

2007-009359

Klamath County, Oregon



05/23/2007 03:26:06 PM

Fee: \$141.00

MTCT8768-KR

PREPARED BY AND
AFTER RECORDING, RETURN TO:

Textron Financial Corporation
Attn: Lee Dickerson
11575 Great Oaks Way, Suite 210
Alpharetta, GA 30022

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

Cover Sheet

Date: May 22, 2007

Grantor: **Nelmstar, L.L.C.**
an Idaho Limited Liability Company

Grantor's
Notice Address: 25651 Atlantic Ocean Dr.; Suite A-16
Lake Forest, CA 92630
Attn: Ben A. Nelms

Trustee: AmeriTitle
Trustee's
Notice Address: 300 Klamath Avenue
Klamath Falls, OR 97601

Lender: **TEXTRON FINANCIAL CORPORATION,**
a Delaware corporation

Lender's
Notice Address: 11575 Great Oaks Way, Suite 210
Alpharetta, GA 30022
Attention: Lee Dickerson

Note Amount: \$120,100.00

Maturity Date: May 22, 2010, or such earlier date provided in the Note

State: Oregon

Financing
Statement: This Instrument is a Financing Statement and Fixture Filing under the
Uniform Commercial Code, as enacted in the State of Oregon.

{TP257080;1}

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

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") made as of the 22 day of May, 2007, by **Nelmstar, L.L.C.**, an Idaho Limited Liability Company ("Grantor"), whose address is 25651 Atlantic Ocean Dr., Suite A-16, Lake Forest, CA 92630, to AmeriTitle, ("Trustee") whose address is 300 Klamath Avenue, Klamath Falls, OR 97601, for the benefit of **TEXTRON FINANCIAL CORPORATION**, a Delaware corporation, having an office at 11575 Great Oaks Way, Suite 210, Alpharetta, GA 30022 ("Lender").

Background

Grantor has executed and delivered to Lender a promissory note (the "Note") in the principal amount of One Hundred Twenty Thousand, One Hundred and no/100 Dollars (\$120,100.00) to be secured by certain real property (the "Real Property") described in Exhibit A attached hereto and other Property (hereinafter defined). The Note represents part of the indebtedness evidenced by and/or relating to the Builder Security Agreement dated between Grantor and Lender and the Finance Plan dated (together, as the same may hereafter be amended or modified, the "Builder Security Agreement"). This Deed of Trust secures repayment of the Note, together with all other amounts, covenants, obligations, sums, expenses and liabilities due or to become due to Lender hereunder or under any other instrument evidencing, securing or executed in connection with the loans evidenced by and/or relating to the Builder Security Agreement (all of the foregoing agreements and instruments, together with the Builder Security Agreement and this Deed of Trust, collectively, the "Loan Documents"), and together with all interest on said indebtedness, obligations, liabilities, amounts, sums and expenses (all of the foregoing, collectively, the "Indebtedness"),

Granting Clause

In consideration of the Loan and as security for the Note (defined below) and all of the Secured Obligations (defined below), Grantor hereby irrevocably GRANTS, BARGAINS, SELLS, TRANSFERS and CONVEYS to Trustee, its successors and assigns, forever, and GRANTS to Trustee, in trust for the benefit of the Lender, with POWER OF SALE, all of the following Real Property and grants a security interest in the following which constitutes personal property, whether the same be now owned or hereafter acquired (the "Property"):

- (a) The Real Property described in Exhibit A, lying and being in the County of Klamath, State of Oregon, and all rights to the land lying in alleys, streets, and roads adjoining or abutting the Property;
- (b) All buildings, improvements and tenements now or hereafter located on the Real Property, including, without limitation, any manufactured housing;
- (c) All fixtures and articles of property now or hereafter attached to, or used or adapted for use in the ownership, development, operation or maintenance of, the buildings, improvements and Real Property (whether such items are leased, are owned or subject to any title retaining or security instrument, or are otherwise used or possessed), including without limitation any manufactured housing attached to the Real Property, and all heating, cooling, air conditioning, ventilating, refrigerating, plumbing, generating, power, lighting, laundry, maintenance, incinerating, lifting, cleaning, fire prevention and extinguishing, security and access control, cooking, gas, electric and communication fixtures, equipment and apparatus, all engines, motors, conduits, pipes, pumps, tanks, ducts, compressors, boilers, water heaters and furnaces, all ranges, stoves, disposers, refrigerators and other appliances, all escalators and elevators, all baths and sinks, all cabinets, partitions, mantels, built-in mirrors, window shades, blinds, screens, awnings, storm doors, windows and sash, all carpeting, underpadding, floor covering, paneling and draperies, all furnishings of public spaces, halls and lobbies, and all shrubbery and plants; all of which items shall be deemed part of the Real Property and not severable wholly or in part without material injury to the freehold;
- (d) All easements, all access, air and development rights, all minerals and oil, gas and other hydrocarbon substances, all royalties, all water, water rights and water stock, and all other rights, hereditaments, privileges, permits, licenses, franchises and appurtenances now or hereafter belonging or in any way appertaining to the Real Property;
- (e) All present and future contracts and policies of insurance which insure the Real Property or any building, structures or improvements thereon, or any such fixtures or personal property, against casualties and theft, and all monies and proceeds and rights thereto which may be or become payable by virtue of any such insurance contracts or policies;
- (f) All of the rents, revenues, issues, profits and income of the Real Property, and to all present and future leases and other agreements for the occupancy or use of all or any part of the Real Property, including without limitation all cash or security deposits, advance rentals and deposits or payments of similar nature, and all guaranties of tenants' or occupants'

performances under such leases and agreements, and all present and future management agreements or contracts regarding the Real Property;

(g) All general intangibles relating to the development or use of the Real Property, including without limitation all permits, licenses and franchises, all names under or by which the Property may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks, trade names, logos and good will in any way relating to the Property;

(h) All awards, compensation and settlements in lieu thereof made as a result of the taking by power of eminent domain of the whole or any part of the Property, including any awards for damages sustained to the Property for a temporary taking, change in grade of streets or taking of access; and

(i) All products and proceeds of all of the foregoing.

All of the Property hereinabove described, real, personal and mixed, whether affixed or annexed or not, and all rights hereby conveyed and granted are intended to be as a unit and are hereby understood and agreed and declared to be appropriated to the use of the Property, and shall for the purposes of this Deed of Trust be deemed to be real estate and conveyed and granted hereby.

THIS CONVEYANCE is intended to operate and is to be construed as a deed passing title to the Property to the Trustee for the benefit of the Lender, as security for the repayment of the Indebtedness herein defined, and is made under those provisions of the existing laws of the State of Oregon relating to deeds of trust, and is given to secure the following (collectively the "Secured Obligations"):

- (1) Payment of the principal and interest of the Note;
- (2) Payment of all sums advanced to protect the security of and the Lender's interests under this Deed of Trust, including but not limited to the payment of taxes on the Property, insurance premiums for insurance for the Property, payment of principal and interest on prior liens and payment of expenses, attorneys' fees, together with interest thereon as herein provided;
- (3) Payment of all the sums which are or which may become owing under the Loan Documents;
- (4) Performance of all of Grantor's other obligations under the Loan Documents; and
- (5) Payment of the principal and interest on all other future loans or advances made by Lender to Grantor when the promissory note evidencing the loan or advance specifically states that it is secured by this Deed of Trust, including all modifications, extensions, renewals, and replacements of any such future loan or advance.

As used herein, the term "Loan Documents" means the Note, the Builder Security Agreement, this Deed of Trust, any loan agreement and Uniform Commercial Code Financing Statements executed in connection herewith, and any other instrument or document evidencing or securing the Loan or otherwise executed in connection therewith, together with all modifications, extensions, renewals and replacements thereof.

IT IS FURTHER REPRESENTED, WARRANTED, COVENANTED AND AGREED AS FOLLOWS:

ARTICLE I TITLE AND USE

Section 1.1 Warranty of Title. Grantor represents and warrants to Lender that: (a) Grantor has good and marketable title in fee simple to the Real Property and is the sole and absolute owner of all other Property; (b) the Property is free from liens, encumbrances, exceptions or other charges of any kind whatsoever other than non-delinquent installments of ad valorem property taxes and special assessments (the "Permitted Exceptions"), if any, permitted under the policy of Lender's title insurance issued to Lender in connection with this Deed of Trust and any other liens, encumbrances, exceptions or charges expressly permitted by the terms of this Deed of Trust, and no others, whether superior or inferior to this Deed of Trust, will be created or suffered to be created by Grantor during the life of this Deed of Trust without the prior written consent of Lender, provided, however, that the recording of any future lease by a tenant or its Lender in the ordinary course of business is permitted; (c) no default on the part of Grantor or, to the best of Grantor's knowledge, any other person exists under any of the Permitted Exceptions and as applicable all are in full force and effect and in good standing, without modification; (d) Grantor will comply

with the terms of the Permitted Exceptions and will not modify the same without Lender's written consent; and (e) Grantor has the right to grant, transfer, convey and assign the Property as herein provided and will forever warrant and defend the Property unto Lender against all claims and demands of any other person whomsoever, subject only to said non-delinquent installments of taxes and assessments and the Permitted Exceptions.

Section 1.2 **Not Homestead Property; Not Community Property.** Grantor represents and warrants that the Property is not the homestead of Grantor. Grantor further represents that the Property is not community property.

ARTICLE II GRANTOR'S COVENANTS

Section 2.1 **Payment of the Indebtedness; Future Advances.** Grantor shall punctually pay the Indebtedness at the times and in the manner provided in the Note and the other Loan Documents, all in lawful money of the United States of America, including, but not limited to all advances. The Note, the Builder Security Agreement and this Deed of Trust shall evidence and this Deed of Trust shall cover and be security for all advances and future advances that may be made by Lender to Grantor any time or times hereafter and intended by Grantor and Lender to be so evidenced and secured, and such Advances shall be added as part of the Indebtedness. All such future advances and readvances shall be made between the date hereof and the date this is fifteen (15) years from the date hereof. Grantor acknowledges and agrees that this provision regarding future advances shall not obligate the Lender to fund any such additional advances.

Section 2.2 **Title to the Property.** Grantor shall preserve its fee simple title to the Real Property, free and clear of liens and encumbrances, except the Permitted Encumbrances, and Grantor will forever warrant and defend the same and the validity and priority of this Deed of Trust to Lender against all claims whatsoever.

Section 2.3 **Maintenance of the Property.** Grantor shall maintain the Property in good condition, working order and repair, comply with all laws, ordinances, and regulations of any governmental authority claiming jurisdiction over the Property, and comply with the requirements of any governmental authority claiming jurisdiction over the Property within 30 days (or less if the order so requires) after an order containing such requirement has been issued by any such authority. Grantor shall permit Lender to enter upon and inspect the Property without prior notice at all reasonable hours. Grantor shall not, without the prior consent of Lender, (a) change the use of the Property or cause or permit the use or occupancy of any part of the Property to be discontinued if such discontinuance would violate any zoning or other law, ordinance or regulation; (b) consent to any zoning reclassification, modification or restriction affecting the Property; (c) threaten, commit or permit any waste, structural or material alteration, demolition or removal of the Property or any portion thereof; or (d) take any steps whatsoever to convert the Property, or any portion thereof, to a condominium or cooperative form of ownership.

Section 2.4 **Insurance.**

(a) **Coverages Required.** Grantor will keep or cause to be kept the insurance coverages provided for in the Loan Documents or as otherwise required by the Lender from time to time.

(b) **Policies.** Each insurance policy will be in form acceptable to Lender, and will be issued by a company acceptable to Lender, which company shall, among other things, be:

(i) duly authorized to provide such insurance in the state in which the Property is located, and

(ii) unless the Loan Documents specify other ratings, insurers shall be rated "A-" or better with a size rating of "V" or larger by A.M. Best Company in its most recent publication of ratings (provided, however, that if A.M. Best Company changes its designations, the basis for its ratings or ceases to provide ratings, Lender shall be entitled to select replacement ratings in the exercise of its reasonable business judgment).

Each hazard insurance policy will include a Lender endorsement in favor of and in form acceptable to Lender, and each liability insurance policy will name Lender as an additional insured. All required policies will provide for at least thirty (30) days' written notice to Lender prior to the effective date of any cancellation or material amendment, which term shall include any reduction in the scope or limits of coverage. Grantor shall furnish to Lender the complete original of each required insurance policy, or a certified copy thereof together with a certificate of insurance setting forth the coverage, the limits of liability, the carrier, the policy number and the expiration date. As security for the Indebtedness, Grantor hereby assigns to Lender all required insurance policies, together with all proceeds thereof, rights thereto and all unearned premiums returnable upon cancellation.

(c) Payment; Renewals. Grantor shall promptly furnish to Lender all renewal notices relating to insurance policies. Grantor will pay or cause to be paid all premiums on insurance policies directly to the carrier. At least thirty (30) days prior to the expiration date of each such policy, Grantor shall furnish to Lender a renewal policy in a form acceptable to Lender, together with evidence that the renewal premium has been paid.

(d) Lender's Right to Obtain Insurance. If the Grantor fails to maintain any of the insurance coverages described above, the Lender may obtain insurance coverage, at Lender's option and at Grantor's expense. The Lender is under no obligation to purchase any particular type or amount of coverage. Therefore such coverage shall cover Lender, but might or might not protect the Grantor, Grantor's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Grantor acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Grantor could have obtained. Any amounts disbursed by Lender under this Section 2.4 shall become additional debt of the Grantor secured by this Deed of Trust; shall bear interest at the Note rate from the date of disbursement and shall be payable, with interest, within thirty (30) days after the date of the Notice of Placement of Insurance sent by the Lender.

Section 2.5 Condemnation. Grantor shall notify Lender immediately of the pendency of any proceedings for the condemnation or taking of the Property or any portion thereof. Lender may participate in such proceedings, and Grantor shall deliver to Lender all instruments requested by Lender to permit such participation. Grantor hereby authorizes Lender, during all periods in which an Event of Default remains uncured, to collect, receive and retain the Proceeds of any such condemnation and to make any compromise or settlement in connection with such proceedings, subject to the provisions of this Deed of Trust. Grantor shall not adjust, compromise, settle or enter into any agreement with respect to such proceedings without the prior written consent of Lender. All Proceeds of any condemnation, or purchase in lieu thereof, of the Property or any portion thereof are hereby assigned to and shall be paid to Lender. Grantor hereby authorizes Lender to collect and receive such Proceeds, to give proper receipts therefor and, in Lender's sole discretion, to apply such Proceeds (less any cost to Lender of recovering and paying out such Proceeds, including reasonable attorneys' fees and costs allocable to inspecting any repair, restoration or rebuilding work and the plans and specifications therefor) toward the payment of the Indebtedness or to the repair, restoration or rebuilding of the Property, as determined by the Lender. If the Proceeds are used to reduce the Indebtedness, they shall be applied in such order as the Lender may determine in the Lender's sole discretion, without any prepayment fee. Grantor shall promptly execute and deliver all instruments requested by Lender for the purpose of confirming the assignment of the condemnation Proceeds to Lender.

Section 2.6 Impositions. Payment of Taxes, Utilities, Liens and Charges.

(a) Taxes and Assessments. Grantor will pay or cause to be paid when due directly to the payee thereof all taxes and assessments (including without limitation non-governmental levies or assessments such as maintenance charges, owner association dues or charges, or fees, levies or charges resulting from covenants, conditions or restrictions) levied, assessed or charged against or with respect to the Property or this Deed of Trust. Upon request, Grantor shall promptly furnish or cause to be furnished to Lender all notices of amounts due under this subparagraph and all receipts evidencing such payments. However, Grantor may contest any such taxes or assessments by appropriate proceedings duly instituted and diligently prosecuted at Grantor's expense. Grantor shall not be obligated to pay such taxes or assessments while such contest is pending if the Property is not thereby subjected to imminent loss or forfeiture and, if Grantor has not provided evidence that it has deposited the entire amount assessed with the applicable governmental authority, it deposits the entire amount together with projected penalties and interest with the Lender or provides other security satisfactory to the Lender in its sole discretion.

(b) Utilities. Grantor will pay or cause to be paid when due all utility charges and assessments for services furnished the Property.

(c) Liens and Charges. Grantor will pay when due the claims of all persons supplying labor or materials to or in connection with the Property. However, Grantor may contest any such claims by appropriate proceedings duly instituted and diligently prosecuted at Grantor's expense. Grantor shall not be obligated to pay such claims while such contest is pending if the Property are not thereby subjected to imminent loss or forfeiture and, if required by Lender, Grantor deposits the entire amount together with projected penalties and interest with the Lender or provides other security satisfactory to the Lender in its sole discretion.

Section 2.7 Costs of Defending and Upholding the Lien and Priority of this Deed of Trust. Lender may, after notice to Grantor, (a) appear in and defend any action or proceeding, in the name and on behalf of Lender or Grantor, in which Lender is named or which Lender in its sole discretion determines may adversely affect the Property, this Deed of Trust, the lien or the priority hereof or any other Loan Document; and (b) institute any action or proceeding which Lender in its sole discretion determines should be instituted to protect the interest or rights of Lender in the Property or under this Deed of Trust or any other Loan Document. Grantor agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' fees) relating to or incurred by Lender in connection with any such action or proceeding.

Section 2.8 Costs of Enforcement. Grantor agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' and appraisers' fees and the expenses and reasonable fees of any receiver or similar official) of or incidental to the collection of the Indebtedness, any foreclosure of this Deed of Trust or any other Loan Document, any enforcement, compromise or settlement of this Deed of Trust, any other Loan Document or the Indebtedness, or any defense or assertion of the rights or claims of Lender in respect of any thereof, by litigation or otherwise.

Section 2.9 Interest on Advances and Expenses. All Advances made and reasonable expenses incurred at any time by Lender pursuant to the provisions of this Deed of Trust or the other Loan Documents or under applicable law shall be secured by this Deed of Trust as part of the Indebtedness, with equal rank and priority. All such advances and expenses shall bear interest at the Default Rate, be payable on demand, from the date that each such advance or expense is made or incurred to the date of reimbursement.

Section 2.10 Environmental Matters; Notice; Indemnity.

(a) Definitions. For purposes of this Section 2.10:

(i) "Property" means: The Property, including improvements now and hereafter situated thereon or thereunder, construction material used in such improvements, surface and subsurface soil and water, areas leased to tenants, and all business, uses and operations thereon.

(ii) "Environmental Laws" means:

a. any federal statute, law, code, rule, regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions and administrative orders) now existing, or which may arise in the future, together with all related amendments, implementing preservation, conservation or regulation of the environment, regulations and reauthorizations, pertaining to the protection, preservation, conservation or regulation of the environment, including, but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. ("TOSCA"); the Clean Air Act, 42 U.S.C. § 7401 et seq.; and the Clean Water Act, 33 U.S.C. § 1251 et seq.;

b. any state or local statute, law, code, rule, regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions and administrative orders) now existing, or which may arise in the future, together with all reauthorizations, pertaining to the protection, preservation, conservation or regulation of the environment.

c. any federal, state or local legislation enacted in the future pertaining to the protection, preservation, conservation or regulation of the environment, and all related amendments, implementing regulations and reauthorizations.

(iii) "Hazardous Material" means:

a. "hazardous substances" as defined by CERCLA;

b. "hazardous wastes", as defined by RCRA;

c. any pollutant or contaminant, or hazardous, dangerous or toxic chemical, material, waste or substance ("pollutant") within the meaning of Environmental Laws, which Environmental Laws prohibit, limit or otherwise regulate the use, exposure, release, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of such pollutant;

d. petroleum, crude oil, waste oil or any fraction of petroleum or crude oil;

e. any radioactive material, including any source, special nuclear or by-product material, as defined at 42 U.S.C. § 2011 et seq., and amendments thereto and reauthorizations thereof;

f. asbestos-containing materials in any form or condition ("ACM");

g. polychlorinated biphenyls ("PCB");

- h. methane gas or any related substance; and
- i. solvent mixtures.

(iv) "Environmental Actions" means:

a. any notice of violation, correspondence, complaint, claim, citation, demand, inquiry or inquiries, report, action, assertion of potential responsibility, lien, encumbrance or proceeding regarding the Property, whether formal or informal, absolute or contingent, matured or unmatured, brought or issued by any governmental unit, agency or body, or any person or entity respecting:

- a) Environmental Laws;
- b) public health risks;
- c) the environmental condition of the Property, or any portion thereof, or any property contiguous to the Property of which Grantor has knowledge, including actual or alleged damage or injury to wildlife, biota, air, surface or subsurface soil or water, or other natural resources; or
- d) the use, exposure, release, generation, manufacture, transportation to or from, handling, storage, treatment, recycling, reclamation, reuse, disposal or presence of Hazardous Material either on the Property or transported off-site for sale, treatment, storage, recycling, reclamation, reuse or disposal;

b. any violation or claim of violation of any Environmental Laws by Grantor or any predecessor to Grantor in the chain of title to the Property;

c. any lien for damages caused by, or the recovery of any costs incurred for the investigation, remediation or cleanup of any release or threatened release of Hazardous Material; or

d. the destruction or loss of use of all or any portion of the Property, or the injury, illness or death of any officer, director, employee, agent, representative, tenant or invitee of Grantor or any other person arising from or caused by the environmental condition of the Property.

(v) "Remedial Work" means any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work.

(b) Representations and Warranties. Grantor hereby represents and warrants to Lender that:

(i) Compliance. The Property and Grantor are in compliance with all Environmental Laws. All required governmental permits and licenses are in effect, and Grantor is in compliance therewith. Grantor has not received any notice of any Environmental Action respecting either the Property or any off-site facility to which has been sent any such Hazardous Material for off-site treatment, recycling, reclamation, reuse, handling, storage or disposal.

(ii) Absence of Hazardous Material. No use, exposure, release, generation, manufacture, storage, treatment, transportation or disposal of Hazardous Material is occurring or has occurred on or from the Property, except in the ordinary course of Grantor's business and in full compliance with all applicable Environmental Laws. No environmental, public health or safety hazards exist with respect to the Property. No underground storage tanks (including petroleum storage tanks) are present on or under the Property.

(iii) Proceeding and Actions. There are no pending or threatened Environmental Actions to which Grantor is a party or which relate to the Property.

(iv) Waters of the United States. No part of the Land on which Improvements are located contains "waters of the United States," as defined in 33 CFR 328, and Grantor will not discharge dredged or fill material into waters of the United States as such activity is described and regulated by Section 404 of the Clean Water Act, 33 U.S.C. 1344.

(c) Grantor Covenants. Grantor hereby covenants and agrees with Lender as follows:

(i) Compliance. Grantor shall comply with all Environmental Laws and cause the Property to comply with all Environmental Laws. All governmental permits and licenses required under any Environmental Laws shall remain in effect or shall be renewed in a timely manner, and Grantor shall comply therewith. Grantor shall satisfy all requirements of applicable Environmental Laws for the registration, operation, maintenance and removal of all underground storage tanks on the Property, if any.

(ii) Absence of Hazardous Material. Except for de minimis quantities of Hazardous Materials which are used, stored or handled in the ordinary course of Grantor's business, and which are in full compliance with all applicable Environmental Laws, no Hazardous Material shall be introduced to or used, stored, generated, presented or handled on the Property, except as appropriate to the operation of a marina, and provided said materials are used, stored, generated, presented and handled in accordance with all applicable laws.

(iii) Environmental Actions. Grantor shall immediately notify Lender of all Environmental Actions and provide Lender with copies of all written notices, complaints, correspondence and other documents relating thereto within three (3) business days of Grantor's receipt of the same. Grantor shall immediately and diligently pursue the cure and dismissal with prejudice of all Environmental Actions to the satisfaction of Lender, and Grantor shall keep the Property free of any encumbrance arising from any judgment, liability or lien imposed pursuant to any Environmental Actions.

(iv) Future Environmental Audits. Grantor shall provide such information and certifications which Lender may request from time to time to insure Grantor's compliance with this Section 2.10. Lender shall have the right, at any time, but no obligation, to enter upon the Property, take samples, cause an environmental site assessment to be performed, review Grantor's books and records, interview Grantor's employees and officers, and conduct such other activities as Lender, in its sole and absolute discretion, deems appropriate to ensure Grantor's compliance with each and every term, covenant and condition of this Section 2.10. Grantor shall cooperate fully in the conduct of such an audit. Lender acknowledges that except (i) in the case of an emergency or (ii) if an Event of Default has occurred, it will not require an audit more frequently than once per year. Grantor shall pay, upon demand, all costs and expenses connected with such audit, which, until paid, shall become additional indebtedness secured by the Loan Documents and shall bear interest at the Default Rate (as defined in the Note). Nothing in this Section 2.10 shall give or be construed as giving Lender the right to direct or control Grantor's actions in complying with Environmental Laws.

(d) Lender's Right to Rely. Lender is entitled to rely upon Grantor's representations, warranties and covenants contained in this Section 2.10 despite any independent investigations by Lender or its consultants. Grantor shall take all necessary actions to determine for itself, and to remain apprised of, the environmental condition of the Property. Grantor shall have no right to rely upon any independent environmental investigations or findings made by Lender or Lender's consultants.

(e) Indemnification. The term "Lender's Environmental Liability" shall mean any and all losses, liabilities, obligations, penalties, claims, fines, lost profits, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential, punitive and exemplary damages), disbursements or expenses of any kind or nature whatsoever (including reasonable attorneys' fees and expenses prior to and at trial and appellate levels and experts' fees and expenses incurred in investigating, defending, settling or prosecuting any litigation, claim or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Lender or any of Lender's parent and subsidiary corporations, and their affiliates, shareholders, directors, officers, employees and agents (collectively, "Affiliates") in connection with or arising from:

(i) any Hazardous Material on, in, under or affecting (i) all or any portion of the Property, or (ii) any other property contiguous to the Property;

(ii) any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to in this Section 2.10;

(iii) any violation or claim of violation by Grantor of any Environmental Law relating to the Property or any property contiguous to the Property;

(iv) the imposition of any lien for damages caused by, or the recovery of any costs incurred for, the cleanup of any release or threatened release of Hazardous Material on, in, under, affecting or from the Property; or

(v) any Environmental Actions.

Grantor shall, at Grantor's sole cost and expense, indemnify, defend (at trial and appellate levels and with counsel, experts and consultants satisfactory to Lender) and hold Lender and its Affiliates free and harmless from and against Lender's Environmental Liability (collectively, "Grantor's Indemnification Obligations").

Grantor and Grantor's successors and assigns, hereby waive, release and agree not to make any claim or bring any cost recovery action against Lender relating to the Indebtedness or the Property under or with respect to any Environmental Laws. To the extent that Lender is strictly liable under any Environmental Law or Environmental Action, Grantor's obligation to Lender under the foregoing indemnity shall likewise be without regard to fault on the part of Grantor or Lender with respect to the violation or condition which results in liability to Lender.

Grantor's Indemnification Obligations shall survive without limitation the Maturity Date, the repayment of the Indebtedness, and any transfer of the Property by Grantor, including by foreclosure or by a deed-in-lieu of foreclosure.

(f) Remedial Work.

(i) If any Remedial Work is required under any applicable Environmental Law because of or in connection with the current or future presence, suspected presence, release or suspected release of a Hazardous Material into the air, soil, ground water, surface water, or soil vapor on, under or about the Property or any portion thereof, Grantor shall cause Grantor to promptly commence and diligently prosecute to completion all such Remedial Work. In all events, such Remedial Work shall be commenced within 45 days after any demand therefor by Lender or such shorter period as may be required under any applicable Environmental Law.

(ii) All Remedial Work shall be performed by contractors, and under the supervision of a consulting engineer, each approved in advance by Lender. All costs and expenses of such Remedial Work and Lender's monitoring or review of such Remedial Work (including reasonable attorneys' fees) shall be paid by Grantor. If Grantor does not cause Grantor to timely commence and diligently prosecute to completion the Remedial Work, Lender may (but shall not be obligated to) cause such Remedial Work to be performed. Grantor agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' fees) relating to or incurred by Lender in connection with monitoring, reviewing or performing any Remedial Work.

(iii) Except with Lender's prior written consent, Grantor shall not commence any Remedial Work or enter into any settlement agreement, consent decree or other compromise relating to any Hazardous Materials or Environmental Laws which might, in Lender's sole judgment, impair the value of Lender's security hereunder or under the Loan Documents. Lender's prior consent shall not be required, however, if the presence or threatened presence of Hazardous Materials on, under or about the Property poses an immediate threat to the health, safety or welfare of any person or is of such a nature that an immediate remedial response is necessary, and it is not practical to obtain Lender's prior consent. In such event Grantor shall notify Lender as soon as practicable of all action taken.

(iv) Grantor acknowledges that Lender has agreed to make the Loan in reliance upon Grantor's representations, warranties and covenants in this Deed of Trust. For this reason, it is the intention of Grantor and Lender that the provisions of this Deed of Trust shall supersede any provisions in the Loan Documents which in any way limit the personal liability of Grantor regarding any matter set forth in this Deed of Trust and that Grantor shall be personally liable for any obligations arising under this Deed of Trust even if the amount of liability incurred exceeds the amount of the Loan. All of the representations, warranties, covenants and indemnities contained in this Deed of Trust shall survive the repayment of the Note and the release of the lien of the Deed of Trust from the Property and shall survive the transfer of any or all right, title and interest in and to the Property by Grantor to any other party, whether or not affiliated with Grantor.

Section 2.11 Restrictions on Transfer or Encumbrance of the Property.

(a) In determining whether or not to make the Loan, Lender examined the credit-worthiness of Grantor, found it acceptable and relied and continues to rely upon same as the means of repayment of the Loan. Lender also evaluated the background and experience of Grantor in owning and operating property such as the Property, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Property which is Lender's security for the Loan. Grantor is a business person or entity well-experienced in borrowing money and owning and operating property such as the Property, was ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. Grantor recognizes that Lender is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Grantor. Grantor further recognizes that any secondary or junior financing placed upon the Property (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Lender to take measures and incur expenses to protect its security; (c) would detract from the value of the Property should Lender come into possession thereof with the intention of selling same; and (d) impair Lender's right to accept a deed in lieu of foreclosure, as a foreclosure by Lender would be necessary to clear the title to the Property.

In accordance with the foregoing and for the purposes of (i) protecting Lender's security both of repayment by Grantor and of value of the Property; (ii) giving Lender the full benefit of its bargain and contract with Grantor; (iii) keeping the Property free of subordinate financing liens, Grantor agrees that if this Paragraph be deemed a restraint on alienation, that it is a reasonable one.

A "Transfer" is: any sale (by contract or otherwise), encumbrance, conveyance or other transfer of all or any interest in the Property; or any change in the ownership of any stock interest in a corporate Grantor, in the ownership of any membership interest or in the manager of a limited liability company Grantor, in the ownership of any general partnership interest in any general or limited partnership Grantor, or in the ownership of any beneficial interest in any other Grantor which is not a natural person or persons (including without limitation a trust); or any change in the ownership of any stock, membership, general partnership or other beneficial interest in any corporation, limited liability company, partnership, trust or other entity, organization or association directly or indirectly owning an interest in Grantor, or a change in the manager of a limited liability company.

In the event of a Transfer without Lender's prior written consent, Lender may at its sole option declare the Transfer an event of default under this Deed of Trust and invoke any remedy or remedies provided for in Article 6 hereof, or may at its sole option consent to such Transfer. Lender may condition its consent to a Transfer upon the payment of a fee to Lender, or an increase in the rate of interest due under the Note, or any combination of the foregoing. Lender's consent to a Transfer or its waiver of an event of default by reason of a Transfer shall not constitute a consent or waiver of any right, remedy or power accruing to Lender by reason of any subsequent Transfer.

Section 2.12 Preservation and Maintenance of Property; Right of Entry.

(a) Preservation and Maintenance. Grantor (i) will not commit or suffer any waste or permit any impairment or deterioration of the Property, (ii) will not abandon the Property, (iii) will restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing (which approval shall not be unreasonably withheld), in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (iv) will keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon, in good condition and repair and shall replace fixtures, equipment, machinery and appliances of the Property when necessary to keep such items in good condition and repair, and (v) will generally operate and maintain the Property in a commercially reasonable manner.

(b) Alterations. No building or other improvement on the Property will be structurally altered, removed or demolished, in whole or in part, without Lender's prior written consent, nor will any fixture or chattel covered by this Deed of Trust and adapted to the use and enjoyment of the Property be removed at any time without like consent unless actually replaced by an article of equal suitability, owned by Grantor, free and clear of any lien or security interest except such as may be approved in writing by Lender (which approval shall not be unreasonably withheld).

(c) Right of Entry. Lender is hereby authorized to enter the Property, including the interior of any structures, at reasonable times and after reasonable notice, for the purpose of inspecting the Property and for the purpose of performing any of the acts it is authorized to perform hereunder.

Section 2.13 Protection of Lender's Security. Grantor will give notice to Lender of and will, at its expense, appear in and defend any action or proceeding that might affect the Property or title thereto or the interests of Lender therein or the rights or remedies of Lender. If any such action or proceeding is commenced or if Lender is made a party to any such action or proceeding by reason of this Deed of Trust or if Grantor fails to perform any obligation on its part to be performed hereunder, then Lender, in its own discretion, may make any appearances, disburse any sums, make any entries upon the Property and take any actions as may be necessary or desirable to protect or enforce the security of this Deed of Trust, to remedy Grantor's failure to perform its covenants (without, however, waiving any default by Grantor) or otherwise to protect Lender's interests. Grantor agrees to pay all loss, damage, costs and expenses, including reasonable attorneys' fees, of Lender thus incurred. This paragraph shall not be construed to require Lender to incur any expenses, make any appearances or take any actions.

Section 2.14 Reimbursement of Lender's Expenses. All amounts disbursed by Lender pursuant to Section 2.6 or any other provision of this Deed of Trust, with interest thereon, shall be additional indebtedness of Grantor secured by this Deed of Trust. All such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the interest rate in effect on the Note from time to time, or at the maximum rate which may be collected from Grantor on such amounts by the payee thereof under applicable law if that is less.

ARTICLE III
UNIFORM COMMERCIAL CODE SECURITY AGREEMENT

Section 3.1 **Grant to Lender.** This Deed of Trust constitutes a security agreement pursuant to the Uniform Commercial Code of the State of Oregon with respect to:

- (a) Any of the Property which, under applicable law, is not real property or effectively made part of the real property by the provisions of this Deed of Trust; and
- (b) Any and all other property now or hereafter described on any Uniform Commercial Code Financing Statement naming Grantor as Debtor and Lender as Secured Party and affecting property in any way connected with the use and enjoyment of the Property (any and all such other property constituting "Property" for purposes of this Deed of Trust).

Grantor hereby grants Lender a security interest in all property described in clauses (a) and (b) above as additional security for the Secured Obligations. Grantor and Lender agree, however, that neither the foregoing grant of a security interest nor the filing of any such financing statement shall ever be construed as in any way derogating from the parties' hereby stated intention that everything used in connection with the production of income from the Property or adapted for use therein or which is described or reflected in this Deed of Trust and all assets of Grantor at the Property are and at all times shall be regarded for all purposes as part of the real property.

Section 3.2 **Lender's Rights and Remedies.** With respect to Property subject to the foregoing security interest, Lender has all of the rights and remedies (i) of a secured party under the Oregon Uniform Commercial Code; (ii) provided herein, including without limitation the right to cause such Property to be sold under the power of sale granted by this Deed of Trust; and (iii) provided by law. In exercising its remedies, Lender may proceed against the items of real property and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies. Upon demand by Lender following an Event of Default hereunder, Grantor will assemble any items of personal property and make them available to Lender at the Property, a place which is hereby deemed to be reasonably convenient to both parties. Lender shall give Grantor at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such Property or of the time of or after which any private sale or any other intended disposition is to be made. Any person permitted by law to purchase at any such sale may do so. Such Property may be sold at any one or more public or private sales as permitted by applicable law. All expenses incurred in realizing on such Property shall be borne by Grantor.

Section 3.3 **Grantor Name(s); Matters Affecting Financing Statement Filings.** At the request of Lender, Grantor shall execute a certificate in form satisfactory to Lender listing the trade names or fictitious business names under which Grantor intends to operate the Property or any business located thereon and representing and warranting that Grantor does business under no other trade names or fictitious business names with respect to the Property. Grantor will not change any of the following without notifying the Lender of such change in writing at least thirty (30) days prior to the effective date of such change and without first obtaining the written consent of the Lender, not to be unreasonably withheld:

- (a) Grantor's name or identity (including its trade name or names);
- (b) if Grantor is an individual, Grantor's principal residence;
- (c) if Grantor is an organization, Grantor's corporate, partnership or other structure;
- (d) if Grantor is an organization, Grantor's jurisdiction of organization (i.e. the jurisdiction under whose law the Grantor is organized); or
- (e) if Grantor is an organization, Grantor's place of business (if Grantor has only one place of business) or Grantor's chief executive office (if Grantor has more than one place of business).

Upon any change in the matters referred to above (if permitted hereunder), Grantor will, upon request of Lender, execute any financing statement amendments, additional financing statements and other documents required by Lender to reflect such change.

Section 3.4 **Fixture Filing.** This Deed of Trust covers goods which are or are to become fixtures on the Property.

ARTICLE IV
ASSIGNMENT OF RENTS AND LEASES; LEASES OF PROPERTY
APPOINTMENT OF RECEIVER; LENDER IN POSSESSION

Section 4.1 Assignment of Rents and Leases. As part of the consideration for the indebtedness evidenced by the Note, and not as additional security therefor, Grantor hereby absolutely and unconditionally assigns and transfers to Lender (a) all present and future leases and other agreements for the occupancy or use of all or any part of the Property, and any and all extensions, renewals and replacements thereof (collectively "Leases"), including without limitation the leases described in the Lease Affidavit executed by Grantor in favor of Lender on or about the date hereof, and all right, title and interest of Grantor thereunder, including without limitation all cash or security deposits, advance rentals and deposits or payments, of similar nature; (b) any and all guaranties of tenants' or occupants' performances under any and all Leases; and (c) all rents, issues, profits and revenues (collectively "Rents") now due or which may become due or to which Grantor may now or shall hereafter become entitled or may demand or claim (including Rents coming due during any redemption period), arising or issuing from or out of any and all Leases, including without limitation minimum, additional, percentage and deficiency rents and liquidated damages.

Section 4.2 Collection of Rents. Prior to written notice given by Lender to Grantor of an Event of Default hereunder, Grantor shall have a license to, and will, collect and receive all Rents of the Property as trustee for the benefit of Lender and Grantor, to apply the Rents so collected first to the payment of taxes, assessments and other charges on the Property prior to delinquency, second to the cost of insurance, maintenance and repairs and operation of the Property (i.e., capital and operating expenses) required by the terms of this Deed of Trust, third to the costs of discharging any obligation or liability of Grantor under the Leases, and fourth to the indebtedness secured hereby, with the balance, if any, so long as no such Event of Default has occurred, to the account of Grantor. Upon delivery of written notice by Lender to Grantor of an Event of Default hereunder and stating that Lender exercises its rights to the Rents, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all Rents from the Property as the same become due and payable, including without limitation Rents then due and unpaid, and all such Rents shall, immediately upon delivery of such notice, be held by Grantor as trustee for the benefit of Lender only. Upon delivery of such written notice by Lender, Grantor hereby agrees to direct each tenant or occupant of the Property to pay all Rents to Lender on Lender's written demand therefor, without any liability on the part of said tenant or occupant to inquire further as to the existence of a default by Grantor; Grantor hereby authorizes Lender as Grantor's attorney-in-fact to make such direction to tenants and occupants upon Grantor's failure to do so as required herein. Payments made to Lender by tenants or occupants shall, as to such tenants and occupants, be in discharge of the payors' obligations to Grantor. Lender may exercise, in Lender's or Grantor's name, all rights and remedies available to Grantor with respect to collection of Rents. Nothing herein contained shall be construed as obligating Lender to perform any of Grantor's obligations under any of the Leases.

Section 4.3 Grantor's Representations and Warranties. Grantor hereby represents and warrants to Lender that Grantor has not executed and will not execute any other assignment of said Leases or Rents, that Grantor has not performed and will not perform any acts and has not executed and will not execute any instrument which would prevent Lender from exercising its rights under this Article 4, and that at the time of execution of this Deed of Trust there has been no anticipation or prepayment of any of the Rents of the Property for more than two (2) months prior to the due dates thereof. Grantor further represents and warrants to Lender that all the Leases described in the Lease Affidavit executed by Grantor in favor of Lender on or about even date herewith, are in good standing and there is no default thereunder, whether by Grantor or lessee, nor to Grantor's knowledge any event or condition which, with notice or the passage of time or both, would be in default thereunder.

Section 4.4 Leases of the Property. Grantor will comply with and observe Grantor's obligations as landlord under all Leases and will do all that is necessary to preserve all Leases in force and free from any right of counterclaim, defense or setoff. Without Lender's written consent, Grantor will not collect or accept payment of any Rents of the Property more than two (2) months prior to the due dates thereof, will not enter into, execute, modify (including, but not limited to, consenting to an assignment or sublease by a tenant) or extend any Lease now existing or hereafter made providing a term (assuming that all renewal options, if any, are exercised) of more than five (5) years. To the extent required by Lender, each tenant shall execute an estoppel certificate and acknowledge receipt of a notice of the assignment of its lease, all satisfactory in form and content to Lender. Without Lender's written consent, Grantor will not request or consent to the subordination of any Lease to any lien subordinate to this Deed of Trust.

Section 4.5 Lender in Possession; Appointment of Receiver. Upon any Event of Default hereunder, Lender in person, by agent or by a court-appointed receiver, and regardless of the adequacy of Lender's security, may enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof in the same manner and to the same extent as Grantor could do the same, including without limitation the execution, enforcement, cancellation and modification of Leases, the collection of all Rents of the Property, the removal and eviction of tenants and other occupants, the making of alteration and repairs to the Property, and the execution and termination of contracts providing for management or maintenance of the Property, all on such terms as are deemed best by Lender to protect

the security of this Deed of Trust. From and after the occurrence of any such Event of Default, if any owner of the Property shall occupy the Property or part thereof such owner shall pay to Lender in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure so to do Lender shall be entitled to remove such owner from the Property by any appropriate action or proceedings. Following an Event of Default hereunder, Lender shall be entitled (without notice and regardless of the adequacy of Lender's security) to the appointment of a receiver, Grantor hereby consenting to the appointment of such receiver, and the receiver shall have, in addition to all of the rights and powers customarily given to and exercised by such receivers, all the rights and powers granted to Lender in this Article 4. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

Section 4.6 Application of Rents. All Rents collected subsequent to delivery of written notice by Lender to Grantor of an Event of Default hereunder shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the Rents, including without limitation attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Grantor under the Leases, and then to the indebtedness secured hereby. Lender or the receiver shall be liable to account only for those Rents actually received. Lender shall not be liable to Grantor, anyone claiming under or through Grantor or anyone having an interest in the Property by reason of anything done or left undone by Lender under this Article 4 so long as Lender acts in good faith and in a commercially reasonable manner.

Section 4.7 Deficiencies. To the extent, if any, that the costs of taking control of and managing the Property, collecting the Rents, and discharging obligations and liabilities of Grantor under the Leases, exceed the Rents of the Property, the excess sums expended for such purposes shall be indebtedness secured by this Deed of Trust. Such excess sums shall be payable upon demand by Lender and shall bear interest from the date of disbursement at the default rate of interest stated in the Note, or the maximum rate which may be collected from Grantor therefor under applicable law if that is less.

Section 4.8 Lender Not Lender in Possession. Nothing herein shall constitute Lender as a "Lender in possession" prior to its actual entry upon and taking possession of the Property, entry upon and taking possession by a receiver not constituting possession by Lender.

Section 4.9 Enforcement. Lender may enforce this assignment without first resorting to or exhausting any security or collateral for the indebtedness. As used in this Article 4, the word "lease" shall mean "sublease" if this Deed of Trust is on a leasehold. This assignment shall terminate at such time as this Deed of Trust ceases to secure payment of indebtedness held by Lender.

ARTICLE V

EVENTS OF DEFAULT

Section 5.1 Events of Default. The occurrence of any one or more of the following is an Event of Default hereunder:

(a) Failure to make any payment when due under the Note, this Deed of Trust or any of the other Loan Documents, followed by the failure to make such payment within ten (10) days after written notice thereof given to Grantor by Lender; provided, however, that Lender shall not be obligated to give Grantor written notice prior to exercising its remedies with respect to such default if Lender had previously given Grantor during that calendar year a notice of default for failure to make a payment of similar type.

(b) Failure to perform any other covenant, agreement or obligation under the Note, this Deed of Trust or any of the other Loan Documents, followed by the failure to cure such default within thirty (30) days after written notice thereof given to Grantor by Lender (or if such cure cannot be completed within such thirty (30) day period through the exercise of diligence, the failure by Grantor to commence the required cure within such thirty (30) day period and thereafter to continue the cure with diligence and to complete the cure within ninety (90) days following Lender's notice of default).

(c) Grantor, any trustee of Grantor, or any guarantor files a petition in bankruptcy or for an arrangement, reorganization or any other form of debtor relief; or such a petition is filed against Grantor, any trustee of Grantor, or any guarantor and the petition is not dismissed within forty-five (45) days after filing.

(d) A decree or order is entered for the appointment of a trustee, receiver or liquidator for Grantor or Grantor's property, and such decree or order is not vacated within forty-five (45) days after the date of entry.

(e) Grantor commences any proceeding for dissolution or liquidation; or any such proceeding is commenced against Grantor and the proceeding is not dismissed within forty-five (45) days after the date of commencement.

(f) Grantor makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due.

(g) There is an attachment, execution or other judicial seizure of any portion of Grantor's assets and such seizure is not discharged within ten (10) days.

(h) Any representation or disclosure made to Lender by Grantor or any guarantor of the Loan proves to be materially false or misleading when made, whether or not that representation or disclosure is contained herein.

ARTICLE VI REMEDIES

Section 6.1 **Acceleration Upon Default; Additional Remedies.** Upon the occurrence of an Event of Default hereunder, Lender may, at its option and without notice to or demand upon Grantor (except as hereinafter provided), take any one or more of the following actions:

- (a) Declare any or all indebtedness secured by this Deed of Trust to be due and payable immediately.
- (b) Bring a court action to enforce the provisions of this Deed of Trust or any of the indebtedness or obligations secured by this Deed of Trust.
- (c) Cause any or all of the Property to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law.
- (d) Exercise any or all of the rights and remedies provided for herein upon the occurrence of an Event of Default hereunder.
- (e) Exercise any other right or remedy available under law or in equity.

Section 6.2 **Right of Lender to Enter and Take Possession.** The Lender shall have the rights under this section as follows:

(a) If an Event of Default shall have occurred and be continuing, the Grantor, upon written demand of the Lender, shall forthwith surrender to the Lender the actual possession of the Property and if, and to the extent, permitted by law, the Lender may enter and take possession of the Property and may exclude the Grantor and the Grantor's agents and employees wholly therefrom.

(b) Upon every such entering and taking of possession, the Lender may hold, store, use, operate, manage, control, and maintain the Property and conduct the business thereof, and, from time to time,

(i) make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;

(ii) insure or keep the Property insured;

(iii) manage and operate the Property and exercise all the rights and powers of the Grantor, in its name or otherwise, with respect to the same; and

(iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender; all as the Lender may from time to time determine to be to its best advantage; and the Lender may collect and receive all of the income, rents, profits, issues and revenues of the Property, including those past due as well as those accruing thereafter and, after deducting:

a. all expenses of taking, holding, managing and operating the Property (including compensation for the services of all persons employed for such purposes);

b. the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases, and acquisitions;

- c. the cost of such insurance;
- d. such taxes, assessments and other charges prior to the lien of this Deed of Trust as the Lender may determine to pay;
- e. other proper charges upon the Property or any part thereof; and
- f. reasonable compensation and expenses of attorneys and agents of the Lender,

shall apply the remainder of the money so received by the Lender, first to the payment of accrued interest and late charges; then to the payment of overdue installments of principal.

(c) For the purpose of carrying out the provisions of this section, the Grantor hereby constitutes and irrevocably appoints the Lender the true and lawful attorney in fact of the Grantor to do and perform, from time to time, any and all actions necessary and incidental to such purpose and does, by these presents, ratify and confirm any and all actions of said attorney in fact in the Property. This appointment is coupled with an interest and is irrevocable by death or otherwise.

(d) Whenever all such defaults have been cured and satisfied, the Lender shall surrender possession of the Property to the Grantor and upon such surrender, the Grantor shall retake possession thereof; provided that the right of the Lender to take possession, from time to time, pursuant to subparagraph (a) above under this section shall exist if any subsequent default shall occur and be continuing.

Section 6.3 Power of Sale.

(a) If an Event of Default shall occur hereunder and, as a result thereof, the Secured Obligations are accelerated and are due and payable in full, the Trustee, at its option, may sell the Property or any part of the Property at public sale or sales before the door of the courthouse of the County in which the Property or any part of the Property is situated, to the highest bidder for cash, in order to pay the Secured Obligations and accrued interest thereon and insurance premiums, liens, assessments, taxes and charges, including utility charges, if any, with accrued interest thereon, and all expenses of the sale and of all proceedings in connection therewith, including attorney's fees as provided in the Note.

(b) If The Lender invokes the power of sale, the Trustee or Lender shall give the Grantor, in the manner provided in Section 7.12, notice of the Lender's election to sell the Property. The Trustee shall give notice of sale by public advertisement for the time and in the manner prescribed by applicable law. Grantor hereby waives personal service of notice of any sale made hereunder, upon Grantor, its agents, successors or assigns, and also waives the posting of notice of sale at the courthouse. Trustee, without the demand of the Grantor, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone the sale of the Property by public notice at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale free from any right or equity of redemption in the Grantor, any such right or equity of redemption being hereby expressly waived by the Grantor. Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, express or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein.

(c) Trustee shall apply the proceeds of the sale in the order set forth in Section 6.4. In the event that foreclosure proceedings are instituted hereunder but are not completed, Trustee shall be reimbursed for all costs and expenses incurred by it in commencing such proceedings; and all costs and expenses so incurred by Trustee, together with interest thereon until paid at the Note default rate shall be and become a part of the obligations secured hereby and shall be collectible as such.

Section 6.4 Application of the Proceeds of Sale. Upon any such sale pursuant to the aforementioned power of sale and agency, the proceeds of said sale shall be applied (i) first to the expenses of such sale and of all proceedings in connection therewith, including attorneys' fees and Trustee's fee not to exceed 5% of the gross sales proceeds of such sale, (ii) second to payment of the Secured Obligations, (iii) third to said insurance premiums, liens, assessments, taxes and charges, including utility charges, with accrued interest thereon, and (iv) finally, the remainder, if any, shall be paid to the Grantor or to those otherwise entitled thereto by law. Nothing herein dealing with foreclosure procedures which specifies any particular actions to be taken by Trustee or Lender shall be deemed to contradict the requirements and procedures (now or hereafter existing) of Oregon law, and any such contradiction shall be resolved in favor of Oregon law applicable at the time of foreclosure.

Section 6.5 Grantor as Tenant Holding Over. In the event of any such public sale pursuant to the aforesaid power of sale and agency, the Grantor shall be deemed a tenant holding over and shall forthwith deliver possession of the

Property to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

Section 6.6 Rights Under Uniform Commercial Code. In addition to the rights available to a holder of a Deed of Trust Lender shall also have all the rights, remedies and recourse available to a secured party under the Uniform Commercial Code including the right to proceed under the provisions of the Uniform Commercial Code governing default as to any property which is subject to the security interest created by the Deed of Trust or to proceed as to such personal property in accordance with the procedures and remedies available pursuant to a foreclosure of real estate.

Section 6.7 Right to Discontinue Proceedings. In the event Lender shall have proceeded to invoke any right, remedy or recourse permitted under this Deed of Trust and shall thereafter elect to discontinue or abandon the same for any reason, Lender shall have the unqualified right to do so and in such event Grantor and Lender shall be restored to their former positions with respect to the Secured Obligations. This Deed of Trust, the Property and all rights, remedies and recourse of the Lender shall continue as if the same had not been invoked.

Section 6.8 Waiver of Order of Sale and Marshalling. Grantor waives all rights to direct the order in which any of the Property will be sold in the event of any sale under this Deed of Trust, and also any right to have any of the Property marshaled upon any sale.

Section 6.9 Non-Waiver of Default. The entering upon and taking possession of the Property, the collection of Rents or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the Property, and the application or release thereof as herein provided, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

Section 6.10 Remedies Cumulative. To the extent permitted by law, every right and remedy provided in this Deed of Trust is distinct and cumulative to all other rights or remedies under this Deed of Trust or afforded by law or equity or any other agreement between Lender and Grantor, and may be exercised concurrently, independently or successively, in any order whatsoever. Lender may exercise any of its rights and remedies at its option without regard to the adequacy of its security.

Section 6.11 Lender's Expenses. Grantor will pay all of Lender's expenses incurred in any efforts to enforce any terms of this Deed of Trust, whether or not any suit is filed, including without limitation appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, legal fees and disbursements, foreclosure costs and title charges (which may be estimated as to items to be expended after entry of a decree) for procuring abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurance with respect to title, as the Lender may deem reasonably necessary either to prosecute suit or evidence to bidders at sales which may be had pursuant to decree, the true condition of the title to or value of the Property. All such sums, with interest thereon, shall be additional indebtedness of Grantor secured by this Deed of Trust. Such sums shall be immediately due and payable and shall bear interest from the date of disbursement at the default rate of interest stated in the Note, or the maximum rate which may be collected from Grantor under applicable law if that is less.

ARTICLE VII GENERAL

Section 7.1 Application of Payments. Except as applicable law or this Deed of Trust may otherwise provide, all payments received by Lender under the Note or this Deed of Trust shall be applied by Lender in the following order of priority: (a) Lender's expenses incurred in any efforts to enforce any terms of this Deed of Trust; (b) interest and late charges payable on the Note, including any applicable prepayment fee or premium; (c) principal of the Note; (d) interest payable on advances made to protect the security of this Deed of Trust; (e) principal of such advances; and (f) any other sums secured by this Deed of Trust in such order as Lender, at its option, may determine; provided, however, that Lender may, at its option, apply any such payments received to interest on and principal of advances made to protect the security of this Deed of Trust prior to applying such payments to interest on or principal of the Note.

Section 7.2 Cancellation and Surrender of Deed of Trust. When all the Secured Obligations have been paid according to the tenor and effect thereof when same shall become due and payable, and should Grantor perform all covenants herein contained in a timely manner, then this Deed of Trust shall be canceled and surrendered in accordance with applicable law of the State of Oregon at the cost and expense of the Grantor.

Section 7.3 Save Harmless Clause. The Grantor shall indemnify and save harmless the Lender for all costs and expenses, including reasonable attorneys' fees incurred by them or any of them by reason of the Property or any part thereof, this Deed of Trust or any of the Loan Documents, including any legal action to which Lender shall become a party. Any money

so paid or expended by the Lender shall become additional Secured Obligations and shall be due and payable upon ten (10) days' notice and if the same is not paid when due; it shall be paid together with interest at the rate then in effect under the Note from the date incurred and all such sums shall be secured by this Deed of Trust.

Section 7.4 **Trustees and Substitution of Trustees.** It is hereby expressly covenanted and agreed by all parties hereto that Lender may, at any time and from time to time hereafter, without notice, appoint and substitute another Trustee or Trustees, corporations or person, in place of the Trustee herein named to execute the trust herein created. Upon such appointment, either with or without a conveyance to said substituted Trustee or Trustees by the Trustee herein named, or by any substituted Trustee in case the said right of appointment is exercised more than once, the new and substituted Trustee or Trustees in each instance shall be vested with all the rights, titles, interests, powers, duties and trusts in the premises which are vested in and conferred upon the Trustees herein named; and such new and substituted Trustee or Trustees shall be considered the successors and assigns of the Trustees who are named herein within the meaning of this Deed of Trust, and substituted in their place and stead. Each such appointment and substitution shall be evidenced by an instrument in writing which shall recite the parties to, and the book and page of record of, this Deed of Trust, and the description of the real property herein described, which instrument, executed and acknowledged by the Lender and recorded in the office of the Recorder of Deeds of the County wherein the Property is situate, shall be conclusive proof of the proper substitution and appointment of such successor Trustee or Trustees, and notice of such proper substitution and appointment to all parties in interest. The Trustees, or either of them or the survivor thereof, may act in the execution of this trust and in the event either of the Trustees shall act alone, the authority and power of the Trustee so acting shall be as full and complete as if the powers and authority granted to the Trustees herein jointly had been granted to such Trustee alone. Either or both of the trustees are hereby authorized to act by agent or attorney in the execution of this trust, and it shall not be necessary for any Trustee to be present in person at any foreclosure sale.

Section 7.5 **Lender's Powers.** Without affecting the liability of any person for payment or performance of the Secured Obligations, Lender, at its option, may extend the time for payment of the indebtedness secured hereby or any part thereof, reduce payment thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of the indebtedness, release the lien of this Deed of Trust on any part of the Property, take or release other or additional security, release or reconvey or cause to be released or reconveyed all or any part of the Property, or consent to the making of any map or plat of the Property, consent to the granting of any easement or creating any restriction on the Property, or join in any subordination or other agreement affecting this Deed of Trust or the lien or charge hereof. Grantor shall pay Lender a reasonable service charge, together with such title insurance premiums and reasonable attorneys' fees as may be incurred at Lender's option, for any such action if taken at Grantor's request.

Section 7.6 **Subrogation.** Lender shall be subrogated for further security to the lien, although released of record, of any and all encumbrances discharged, in whole or in part, by the proceeds of the Loan or any other indebtedness secured hereby.

Section 7.7 **No Violation of Usury Laws.** Interest, fees and charges collected or to be collected in connection with the indebtedness secured hereby shall not exceed the maximum, if any, permitted by any applicable law. If any such law is interpreted so that said interest, fees and/or charges would exceed any such maximum and Grantor is entitled to the benefit of such law, then:

(a) such interest, fees and/or charges shall be reduced by the amount necessary to reduce the same to the permitted maximum; and

(b) any sums already paid to Lender which exceeded the permitted maximum will be refunded. Lender may choose to make the refund either by treating the payments, to the extent of the excess, as prepayments of principal or by making a direct payment to the person(s) entitled thereto. No prepayment premium shall be assessed on prepayments under this paragraph. The provisions of this paragraph shall control over any inconsistent provision of this Deed of Trust or the Note or any other Loan Documents.

Section 7.8 **Additional Documents; Power of Attorney.** Grantor, from time to time, will execute, acknowledge and deliver to Lender, upon request, such security agreements, assignments for security purposes, assignments absolute, financing statements, affidavits, certificates and other documents, in form and substance satisfactory to Lender, as Lender may request in order to perfect, preserve, continue, extend or maintain the assignments herein contained, the lien and security interest under this Deed of Trust, and the priority thereof. Grantor will pay to Lender upon request therefor all costs and expenses incurred in connection with the preparation, execution, recording and filing of any such document. Grantor specifically authorizes Lender to file such Uniform Commercial Code Financing Statements before, on or after the date hereof, and to file such amendments and continuation statements, all as Lender determines necessary or desirable from time to time to perfect or continue the lien of Lender's security interest in the Property. Upon an Event of Default or upon Lender's request and Grantor's failure to comply with the terms of this Section 7.8, Grantor hereby irrevocably appoints Lender its attorney-in-fact to execute,

acknowledge, deliver and if appropriate file and record all such agreements, assignments, statements, affidavits, certificates and other documents set forth above.

Section 7.9 Waiver of Statute of Limitations and Other Matters. To the full extent Grantor may do so, Grantor hereby waives the right to assert any statute of limitations as a defense to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Note or any other obligation secured by this Deed of Trust. The Grantor covenants and agrees to the full extent permitted by law (but not otherwise) that it will not insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law, any "Homestead Law" or any so-called "Moratorium Law" now or hereafter in force, nor claim, take or insist upon any benefit or advantage of any law now or later in force providing for the valuation or appraisal of the Property or any part of it, prior to any sale or sales thereof to be made pursuant to any provisions herein, or to decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or later in force to redeem the property sold, or any part of it, or relating to the marshaling thereof, upon foreclosure sale or other enforcement of this Deed of Trust. Grantor expressly waives any rights or equity of redemption from sale under any order or decree of foreclosure of this Deed of Trust, on its own behalf and on behalf of each person, excepting only decree or judgment creditors of the Grantor acquiring any interest in or title to the Property subsequent to the date hereof, it being the intent that any and all rights of redemption of the Grantor and of all other persons are and shall be deemed to be waived to the full extent permitted by law. Insofar as the Grantor may lawfully agree, the Grantor covenants and agrees not to invoke or utilize any such laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Lender, but covenants and agrees to suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted.

Section 7.10 Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy, and no waiver by Lender of any particular default by Grantor shall constitute a waiver of any other default or of any similar default in the future. Without limiting the generality of the foregoing, the acceptance by Lender of payment of any sum secured by this Deed of Trust after the due date thereof shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness or damages under Article 6 hereof operate to cure or waive Grantor's default in payment of sums secured by this Deed of Trust.

Section 7.11 Modifications and Waivers. This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

Section 7.12 Notice. Except as applicable law may otherwise require, all notices and other communications shall be in writing and shall be deemed given when delivered by personal service or when mailed, by certified or registered mail, postage prepaid, addressed to the address set forth at the beginning of this Deed of Trust. Any party may at any time change its address for such purposes by delivering or mailing to the other parties hereto as aforesaid a notice of such change.

Section 7.13 Governing Law; Severability; Captions. This Deed of Trust shall be governed by the laws of the State of Oregon. If any provision or clause of this Deed of Trust conflicts with applicable law, such conflicts shall not affect other provisions or clauses hereof which can be given effect without the conflicting provision, and to this end the provisions hereof are declared to be severable. The captions and headings of the paragraphs and articles of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

Section 7.14 Definitions. As used herein: the term "Grantor" means the Grantor herein named, together with any subsequent owner of the Property, or any part thereof or interest therein, and the term "Lender" means the Lender herein named, together with any subsequent owner or holder of the Note or any interest therein, including pledgees, assignees and participants.

Section 7.15 Successors and Assigns Bound; Joint and Several Liability; Agents. This Deed of Trust shall bind and inure to the benefit of the parties hereto and their respective heirs, devisees, legatees, administrators, executors, successors and assigns. All obligations of Grantor hereunder are joint and several. In exercising any rights hereunder or taking actions provided for herein, Lender may act through its respective employees, agents or independent contractors as authorized by Lender.

Section 7.16 Number; Gender. This Deed of Trust shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

Section 7.17 Time. Time is of the essence in connection with all obligations of Grantor herein.

Section 7.18 **Notice Regarding Insurance.** Pursuant to the provisions of Oregon Statutes, Section 746.201, the following notice is given:

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.

Section 7.19 **Exhibits.** Grantor, by executing and delivering this Deed of Trust, and Lender, by accepting this Deed of Trust, acknowledge and agree that the following is a list of the Exhibits to this Deed of Trust, which Exhibits are hereby made a part of this Deed of Trust by reference:

EXHIBIT A Property Schedule (which includes the legal description of the Property)


IN WITNESS WHEREOF, the Grantor has caused these presents to be executed under seal as of the date first above written.

Signed, sealed and delivered in the presence of:

Nelmstar, L.L.C.



Witness

By: 

Print Name: Ben A. Nelms
Print Title: President



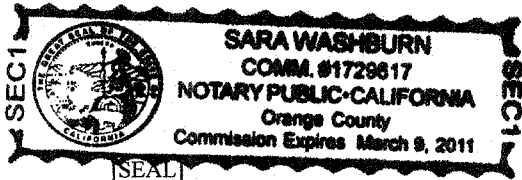
Witness

[SEAL]

STATE OF ~~OREGON~~ California
COUNTY OF Orange

Before me, a notary public, in and for said county, personally appeared Ben A. Nelm S
_____, known to me to be the person who as President of Nelmstar, LLC
_____, the _____ which executed the foregoing instrument, signed the same and
acknowledged to me that he or she did so sign said instrument in the name and on behalf of the said _____
_____ as such officer of his/her own free will and accord, for the purposes therein stated and expressed.

In witness whereof, I have hereunto subscribed my name and affixed my official seal this 22 day of May,
2007.



Sara Washburn
NOTARY PUBLIC
Name: Sara Washburn
Serial #: 1729617
My Commission Expires: March 9, 2011

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
COUNTY OF Orange)

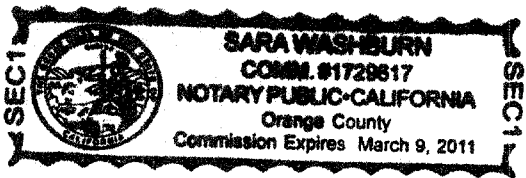
On May 22, 2007 before me, Sara Washburn, Notary Public
DATE NAME, TITLE OF OFFICER – E.G., “JANE DOE, NOTARY PUBLIC

personally appeared, Ben A. Nelms

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Sara Washburn (SEAL)
NOTARY PUBLIC SIGNATURE



OPTIONAL INFORMATION

THIS OPTIONAL INFORMATION SECTION IS NOT REQUIRED BY LAW BUT MAY BE BENEFICIAL TO PERSONS RELYING ON THIS NOTARIZED DOCUMENT.

TITLE OR TYPE OF DOCUMENT _____

DATE OF DOCUMENT _____ NUMBER OF PAGES _____

SIGNERS(S) OTHER THAN NAMED ABOVE _____

SIGNER'S NAME _____ SIGNER'S NAME _____

**EXHIBIT A
TO
DEED OF TRUST**

REAL PROPERTY

Lot 44, Blok 31, Tract No. 1184, OREGON SHORES UNIT #2 FIRST ADDITION, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.