

**M06-14452**

Klamath County, Oregon

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Pages 18 Fee: \$121.00

**RECORDATION REQUESTED BY:**

U.S. Bank N.A.  
Collateral Department  
PO Box 5308  
Portland, OR 97228-5308

**WHEN RECORDED MAIL TO:**

U.S. Bank N.A.  
Collateral Department  
PO Box 5308  
Portland, OR 97228-5308

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

1st-837836

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(Construction Loan)**

**LINE OF CREDIT INSTRUMENT**

The maximum principal amount to be advanced at any one time pursuant to the Credit Agreement (Construction Loan Agreement) is One Million Fifty-Four Thousand and 00/100 (\$1,054,000.00). The maturity date of the Credit Agreement (exclusive of any extension or renewal options) is September 30, 2007. The maximum principal amount to be advanced pursuant to the Credit Agreement may be exceeded by advances to complete construction pursuant to ORS 86.155(2)(c).

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING IS DATED AS OF July 17, 2006, among Capri Properties, LLC whose address is 520 Klamath Avenue, Klamath Falls, Oregon 97601 (referred to below as "Grantor"); U.S. Bank N.A., whose address is Commercial Loan Services, PD-OR-P7LD, 555 S.W. Oak St., Portland, Oregon 97204 (referred to below sometimes as "Bank" and sometimes as "Beneficiary"); and U.S. Bank Trust Company, N.A., whose address is 555 S.W. Oak Street, Portland, Oregon 97204 (referred to below as "Trustee").

**THIS DEED OF TRUST IS INTENDED ALSO AS A FIXTURE FILING AND IS TO BE INDEXED NOT ONLY AS A DEED OF TRUST, BUT ALSO AS A FIXTURE FILING. THIS DEED OF TRUST IS A CONSTRUCTION MORTGAGE PURSUANT TO THE UNIFORM COMMERCIAL CODE.**

1. **CONVEYANCE AND GRANT.** For valuable consideration, Grantor conveys to Trustee in trust with power of sale, right of entry and possession and for the benefit of Bank as Beneficiary all of Grantor's present and future right, title, and interest in and to (a) the real property located in Jackson County, State of Oregon, and described on attached Exhibit A which is hereby incorporated herein, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all appliances, furniture and furnishings affixed to the real property; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, and all requisite approvals, licenses, permits, variances, cooperative agreements, tax credits (if applicable), tax abatement benefits (if applicable), and land use entitlements (the "Real Property"); and (b) all Personal Property, Improvements, Leases and Rents. The tax account number for the Real Property is 18091.

Grantor hereby assigns as security to Bank, all of Grantor's right, title, and interest in and to all present and future Leases, Rents, and profits of the Property. Grantor further grants to Bank a security interest in all Rents and Personal Property.

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THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF LEASES AND RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (1) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THE NOTE AND LOAN AGREEMENT AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THIS DEED OF TRUST.

2. **DEFINITIONS.** The following words shall have the following meanings when used in this Deed of Trust. Terms not otherwise defined in this Deed of Trust and defined therein shall have the meanings attributed to such terms in the Uniform Commercial Code as now or hereafter in effect. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

**"Deed of Trust"** means this Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing among Grantor and Bank, and includes without limitation, all assignment and security interest provisions relating to the Personal Property, Leases and Rents.

**"Guarantor"** means and includes without limitation, any and all guarantors, sureties, and accommodation parties in connection with the Indebtedness, including without limitation, any one or more of Tim M. Amuchastegui, Cecelia M. Amuchastegui and Amuchastegui Building, Incorporated.

**"Improvements"** means and includes without limitation, all existing and future improvements, fixtures, buildings, structures, mobile homes affixed on the Real Property, facilities, additions and other construction on the Real Property.

**"Indebtedness"** means all principal and interest payable under the Loan Agreement and the Promissory Note given to evidence advances thereunder and any amounts expended or advanced by Bank to discharge obligations of Grantor or expenses incurred by Trustee of Bank to enforce obligations of Grantor under this Deed of Trust, together with interest on such amounts as provided in said Promissory Note.

**"Leases"** means all present and future leases, subleases, rental agreements, and other agreements for the use of and occupancy of all or any part of the Real Property, whether written or oral, and any amendments, extensions, renewals, and replacements thereof.

**"Loan Agreement"** means the Construction Loan Agreement dated as of July 17, 2006, between the Bank and Grantor, together with all renewals, extensions, modifications and replacements thereof or therefor in the principal amount of One Million Fifty-Four Thousand and 00/100 Dollars (\$1,054,000.00) outstanding from time to time. The maturity date of the Loan Agreement, if not sooner paid, is September 30, 2007. The Loan Agreement is a non-revolving line of credit for the construction of improvements on the Real Property, represented by a Promissory Note dated as of July 17, 2006, and with a maturity date of September 30, 2007.

**"Loan Documents"** means and includes without limitation the Note, the Loan Agreement, and all promissory notes, credit agreements, loan agreements, guaranties, security agreements, subordination agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed by any person or entity ("Person") in connection with the Indebtedness.

**"Loan Party" or "Loan Parties"** means Grantor, each Guarantor, and each Person providing any collateral security for the Indebtedness and each Person signing any Loan Document.

**"Note Rate"** means the rate of interest from time to time payable under the Loan Agreement and the Promissory Notes for each advance.

**"Personal Property"** means Grantor's interest in all of the following, whether now owned or hereafter acquired or arising (a) all equipment, fixtures, inventory and other articles of personal property now or hereafter owned by Grantor, and now or hereafter located on or used in connection with all or any part of the Real Property, any construction thereon or any business operated thereon, together with all accessions, parts and additions to, all business operated thereon, together with all accessions, parts and additions to, all replacements of, and all substitutions for, any of such property; (b) all inventory, equipment, materials, supplies and other goods, wherever located, whether in the possession of Grantor, a warehouseman, bailee or any other Person,

purchased for use in the construction or furnishing of any improvements on the Real Property; (c) all accounts, general intangibles, chattel paper and instruments arising from or relating to the Property or any business operated by Grantor thereon; (d) all construction, service, engineering, consulting, leasing, architectural and other similar contracts of any nature (including, without limitation, those of any general contractors and subcontractors), as such may be modified, amended or supplemented from time to time, concerning the design, construction, management, operation, occupancy, use and/or disposition of any portion of or all of the Property; (f) all payment and performance bonds or guarantees and any and all modifications and extensions thereof relating to the Property; (g) all deposits and deposit accounts relating to the Indebtedness or the Property, including without limitation security deposits, deposits relating to utility services and deposits, deposit accounts and reserved established with Bank for taxes, insurance or otherwise; (h) to the extent it is deemed to be personal property the Real Property; and (i) all proceeds (including without limitation, all condemnation awards and settlements, insurance proceeds and refunds of premiums) of any of the foregoing and any other Property.

**"Property"** means collectively the Real Property, the improvements and the Personal Property and except where the context otherwise required, the Leases and Rents.

**"Rents"** means all present and future rents, revenues, fees, charges, income, issues, royalties, profits and other income, benefits, or payments of any nature arising from or out of the Leases or from or out of all or any part of the Property, including but not limited to fees, charges, amounts, and other payments for use or occupancy of rooms and other public facilities, minimum rents, additional rents, percentage rents, parking or common area maintenance charges, tax and insurance contributions, deficiency rents, and claims for damages from default in any Lease.

3. **PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, Grantor shall pay to Bank all Indebtedness secured by this Deed of Trust as it becomes due, and Grantor shall strictly perform all of Grantor's obligations under the Note, this Deed of Trust, and the Loan Documents.

4. **POSSESSION AND MAINTENANCE OF THE PROPERTY.**

4.1 **Possession and Use.** Until the occurrence of an Event of Default, Grantor may (a) remain in possession and control of the Property and (b) use, operate or manage the Property.

4.2 **Duty to Maintain.** Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements and maintenance necessary to preserve its value.

4.3 **Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Specifically, without limitation, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), soil, gravel, or rock products without the prior written consent of Bank.

4.4 **Removal of Improvements.** Grantor shall not alter, demolish, or remove any Improvements from the Real Property without the prior written consent of Bank. As a condition to the alteration, demolition, or removal of any Improvements, Bank may require Grantor to make arrangements satisfactory to Bank to replace such Improvements with Improvements of at least equal value.

4.5 **Bank's Right to Enter.** Bank and its agents and representatives may enter upon the Real Property at all reasonable times to attend to Bank's interests and to inspect the Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

4.6 **Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance, or regulations and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Bank in writing prior to doing so and so long as, in Bank's sole opinion, Bank's interests in the Property are not jeopardized. Bank may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Bank, to protect Bank's interest.

**4.7 Duty to Protect.** Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**4.8 Access Laws.** (a) Grantor agrees that Grantor and the Property shall at all times strictly comply with the requirements of the federal Americans with Disabilities Act of 1990; the federal Fair Housing Amendments Act of 1988; and other federal, state, or local laws or ordinances related to disabled access; or any statute, rule, regulation, ordinance, order of governmental bodies and regulatory agencies, or order or decree of any court adopted or enacted with respect thereto, as now existing or hereafter amended or adopted (collectively, the "Access Laws"). At any time, Bank may require a certificate of compliance with the Access Law and Indemnification agreement in a form reasonably acceptable to Bank. Bank may also require a certificate of compliance with the Access Laws from an architect, engineer, or other third party acceptable to Bank. (b) Notwithstanding any provisions set forth herein or in any other document, Grantor shall not alter or permit any tenant or other Person to alter the Property in any manner which would increase Grantor's responsibilities for compliance with the Access Laws, without the prior written approval of Bank. In connection with such approval, Bank may require a certificate of compliance with the Access Laws from an architect, engineer or other Person's acceptable to Bank. (c) Grantor agrees to give prompt written notice to Bank of the receipt by Grantor of any claims of violation of any of the Access Laws and of the commencement of any proceeding or investigations which relate to compliance with any of the Access Laws. (d) Grantor shall indemnify, defend, and hold harmless Bank from and against any and all claims, demands, damages, costs, expenses, losses, liabilities, penalties, fines, and other proceedings, including without limitation, reasonable attorney fees and expenses arising directly or indirectly from our out of or in any way connected with any failure of the Property to comply with any of the Access Laws. The obligations and liabilities of Grantor under this section shall survive any termination, satisfaction, judgment, judicial or nonjudicial foreclosure proceeding, or delivery of a deed in lieu of foreclosure.

**4.9 Reappraisals.** Bank shall have the right to obtain at Grantor's cost and expense, reappraisals of the Property from any licensed or certified appraiser designated by Bank, from time to time (a) whenever such reappraisal may be required by any law, rule or regulation applicable to the conduct of Bank's business, or may be requested or directed by any governmental authority charged with the administration of such law, rule or regulation or Bank's compliance therewith, whether or not such request or direction has the force of law, (b) whenever required to comply with Bank's policies concerning appraisals, or (c) whenever reasonably deemed appropriate by Bank following the occurrence or during the continuation of an Event of Default.

## **5. HAZARDOUS SUBSTANCES.**

**5.1 Representations and Warranties.** Except as disclosed to and acknowledged by Bank in writing, Grantor represents and warrants that: (a) during the period of its ownership or operation of the Real Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any Person on, under, about or from the Property, except such use and storage as has been conducted in accordance with all applicable federal, state and local laws, regulations and ordinances; (b) it has no knowledge of, or reason to believe that there has been (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (ii) any actual or threatened litigation or claims of any kind by any Person relating to such matters. The representations and warranties contained herein are based on the Grantor's due diligence in investigating the Property for Hazardous Substances.

**5.2 Activities.** Except as agreed to by Bank in writing, Grantor agrees that it will not, and will not permit any tenant, contractor, agent or other authorized user of the Property to use generate, manufacture, store, treat, dispose of, or release any Hazardous Substance on, under, about or from the Property; provided, however, that Grantor and its contractors may use and store such Hazardous Substances as are necessary and customary in the construction of townhouses on the Property, so long as such use, storage and any other permitted activity is conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances.

**5.3 Inspections.** Grantor authorizes Bank and its agents to enter upon the Property to make such inspections and tests as Bank may deem appropriate to determine compliance of the Property with the provisions relating to Hazardous Substances. Any inspections or tests made by Bank shall be at the expense of Grantor and for

bank's purposes only and shall not be constructed to create any responsibility or liability on the part of Bank to Grantor or any other Person.

**5.4 Notice.** Grantor agrees to immediately notify Bank of Grantor becomes aware of (a) any Hazardous Substances or other environmental problem or liability with respect to the Property, or any adjacent property, or (b) any lien, action or notice of any governmental authority related to Hazardous Substances. At its own cost, Grantor will take all actions which are necessary or desirable to clean up any Hazardous Substances affecting the Property, including removal, containment, or any other remedial action required by applicable governmental authorities.

**5.5 Release and Indemnity.** Grantor hereby (a) release and waives any future claims against Bank for indemnity or contribution in the event it becomes liable for cleanup or other costs under any Environmental Laws, and (b) agrees to defend, indemnify and hold Bank harmless from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and costs and expenses (including attorney fees), arising directly or indirectly from or out of, or in any way connected with (i) the inaccuracy of the statements and information contained herein, (ii) any breach of any provisions of this Deed of Trust related to Hazardous Substances, (iii) any past, present or future use, generation, manufacture, storage, disposal, release, or threatened release of Hazardous Substances on or from the Property, (iv) the discovery of Hazardous Substances on the Property or on any other property which is caused by activities on the Property, and (v) the cleanup of Hazardous Substances from the Property or any such other properties. Grantor acknowledges that it will be solely responsible for all costs and expenses relating to the cleanup of Hazardous Substances from the Property or from any other properties which become contaminated with Hazardous Substances as a result of activities on or the contamination of the Property.

**5.6 Survival.** The provisions of this section of the Deed of Trust, including the obligation to indemnify, shall survive the repayment of the Indebtedness and other liabilities and obligations of Grantor under this Agreement, and the satisfaction and reconveyance of the lien of this Deed of Trust, and shall not be affected by Bank's acquisition of any interest in the Property, whether by foreclosure or otherwise.

**5.7 Definitions.** As used herein:

**"Environmental Laws"** means all local, state, and federal laws, rules, regulations, and ordinances pertaining to Hazardous Substances and environmental regulation, contamination or clean-up, all as now existing or hereafter amended or adopted (including, without limitation, the federal statutes known as the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Resource Conservation and Recovery Act of 1976, Superfund Amendments and Reauthorization Act of 1986 and the Hazardous Materials Transportation Act).

**"Hazardous Substances"** means (a) any substance or material now or hereafter defined or designated as hazardous, toxic or radioactive materials, waste or substance, or as a pollutant or contaminant (or designated by any other term), by any Environmental Law now or hereafter in effect; (b) asbestos and any substance or compound containing asbestos; (c) petroleum, natural gas, natural gas liquids, liquified natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) and ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources; (d) urea formaldehyde foam insulation; (e) polychlorinated biphenyls (PCBs); (f) radon, and (g) any other chemical, material, or substance, exposure to which (because of its quantity, concentrations, or physical or chemical characteristics) is limited or regulated for health and safety reasons by any governmental authority, or which poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment.

**6. DUE ON SALE - CONSENT BY BANK-PARTIAL RELEASES.** Except for sales in accordance with the terms of the Loan Agreement, Bank may, at its option, (a) declare immediately due and payable all sums secured by this Deed of Trust or (b) impose such conditions as Bank deems appropriate, upon the sale or transfer, without the Bank's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of the Real Property, or any right, title or interest therein; whether legal or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, lease, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding

title to the Real Property, or by any other method of conveyance of Real Property interest. If any Grantor is a corporation, partnership, limited liability company or other entity, transfer also includes any change in ownership of any of the voting stock, partnership interests, membership interests or other ownership interests, of Grantor. However, this option shall not be exercised by Bank if such exercise is prohibited by law.

If all pertinent conditions set forth in the Loan Agreement between the Bank, Grantor and certain other parties are met, Beneficiary will release an approximately 15 acre unimproved parcel from the lien of this Deed of Trust to Grantor in conjunction with a division of the Real Property into two tax lots.

OTHER PARTIES ARE ON NOTICE THAT EVEN IF BENEFICIARY AUTHORIZES THE RELEASE OF THE LIEN OF THIS DEED OF TRUST AS TO ANY PART OF THE REAL PROPERTY, THAT THE LIEN OF THIS DEED OF TRUST SHALL REMAIN IN FULL FORCE AND EFFECT AS TO ALL THE OTHER UNRELEASED PROPERTY.

## **7. TAXES AND LIENS.**

**7.1 Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens and encumbrances except Permitted Encumbrances (as defined below), the lien of taxes and assessments not due, and except as otherwise provided in this Deed of Trust.

**7.2 Right to Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Bank's interest in the property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Bank, deposit with Bank cash or a sufficient corporate surety bond or other security satisfactory to Bank in an amount sufficient to discharge the lien, plus any costs and attorneys' fees or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Bank and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Bank as an additional obligee under any surety bond furnished in the contest proceedings.

**7.3 Notice of Construction.** Grantor shall notify Bank at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds \$5,000.00. Grantor will upon request of Bank, furnish to Bank advance assurances satisfactory to Bank that Grantor can and will pay the cost of such improvements.

## **8. INSURANCE.**

**8.1 Maintenance of Insurance.** Grantor shall obtain and maintain such policies of insurance as Bank requires, including but not limited to the following: (a) property insurance with respect to all Improvements, Personal Property and any other insurable Property, covering loss by fire, theft and such other hazards as are now or hereafter covered by Special Form (also known as "all-risk") coverage, including earth movement, and covering such other hazards as Bank requires, in an amount equal to 100% of the full replacement cost value and sufficient to avoid application of any coinsurance clause, and with an acceptable mortgagee and/or lender loss payable clause in favor of Bank, which insurance shall, during the course of any construction be in a "builder's risk" completed value (non-reporting) form; (b) commercial general liability insurance on an occurrence basis, in such amounts as Bank requires, naming Bank and Trustee as additional insureds; (c) if the Real Property at any time becomes located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, flood insurance in such amounts as Bank requires; and (d) such other insurance, including but not limited to hazard, business interruption, loss of rents and boiler insurance, as Bank may reasonably require.

**8.2 Form of Policies.** All policies shall be written in form, amounts, coverages and basis reasonably acceptable to Bank and shall be issued by a company or companies reasonably acceptable to Bank. All policies shall include a provision that such policies will not be cancelled or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days prior written notice to Bank. Each policy

also shall include an endorsement providing that coverage in favor of Bank will not be impaired in any way by any act, omission or default of Grantor or any other Person and shall include the agreement of the insurer waiving all rights of setoff, counterclaim, and/or deduction against Grantor.

**8.3 Delivery of Policies.** Grantor shall furnish to Bank an original duplicate policy or, at Bank's option, a certificate of insurance in a form acceptable to Bank. At least thirty (30) days prior to the expiration date of each policy, Grantor shall furnish Bank a renewal policy, together with evidence that the renewal premium has been paid.

**8.4 Application of Proceeds.** Grantor shall promptly notify Bank of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$5,000.00. Bank may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Bank may, at its election, receive and retain the proceeds and apply the same to the reduction of the Indebtedness and/or the payment of any lien affecting the Property, or may apply the proceeds to the repair, restoration and replacement of the Property. In the event Bank elects to apply the insurance proceeds to the repair, restoration and replacement of the Property, Grantor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Bank. Bank shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration or, at Bank's option, the proceeds shall be disbursed in accordance with its usual practices for construction loans (in which case Bank shall be entitled to reasonable compensation for its services). Any proceeds which have not been disbursed within 180 days after their receipt and which Bank has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Bank under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Bank holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appeal.

**8.5 Unexpired Insurance at Sale.** Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Deed of Trust at any trustee's sale or other sale held under the provisions of this Deed of Trust, or at any foreclosure sale of such Property.

**8.6 Grantor's Report on Insurance.** Upon request of Bank, Grantor shall furnish to Bank a report on each existing policy of insurance showing: (a) the name of the insurer; (b) the risks insured; (b) the amount of the policy; (d) the property insured, the then current placement value of such property, and the manner of determining that value; and (e) the expiration date of the policy. Grantor shall, upon request of Bank, have an independent appraiser satisfactory to Bank determine the cash value replacement cost of the Property.

**8.7 Insurance Disclosure.**

#### **WARNING**

**Unless Grantor provides Bank with evidence of the insurance coverage as required herein, Bank may purchase insurance at Grantor's expense to protect Bank's interest. This insurance may, but need not, also protect Grantor's interest. If the Property becomes damaged, the coverage Bank purchases may not pay any claim Grantor makes or any claim made against Grantor. Grantor may later cancel this coverage by providing evidence that Grantor has obtained property coverage elsewhere.**

**Grantor is responsible for the cost of any insurance purchased by Bank. The cost of this insurance may be added to the Note balance. If the cost is added to the Note balance, the interest rate on the Note will apply to this added amount. The effective ate of coverage may be the date Grantor's prior coverage lapsed or the date Grantor failed to provide proof of coverage.**

**The coverage Bank purchases may be considerably more expensive than insurance Grantor can obtain on Grantor's own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.**

9. **TAX AND INSURANCE RESERVES.** Subject to any limitations set by applicable law, Bank may require Grantor to maintain with Bank reserves for payment of annual taxes, assessments, and insurance premiums, which reserves shall be created by advance payment or monthly payments of a sum estimated by Bank to be sufficient to produce, at least fifteen (15) days before due, amounts at least equal to the taxes, assessments, and insurance premiums to be paid. If fifteen (15) days before payment is due the reserve funds are insufficient, Grantor shall upon demand pay any deficiency to Bank. The reserve funds shall be held by Bank as a general deposit from Grantor, which Bank may satisfy by payment of the taxes, assessments, and insurance premiums required to be paid by Grantor as they become due. Bank shall have the right to draw upon the reserve funds to pay such items, and Bank shall not be required to determine the validity or accuracy of any items before paying it. Nothing in the Deed of Trust shall be construed as requiring Bank to advance other monies for such purposes, and Bank shall not incur any liability for anything it may do or omit to do with respect to the reserve account. Subject to any limitations set by applicable law, if the reserve funds disclose a shortage or deficiency, Grantor shall pay such shortage or deficiency as required by Bank. All amounts in the reserve account are hereby pledged to further secure the Indebtedness, and Bank is hereby authorized to withdraw and apply such amounts on the Indebtedness upon the occurrence of an Event of Default. Bank shall not be required to pay any interest or earnings on the reserve funds unless required by law or agreed to by Bank in writing. Bank does not hold the reserve funds in trust for Grantor, and Bank is not the agent of Grantor for payment of the taxes and assessments required to be paid by Grantor.

10. **BANK'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Bank's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Loan Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Loan Documents, Bank on Grantor's behalf (but shall not be obliged to) take any action that Bank deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Bank for such purposes will then bear interest at the Note Rate from the date incurred or paid by Bank to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and will be payable on demand. The Property also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Bank may be entitled on account of the default. Any such action by Bank shall not be construed as curing the default so as to bar Bank from any remedy that it otherwise would have had.

11. **WARRANTY; DEFENSE OF TITLE.**

11. **Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances, other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion which are accepted by Bank in writing (collectively, "Permitted Encumbrances"), and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Bank.

11.2 **Defense of Title.** Except for Permitted Encumbrances, Grantor warrants and will forever defend the title to the Property against the lawful claims of all Persons and agrees that there shall be no other liens or encumbrances against the Property. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Bank under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal property in such proceeding, but Bank shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Bank's own choice, and Grantor will deliver, or cause to be delivered, to Bank such instruments as Bank may request from time to time to permit such participation.

11.3 **Compliance with Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

12. **CONDEMNATION.**

12.1 **Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Bank may, at its election, require that all or any portion of the net proceeds of the award be applied to the Indebtedness or may permit the proceeds to be applied to the repair or restoration of the Property. If the proceeds are applied to repair or restoration, Bank shall, upon

satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust or, at Bank's option, the proceeds shall be disbursed by Bank in accordance with its usual practices for construction loans (in which case Bank shall be entitled to reasonable compensation for its services). The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees, of both the Trustee and Bank in connection with the condemnation.

12. **Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Bank in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Bank shall be entitled to participate in the proceeding and to be represented in the proceedings by counsel of its own choice, and Grantor will deliver or cause to be delivered to Bank such instruments as may be requested by it from time to time to permit such participation.

13. **IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.**

13.1 **Current Taxes, Fees and Charges.** Upon request by Bank, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Bank to perfect and continue Bank's lien on the Real Property. Grantor shall reimburse Bank for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

13.2 **Taxes.** The following shall constitute taxes to which this section applies: (a) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of trust; (b) a specific tax on Grantor which it is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (c) a tax on this type of Deed of Trust chargeable against the Bank or the holder of the Note; and (d) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

13.3 **Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default (as defined below), and Bank may exercise any or all of its available remedies for an Event of Default as provided below, unless the Grantor either (a) pays the tax before it becomes delinquent, or (b) contests the tax as provided above in the Taxes and Liens section and deposits with Bank cash or a sufficient corporate surety bond or other security satisfactory to Bank.

14. **SECURITY AGREEMENT; FINANCING STATEMENTS.**

14.1 **Security Agreement.** This instrument shall constitute a security agreement to the extent any of the Property constitutes inventory, equipment, fixtures, accounts, general intangibles, instruments, chattel paper, deposit accounts or other personal property, and Bank shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

14.2 **Security Interest.** Upon request by Bank, Grantor shall take whatever action is required by Bank to evidence, perfect, protect, enforce and continue Bank's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Bank may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor authorizes Bank to file any financing statements and to take all other actions which bank deems advisable to evidence, perfect or continue its security interest in any collateral for the Indebtedness. Grantor shall reimburse Bank for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall assemble the Personal Property in a manner and at a place reasonably convenient to Grantor and bank and make it available to Bank within three (3) days after receipt of written demand from Bank.

14.3 **UCC Financing Statement Information.** The mailing addresses of Grantor (debtor) and Bank (secured party), from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code), are as stated on the first page of this Deed of Trust.

15. **ASSIGNMENT OF LEASES AND RENTS.** Grantor assigns and conveys to Bank all of Grantor's right, title, and interest in and to all present and future Leases and Rents. Bank grants to Grantor a license to collect the Rents

and profits, which license may be revoked at Bank's option and shall be automatically revoked upon acceleration of all or part of the Indebtedness.

**15.1 Grantor's Representations and Warranties.** Grantor represents and warrants that (a) Grantor has good right, title, and interest to the Leases and Rents, free of all liens, encumbrances, and claims except those disclosed to and accepted by Bank in writing; (b) Grantor has full right, power, and authority to enter into and perform this assignment; (c) the Leases are in full force and effect and have not been modified or amended; (d) the Rents have not been waived, discounted, compromised, setoff or paid more than one month in advance; (e) there are no other assignments, transfers, pledges or encumbrances of any Leases or Rents; and (f) neither Grantor nor the lessees and tenants are in default under the Leases.

**15.2 Grantor's Agreements.** Grantor shall (a) fulfill or perform each and every terms, covenant and provision of the Leases to be fulfilled or performed by the lessor thereunder; (b) give prompt notice to Bank of any notice received by Grantor of default under any Lease or of any alleged default or failure of performance that could become a default thereunder, together with a complete copy of such notice; and (c) enforce, short of termination thereof, the performance or observance of each and every term, covenant and provision of each Lease to be performed or observed by the lessees and tenants thereunder. Grantor, without the prior written consent of Bank, shall not: (d) cancel, modify or alter, or accept the surrender of, any Lease; (e) assign, transfer, pledge or encumber, the whole or any part of the Leases and Rents to anyone other than Bank; (f) accept any Rents more than one month in advance of the accrual thereof; (g) do not permit anything to be done, the doing of which, or omit or refrain from doing anything, the omission of which, could be a breach or default under the terms of any Lease or a basis for termination thereof, or (h) enter into any new tenant leases.

**15.3 Bank Not Liable.** Bank does not assume and shall not be liable for any obligation of the lessor under any of the Leases and all such obligations shall continue to rest upon Grantor as though this assignment had not been made. Neither the assignment of the Leases and Rents nor the exercise by Bank of any of its rights or remedies hereunder or in connection herewith, prior to Bank obtaining actual possession of the Property, shall constitute Bank a "mortgagee in possession" or otherwise make Bank responsible or liable in any manner with respect to the Property or the occupancy, operation or use thereof.

**15.4 Bank's Rights to Collect Rents.** In addition to the other remedies available to Bank, Bank shall have the right at any time, if an Event of Default has occurred, to collect and receive the Rents. For this purpose, Bank is hereby given and granted the following rights, powers and authority: (a) Bank may send notices to any and all tenants of the Property advising them of the assignment and directing all Rents to be paid directly to Bank or Bank's agent; (b) Bank may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other Persons liable therefor, all of the Rents; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; collect the Rents and remove any tenant or tenants or other Persons from the Property; (c) Bank may enter upon the Property to maintain the Property and keep the same in repair; to pay the costs thereof and of all services of all employees, including their equipment, and of all continuing costs and expenses of maintaining the Property in proper repair and condition, and also to pay all taxes, assessments and water utilities, and the premiums on fire and other insurance affected by Bank on the Property; (d) Bank may do any and all things to execute and comply with applicable state laws and also all other laws, rules, orders, ordinances and requirements of all other governmental agencies affecting the Property; (e) Bank may rent or lease the whole or any part of the Property for such term or terms and on such conditions as Bank may deem appropriate; (f) Bank may engage such agent or agents as Bank may deem appropriate, either in Bank's name or in Grantor's name, to rent and manage the Property, including the collection and application of Rents; and (g) Bank may do all such other things and acts with respect to the Property as Bank may deem appropriate and may act exclusively and solely in the place and stead of Grantor and to have all of the powers of Grantor for the purposes stated above. Bank shall not be required to do any of the foregoing acts or things, and the fact that Bank shall have performed one or more of the foregoing acts or things shall not require Bank to do any other specific act or thing.

**15.5 Application of Rents.** All costs and expenses incurred by Bank in connection with the Property shall be for Grantor's account and Bank may pay such costs and expenses from the Rents. Bank, in its sole discretion, shall determine the application of any and all Rents received by it; however, any such Rents received by Bank which are not applied to such costs and expenses shall be applied to the Indebtedness. All expenditures made by Bank and

not reimbursed from the Rents shall become a part of the Indebtedness secured by this Deed of Trust and shall be payable on demand, with interest at the Note Rate from date of expenditure until paid.

**16. FURTHER ASSURANCES; ATTORNEY-IN-FACT.**

**16.1 Further Assurances.** At any time, and from time to time, upon request of Bank, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Bank or to Bank's designee, and when requested by Bank, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Bank may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Bank, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (a) the obligations of Grantor under the Note, this Deed of Trust, and the Loan Documents, and (b) the liens and security interests created by this Deed of Trust on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or agreed to the contrary by Bank in writing, Grantor shall reimburse Bank for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**16.2 Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Bank may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Bank as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Bank's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**17. FULL PERFORMANCE.** If Grantor pays all the Indebtedness when due, terminates the availability of advances, and Grantor otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Bank shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Grantor suitable statements of termination of any financing statement on file evidencing Bank's security interest in the Rents and Personal Property. Grantor shall pay Bank a reasonable reconveyance fee for said reconveyance. The grantee in any such reconveyance may be described as the "person or persons legally entitled thereto."

**18. DEFAULT.** Each of the following, at the option of Bank, shall constitute an event of default ("Event of Default") under this Deed of Trust:

**18.1 Loan Document Default.** Any default or event of default under or any failure of Grantor or any other Loan Party to pay, perform, or comply with any term, obligation, covenant or condition contained in this Deed of Trust, the Note, the Loan Agreement, or in any of the other Loan Documents, or in any of the other Loan Documents in connection with the Construction Loan Agreement executed by Grantor and other parties in favor of Bank.

**18.2 Default on Other Payments.** Failure of Grantor within the time required by this Deed of Trust to make payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

**18.3 Misrepresentations.** Any warranty, representation or statement made or furnished to Bank by or on behalf of any Loan Party under this Deed of Trust, the Note or the loan Documents is, or at the time made or furnished was, false in any material respect.

**18.4 Foreclosure, Etc.** Commencement of foreclosure or forfeiture proceedings, whether by judicial or nonjudicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or any governmental agency against any of the Property or the occurrence of any event which gives any creditor the right to take such action.

**18.5 Defective Documents.** This Deed of Trust or any of the Loan Documents ceases to be in full force and effect (including the failure of this Deed of Trust or any Loan Document to create a valid and perfected security interest or lien) at any time and for any reason.

**19. RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of any Event of Default and at any time thereafter, Trustee or Bank, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law.

**19.1 Accelerate Indebtedness.** Bank shall have the right at its option to declare the entire Indebtedness immediately due and payable, including any prepayment fee or penalty which Grantor would be required to pay; provided, however, if any proceeding under any bankruptcy or insolvency laws is commenced by or against Grantor, or any Guarantor, the Indebtedness shall automatically become due and payable in full.

**19.2 Foreclosure.** With respect to all or any part of the Real Property, the Trustee and Bank shall have the right to foreclose by notice and sale, and to foreclose by judicial foreclosure in either case in accordance with and to the full extent provided by applicable law. If this Deed of Trust is foreclosed (whether by judicial foreclosure or otherwise), Bank will, to the fullest extent permitted by applicable law, be entitled to a judgment which will provide that if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for the amount of the unpaid balance of the judgment.

**19.3 UCC Remedies.** With respect to all or any part of the Personal Property, Bank shall have all the rights and remedies of a secured party under the Uniform Commercial Code, including without limitation the right to recover any deficiency in the manner and to the full extent provided by applicable law.

**19.4 Collect Rents.** Bank shall have the right, without notice to Grantor, to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Bank's costs, against the Indebtedness. In furtherance of this right, Bank may require any tenant or other user of the Property to make payments of rent or use fees directly to Bank. If the Rents are collected by Bank, then grantor irrevocably designates Bank as Grantor's attorney-in-fact to endorse instruments received in payment hereof in the name of Grantor and to negotiate the same and collect the proceeds. This power is irrevocable and is coupled with an interest. Payments by tenants or other users to Bank in response to Bank's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Bank may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**19.5 Appoint Receiver.** Bank shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Bank's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Bank shall not disqualify a Person from serving as a receiver.

**19.6 Tenancy at Sufferance.** If Grantor remains in possession of the Property after the Property is sold as provided above or Bank otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Bank or the purchaser of the Property and shall, at Bank's option, either (a) pay a reasonable rental for the use of the Property, or (b) vacate the Property immediately upon the demand of Bank.

**19.7 Other Remedies.** Trustee or Bank shall have any other right or remedy provided in this Deed of Trust, the Note, the other Loan Documents, or by law including without limitation the right to take possession of the Property and to take any and all actions necessary to complete construction of the improvements being constructed with the proceeds of the Note.

**19.8 Notice of Sale.** Bank shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of Personal Property made be made in conjunction with any sale of the Real Property.

**19.9 Sale of the Property.** To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Bank shall be free to sell all or any party of the Property together or separately, in one sale or by separate sales. Bank shall be entitled to bid at any public sale on all or any portion of the Property.

**19.10 Waiver; Election of Remedies.** A waiver by any party of a breach of a provision of this Deed of Trust shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Bank to pursue any remedy provided in this Deed of Trust, the Note, in any Loan Document, or provided by law shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust after failure of Grantor to perform shall not affect Bank's right to declare a default and to exercise any of its remedies.

**19.11 Attorney Fees; Expenses.** Whether or not any court action is involved, all reasonable expenses incurred by Bank which in Bank's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note Rate from the date of expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Bank's attorney fees whether or not there is a lawsuit, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Without limiting the foregoing, if any suit or action is commenced to construe or to enforce any of the terms of this Deed of Trust, Bank shall be entitled to recover such sums as the court may adjudge reasonable as attorney fees. As used in this Deed of Trust, "attorney fees" include attorney fees whether or not there is a lawsuit and include without limitation attorney fees at trial, in any appellate proceeding, proceeding under the bankruptcy code (including efforts to modify or vacate any automatic stay or injunction) or receivership, and post-judgment fees of enforcing any judgment. Grantor also will pay any court costs, in addition to all other sums provided by law.

**19.12 Rights of Trustee.** Trustee shall have all of the rights and duties of Bank as set forth in this section.

## **20. POWERS AND OBLIGATIONS OF TRUSTEE.**

**20.1 Powers of Trustee.** In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Bank and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Bank under this Deed of Trust.

**20.2 Obligation to Notify.** Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Bank, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

**20.3 Trustee.** Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Bank shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

**20.4 Successor Trustee.** Bank, at Bank's option, may from time to time appoint a successor Trustee in accordance with the requirements of applicable law. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law.

**21. NOTICES TO GRANTOR AND OTHER PARTIES.** Any notice under this Deed of Trust shall be in writing and shall be effective when actually delivered or, if mailed, shall be deemed effective when deposited in the United States mail first class, certified or registered mail, postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Bank's address, as shown near the beginning of this Deed of trust. For notice purposes, Grantor agrees to keep Bank and Trustee informed at all times of Grantor's current address.

**22. GRANTOR'S WAIVERS.** Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Bank from bringing any action against Grantor, including a

claim for deficiency to the extent Bank is otherwise entitled to a claim for deficiency, before or after Bank's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

## **23. MISCELLANEOUS PROVISIONS.**

**23.1 Amendments.** This Deed of Trust, together with any Loan Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**23.2 Subrogation.** If, and to the extent that, the proceeds of the Note are used to pay, satisfy or discharge any existing lien on the Property, Bank shall be subrogated to the rights, including the lien priority, of the holder of such existing lien, whether or not such existing lien is released.

**23.3 Accounts and Records.** Grantor will maintain a standard system of accounting administered in accordance with generally accepted accounting principles. Bank shall have the right to examine the books of account of Grantor, and to discuss the affairs, finances, and accounts of Grantor with Grantor's representatives, all at such reasonable times and intervals as Bank may desire. Grantor will furnish to Bank from time to time such financial and other information as Bank requests regarding Grantor, any other Loan Party, and the Property.

**23.4 Applicable Law.** This Deed of Trust shall be governed by, construed and enforced in accordance with the laws of the State of Oregon. However, in the event that the enforceability or validity of any provision of this Deed of Trust is challenged or questioned, such provision shall be governed by whichever applicable state or federal law would uphold or would enforce such challenged or questioned provision. The loan transaction which is evidenced by the Note and this Deed of Trust (which secures the Note) has been applied for, considered, approved, and made in the State of Oregon. **IF THERE IS A LAWSUIT, GRANTOR, AT BANK'S OPTION, AGREES TO SUBMIT TO THE JURISDICTION OF ANY FEDERAL OR STATE COURT LOCATED IN OR HAVING JURISDICTION OVER JACKSON COUNTY, OREGON; PROVIDED, HOWEVER, THAT THIS SHALL NOT AFFECT BANK'S RIGHT TO BRING PROCEEDINGS AGAINST GRANTOR IN THE COMPETENT COURTS OF ANY OTHER JURISDICTION.**

**23.5 Waiver of Jury Trial.** **GRANTOR HEREBY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO ANY OF THE LOAN DOCUMENTS, THE OBLIGATIONS THEREUNDER, ANY COLLATERAL SECURING THE INDEBTEDNESS, OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. GRANTOR ACKNOWLEDGES MW AGREES THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.**

**23.6 Caption Headings.** Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

**23.7 Assignments and Participations.** Bank may at any time sell, assign, transfer, negotiate, grant participations in, or otherwise dispose of, to any one or more other lenders all or any part of the indebtedness of Grantor at any time outstanding under the Note, this Deed of Trust, or any of the Loan Documents and in connection therewith disclose any information Bank may have concerning Grantor.

**23.8 Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Bank in any capacity, without the written consent of Bank.

**23.9 Multiple Parties.** If Grantor consists of more than one Person, all obligations of Grantor under this Deed of Trust shall be joint and several, and all references to Grantor shall mean each and every Grantor. Where any one or more of the parties are corporations, partnerships, limited liability companies, or other entities, it is not necessary for Bank to inquire into the powers of any of the parties or of the officers, directors, partners, agents, managers or members acting or purporting to act on their behalf.

**23.10 Severability.** If a court of competent jurisdiction finds any provision of this Deed of Trust to be invalid or unenforceable as to any Person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other Persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Deed of Trust in all other respects shall remain valid and enforceable.

**23.11 Successors and Assigns.** Subject to the limitations stated in this Deed of Trust on transfer of Grantors interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a Person other than Grantor, Bank, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the Indebtedness.

**23.12 Time Is of the Essence.** Time is of the essence in the performance of this Deed of Trust.

**23.13 Waivers and Consents.** Bank shall not be deemed to have waived any rights under this Deed of Trust (or under the Loan Documents) unless such waiver is in writing and signed by Bank. No delay or omission on the part of Bank in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Deed of Trust shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. No prior waiver by Bank, nor any course of dealing between Bank and Grantor, shall constitute a waiver of any of Bank's rights or any of Grantor's obligations as to any future transactions. Whenever consent by Bank is required in this Deed of Trust, the granting of such consent by Bank in any instance shall not constitute continuing consent to subsequent instances where such consent is required.

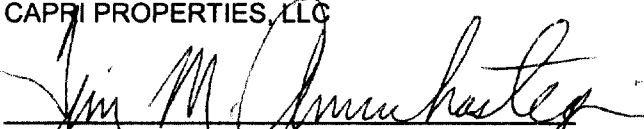
**23.14 Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Oregon as to all Indebtedness secured hereby.

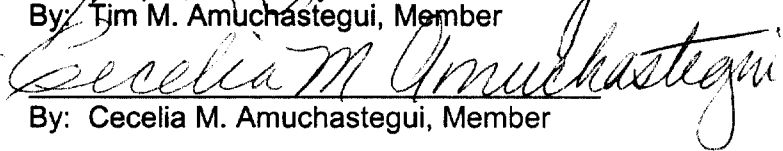
**24. USE OF PROPERTY.** This Deed of Trust is not a residential trust deed. The Property shall not at any time be occupied as the principal residence of Grantor, Grantor's spouse or Grantor's minor or dependent child.

**GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.**

**GRANTOR:**

CAPRI PROPERTIES, LLC

By:  Tim M. Amuchastegui, Member

By:  Cecelia M. Amuchastegui, Member

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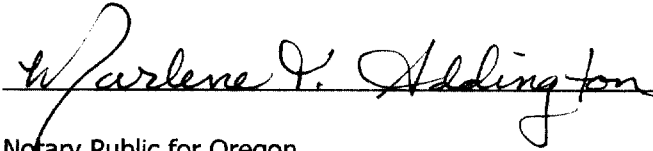
**NOTARY ACKNOWLEDGEMENT  
ATTACHED TO DOCUMENT DEED OF TRUST**

File No: **7021-837836 (MTA)**

Date: **July 18, 2006**

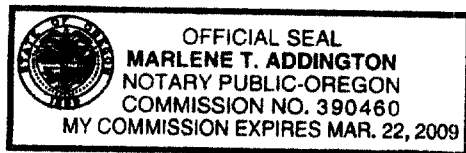
STATE OF    Oregon                                 )  
                                                                      )ss.  
County of    Klamath                                )

This instrument was acknowledged before me on this 17<sup>th</sup> day of July, 2006  
by Tim M. Amuchastegui and Cecelia M. Amuchastegui as Members of his sole and separate property, on  
behalf of the Limited Liability Company.



Notary Public for Oregon

My commission expires: March 22, 2009



**REQUEST FOR FULL RECONVEYANCE**  
(To be used only when obligations have been paid in full)

To: \_\_\_\_\_, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. You are hereby requested. upon payment of all sums owing to you, to reconvey without warranty, to the persons entitled thereto, the right, title and interest now held by you under the Deed of Trust.

Date: \_\_\_\_\_

Beneficiary: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT "A"

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

Those portions of Tracts 13, 14, 15 and 16 of the Altamont Ranch Tracts located in the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  of Section 10, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, a portion of that certain Parcel 3 of Quitclaim Deed dated November 21, 1988 to Glacier Park Company from The Burlington Northern Railroad Company, recorded in Book M89 page 9296 et seq., records of said Klamath County, Oregon, described as follows:

Beginning at the intersection of the South line of Bristol Avenue (Sixth Street), according to the recorded plat thereof, with a line drawn parallel with and distant 25.0 feet Easterly of, as measured at right angles from The Burlington Northern and Santa Fe Railway Company (formerly Great Northern Railway Company) centerline of the Interchange Track with the Southern Pacific (Formerly Oregon, Central and Eastern), as now located and constructed; thence Southwesterly parallel with said track centerline to the intersection with the East line of said Tract 13; thence Southerly along the East line of Tract 13 to the Southeast corner of said Tract 16; thence Westerly along the South line of said Tract 16 to the intersection with a line drawn parallel with and distant 15.0 feet Westerly of, as measured at right angles from the Track centerline of the Southeasterly Leg of the Wye connecting said Southern Pacific (formerly Oregon, Central and Eastern) Interchange Track centerline with the Burlington Northern and Santa Fe Railway Company's Main Track centerline; thence Northeasterly parallel with said Wye Track centerline to the intersection with a line drawn with and distant 15.0 feet Southeasterly of, as measured at right angles from the Track centerline of the Northwesterly Leg of the Wye connecting said Southern Pacific (formerly Oregon, Central and Eastern) Interchange Track centerline with the Burlington Northern and Santa Fe Railway Company's Main Track centerline; thence Southwesterly parallel with said Northwesterly Leg of the Wye Track centerline to the intersection with a line drawn parallel with and distant 100.0 feet Northeasterly of, as measured at right angles from said Railway Company's Main Track centerline; thence Northwesterly parallel with said Main Track centerline to the intersection with the West line of said Tract 15; thence Northerly along said West line of Tract 15 to the Southwest corner of said Tract 14; thence Easterly along the South line of Said Tract 14 to the intersection with a line drawn parallel with and distant 500.0 feet Westerly, of as measured at right angles from the East line of said Tracts 13 and 14; thence Northerly parallel with said Tracts 13 and 14 to the intersection with the said South line of Bristol Avenue; thence Easterly along said South line of Bristol Avenue to the point of beginning.

Tax Parcel Number: 18091