

2007-009600

Klamath County, Oregon

Recording Requested By:



00023406200700096000230231

05/29/2007 02:53:49 PM

Fee: \$141.00

Beneficiary

When Recorder Mail To:

Normandy Corporation

46 Prince St.

Rochester, NY 14607

Loan No. _____

Space Above For Recorder's Use

**CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT,
AND FIXTURE FILING**

1ST 992950

THIS CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT, AND FIXTURE FILING (hereinafter referred to as "Deed of Trust") entered into this 29th day of May, 2007, between Ore-Cal Land Development, LLC, (hereinafter referred to as "Trustor"), whose address is 645 Wildland Drive, Klamath Falls, Oregon 97601, First American Title Insurance Company of Oregon, Trustee, and its successors in the Trust hereby created (such Trustee and any successors in Trust being hereinafter referred to as "Trustee"), and NORMANDY CORPORATION, a New York corporation, and its assigns (hereinafter referred to as "Beneficiary"), whose address is 46 Prince Street, Rochester, New York 14607-1016.

WITNESSETH:

ARTICLE 1 - Definitions

As used herein, the following terms shall have the following meanings:

1.1 Contracts. All of the right, title and interest of Trustor in and to all contracts respecting construction of the Improvements and maintenance of the Mortgaged Property, defined in the Building Loan Agreement.

1.2 Escrowed Sums. The amounts paid by Trustor to Beneficiary pursuant to Section 11.13 hereof to be held by Beneficiary in a fund for the payment of Impositions and insurance premiums.

1.3 Event of Default. Any happening or occurrence described in Article 6 herein.

1.4 Fixtures. All materials, supplies, equipment, apparatus, and other items now or hereafter attached to, installed on or in the Land or the Improvements, or which in some fashion are deemed to be fixtures to the Land

or Improvements under the laws of the State of Oregon. The term "Fixtures" shall include, without limitation, all items of personalty to the extent that the same may be deemed Fixtures under applicable law.

1.5 Governmental Authority. Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

1.6 Impositions. All real estate and personal property taxes, water, gas, sewer, electricity, and other utility rates and charges; charges imposed pursuant to any subdivision, planned unit development, or condominium declaration or restrictions; charges for any easement, license, or agreement maintained for the benefit of the Mortgaged Property, and all other taxes, charges and assessments and any interest, costs, or penalties with respect thereto of any kind and nature whatsoever which at any time prior to or after the execution hereof as may be assessed, levied or imposed upon the Mortgaged Property or the ownership, use, occupancy, or enjoyment thereof.

1.7 Improvements. Any and all buildings, structures, open parking areas, and other improvements, and any and all accessions, additions, replacements, substitutions, or alterations thereof or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land or any part thereof.

1.8 Indebtedness. The principal of, interest on, and all other amounts and payments due under or secured by the Note and the other Security Documents, together with all funds hereafter advanced by Beneficiary to or for the benefit of Trustor as contemplated by any covenant or provision herein contained or for any other purpose, and all other indebtedness, absolute or contingent, owing or which may hereafter become owing by trustor to Beneficiary, whether such indebtedness is evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty, or otherwise, it being contemplated that Trustor may hereafter become indebted to Beneficiary in further sum or sums, provided that such evidence of indebtedness contains a recitation that the Security Documents secure payment thereof.

1.9 Land. The real estate or any interest therein described in Exhibit A attached hereto and made a part hereof, together with all Improvements and Fixtures and all rights, titles, and interests appurtenant thereto.

1.10 Leases. Any and all leases, subleases, licenses, concessions, or other agreements (written or verbal, now or hereafter in effect) which grant a possessory interest in and to, or the right to extract, mine, reside in, sell, or use the Mortgaged Property, and all other agreements, including, but not limited to, utility contracts, maintenance agreements, and service contracts, which in any way relate to the use, occupancy, operation, maintenance, enjoyment, or ownership of the Mortgaged Property.

1.11 Legal Requirements:

1.11.1 Any and all present and future judicial decisions, statutes, rulings, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to Trustor or the Mortgaged

Property, including, the ownership, use, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction thereof.

1.11. 2 Any and all restrictions, reservations, conditions, easements, or other covenants or agreements of record affecting the Mortgaged Property.

1.12 Loan Agreement. That certain Building Loan Agreement of even date herewith between Trustor and Beneficiary relating to the Mortgaged Property.

1.13 Mortgaged Property. Trustor's interest in and to the Land, and all Improvements, Fixtures, Personalty, Leases and Rents, together with:

1.13.1 All rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages, and appurtenances appertaining thereto, and all right, title, and interest of Trustor in and to any streets, ways, alleys, strips of land adjoining the Land, or any part thereof;

1.13.2 All betterments, accessions, additions, appurtenances, substitutions, replacements, and revisions thereof and thereto and all reversions and remainders therein;

1.13.3 All of Trustor's right, title, and interest in and to any award, remuneration, settlement, or compensation heretofore made or hereafter to be made by any Governmental Authority to Trustor, including those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements;

1.13.4 All plans and specifications for the Improvements; all contracts and subcontracts relating to the Improvements, all deposits (including purchaser's deposits into escrow and tenant's security deposits), funds, accounts, contract rights, instruments, documents, general intangibles (including trademarks, service marks, trade names, and symbols used in connection therewith), and notes or chattel paper arising from or by virtue of any transactions related to the property described herein; all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the property described herein, all proceeds arising from or by virtue of the sale, lease, or other disposition of all or any part of the Mortgaged Property (consent to same not granted or to be implied hereby); all proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to the Mortgaged Property;

1.13.5 All other interest of every kind and character which Trustor now has or at any time hereafter acquires in and to the above described real and personal property and all property which is used or useful in connection therewith, including rights of ingress and egress, easements, licenses, and all reversionary rights or interests of Trustor with respect to such property. To the extent permitted by law, all of the foregoing Personal Property and Fixtures are to be deemed and held to be a part of and affixed to the real property. The lien, further, or additional titles, estates, interest, or rights which may exist now or at any time be acquired by Trustor in or to the property demised under the Master Lease, if applicable, and including Trustor's rights, if any, to purchase the property demised under the Master Lease, if applicable, and, if fee simple title to any of such property shall ever become vested in Trustor, such fee simple interest shall be encumbered by this Deed of

Trust in the same manner as if Trustor had fee simple title to such property as of the date of execution hereof; and

1.13.6 Any and all other security and collateral of any nature whatsoever now or

hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations. As used in this Deed of Trust, the term "Mortgaged Property" is expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

1.14 Note. One certain promissory note of even date herewith, executed by Trustor, payable to the order of Beneficiary, in the principal sum of Three Hundred Thirty Thousand and 00/100 Dollars (US \$330,000.00), bearing interest and being payable as therein provided, and any amendments, expansions, extensions, modifications, renewals, rearrangements or reinstatements of said Note pursuant to the terms of the Loan Agreement.

1.15 Obligations. Any and all of the covenants, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Trustor or others to Beneficiary, Trustee, or others as set forth in the Security Documents.

1.16 Personalty. All of the right, title and interest to Trustor in and to tangible and intangible personal property, including all equipment, inventory, goods, consumer goods, accounts, chattel paper, instruments, money, general intangibles, documents, minerals, crops, and timber which are attached to, installed on, or placed or used on, in connection with or are acquired for such attachment, installation, placement, or use, or which arise out of the development, improvement, financing, leasing, operation, or use of, the Land, the Improvements, Fixtures, or other goods located on the Land or Improvements, together with all additions, accessions, accessories, amendments, and modifications thereto, extensions, renewals, enlargements, and proceeds thereof, substitutions therefor, and income and profits therefrom. The following are included, without limitation, in the definition of Personalty: furnishings, building materials, landscaping, supplies, machines, engines, boilers, stokers, pumps, fans, vents, blowers, dynamos, furnaces, elevators, ducts, shafts, pipes, furniture cabinets, shades, blinds, screens, plumbing, heating, air conditioning, lighting, lifting, ventilation, refrigerating, cooking, medical, laundry, and incinerating equipment; partitions, drapes, carpets, rugs, and other floor coverings, awnings, call and sprinkler systems, fire prevention and extinguishing apparatus and equipment, water tanks, swimming pools, compressors, vacuum cleaning systems, disposals, dishwashers, ranges, ovens, kitchen equipment, cafeteria equipment, recreational equipment, loan commitments, financing arrangements, bonds, construction contracts, leases, licenses, permits, sales contracts, insurance policies, and the proceeds therefrom, plans and specifications, surveys, rent rolls, books and records, funds, bank deposits, and all other intangible personal property.

1.17 Rents. All of the rents, revenues, income, proceeds, royalties, profits, and other benefits paid or payable for using, leasing, licensing, possessing, operating from or in, residing in, selling, mining, extracting or otherwise enjoying, or Property.

1.18 Security Documents. The Loan Agreement, the Note, this Construction Deed of Trust and Security Agreement, Financing Statements, the Continuing Guaranty (s) and all documents referred to or incorporated in the Loan Agreement, and any and all other documents now or hereafter executed by Trustor or any person or party to evidence or secure the payment of the Indebtedness or the performance and discharge of the Obligations.

ARTICLE 2 - Grant

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Trustor has irrevocably GRANTED, BARGAINED, SOLD, CONVEYED, TRANSFERRED, AND ASSIGNED, and by these presents does irrevocably GRANT, BARGAIN, SELL, CONVEY, TRANSFER, AND ASSIGN unto Trustee, the Mortgaged Property, subject, however, to the permitted encumbrances, TO HAVE AND TO HOLD the Mortgaged Property unto Trustee, its successors in trust, and Trustee's assigns forever, WITH POWER OF SALE, and Trustor does hereby bind itself, its successors, and assigns to warrant and forever defend the title to the Mortgaged Property unto Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof, provided, however, that if Trustor shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall perform and discharge (or cause to be performed and discharged) the Obligations on or before the date same are to be performed and discharged, then the liens, security interests, estates and rights granted by the Security Documents shall terminate, otherwise same shall remain in full force and effect.

ARTICLE 3 - Warranties and Representations

Trustor hereby unconditionally warrants and represents to Beneficiary as follows:

3.1 Information. All information, reports, papers, and data given to Beneficiary with respect to Trustor or others obligated under the terms of the Security Documents or the Mortgaged Property are accurate, complete, and correct in all material respects and do not omit any fact the inclusion of which is necessary to prevent the facts contained therein from being materially misleading.

3.2 Title to Mortgaged Property and Lien of this Instrument. Trustor has good, marketable and indefeasible title to the Land, in fee simple, and good and indefeasible title to the Fixtures and Personalty, Leases and Rents, free and clear of any liens, charges, encumbrances, security interests, and adverse claims whatsoever, except the permitted encumbrances. This Deed of Trust constitutes a valid, subsisting first and prior lien deed of trust on Trustor's interest in the Land described in Exhibit A, the Improvements, and the Fixtures, and a valid, subsisting first, and prior security interest in and to the Personalty, Leases, and Rents, all in accordance with the terms hereof.

3.3 Taxes and Other Payments. Trustor has filed all federal, state, county-municipal, and city income and other tax returns required to have been filed by them and have paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by them, and Trustor knows of no basis for any additional assessment in respect to any such taxes. Trustor has paid or will pay in full (except for such retainages as may be permitted or required by any Legal Requirements to be withheld by Trustor pending completion of the Improvements) all sums owing or claimed for labor, material, supplies, personal property (whether or not

constituting a Fixture hereunder), and services of every kind and character used, furnished, or installed in the Mortgaged Property and no claim for same currently exists or will be permitted to become past due.

3.4 Litigation. There are no actions, suits, or proceedings pending or to the knowledge

of Trustor threatened against or affecting Trustor or the Mortgaged Property or involving the validity or enforceability of this Deed of Trust or the priority of the lien and security interest hereof, and no event has occurred (including specifically Borrower's execution of the Security Documents and its consummation of the loan represented thereby) which will violate, be in conflict with, result in the breach of, or constitute (with due notice or lapse of time, or both) a default under, any legal requirement or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of Trustor's property other than the lien and security interest created by the Security Documents.

ARTICLE 4 - Affirmative Covenants

Trustor hereby unconditionally covenants and agrees with Beneficiary as follows:

4.1 Payment and Performance. Trustor will pay the Indebtedness, as and when called for in the Security Documents, and will perform all of the Obligations in full and on or before the dates they are to be performed.

4.2 Existence. Trustor will preserve and keep in full force and effect its existence, rights, franchises and trade names.

4.3 Compliance With Legal Requirements. Trustor will promptly and faithfully comply with, conform to, and obey all present and future Legal Requirements, whether or not same shall necessitate structural changes in, improvements to, or interfere with the use or enjoyment of, the Mortgaged Property.

4.4 Payment of Impositions. Subject to the provisions of Section 11.13 herein, Trustor will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the due date thereof, or the day any fine, penalty, interest, or cost may be added thereto or imposed, or the day any lien may be filed, for the nonpayment thereof (if such day is used to determine the due date of the respective item); provided, however, that Trustor may, if permitted by law and if installment payments would not create or permit the filing of a lien against the Mortgaged Property, pay the Imposition in installments whether or not interest shall accrue on the unpaid balance of such Impositions. Trustor may in good faith, in lieu of paying such Impositions as they become due and payable, by appropriate proceedings, contest the validity thereof. During such contest Trustor shall not be deemed in default hereunder because of such nonpayment if, prior to delinquency of the asserted tax or assessment, Trustor furnishes Beneficiary an indemnity bond, conditioned that such tax or assessment with interest, cost, and penalties be paid as herein stipulated, secured by a deposit in cash, or security acceptable to Beneficiary or with surety acceptable to Beneficiary, in the amount of the tax or assessment being contested by Trustor and a reasonable additional sum to pay all possible costs, interest and penalties imposed or incurred in connection therewith. Upon conclusion of such contest, Trustor shall promptly pay any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties, and interest thereon prior to the date such judgment becomes final or any writ or order issued under which the Mortgaged Property may be sold pursuant to such judgment.

Trustor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Trustor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Trustor has notice of the filing, secure the discharge of the lien, or if required by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender 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, Trustor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Trustor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

4.5 Repair. Trustor will keep the Mortgaged Property in first-class order and condition and presenting a first-class appearance and will make all repairs, replacements, renewals, additions, betterments, improvements, and alterations thereof and thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep same in such order and condition. Trustor will also use its best efforts to prevent any act or occurrence which might impair the value or usefulness of the Mortgaged Property for its intended usage as set forth in any plans and specifications for the Improvements submitted to Beneficiary or in the Security Documents. In instances where repairs, replacements, renewals, additions, betterments, improvements, or alterations are required in and to the Mortgaged Property on an emergency basis to prevent loss, damage, waste, or destruction thereof, Trustor shall proceed to construct same, or cause same to be constructed, notwithstanding anything to the contrary contained in Section 5.2 herein below; provided, however, that in instances where such emergency measures are to be taken, Trustor will promptly notify Beneficiary in writing of the commencement of same and the measures to be taken, and when same are completed, the completion date and the measures actually taken. This Section 4.5 shall not be deemed to prohibit Trustor from construction of the Project, as defined in the Loan Agreement.

4.5.1 Hazardous Substances. The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Deed of Trust, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, *et seq.* ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub.L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, *et seq.*, the Resource Conservation and Recovery Act, 49 U.S.C. Section 6901, *et seq.*, or other applicable State or Federal laws, rules or regulations adopted pursuant to any of the foregoing. Trustor represents to Lender that: (A) during the period of Trustor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, or about the Property; (B) Trustor has no knowledge of, or any reason to believe that there has been except as previously disclosed to and acknowledged by Lender in writing, (i) any use, generation, manufacture, storage, treatment, disposal, releases, or threatened release of any hazardous waster or substance 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; and (C) except as previously disclosed to and acknowledged by Lender in writing, (i) neither Trustor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, or about the Property and (ii) any such activity shall be conducted in compliance with all applicable Federal, State, and local

laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Trustor authorizes Lender and their agents to enter upon the Property to make such inspections and tests as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Trustor or to any other person. The representations and warranties contained herein are based on Trustor's due diligence in investigation the Property for hazardous waste. Trustor hereby (a) releases and waives any future claims against Lender for indemnity or contribution in the event Trustor becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened releasing occurring prior to Trustor's ownership or interest in the Property, whether or not the same was or should have been known to Trustor. The provisions of this section of the Deed of Trust, including the obligation to indemnify, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

4.5.2 Nuisance, Waste. Trustor 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, Trustor 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 the Lender.

4.6 Insurance. Trustor shall obtain and maintain insurance upon and relating to the Mortgaged Property insuring against personal injury and death, loss by fire, and such other hazards, casualties, and contingencies (including, but not limited to, fire, lightning, landslide, earthquake, hail, windstorm, explosion, malicious mischief, and vandalism) as are covered by extended coverage policies in effect where the Land is located and such other risks as may be specified by Beneficiary from time to time, all in accordance with Lender's Insurance Requirements set forth in the Loan Agreement; provided, however, that absent written direction from Beneficiary, such insurance shall be in an amount not less than the greater of the full insurable replacement value of the Mortgaged Property, or Trustor's unpaid Indebtedness to Beneficiary. If, and to the extent that the Mortgaged Property is located within an area that has been or is hereafter designated or identified as an area having special flood hazards by the Secretary of Housing and Urban Development or by such other official as shall from time to time be authorized by federal or state law to make such designation pursuant to the National Flood Insurance Act of 1994 as such Act may from time to time be amended and in effect, or pursuant to any other national or state program of flood insurance, Trustor shall carry full insurance with respect to the Mortgaged Property in amounts not less than the maximum limit of coverage then available with respect to the Mortgaged Property pursuant to any and all national and state flood insurance programs with respect to the Mortgaged Property or the amount of the Indebtedness, whichever is less. Each insurance policy issued in connection with the Mortgaged Property shall provide by way of endorsements, riders, or other wise, that proceeds will be payable to Beneficiary as its interest may appear. All renewal and substitute policies of insurance shall be delivered at the office of Beneficiary, premiums paid, at least thirty (30) days before termination of policies theretofore delivered to Beneficiary. In case of loss, and except as provided in Section

4.7 hereof, Beneficiary, at its option, shall be entitled to receive and retain the proceeds of the insurance policies, applying the same upon the Indebtedness secured hereby. If any loss shall occur at any time when Trustor shall be in default in the performance of this covenant, Beneficiary shall be entitled to the benefit of all insurance policies held by or for any Trustor, to the same extent as if same had been made payable to Beneficiary; and upon foreclosure hereunder, Beneficiary shall become the owner thereof. Beneficiary shall have the right, but not the obligation, to make premium payments, at Trustor's expense, to prevent any cancellation, endorsement, alteration or reissuance, and such payments shall be accepted by the insurer to prevent same.

4.7 Restoration Following Casualty. If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Mortgaged Property which exceeds Five Thousand Dollars (\$5,000) in any single occurrence, Trustor will give notice thereof to Beneficiary and, if so instructed by Beneficiary, will promptly, at Trustor's sole cost and expense regardless of whether the insurance proceeds (if any) shall be sufficient for the purpose, commence and continue diligently to completion to restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition, and character immediately prior to such damage, loss, or destruction. Anything herein to the contrary notwithstanding, if Beneficiary determines, in its reasonable discretion, that the proceeds of the insurance policies are sufficient to restore, repair, replace, and rebuild the Mortgaged Property as nearly as possible to its value, condition, and character immediately prior to such damage, loss, or destruction, or if the proceeds are not sufficient and Trustor provides additional sums to Beneficiary's satisfaction that the aggregate of such sums and the insurance proceeds will be sufficient for such purpose, the proceeds of the insurance policies, together with additional sums provided by Trustor, shall be placed in a separate account for the benefit of Beneficiary and Trustor to be used to restore, repair, replace, and rebuild the Mortgaged Property as nearly as possible to its value, condition, and character immediately prior to such damage, loss, or destruction. All work to be performed in connection therewith shall be pursuant to a written contract therefor, which contract shall be subject to the prior approval of Beneficiary. In the event Beneficiary determines that such proceeds are insufficient for such purpose and if Trustor elects not to provide additional funds, or to the extent that any funds remain after the Mortgaged Property has been so restored or repaired, such funds shall be applied against the indebtedness to be paid by Trustor.

4.8 Leases and Rents. Trustor shall (a) submit any Lease to Beneficiary for its approval prior to the execution thereof, provided, however that Trustor shall not be required to submit any lease if such lease is for a term not to exceed three (3) months and the rent charged thereunder is not less than the rent being charged for similar-type units in the geographical area in which the Mortgaged Property is located; (b) duly and punctually perform and comply with any and all representations, warranties, covenants, and agreements expressed as binding upon it under each of the Leases; (c) not voluntarily terminate, cancel, waive, modify, or amend its rights or the obligations of any party under any of the Leases; (d) use all reasonable efforts to maintain each of the Leases in full force and effect during the full term hereof, and (e) appear and/or defend any action or proceeding arising under or in any manner connected with any of the Leases or the representations, warranties, covenants, and agreements of it or of any other party or parties thereto. Beneficiary shall, at any time either prior or subsequent to an Event of Default, have the right to collect all Rents, incomes and other sums due and owing from the Mortgaged Property directly from any lessee, tenant, or any other obligor obligated to pay the same. Beneficiary at any time may contact each and every such lessee, tenant or obligor and any other party obligated

on the Leases, informing them to make payment of all sums due and owing Trustor or any other party directly to Beneficiary to the credit of Trustor. Beneficiary may demand, sue for, compromise, and collect any Rents, either under its own name or in the name of Trustor, with or without the consent of Trustor. Trustor will establish, at Beneficiary's request, a separate account into which all Rents and other income from the Land, Improvements, Fixtures, and Personalty shall be deposited, which account Trustor hereby pledges and assigns to Beneficiary as additional security for the Indebtedness and Obligations. Beneficiary may also establish a post office box in the name of Beneficiary to which all Rents shall be sent at the direction of Beneficiary made to the lessees, tenants, or other parties renting, leasing, or otherwise using the Mortgaged Property.

4.9 Inspection. Trustor will permit Trustee and Beneficiary, and their agents, representatives, and employees, to inspect the Mortgaged Property at all reasonable times.

4.10 Defense of Title. If the title of Trustee to, or the interest of Beneficiary in, the Mortgaged Property hereby conveyed, or any part thereof, shall be endangered or shall be attacked, directly or indirectly, Trustor hereby authorizes Beneficiary, at Trustor's expense, to take all necessary and proper steps for the defense of such title or interest, including the employment of counsel, the prosecution or defense of litigation and the compromise or discharge of claims made against such title or interest in the Mortgaged Property. Trustor will indemnify and hold Beneficiary harmless from and against any and all loss, cost, damage, liability, or expense incurred by Beneficiary in protecting its interests hereunder in such an event (including all court costs and attorneys' fees).

4.11 Future Impositions. At anytime should any law be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust or upon any rights, titles, liens, or security interest created hereby or upon the Note, or any part thereof, Trustor shall immediately pay all such taxes; provided that, in the alternative, Trustor may, in the event of the enactment of such a law, and must, if it is unlawful for Trustor to pay such taxes, prepay the Note in full within sixty (60) days after demand therefor by Beneficiary. Trustor shall upon request, promptly furnish at any time and from time to time, a written statement or affidavit, in such form as may be required by Beneficiary, stating the amount of the unpaid balance of the Note and that there are no offsets or defenses against full payment of the Note and performance of the terms hereof or, if there are any such offsets and defenses, specifying them in detail.

4.12 Books and Records. Trustor will maintain full and accurate books of accounts and other records reflecting the results of its operations and will furnish or cause to be furnished to Beneficiary, on or before ninety (90) days after the end of Trustor's fiscal year: (a) a complete, executed copy of a separate report of an examination of Trustor's financial affairs prepared by an independent certified public accountant acceptable to Beneficiary, such reports to include a balance sheet and statement of profit and loss for the immediately preceding fiscal year of Trustor and (b) an operating statement, in such detail as Beneficiary may reasonably require, which accurately, fairly, and separately presents Trustor's operations of the Mortgaged Property for the fiscal year then ended. At any time, and from time to time, Trustor shall deliver to Beneficiary such other financial data as Beneficiary shall reasonably request with respect to the ownership, improvement, maintenance, use, and operation of the Mortgaged Property, and Beneficiary shall have the right, at reasonable times and upon reasonable notice, to audit Trustor's books of account and records relating to the Mortgaged Property, all of

which shall be maintained and made available to Beneficiary and Beneficiary's representatives for such purpose on the Mortgaged Property or at such other location as Beneficiary may approve.

ARTICLE 5 - Negative Covenants

Trustor hereby covenants and agrees with Beneficiary that, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged:

5.1 Use Violations. Trustor will not use, maintain, operate, or occupy, or allow the use,

maintenance, operation, or occupancy of the Mortgaged Property in a manner which (a) violates any Legal Requirement; (b) may be dangerous unless safeguarded as required by law; (c) constitutes a public or private nuisance; (d) makes void, voidable, or cancelable, or increases the premium of, any insurance then in force with respect thereto.

5.2 Alterations. Trustor will not commit or permit any waste of the Mortgaged Property and will not

(subject to the provisions of Sections 4.5 and 4.7 herein, and the Loan Agreement), without the prior written consent of Beneficiary, make or permit to be made any alterations or additions to the Mortgaged Property of a material nature once completed.

5.3 Replacement of Fixtures and Personalty. Trustor will not, without the prior written consent of

Beneficiary, permit any of the Fixtures or Personalty to be removed at any time from the Land or Buildings unless the removed item is removed temporarily for maintenance or repair or, if removed permanently, is replaced by an article of equal suitability and value, owned by Trustor, free and clear of any lien or security interest except as such may be first approved in writing by Beneficiary.

ARTICLE 6 - Events of Default

The term "Event of Default" as used herein and in the Security Documents shall, in addition to the Events of Default described in the Loan Agreement, mean the occurrence, happening, or continuance of any one or more of the following:

6.1 Foreclosure of Other Liens. If the holder of any lien or security interest on the Mortgaged Property

(without implying Beneficiary's consent to the existence, placing, creating, or permitting of any lien or security interest) or other proceedings for the enforcement of its remedies thereunder.

6.2 Change of Ownership. If at any time the Mortgaged Property, or any part of the Mortgaged Property or any undivided interest in the Mortgaged Property, (i) is sold, transferred or otherwise conveyed by Trustor either voluntarily or by operation of law (ii) is or becomes the subject of a contract or a grant of option for the sale, transfer or conveyance thereof, or (iii) is or becomes the subject of a lease, rental agreement or other agreement, oral or written, granting or creating a leasehold interest in all of, any part of, or any undivided interest in the fee of the Mortgaged Property for a term of more than three years (including any mandatory or optional rights to extend the term), without the prior written consent of Beneficiary, Beneficiary will have the option to declare, without giving notice or making a demand of any kind, that the entire indebtedness secured by this Deed of Trust is immediately due.

6.3 No Further Encumbrances. Trustor will not, without the prior written consent of Beneficiary, create,

place, suffer, or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of or allow to remain, any mortgage, pledge, lien (statutory, constitutional, or contractual), security interest, encumbrance, or charge on, or conditional sale or other title retention agreement, regardless of whether same are expressly subordinate to the liens of the Security Documents, with respect to the Mortgaged Property.

6.4 Title and Lien Priority. If title of Trustor to any or all of the Mortgaged Property or the status of this

Deed of Trust as a first and prior lien and security interest on the Mortgaged Property shall be challenged or endangered by any party whatsoever, and Trustor shall fail to cure the same upon reasonable demand by Beneficiary.

ARTICLE 7 - Default and Foreclosure

If an Event of Default shall occur, Beneficiary may, at Beneficiary's election and by and through Trustee or otherwise, exercise any or all of the following rights, remedies, and recourses:

7.1 Acceleration and Future Advances. Beneficiary may declare the entire Indebtedness,

including the Note, Principal Balance (defined hereby as meaning the then unpaid principal balance on the Note), the accrued interest and any other accrued but unpaid interest thereon, court costs and attorneys' fees hereunder immediately due and payable, without notice, presentment, protest, demand, or action of any nature whatsoever (each of which hereby is expressly waived by Trustor), whereupon the same shall become immediately due and payable. Additionally, Beneficiary shall not be required to make any further advances on the Note or other Security Documents upon the occurrence of an Event of Default or an event which, with the giving of notice or passing of time, would constitute an Event of Default.

7.2 Entry on Mortgaged Property. Beneficiary may enter upon the Mortgaged Property and take

exclusive possession thereof and of all books, records, and accounts relating thereto without notice and without being guilty of trespass. If Trustor remains in possession of all or any part of the Mortgaged Property after an Event of Default and without Beneficiary's prior written consent thereto, Beneficiary may, without noticed to Trustor, invoke any and all legal remedies to dispossess Trustor, including specifically one or more actions for forcible entry and retainer, and writ of restitution. Nothing contained in the foregoing sentence shall, however, be construed to impose any greater obligation or any prerequisites to acquiring possession of the Mortgaged Property after an Event of Default than would have existed in the absence of such sentence.

7.3 Operation of Mortgaged Property. Beneficiary may hold, lease, manage, operate, or otherwise use or

permit the use of the Mortgaged Property, either itself or by other persons, firms, or entities, in such manner, for such time and upon such other terms as Beneficiary may deem to be prudent and reasonable under the circumstances (making such repairs, alterations, additions, and improvements thereto, from time to time, as Beneficiary shall deem necessary or desirable), and apply all Rents and other amounts collected by Trustee in connection therewith in accordance with the provisions of Section 7.1 2 herein.

7.4 Foreclosure by Power of Sale. Should Beneficiary elect to foreclose by exercise of the power of sale

herein contained, Beneficiary shall notify Trustor and shall deposit with Trustee this Deed of Trust and the Note and such receipts with evidence of expenditures made and secured hereby as Trustee may require.

7.4.1 Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published, and

delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust and after lapse of such time as may then be required by law and after recordation of such notice of default, Trustee without demand on Trustor, shall, after lapse of time and notice of sale having been given as required by law, sell the Mortgaged Property at the time and place of sale fixed by it in said notice of sale, either as a whole or in separate parcels or items and in such order as Trustee may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale and in accordance with the laws of the State of Oregon. Trustee shall deliver to such purchaser its deed conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof, any person, including, without limitation, Trustor, Trustee, or Beneficiary, may purchase at such sale.

7.4.2 Trustee shall, after receipt of the amount paid by said purchaser, deliver to purchaser its deed conveying the Mortgaged Property, without warranty as to title, possession, or encumbrances. Trustee shall apply the proceeds of the sale in the following order to repayment of: (i) expenses of sale; (ii) costs, fees, charges, and expenses of Trustee and of this trust, including attorneys' fees in a reasonable amount; (iii) costs of evidence of title and Trustee's fees in connection with such sale; (iv) all sums expended under any of the terms hereof by Trustee or Beneficiary not then repaid, with accrued interest at the same rate as specified in the Note; (v) accrued interest on the Note; (vi) unpaid principal of said Note; and (vii) all other obligations of Trustor to Beneficiary secured hereby. Any remainder shall then be paid to the person or persons legally entitled thereto upon proof of such right. The recitals in Trustee's deed of any matters, proceedings, and facts shall be conclusive proof of the truthfulness and regularity thereof. Trustor agrees to surrender possession of said property to the purchaser immediately and without demand.

7.4.3 Trustee may postpone the sale of all or any portion of the Mortgaged Property by public announcement at the time and place first fixed for sale, and from time to time thereafter may postpone such sale by public announcer at the time and place fixed by the preceding postponement, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

7.5 Appointment of Receiver. If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without notice to Trustor or anyone claiming under it, and without regard to the then value of the Mortgaged Property or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Properties, and Trustor hereby irrevocably consents to such appointment and waives prior but not simultaneous notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided herein and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgaged Property unless such receivership is sooner terminated.

7.6 Partial or Late Payment. The acceptance by Beneficiary of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums secured hereby or to declare a default as herein provided and in either event to assess a late charge or penalty. The acceptance by Beneficiary of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon the condition that it shall not constitute a waiver of the obligation of Trustor to pay the entire sum when due, and Trustor's failure to pay the entire sum then due shall be and continue to be a default

notwithstanding such acceptance of such amount on account, as aforesaid, and Beneficiary or Trustee shall be at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Beneficiary there after of further sums on account, or otherwise, entitled to exercise all rights in this Deed of Trust or the Loan Agreement conferred upon them or either of them upon the occurrence of a default.

7.7 Remedies Cumulative, Concurrent and Nonexclusive. Trustee and Beneficiary shall have all rights,

remedies, and recourses granted in the Security Documents and available at law or equity (including specifically those granted by the Uniform Commercial Code in effect and applicable to the Mortgaged Property or any portion thereof) and same (a) shall be cumulative and concurrent; (b) may be pursued separately, successively, or concurrently against Trustor or others obligated under the Note, or against the Mortgaged Property, or against any one or more of them at the sole discretion of Beneficiary, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Trustor that the exercise or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse; and (d) are intended to be, and shall be, nonexclusive.

7.8 Release of and Resort to Collateral. Any part of the Mortgaged Property may be released by

Beneficiary without affecting, subordinating, or releasing the lien, security interest, and assignment hereof against the remainder. The lien, security interest, and other rights granted hereby shall not affect or be affected by any other security taken for the same indebtedness or any part thereof. The taking of additional security, or the rearrangement, extension or renewal of the Indebtedness, or any part thereof, shall not release or impair the lien, security interest, and other rights granted hereby or affect the liability of any endorser, guarantor, or surety, or improve the right of any permitted junior lien holder; and this Deed of Trust, as well as any instrument given to secure any rearrangement, renewal, or extension of the Indebtedness secured hereby, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the Indebtedness is completely paid.

7.9 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law,

Trustor hereby irrevocably and unconditionally waives and releases (a) all benefits that might accrue to Trustor by any present or future laws exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; (b) all notices of any Event of Default (except as may be provided for under the terms hereof) or of Beneficiary's or Trustee's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Security Documents; (c) any right to appraisal or marshalling of assets or a sale in inverse order of alienation, (d) the exemption of homestead; and (e) the administration or estates of decedents, or other matter whatever to defeat, reduce, or affect the right of Beneficiary under the terms of this Deed of Trust, to sell the Mortgaged Property for the collection of the Indebtedness secured hereby (without any prior or different resort for collection) or the right of Beneficiary, under the terms of the Deed of Trust, to the payment of the Indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other person and claimant whatever (only reasonable expenses of such sale being first deducted). Trustor expressly waives and relinquishes any right or remedy which it may have or be able to assert by reason of the provisions of the Uniform Commercial Code of the State of Oregon pertaining to the rights and remedies of sureties.

7.10 Discontinuance of Proceeding. In case Beneficiary shall have proceeded to invoke

any right, remedy, or recourse permitted under the Security Documents and shall thereafter elect to discontinue or abandon the same for any reason, Beneficiary shall have the unqualified right so to do and, in such event, Trustor and Beneficiary shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Security Documents, the Mortgaged Property, and otherwise, and the rights, remedies, recourses, and power of Beneficiary shall continue as if same had never been invoked.

7.11 Application of Proceeds; Deficiency Obligation. The proceeds of any sale of, and the

Rents and other income generated by the holding, leasing operating, or other use of, the Mortgaged Property shall be applied by Beneficiary (or the receiver, if one is appointed) to the extent that funds are so available therefrom in the following order of priority: (a) first, to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, maintaining, repairing, improving, and selling the same, including, without limitation, (i) Trustee's fees and receiver's fees; (ii) costs of advertisement; (iii) attorneys' and accountants' fees; (iv) court costs; and (v) payment of any and all impositions and prior liens, security interests or other rights, titles, or interest on the Mortgaged Property (without in any way implying Beneficiary's prior consent to the creation thereof); (b) second, to the payment of all amounts, other than the principal amount and accrued but unpaid interest which may be due to Beneficiary under the Security Documents, together with interest thereon as provided therein, (c) third, to the payment of all accrued but unpaid interest due on the Note; (d) fourth, to the payment of the principal amount outstanding on the Note in inverse order of maturity, (e) fifth, to the payment of any indebtedness or obligation secured by a subordinate deed of trust or security interest on the Mortgaged Property, and (f) sixth, to Trustor. Trustor and any other party liable on the Indebtedness and the Obligation shall be liable for any deficiency remaining in the Indebtedness and Obligations subsequent to the sale referenced in this section.

7.12 Prepayment. If, following the occurrence of an Event of Default and an acceleration of Indebtedness

but prior to the sale of the Mortgaged Property, Trustor shall tender to Beneficiary payment of an amount sufficient to satisfy the entire Indebtedness, such payment shall be deemed to be a voluntary prepayment under the Note and, accordingly, Trustor shall also pay to Beneficiary the premium (if any) then required under the Note in order to exercise the prepayment privilege contained therein.

7.13 Purchase by Beneficiary. Beneficiary shall have the right to become the purchaser at the sale of the

Mortgaged Property hereunder pursuant to any other means and shall have the right to be credited on the amount of its bid therefor all of the Indebtedness and Obligations due and owing as of the date of such sale.

7.14 Disaffirmation of Contracts. The purchaser at any Trustee's or foreclosure sale hereunder may

disaffirm any easement granted, or rental, lease, or other contract made in violation of any provision of this Deed of Trust and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement and rental, lease, or other contract.

ARTICLE 8 - Condemnation

8.1 Application of Proceeds. If the Mortgaged Property, or any part thereof, shall be condemned or otherwise taken for public or quasi-public use under the power of eminent domain, or be transferred in lieu thereof, all damages or other amounts awarded for the taking of, or injury to, the Mortgaged Property shall be paid to Beneficiary who shall have the right, in its reasonable discretion, to apply the amounts so received against (i) the costs and expenses of Beneficiary or trustee, including reasonable attorneys' fees incurred in

connection with collection of such amounts, and (ii) the balance against the Indebtedness and Obligations; provided, however, that if Beneficiary determines, in its reasonable discretion, that the proceeds of such award are sufficient to restore, repair, replace, and rebuild the Mortgaged Property as nearly as possible to its value, condition, and character immediately prior to such taking, or if the proceeds are not sufficient and Trustor provides additional sums to Beneficiary's satisfaction that the aggregate of such sums and the proceeds of such award will be sufficient for such purpose, the proceeds of such award, together with additional sums provided by Trustor shall be placed in a separate account for the benefit of Beneficiary and Trustor to be used to restore, repair, replace, and rebuild the Mortgaged Property as nearly as possible to its value, condition, and character immediately prior to such taking. All work to be performed in connection therewith shall be pursuant to a written contract therefor, which contract shall be subject to the prior approval of Beneficiary. In the event Beneficiary determines that the aggregate of such proceeds are insufficient for such purpose and if Trustor elects not to provide additional funds, or to the extent that any funds remain after the Mortgaged Property has been so restored and repaired, the same shall be applied against the Indebtedness and the Obligations. To enforce its rights hereunder, Beneficiary shall be entitled to participate in and control any condemnation proceedings and to be represented therein by counsel of its own choice, and Trustor will deliver, or cause to be delivered, to Beneficiary such instruments as may be requested by it from time to time to permit such participation. In the event Beneficiary, as a result of any such judgment, decree, or award, reasonably believes this Deed of Trust is impaired, Beneficiary may, without notice, declare all of the Indebtedness secured hereby immediately due and payable.

ARTICLE 9 - Security Agreement

9.1 Security Interest. This Deed of Trust shall be construed as a Deed of Trust on real

property, and it shall also constitute and serve as a security agreement on personal property within the meaning of, and shall constitute until the grant of this Deed of Trust shall terminate as provided in Article 2 hereof, a first and prior pledge and assignment and a first and prior lien security interest under the Oregon Uniform Commercial Code with respect to the Contracts, Personalty, Fixtures, Leases, and Rents. Trustor has granted, bargained, conveyed, assigned, transferred and set over, and by these presents does grant, bargain, convey, assign, transfer, and set over unto Trustee (acting as both a trustee and agent for Beneficiary under the terms hereof) a first and prior security interest in and to all of Trustor's right, title, and interest in, to, and under the Personalty, Fixtures, Leases and Rents in trust, to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. Upon an Event of Default, Trustor shall gather all of the Mortgaged Property which is Personalty at a location designated by Beneficiary for sale pursuant to the terms hereof.

9.2 Financing Statements. Trustor shall execute and deliver to Beneficiary, in form and substance

satisfactory to Beneficiary, such financing statements and such further assurances as Beneficiary may, from time to time, consider reasonably necessary to create, perfect, and preserve Beneficiary's security interest herein granted, and Beneficiary may cause such statements and assurances to be recorded and filed at such times and places as may be required or permitted by law to so create, perfect, and preserve such security interest. Pursuant to the Oregon Uniform Commercial Code, this Deed of Trust shall be effective as a Financing Statement filed as a Fixture filing from the date of its filing for record covering the Fixtures and Personalty. The address of Trustor, as Debtor, and Beneficiary, as Secured Party, are as set forth herein. The above described goods are or are to become fixtures related to the Land and Improvements of which Trustor is the record title owner.

9.3 Uniform Commercial Code Remedies. Trustee and Beneficiary shall have all the rights, remedies and recourses with respect to the Personalty, Fixtures, Leases, and Rents afforded a secured party by the aforesaid Uniform Commercial Code in addition to, and not in limitation of, the other rights, remedies and recourses afforded by the Security Documents and at law.

9.4 No Obligation of Trustee or Beneficiary. The assignment and security interest herein granted shall not be deemed or construed to constitute Trustee or Beneficiary as a trustee in possession of the Mortgaged Property, to obligate Trustee or Beneficiary to operate the Mortgaged Property or attempt to do the same, or take any action, incur expenses, or perform or discharge any obligation, duty, or liability whatsoever under any of the Leases or otherwise.

ARTICLE I0 - Concerning the Trustee

10.1 No Liability. Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever. Trustee shall not be personally liable in case of entry by Trustee or anyone acting by virtue of the powers herein granted Trustee upon the Mortgaged Property for debts contracted or liability or damages incurred in the management or operation of the Mortgaged Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder or believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Trustor will, from time to time, pay compensation due Trustee hereunder and reimburse Trustee for and save and hold Trustee harmless from and against any and all loss, cost, liability, damage, and expense whatsoever incurred by Trustee in the performance of Trustee's duties.

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

10.3 Successor Trustees. Trustee may resign by giving of notice of such resignation in writing to Beneficiary. If Trustee shall die, resign or become disqualified from acting in the execution of this trust or shall fail or refuse to exercise the same when requested by Beneficiary so to do or if for any reason and without cause Beneficiary shall prefer to appoint a substitute trustee to act instead of the original Trustee named herein, or any prior successor or substitute trustee, Beneficiary shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estate, rights, powers, and duties of the aforementioned Trustee.

10.4 Succession Instruments. Any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of Trustee's predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but, nevertheless, upon the written request of Beneficiary or Trustee's successor trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee, upon the trust herein expressed, all the estates, properties, rights, powers and trusts of Trustee so ceasing to act, and shall duly assign,

transfer and deliver any of the property and moneys held by Trustee to the successor trustee so appointed in Trustee's place.

10.5 Performance of Duties by Agents. Trustee may authorize one or more parties to act on Trustee's behalf to perform the ministerial functions required of Trustee hereunder, including, without limitations the transmittal and posting of any notices.

ARTICLE 11 - Miscellaneous

11.1 Survival of Obligations. Each and all of the Obligations shall survive the execution and delivery of the Security Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Indebtedness shall have been paid in full.

11.2 Further Assurances. Trustor upon the request of Trustee or Beneficiary, will execute, acknowledge, deliver, and record and/or file such further instruments and do such further acts as may be necessary, desirable, or proper to carry out more effectively the purposes of the Security Documents, to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including specifically, without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Mortgaged Property, and to complete, execute, record, and file any document or instrument necessary to place third parties on notice of the liens and security interests granted under the Security Documents. Trustor hereby irrevocably appoints Trustee and Beneficiary as its agents to execute and deliver all such instruments and additionally to record and file any of the same as may be necessary.

11.3 Recording and Filing. Trustor will cause the Security Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded, and re-filed in such manner and in such places as Trustee or Beneficiary shall reasonably request and will pay all such recording, filing, re-recording, and re-filing taxes, fees and other charges.

11.4 Notices. All notices or other communications required or permitted to be given pursuant to this Deed of Trust shall be in writing and shall be considered as properly given upon the expiration of forty-eight (48) hours following deposit in a regularly maintained receptacle for the United States Postal Service, postage prepaid, registered or certified, return receipt requested, or by delivering the same in person to the intended addressee or by prepaid telegram; provided, however, that notice regarding any proposed foreclosure sale shall be given pursuant to Section 7.4 Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be as set forth in the opening recital herein; provided, however, that trustor and Beneficiary shall have the right to change their address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove.

11.5 No Waiver. Any failure by Trustee or Beneficiary to insist, or any election by Trustee or Beneficiary not to insist, upon strict performance by Trustor of any of the terms, provisions, or conditions of the Security Documents shall not be deemed to be a waiver of the same or of any other term, provision, or condition thereof, and Trustee or Beneficiary shall have the right at any time and from time to time thereafter to insist upon strict performance by Trustor of any and all of such terms, provisions, and conditions.

11.6 Beneficiary's Right to Pay Indebtedness and Pay Obligations. If Trustor or any other party shall fail, refuse, or neglect to make any required payment of the Indebtedness or perform any of the Obligations required by the Security Documents, then at any time thereafter and without notice or demand upon Trustor or any other party, and without waiving or releasing any other right, remedy or recourse Beneficiary may have because of the same, Beneficiary may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Trustor and shall have the right to enter upon the Mortgaged Property for such purpose and to take all such action thereon with respect to the Mortgaged Property as it may deem necessary or appropriate. Trustor shall be obligated to repay Beneficiary for all sums advanced by it pursuant to this Section 11.6 and shall indemnify and hold Beneficiary harmless from and against any and all loss, cost, expense, liability, damage, and claim and cause of action, including reasonable attorneys' fees, incurred or accruing by any acts performed by Beneficiary pursuant to the provisions of this Section 11.6 or by reason of any other provision of the Security Documents. All sums paid by Beneficiary pursuant to this Section 11.6 and all other sums extended by Beneficiary to which it shall be entitled to be indemnified, together with interest thereon at the maximum legal contract rate of interest that Beneficiary may charge Trustor from the date of such payment or expenditure shall constitute additions to the Indebtedness and Obligations, shall be secured by the Security Documents, and shall be paid by Trustor to Beneficiary upon demand.

11.7 Covenants Running with the Land. All obligations contained in the Security Documents are intended by the parties to be and shall be construed as covenants running with the Mortgaged Property.

11.8 Successors and Assigns. All of the terms of the Security Documents shall apply to, be binding upon, and inure to the benefit of the parties thereto, their respective successors, assigns, heirs and legal representatives, and all other persons claiming by, through, or under them.

11.9 Severability. The Security Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Security Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances, or other instruments referred to herein above shall be affected thereby, but rather, the same shall be enforced to the greatest extent permitted by law.

11.10 Entire Agreement and Modification. The Security Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof, and all prior agreements relative thereto which are not contained herein or therein are terminated. The Security Documents may be amended, revised, waived, discharged, released, or terminated only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release, or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

11.11 Counterparts. This Deed of Trust may be executed in any -number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

11.12 Applicable Law and Uniform Commercial Code. The Security Documents shall be governed by and construed according to the laws of the State of Oregon. All terms used herein which are defined in the Oregon Uniform Commercial Code shall be used with the definition therefor in said code.

11.13 Impositions and Insurance Escrow. To implement the provisions of Sections 4.4 and 4.6 hereof, upon the failure by Trustor to pay impositions and insurance premiums when due, Trustor at Beneficiary's request, shall pay to Beneficiary, in advance, as and when directed by Beneficiary and as escrowed sums, an amount equal to the sum of: (a) the annual Impositions (estimated wherever necessary) to become due for the tax year during which such payment is so directed; and (b) the insurance premiums for the same year for those insurance policies as are required hereunder. If Beneficiary determines that any amounts theretofore paid by Trustor are insufficient for the payment in full of such Impositions and insurance premiums, Beneficiary shall notify Trustor of the increased amounts required to provide a sufficient fund, whereupon Trustor shall pay to Beneficiary within thirty (30) days thereafter the additional amount stated in Beneficiary's notice. The escrowed sums may be held by Beneficiary in non-interest-bearing accounts and may be commingled with Beneficiary's other funds. Upon assignment of this Deed of Trust and Security Agreement, Beneficiary shall have the right to pay over the balance of the escrowed sums then in its possession to its assignee, whereupon Beneficiary and its trustee shall then become completely released from all liability with respect thereto. Upon payment of the Indebtedness and Obligations, or at such earlier time that Beneficiary may elect, the balance of the escrowed sums in its possession may be paid over to Trustor and no other party shall have any right or claim thereto. If no Event of Default shall have occurred or be continuing hereunder, the escrowed sums may, at the option of Beneficiary, be repaid to Trustor in sufficient time to allow Trustor to satisfy Trustor's obligations under the Security Documents to pay the Impositions and the required insurance premiums or may be paid by Beneficiary directly to the Governmental Authority and the insurance company entitled thereto. If an Event of Default shall have occurred and be continuing hereunder, however, Beneficiary shall have the additional option of crediting the full amount of the escrowed sums against the Indebtedness. Notwithstanding anything to the contrary contained in this Section or elsewhere in this Deed of Trust, Beneficiary hereby reserves the right to waive the payment by Trustor to Beneficiary of the escrowed sums and, in the event Beneficiary does so waive such payment, it shall be without prejudice to Beneficiary's right to insist, at any subsequent time or times, that such payments be made in accordance herewith.

11.14 Headings and General Application. The article and paragraph entitlements hereof are inserted for convenience of reference only and shall in no way affect, modify or define, or be used in construing, the text of such article or paragraph. If the text requires, words used in the singular shall be read as including the plural, and pronouns of any gender shall include all genders.

11.15 Sole Benefit. This instrument and the other Security Documents have been executed for the sole benefit of Trustor and Beneficiary and the heirs, successors, assigns, and legal representatives of Beneficiary. No other party shall have rights thereunder not be entitled to assume that the parties thereto will insist upon strict performance of their mutual obligations hereunder, any of which may be waived from time to time. Trustor shall have no right to assign any of their rights under the Security Documents to any party whatsoever including the right to receive advances under the Note or otherwise.

11.16 Subrogation. If any or all of the proceeds of the Indebtedness or the Obligations have been used to extinguish, extend, or renew any indebtedness heretofore existing against the Mortgaged Property or to satisfy any indebtedness or obligation secured by a lien or encumbrance of any kind (including liens securing the payment of any Impositions), such proceeds have been advanced by Beneficiary at Trustor's request, and, to the extent of such funds so used, the Indebtedness and Obligations in this Deed of Trust shall be subrogated to and extend to all of the rights, claims, liens, titles, and interests heretofore existing against the Mortgaged Property

to secure the indebtedness or obligation so extinguished, paid, extended, or renewed, and the former rights, claims, liens, titles, and interests, if any, shall not be waived but rather shall be continued in full force and effect and in favor of Beneficiary and shall be merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and satisfaction of the Obligations.

11.17 Not Acting as Agent. If Trustor is not a corporation, Trustor warrants and represents that it does not hold title as agent or trustee for a non corporate entity.

11.18 Attorney-in Fact. If Trustor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Trustor and at Trustor's expense. For such purposes, Trustor hereby irrevocably appoints Lender as Trustor'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 Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

11.19 Construction Mortgage. This Deed of Trust secures an obligation incurred for the construction of an improvement on the Land, including the acquisition cost of the Land and any notes issued in extension and renewal thereof or substitution therefor, and Trustor affirms, acknowledges, and warrants that prior to the recordation of this Deed of Trust in the real property records of the county or counties where the Land is located, no contract will have been entered into nor will any improvements have been constructed upon the Land nor will any material have been delivered to the Land in regard to the Project for which the Loan or Loans evidenced by the Note have been made. It is understood and agreed that funds are to be advanced upon the Note in accordance with a Loan Agreement made by and between Trustor and Beneficiary of even date herewith, which said Loan Agreement is incorporated herein by reference to the same extent and effect as if fully set forth herein and made a part of this Deed of Trust. This Deed of Trust secures the payment of all sums and the performance of all covenants required by Trustor by said Loan Agreement, and on the failure of Trustor to keep and perform all the covenants, conditions, and agreements of said Loan Agreement, the principal sum and all interest and other charges provided for herein and secured hereby shall, at the option of Beneficiary of this Deed of Trust, become due and payable, anything herein contained to the contrary notwithstanding.

Signature Page To Follow.

EXECUTED as of the date first recited.

TRUSTOR:

Ore Cal Land Development, LLC
By: Jim Hogue Pres.
Name/Title Jim Hogue

ACKNOWLEDGMENT

STATE OF Oregon)
) SS.
COUNTY OF Klamath)

On May 29, 07 before me the undersigned, Notary Public, personally appeared Jim Hogue, 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.

Adrien Fleek
Notary Public

My commission expires: 12-3-10

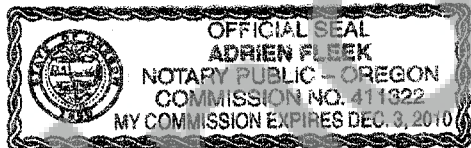


EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

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

ALL OF VACATED BLOCKS 122, 123, 133, 134, 135, 136, 137, 138 AND 139.

THAT PORTION OF VACATED BLOCK 119 OF BUENA VISTA ADDITION TO THE CITY OF KLAMATH FALLS, OREGON DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF LOT 2, BLOCK 119 WHICH IS SOUTHWESTERLY A DISTANCE OF 270.00 FEET FROM THE NORTHEAST CORNER OF SAID BLOCK 119; THENCE SOUTHWESTERLY TO THE SOUTHEASTERLY CORNER OF LOT 2; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID BLOCK, 137.17 FEET TO THE SOUTHWEST CORNER OF LOT 1; THENCE NORTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID BLOCK A DISTANCE OF 145.16 FEET, MORE OR LESS, TO A POINT OF THE NORTHWESTERLY LINE OF LOT 4; SAID POINT ALSO BEING SOUTHWESTERLY 155.0 FEET FROM THE MOST NORTHERLY CORNER OF SAID BLOCK 119; THENCE SOUTHEASTERLY IN A STRAIGHT LINE A DISTANCE OF 210.0 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

LOTS 1, 2, 3, 4, 5 AND 6 IN VACATED BLOCK 120.

A PARCEL OF LAND LYING IN VACATED BLOCK 125, BUENA VISTA ADDITION KLAMATH FALLS, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID BLOCK 125; THENCE SOUTHEASTERLY ALONG THE NORTHEASTERLY LINE OF SAID BLOCK 125, A DISTANCE OF 85 FEET; THENCE SOUTHERLY IN A STRAIGHT LINE 260 FEET, MORE OR LESS, TO A POINT ON THE SOUTHEASTERLY LINE OF SAID BLOCK 125, SAID POINT OF BEING 110 FEET SOUTHWESTERLY OF THE MOST EASTERLY CORNER OF SAID BLOCK 125; THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF SAID BLOCK 125, A DISTANCE OF 65 FEET TO THE MOST SOUTHERLY CORNER OF SAID BLOCK 125; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID BLOCK 125, A DISTANCE OF 320 FEET, MORE OR LESS, TO THE MOST WESTERLY CORNER OF SAID BLOCK 125; THENCE NORTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID BLOCK 125 A DISTANCE OF 168.4 FEET TO THE PLACE OF BEGINNING.

ALL LOCATED IN BUENA VISTA ADDITION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY, OREGON.

ALSO TOGETHER WITH THAT PORTION OF VACATED STREETS BY ORDINANCE NO. 06-14 WHICH RECORDED JULY 11, 2006 IN VOLUME M06, VOLUME 13985, RECORDS OF KLAMATH COUNTY, OREGON.

Tax Parcel Number: R787786 and R211336 and R211345 and R211354 and R211363 and R211372 and R299171 and R299199 and R787777