcy or arbitration proceeding.
45. Delegation of Authority. Wherever this Deed of Trust provides that Borrower authorizes and appoints Lender, Borrower's attorney-in-fact, to perform any act, for or on behalf of borrower or in the name, place and stead of Borrower, it is expressly understood and agreed such authority shall be deemed a power coupled with an interest and such power shall be irrevocable.
  46. Prepayment. If any Note secured by this Deed of Trust provides for a fee or charge as consideration for the acceptance of prepayment of principal, Borrower agrees to pay said fee or charge if said indebtedness or any part thereof shall be paid, whether voluntarily or involuntarily, prior to the due date stated in said Note, even if and notwithstanding Borrower shall have defaulted in payment thereof or in the performance of any agreement hereunder and Lender, by reason thereof or by reason of paragraph 26 hereof, shall have declared all sums secured hereby immediately due and payable.
  47. Taxation of Deeds of Trust. In the event of the enactment of any law deducting from the value of the property any mortgage lien thereon, or imposing upon the Lender the payment of all or part of the taxes, charges, or assessments previously paid by Borrower pursuant to the Deed of Trust, or changing the law relating to the taxation of mortgages, debts secured by mortgages, or Lender's interest in the property so as to impose new incidents of tax on Lender, then Borrower shall pay such taxes or assessments or shall reimburse Lender therefor; provided that, however, if in the opinion of counsel to Lender such payment cannot lawfully be made by Borrower, then Lender may, at Lender's option, declare all of the sums secured by this Deed of Trust to be immediately due and payable without notice to Borrower, and Lender may invoke any remedies permitted by this Deed of Trust.
  48. Governing Law. This instrument shall be governed by the laws of the United States, and the rules and regulations promulgated thereunder, including the federal laws, rules, and regulations for federal savings banks together with the laws of the State of Oregon which are not inconsistent with or pre-empted by the former.
  49. Partial Releases. Not Applicable
  50. Construction Loan Provisions. If this Deed of Trust secures an obligation incurred for the construction of improvements on the Property, it shall constitute a "construction mortgage" under the provisions of the Oregon Uniform Commercial Code.
  51. Request For Notice Of Default. The undersigned Borrower requests that a copy of any Notice of Default or any Notice of Sale hereunder be mailed to him at his address specified herein.
  52. Additional Borrower Representations. Borrower has good and marketable title to an indefeasible fee [or, if applicable, leasehold] estate in the Property subject to no lien, charge, or encumbrance except such as are approved by Beneficiary; that it owns the Improvements free and clear of liens and claims; that this Deed of Trust is and will remain a valid and enforceable first priority lien on the Mortgaged Property subject only to the exceptions referred to above; and that neither the entry nor the performance of and compliance with this Deed of Trust, or the Note has resulted or will result in any violation of, or be in conflict with, or result in the creation of any deed of trust, lien, encumbrance or charge (other than those created by the execution and delivery of, or permitted by, this Deed of Trust and, the Note) upon any of the properties or assets of Trustor, or constitute a default under any deed of trust, indenture, contract, agreement, instrument, franchise, permit, judgment, decree, order, statute, rule or regulation applicable to Trustor. Trustor has full power and lawful authority to convey a lien in the Mortgaged Property in the manner and form herein done or intended hereafter to be done and will preserve such title, and will forever preserve, warrant and defend the same unto the Trustee and Beneficiary,

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and will forever preserve, warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever.

If the Property includes a leasehold estate, Trustor has not, and will not, surrender, terminate, cancel, waive, accept waiver, change, supplement, grant subleases of, alter, surrender or amend, and will comply with all of the terms, covenants and conditions contained in, the Lease.

Trustor will, at its sole cost and expense, and without expense to the Trustee or Beneficiary, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as the Trustee or Beneficiary shall from time to time require, for the purpose of better assuring, conveying, assigning, transferring, pledging, mortgaging, warranting and confirming unto the Trustee the real property and rights, and as to Beneficiary the security interest as to the personal property, hereby conveyed or assigned or intended now or hereafter so to be, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust, or for filing, registering or recording this Deed of Trust and, on demand, will execute and deliver, and hereby authorizes Beneficiary to execute in the name of Trustor, to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Improvements.

Trustor will pay all filing, registration or recording fees, all federal, state, county and municipal stamp taxes and other fees, taxes, duties, imposts, assessments and all other charges incident to, arising out of or in connection with the preparation, execution, delivery and enforcement of the Note, [the Loan Agreement,] this Deed of Trust, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Chattels or any instrument of further assurance.

So long as it is owner of the Mortgaged Property, Trustor, if a corporation or partnership, will do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a business or stock corporation or partnership, as the case may be, under the laws of the state of its incorporation or formation, and will comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to Trustor or to the Mortgaged Property or any part thereof.

53. Mechanic's Liens. Trustor will pay from time to time when the same shall become due, all lawful claims or demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom and in general will do or cause to be done everything necessary so that the lien and security interest hereof shall be fully preserved, at the cost of Trustor, without expense to Beneficiary; provided, however, that if applicable law empowers Trustor to discharge of record any mechanic's, laborer's, materialman's or other lien against the Mortgaged Property by the posting of a bond or other security, Trustor shall not have to make such payment if Trustor posts such bond or other security on the earlier of (i) ten (10) days after the filing or recording of same or (ii) within the time prescribed by law, so as not to place the Mortgaged Property in jeopardy of a lien or forfeiture.
54. Fixture Filing. This Deed of Trust constitutes a financing statement filed as a fixture filing pursuant to Section 9-502 of the Oregon Uniform Commercial Code, as amended or recodified from time to time, covering any portion of the Mortgaged Property which now is or later may become a fixture attached to the Property or any Improvement.
55. Not a Residential Trust Deed. Borrower represents, warrants and that this is not and will not become a "residential trust deed" as defined in ORS 86.705.

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**STATUTORY NOTICE: UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY LENDER CONCERNING LOANS AND OTHER CREDIT EXTENSIONS THAT ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES ARE SECURED SOLELY BY BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY LENDER TO BE ENFORCEABLE.**

IN WITNESS WHEREOF, Borrower has executed and delivered this Deed of Trust on the date first hereinabove written.

**"BORROWER"**

Shilo Inn, Klamath Falls, LLC

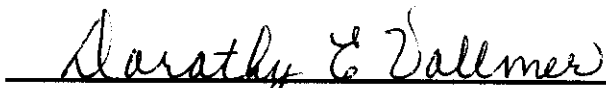
By: Shilo Management Corporation, Manager of Shilo Inn, Klamath Falls, LLC

  
By: John P. Kneeland  
Its: Vice President

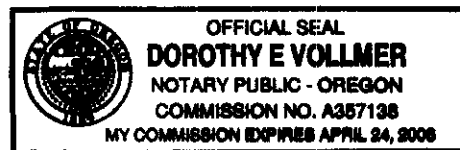
**ACKNOWLEDGMENT**

State of Oregon )  
County of Washington ) ss  
~~Multnomah~~

On March 30, 2005, before me Dorothy E. Vollmer, a Notary Public for Oregon, personally appeared John P. Kneeland, as Vice President of Shilo Management Corporation, Manager of Shilo Inn, Klamath Falls, LLC personally known to me ( or proved to me on the basis of satisfactory evidence) to be the person whose name) is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signatures on the instrument the person or the entity on behalf of which the person acted, executed the instrument.

  
(signature of notary and seal if any)

Notary Public for Oregon





Deed of Trust  
202-000884-0  
Shilo Inn. Klamath Falls, LLC

22065

EXHIBIT "A"  
LEGAL DESCRIPTION

THE REAL PROPERTY REFERRED TO IN THIS DEED OF TRUST IS SITUATED IN THE CITY OF KLAMATH FALLS, COUNTY OF KLAMATH, STATE OF OREGON, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

Lots 2, 3, 4, and 5, in Block 3 of Tract 1163, CAMPUS VIEW, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. TOGETHER WITH that portion of vacated Almond Street which inured thereto as evidenced by Ordinance 6597, recorded July 6, 1990 in Volume M90, page 13373, Microfilm Records of Klamath County, Oregon.

PARCEL 2:

All that portion of the NW1/4 SW1/4 of Section 20, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, lying Northeasterly of the Eastside Bypass conveyed to the State of Oregon by deed recorded June 18, 1957 in Volume 292 at page 373, Deed Records of Klamath County, Oregon and recorded December 28, 1961 in Volume 334 at page 481, Deed Records of Klamath County, Oregon.

PARCEL 3:

Lots 3, 4, and 5 in Block 4 of TRACT NO. 1163, CAMPUS VIEW, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. TOGETHER WITH that portion of vacated Almond Street which inured thereto, as evidence by Ordinance 6597 recorded July 6, 1990 in Volume M90, page 13373, Microfilm Records of Klamath County, Oregon.

PARCEL 4:

Lots 1 and 6 in Block 3 of Tract No. 1163, CAMPUS VIEW, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

(Property commonly known as 2500 Almond Street, Klamath Falls, OR 97601)

JPK