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Fee: \$191.00

MT079352-KR

Drafted, drawn & prepared for or by,
Recording requested by, and
When recorded return to:

WELLS FARGO BANK,
NATIONAL ASSOCIATION
Commercial Mortgage Origination
MAC #A0194-093
45 Fremont Street, 9th floor
San Francisco, California 94105

ATTN: CMO Loan Admin
Loan No.: 31-0906684
MERS No.: 8000101 00000066166

DEED OF TRUST and ABSOLUTE ASSIGNMENT OF RENTS AND LEASES and SECURITY AGREEMENT (AND FIXTURE FILING)

Parties to the Document:

TRUSTOR or BORROWER:	Klamath-Jefferson, LLC, an Oregon limited liability company
TRUSTEE:	Chicago Title Company
BENEFICIARY or LENDER:	Mortgage Electronic Registration Systems, Inc., a Delaware corporation as nominee for Wells Fargo Bank, National Association

Property: 2740 South 6th Street, Klamath Falls, Oregon

**DEED OF TRUST
and
ABSOLUTE ASSIGNMENT OF RENTS AND LEASES
and
SECURITY AGREEMENT
(AND FIXTURE FILING)**

The parties to this DEED OF TRUST and ABSOLUTE ASSIGNMENT OF RENTS AND LEASES and SECURITY AGREEMENT (AND FIXTURE FILING) ("Security Instrument"), dated as of July 12, 2007, are KLAMATH-JEFFERSON, LLC, an Oregon limited liability company ("Borrower"), with a mailing address at 1600 SW Western Boulevard, Suite 175, Corvallis, Oregon 97333, CHICAGO TITLE COMPANY ("Trustee"), with a mailing address of c/o AmeriTitle, 300 Klamath Avenue, Klamath Falls, Oregon 97601, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware Corporation ("MERS" or "Lender"), with a mailing address at MERS Commercial, P. O. Box 2300, Flint, Michigan 48501-2300.

RECITALS:

- A. Klamath-Jefferson, LLC, an Oregon limited liability company (collectively "Borrower") proposes to borrow from Wells Fargo Bank, National Association ("Lender") and Lender proposes to lend to Borrower, the principal sum of NINE MILLION AND NO/100THS DOLLARS (\$9,000,000.00) ("Loan"). The Loan is evidenced by a promissory note ("Note") executed by Borrower, dated the date of this Security Instrument, payable to the order of Lender in the principal amount of the Loan. The final Maturity Date of the Loan is no later than August 1, 2017.
- B. The loan documents include this Security Instrument, the Note and the other documents described in the Note as Loan Documents ("Loan Documents").

ARTICLE 1. SECURITY INSTRUMENT

- 1.1. **GRANT.** For the purposes of and upon the terms and conditions of this Security Instrument, Borrower irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Lender, with power of sale and right of entry and possession, all estate, right, title and interest which Borrower now has or may hereafter acquire in, to, under or derived from any or all of the following:
 - a. That real property ("Land") located in the County of Klamath, State of Oregon, and more particularly described on Exhibit A attached hereto;
 - b. All appurtenances, easements, rights of way, water and water rights, (including but not limited to wells, canals, and reservoirs) pumps, pipes, flumes and ditches and ditch rights, water stock, ditch and/or reservoir stock or interests, royalties, development rights and credits, air rights, minerals, oil rights, and gas rights, and any fixtures or evidence related thereto, whether now or later used or useful in connection with, appurtenant to or related to the Land, whether appropriated or unappropriated, tributary or non-tributary, and decreed or undecreed;
 - c. All buildings, structures, facilities, other improvements and fixtures now or hereafter located on the Land;
 - d. All apparatus, equipment, machinery and appliances and all accessions thereto and renewals and replacements thereof and substitutions therefor used in the operation or occupancy of the Land, it being intended by the parties that all such items shall be conclusively considered to be a part of the Land, whether or not attached or affixed to the Land;

- e. All land lying in the right-of-way of any street, road, avenue, alley or right-of-way opened, proposed or vacated, and all sidewalks, strips and gores of land adjacent to or used in connection with the Land;
- f. All additions and accretions to the property described above;
- g. All licenses, authorizations, certificates, variances, consents, approvals and other permits now or hereafter pertaining to the Land and all estate, right, title and interest of Borrower in, to, under or derived from all tradenames or business names relating to the Land or the present or future development, construction, operation or use of the Land; and
- h. All proceeds of any of the foregoing.

All of the property described above is hereinafter collectively defined as the "Property". The listing of specific rights or property shall not be interpreted as a limitation of general terms.

ARTICLE 2. OBLIGATIONS SECURED

- 2.1. **OBLIGATIONS SECURED.** Borrower makes the foregoing grant and assignment for the purpose of securing the following obligations ("Secured Obligations"):

- a. Full and punctual payment to Lender of all sums at any time owing under the Note;
- b. Payment and performance of all covenants and obligations of Borrower under this Security Instrument including, without limitation, indemnification obligations and advances made to protect the Property;
- c. Payment and performance of all additional covenants and obligations of Borrower under the Loan Documents;
- d. Payment and performance of all covenants and obligations, if any, which any rider attached as an exhibit to this Security Instrument recites are secured hereby;
- e. Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Lender, when the obligation is evidenced by a writing which recites that it is secured by this Security Instrument;
- f. All interest and charges on all obligations secured hereby including, without limitation, prepayment charges, late charges and loan fees;
- g. All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; and (ii) modifications, extensions or renewals at a different rate of interest whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes; and
- h. Payment and performance of any other obligations which are defined as "Secured Obligations" in the Note.

- 2.2. **OBLIGATIONS.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

- 2.3. **INCORPORATION.** All terms and conditions of the documents which evidence any of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice that the rate of interest on one or more Secured Obligation may vary from time to time.

ARTICLE 3. ABSOLUTE ASSIGNMENT OF RENTS AND LEASES

- 3.1. **ASSIGNMENT.** Borrower irrevocably assigns to Lender all of Borrower's right, title and interest in, to and under: (a) all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Property or any portion thereof, whether such leases, licenses and agreements are now existing or entered into after the date hereof ("Leases"); and (b) the rents, issues, deposit and profits of the Property,, including without limitation, all amounts payable and all rights and benefits accruing to Borrower under the Leases ("Payments"). The term "Leases" shall also include all guarantees of and security for the tenants' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Lender's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property.
- 3.2. **GRANT OF LICENSE.** Lender confers upon Borrower a revocable license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Lender may collect and apply the Payments pursuant to the terms hereof without notice and without taking possession of the Property. All Payments thereafter collected by Borrower shall be held by Borrower as trustee under a constructive trust for the benefit of Lender. Borrower hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Lender for the payment to Lender of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing. Borrower hereby relieves the tenants from any liability to Borrower by reason of relying upon and complying with any such notice or demand by Lender. Lender may apply, in its sole discretion, any Payments so collected by Lender against any Secured Obligation or any other obligation of Borrower, Borrower or any other person or entity, under any document or instrument related to or executed in connection with the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Lender shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice. If and when no Default exists, Lender shall re-confer the License upon Borrower until the occurrence of another Default.
- 3.3. **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Lender to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or by any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) responsible for or impose upon Lender any duty to produce rents or profits. Lender shall not directly or indirectly be liable to Borrower or any other person as a consequence of: (e) the exercise or failure to exercise any of the rights, remedies or powers granted to Lender hereunder; or (f) the failure or refusal of Lender to perform or discharge any obligation, duty or liability of Borrower arising under the Leases.
- 3.4. **COVENANTS-LONG TERM LEASES.**
- a. All Leases. Borrower shall, at Borrower's sole cost and expense:
- (i) perform all obligations of the landlord under the Leases and use reasonable efforts to enforce performance by the tenants of all obligations of the tenants under the Leases;

- (ii) use reasonable efforts to keep the Property leased at all times to tenants which Borrower reasonably and in good faith believes are creditworthy at rents not less than the fair market rental value (including, but not limited to, free or discounted rents to the extent the market so requires);
- (iii) promptly upon Lender's request, deliver to Lender a copy of each requested Lease and all amendments thereto and waivers thereof; and
- (iv) promptly upon Lender's request, execute and record any additional assignments of landlord's interest under any Lease to Lender and specific subordinations of any Lease to this Security Instrument, in form and substance satisfactory to Lender.

Unless consented to in writing by Lender or otherwise permitted under any other provision of the Loan Documents, Borrower shall not:

- (v) grant any tenant under any Lease any option, right of first refusal or other right to purchase all or any portion of the Property under any circumstances;
- (vi) grant any tenant under any Lease any right to prepay rent more than 1 month in advance;
- (vii) except upon Lender's request, execute any assignment of landlord's interest in any Lease; or
- (viii) collect rent or other sums due under any Lease in advance, other than to collect rent 1 month in advance of the time when it becomes due.

Any such attempted action in violation of the provisions of this Section shall be null and void.

Borrower shall deposit with Lender any sums received by Borrower in consideration of any termination, modification or amendment of any Lease or any release or discharge of any tenant under any Lease from any obligation thereunder and any such sums received by Borrower shall be held in trust by Borrower for such purpose. Notwithstanding the foregoing, so long as no Default exists, the portion of any such sum received by Borrower with respect to any Lease which is less than \$50,000 shall be payable to Borrower. All such sums received by Lender with respect to any Lease shall be deemed "Impounds" (as defined in Section 6.12b) and shall be deposited by Lender into a pledged account in accordance with Section 6.12b.

b. **Major Leases.** Borrower shall, at Borrower's sole cost and expense, give Lender prompt written notice of any material default by landlord or tenant under any Major Lease (as defined below). Unless consented to in writing by Lender or otherwise permitted under any other provision of the Loan Documents, Borrower shall not:

- (i) enter into any Major Lease which (aa) is not on fair market terms (which terms may include free or discounted rent to the extent the market so requires); (bb) does not contain a provision requiring the tenant to execute and deliver to the landlord an estoppel certificate in form and substance satisfactory to the landlord promptly upon the landlord's request; or (cc) allows the tenant to assign or sublet the premises without the landlord's consent;
- (ii) reduce any rent or other sums due from the tenant under any Major Lease;
- (iii) terminate or materially modify or amend any Major Lease; or
- (iv) release or discharge the tenant or any guarantor under any Major Lease from any material obligation thereunder.

Any such attempted action in violation of the provisions of this Section shall be null and void.

"Major Lease", as used herein, shall mean any Lease, which is, at any time: (1) a Lease of more than 20% of the total rentable area of the Property, as reasonably determined by Lender; or (2) a Lease which generates a gross base monthly rent exceeding 20% of the total gross base monthly rent generated by all Leases (excluding all Leases under which the tenant is then in default), as reasonably determined by Lender. Borrower's obligations with respect to Major Leases shall be governed by the provisions of Section 3.4a as well as by the provisions of this Section.

- c. **Failure to Deny Request.** Lender's failure to deny any written request by Borrower for Lender's consent under the provisions of Sections 3.4a or 3.4b within 10 Business Days after Lender's receipt of such request (and all documents and information reasonably related thereto) shall be deemed to constitute Lender's consent to such request.
- 3.5. **ESTOPPEL CERTIFICATES.** Within 30 days after request by Lender, Borrower shall deliver to Lender and to any party designated by Lender, estoppel certificates relating to the Leases executed by Borrower and by each of the tenants, in form and substance acceptable to Lender; provided, however, if any tenant shall fail or refuse to so execute and deliver any such estoppel certificate upon request, Borrower shall use reasonable efforts to cause such tenant to execute and deliver such estoppel certificate but such tenant's continued failure or refusal to do so, despite Borrower's reasonable efforts, shall not constitute a default by Borrower under this Section.]
- 3.6. **RIGHT OF SUBORDINATION.** Lender may at any time and from time to time by specific written instrument intended for the purpose unilaterally subordinate the lien of this Security Instrument to any Lease, without joinder or consent of, or notice to, Borrower, any tenant or any other person. Notice is hereby given to each tenant under a Lease of such right to subordinate. No subordination referred to in this Section shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder. Nothing herein shall be construed as subordinating this Security Instrument to any Lease.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1. **SECURITY INTEREST.** Borrower grants and assigns to Lender a security interest to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Borrower now or at any time hereafter has any interest ("Collateral"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with or appropriated for use on the Property; all rents, issues, deposits and profits of the Property (to the extent, if any, they are not subject to the Absolute Assignment of Rents and Leases); all inventory, accounts, cash receipts, deposit accounts, impounds, accounts receivable, contract rights, general intangibles, software, chattel paper, instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Property or any business now or hereafter conducted thereon by Borrower; all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all deposits or other security now or hereafter made with or given to utility companies by Borrower with respect to the Property; all advance payments of insurance premiums made by Borrower with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Lender, whether or not disbursed; all funds deposited with Lender pursuant to any Loan Document; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof, including, without limitation, all "Impounds" as defined herein; together with all replacements and proceeds of, and additions and

accessions to, any of the foregoing, and all books, records and files relating to any of the foregoing.

As to all of the above-described personal property which is or which hereafter becomes a "fixture" under applicable law, this Security Instrument constitutes a fixture filing under the Oregon Uniform Commercial Code as amended or recodified from time to time ("UCC").

- 4.2. **COVENANTS.** Borrower agrees: (a) to execute and deliver such documents as Lender deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and, as applicable, its chief executive offices, its principal residence or the jurisdiction in which it is organized without giving Lender at least 30 days' prior written notice thereof; and (c) to cooperate with Lender in perfecting all security interests granted herein and in obtaining such agreements from third parties as Lender deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of Lender's rights hereunder.
- 4.3. **RIGHTS OF LENDER.** In addition to Lender's rights as a "Secured Party" under the UCC, Lender may, but shall not be obligated to, at any time without notice and at the expense of Borrower: (a) give notice to any person of Lender's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Lender therein; and (c) inspect the Collateral. Notwithstanding the above, in no event shall Lender be deemed to have accepted any property other than cash in satisfaction of any obligation of Borrower to Lender unless Lender shall make an express written election of said remedy under the UCC or other applicable law.
- 4.4. **RIGHTS OF LENDER UPON DEFAULT.** Upon the occurrence of a Default, then in addition to all of Lender's rights as a "Secured Party" under the UCC or otherwise at law:
- a. **Disposition of Collateral.** Lender may: (i) upon written notice, require Borrower to assemble any or all of the Collateral and make it available to Lender at a place designated by Lender; (ii) without prior notice, enter upon the Property or other place where the Collateral may be located and take possession of, collect, sell, lease, license and otherwise dispose of the Collateral, and store the same at locations acceptable to Lender at Borrower's expense; or (iii) sell, assign and deliver the Collateral at any place or in any lawful manner and bid and become purchaser at any such sales; and
- b. **Other Rights.** Lender may, for the account of Borrower and at Borrower's expense: (i) operate, use, consume, sell, lease, license or otherwise dispose of the Collateral as Lender deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise or settlement including insurance claims, which Lender may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Borrower in connection with or on account of any or all of the Collateral.
- Borrower acknowledges and agrees that a disposition of the Collateral in accordance with Lender's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that 5 days' prior notice of such disposition is commercially reasonable notice. Lender shall have no obligation to process or prepare the Collateral for sale or other disposition. In disposing of the Collateral, Lender may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any sale or other disposition of the Collateral may be applied by Lender first to the reasonable expenses incurred by Lender in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations, in such order of application as Lender may from time to time elect.
- 4.5. **POWER OF ATTORNEY.** Borrower hereby irrevocably appoints Lender as Borrower's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact, Lender may, without the obligation to do so, in Lender's name or in the name of Borrower, prepare, execute, file and record

financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Lender's security interests and rights in or to the Collateral, and upon a Default, take any other action required of Borrower; provided, however, that Lender as such attorney-in-fact shall be accountable only for such funds as are actually received by Lender.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES

5.1. **REPRESENTATIONS AND WARRANTIES.** Borrower represents and warrants to Lender that, to Borrower's current actual knowledge after reasonable investigation and inquiry, the following statements are true and correct as of the Effective Date:

- a. **Legal Status.** Borrower is duly organized and existing and in good standing under the laws of the state in which Borrower is organized. Borrower is qualified or licensed to do business in all jurisdictions in which such qualification or licensing is required.
- b. **Permits.** Borrower possesses all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, necessary to enable Borrower to conduct the business(es) in which Borrower is now engaged in compliance with applicable law.
- c. **Authorization and Validity.** The execution and delivery of the Loan Documents have been duly authorized and the Loan Documents constitute valid and binding obligations of Borrower or the party which executed the same, enforceable in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or other laws affecting the enforcement of creditors' rights, or by the application of rules of equity.
- d. **Violations.** The execution, delivery and performance by Borrower of each of the Loan Documents do not violate any provision of any law or regulation, or result in any breach or default under any contract, obligation, indenture or other instrument to which Borrower is a party or by which Borrower is bound.
- e. **Litigation.** There are no pending or threatened actions, claims, investigations, suits or proceedings before any governmental authority, court or administrative agency which may adversely affect the financial condition or operations of Borrower other than those previously disclosed in writing by Borrower to Lender.
- f. **Financial Statements.** The financial statements of Borrower, of each general partner (if Borrower is a partnership), of each member (if Borrower is a limited liability company) and of each guarantor, if any, previously delivered by Borrower to Lender: (i) are materially complete and correct; (ii) present fairly the financial condition of such party; and (iii) have been prepared in accordance with the same accounting standard used by Borrower to prepare the financial statements delivered to and approved by Lender in connection with the making of the Loan, or other accounting standards approved by Lender. Since the date of such financial statements, there has been no material adverse change in such financial condition, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged, pledged or encumbered except as previously disclosed in writing by Borrower to Lender and approved in writing by Lender.
- g. **Reports.** All reports, documents, instruments and information delivered to Lender in connection with the Loan: (i) are correct and sufficiently complete to give Lender accurate knowledge of their subject matter; and (ii) do not contain any misrepresentation of a material fact or omission of a material fact which omission makes the provided information misleading.
- h. **Income Taxes.** There are no pending assessments or adjustments of Borrower's income tax payable with respect to any year.

- i. **Subordination.** There is no agreement or instrument to which Borrower is a party or by which Borrower is bound that would require the subordination in right of payment of any of Borrower's obligations under the Note to an obligation owed to another party.
- j. **Title.** Borrower lawfully holds and possesses fee simple title to the Property, without limitation on the right to encumber same. This Security Instrument is a first lien on the Property prior and superior to all other liens and encumbrances on the Property except: (i) liens for real estate taxes and assessments not yet due and payable; (ii) senior exceptions previously approved by Lender and shown in the title insurance policy insuring the lien of this Security Instrument; and (iii) other matters, if any, previously disclosed to Lender by Borrower in a writing specifically referring to this representation and warranty.
- k. **Mechanics' Liens.** There are no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under law could give rise to any such liens) affecting the Property which are or may be prior to or equal to the lien of this Security Instrument.
- l. **Encroachments.** Except as shown in the survey, if any, previously delivered to Lender, none of the buildings or other improvements which were included for the purpose of determining the appraised value of the Property lies outside of the boundaries or building restriction lines of the Property and no buildings or other improvements located on adjoining properties encroach upon the Property.
- m. **Leases.** All existing Leases are in full force and effect and are enforceable in accordance with their respective terms. No material breach or default by any party, or event which would constitute a material breach or default by any party after notice or the passage of time, or both, exists under any existing Lease. None of the landlord's interests under any of the Leases, including, but not limited to, rents, additional rents, charges, issues or profits, has been transferred or assigned. No rent or other payment under any existing Lease has been paid by any tenant for more than 1 month in advance.
- n. **Collateral.** Borrower has good title to the existing Collateral, free and clear of all liens and encumbrances except those, if any, previously disclosed to Lender by Borrower in writing specifically referring to this representation and warranty. Borrower's chief executive office (or principal residence, if applicable) is located at the address shown on page 1 of this Security Instrument. Borrower is an organization organized solely under the laws of the State of Oregon. All organizational documents of Borrower delivered to Lender are complete and accurate in every respect. Borrower's legal name is exactly as shown on page 1 of this Security Instrument.
- o. **Condition of Property.** Except as shown in the property condition survey or other engineering reports, if any, previously delivered to or obtained by Lender, the Property is in good condition and repair and is free from any damage that would materially and adversely affect the value of the Property as security for the Loan or the intended use of the Property.
- p. **Hazardous Materials.** Except as shown in the environmental assessment report(s), if any, previously delivered to or obtained by Lender, the Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of Hazardous Materials (as hereinafter defined) except as otherwise previously disclosed in writing by Borrower to Lender.
- q. **Hazardous Materials Laws.** The Property complies with all Hazardous Materials Laws (as hereinafter defined).
- r. **Hazardous Materials Claims.** There are no pending or threatened Hazardous Materials Claims (as hereinafter defined).

- s. **Wetlands.** No part of the Property consists of or is classified as wetlands, tidelands or swamp and overflow lands.
- t. **Compliance With Laws.** All federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990, as amended from time to time (42 U.S.C. Section 12101 et seq.) have been satisfied or complied with. Borrower is in possession of all certificates of occupancy and all other licenses, permits and other authorizations required by applicable law for the existing use of the Property. All such certificates of occupancy and other licenses, permits and authorizations are valid and in full force and effect.
- u. **Property Taxes and Other Liabilities.** All taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, and ground rents, if any, which previously became due and owing in respect of the Property have been paid.
- v. **Condemnation.** There is no proceeding pending or threatened for the total or partial condemnation of the Property.
- w. **Homestead.** There is no homestead or other exemption available to Borrower that would materially interfere with the right to sell the Property at a trustee's sale or the right to foreclose.
- x. **Solvency.** None of the transactions contemplated by the Loan will be or have been made with an actual intent to hinder, delay or defraud any present or future creditors of Borrower, and Borrower, on the Effective Date, will have received fair and reasonably equivalent value in good faith for the grant of the liens or security interests effected by the Loan Documents. On the Effective Date, Borrower will be solvent and will not be rendered insolvent by the transactions contemplated by the Loan Documents. Borrower is able to pay its debts as they become due.
- y. **Separate Tax Parcel(s).** The Property is assessed for real estate tax purposes as one or more wholly independent tax parcels, separate from any other real property, and no other real property is assessed and taxed together with the Property or any portion thereof.
- z. **Utilities; Water; Sewer.** The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service. The Property is served by public water and sewer systems.
- aa. **ERISA Matters.** Borrower is not an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is subject to Title I of ERISA, nor a plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (each of the foregoing hereinafter referred to individually and collectively as a "Plan"). Borrower's assets do not constitute "plan assets" of any plan within the meaning of Department of Labor Regulation Section 2510.3-101. Borrower will not transfer or convey the Property to a Plan or to a person or entity whose assets constitute such "plan assets", and Borrower will not be reconstituted as a Plan or as an entity whose assets constitute "plan assets". No Lease is with a Plan or an entity whose assets constitute such "plan assets", and Borrower will not enter into any Lease with a Plan or an entity whose assets constitute such "plan assets". With respect to the Loan, Borrower is acting on Borrower's own behalf and not on account of or for the benefit of any Plan.
- bb. **Non-Residential Trust Deed.** This Security Instrument is a commercial trust deed and is not a residential trust deed, as that phrase "residential trust deed" is defined in ORS 86.705. The provisions of ORS 86.705 through ORS 86.795 applicable to the foreclosure of commercial trust deeds shall apply to this Security Instrument at the option of Lender. Borrower warrants that the

loan secured hereby is for commercial purposes and is not for residential, household, personal or consumer purposes.

5.2. **REPRESENTATIONS, WARRANTIES AND COVENANTS REGARDING STATUS (LEVEL II SPE).**

Borrower hereby represents, warrants and covenants to Lender as follows:

- a. such entity was organized solely for the purpose of owning the Property;
- b. such entity has not and will not engage in any business unrelated to the ownership of the Property;
- c. such entity has not and will not have any assets other than the Property (and personal property incidental to the ownership and operation of the Property);
- d. such entity has not and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale, or amendment of its articles of incorporation, articles of organization, certificate of formation, operating agreement or partnership agreement, as applicable;
- e. such entity, without the unanimous consent of all of its directors, general partners or members, as applicable, shall not file or consent to the filing of any bankruptcy or insolvency petition or otherwise institute insolvency proceedings;
- f. such entity has no indebtedness (and will have no indebtedness) other than (i) the Loan; and (ii) unsecured trade debt not to exceed 2% of the Loan amount in the aggregate, which is not evidenced by a note and is incurred in the ordinary course of its business in connection with owning, operating and maintaining the Property and is paid within 30 days from the date incurred;
- g. such entity has not and will not fail to correct any known misunderstanding regarding the separate identity of such entity;
- h. such entity has maintained and will maintain its accounts, books and records separate from any other person or entity;
- i. such entity has maintained and will maintain its books, records, resolutions and agreements as official records;
- j. such entity (i) has not and will not commingle its funds or assets with those of any other entity; and (ii) has held and will hold its assets in its own name;
- k. such entity has conducted and will conduct its business in its own name;
- l. such entity has maintained and will maintain its accounting records and other entity documents separate from any other person or entity;
- m. such entity has prepared and will prepare separate tax returns and financial statements, or if part of a consolidated group, is shown as a separate member of such group;
- n. such entity has paid and will pay its own liabilities and expenses out of its own funds and assets;
- o. such entity has held and will hold regular meetings, as appropriate, to conduct its business and has observed and will observe all corporate, partnership or limited liability company formalities and record keeping, as applicable;

- p. such entity has not and will not assume or guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of any other entity;
- q. such entity has not and will not acquire obligations or securities of its shareholders, partners or members, as applicable;
- r. such entity has allocated and will allocate fairly and reasonably the costs associated with common employees and any overhead for shared office space and such entity has used and will use separate stationery, invoices and checks;
- s. such entity has not and will not pledge its assets for the benefit of any other person or entity;
- t. such entity has held and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other person or entity;
- u. such entity has not made and will not make loans to any person or entity;
- v. such entity has not and will not identify its shareholders, partners or members, as applicable, or any affiliates of any of the foregoing, as a division or part of it;
- w. such entity has not entered into and will not enter into or be a party to, any transaction with its shareholders, partners or members, as applicable, or any affiliates of any of the foregoing, except in the ordinary course of its business pursuant to written agreements and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;
- x. if any such entity is a corporation, the directors of such entity shall consider the interests of the creditors of such entity in connection with all corporate action;
- y. such entity has paid and will pay the salaries of its own employees and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations;
- z. such entity has maintained and will maintain adequate capital in light of its contemplated business operations;
- aa. if any such entity is a partnership with more than one general partner, its partnership agreement requires the remaining partners to continue the partnership as long as one solvent general partner exists; and
- bb. if any such entity is a limited liability company, its operating agreement, if any such entity is a partnership, its partnership agreement and if any such entity is a corporation, to the fullest extent permitted by applicable law, its articles of incorporation, contain the provisions set forth in this Section 5.2 and such entity shall conduct its business and operations in strict compliance with the terms contained therein.

ARTICLE 6. RIGHTS AND DUTIES OF THE PARTIES

- 6.1. **MAINTENANCE AND PRESERVATION OF THE PROPERTY.** Borrower shall: (a) keep the Property in good condition and repair; (b) complete or restore promptly and in workmanlike manner the Property or any part thereof which may be damaged or destroyed; (c) comply and cause the Property to comply with (i) all laws, ordinances, regulations and standards, (ii) all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character and (iii) all requirements of insurance companies and any bureau or agency which establishes standards of insurability, which laws, covenants or requirements affect the Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work of alteration, improvement or demolition as such laws, covenants or

requirements mandate; (d) operate and manage the Property at all times in a professional manner and do all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value; (e) promptly after execution, deliver to Lender a copy of any management agreement concerning the Property and all amendments thereto and waivers thereof; and (f) execute and acknowledge all further documents, instruments and other papers as Lender or Trustee deems necessary or appropriate to preserve, continue, perfect and enjoy the benefits of this Security Instrument and perform Borrower's obligations, including, without limitation, statements of the amount secured hereby then owing and statements of no offset. Borrower shall not: (g) remove or demolish all or any material part of the Property; (h) alter either (i) the exterior of the Property in a manner which materially and adversely affects the value of the Property or (ii) the roof or other structural elements of the Property in a manner which requires a building permit except for tenant improvements required under the Leases; (i) initiate or acquiesce in any change in any zoning or other land classification which affects the Property; (j) materially alter the type of occupancy or use of all or any part of the Property; or (k) commit or permit waste of the Property.

6.2. **HAZARDOUS MATERIALS.** Without limiting any other provision of this Security Instrument, Borrower agrees as follows:

- a. **Prohibited Activities.** Borrower shall not cause or permit the Property to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any of the following (collectively, "Hazardous Materials"): oil or other petroleum products; flammable explosives; asbestos; urea formaldehyde insulation; radioactive materials; hazardous wastes; fungus, mold, mildew, spores or other biological or microbial agents the presence of which may affect human health, impair occupancy or materially affect the value or utility of the Property; toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under the Hazardous Materials Laws (defined below) and/or other applicable environmental laws, ordinances or regulations.

The foregoing to the contrary notwithstanding, (i) Borrower may store, maintain and use on the Property janitorial and maintenance supplies, paint and other Hazardous Materials of a type and in a quantity readily available for purchase by the general public and normally stored, maintained and used by owners and managers of properties of a type similar to the Property; and (ii) tenants of the Property may store, maintain and use on the Property (and, if any tenant is a retail business, hold in inventory and sell in the ordinary course of such tenant's business) Hazardous Materials of a type and quantity readily available for purchase by the general public and normally stored, maintained and used (and, if tenant is a retail business, sold) by tenants in similar lines of business on properties similar to the Property.

- b. **Hazardous Materials Laws.** Borrower shall comply and cause the Property to comply with all federal, state and local laws, ordinances and regulations relating to Hazardous Materials ("Hazardous Materials Laws"), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.
- c. **Notices.** Borrower shall immediately notify Lender in writing of: (i) the discovery of any Hazardous Materials on, under or about the Property (other than Hazardous Materials permitted under Section 6.2(a)); (ii) any knowledge by Borrower that the Property does not comply with any

Hazardous Materials Laws; (iii) any claims or actions ("Hazardous Materials Claims") pending or threatened against Borrower or the Property by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to become contaminated with Hazardous Materials.

- d. **Remedial Action.** In response to the presence of any Hazardous Materials on, under or about the Property, Borrower shall immediately take, at Borrower's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.
 - e. **Inspection By Lender.** Upon reasonable prior notice to Borrower, Lender, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding), enter and inspect the Property for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property.
 - f. **Legal Effect of Section.** Borrower and Lender agree that: (i) this Hazardous Materials Section is intended as Lender's written request for information (and Borrower's response) concerning the environmental condition of the real property security as required by California Code of Civil Procedure Section 726.5 or any other applicable laws; and (ii) each representation and warranty and covenant in this Section (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by Lender and Borrower to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736 or any other applicable law.
- 6.3. **COMPLIANCE WITH LAWS.** Borrower shall comply with all federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), as amended from time to time. Borrower shall possess and maintain or cause Borrower to possess and maintain in full force and effect at all times (a) all certificates of occupancy and other licenses, permits and authorizations required by applicable law for the existing use of the Property and (b) all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, required by applicable law for Borrower to conduct the business(es) in which Borrower is now engaged.
- 6.4. **LITIGATION.** Borrower shall promptly notify Lender in writing of any litigation pending or threatened against Borrower claiming damages in excess of \$50,000 and of all pending or threatened litigation against Borrower if the aggregate damage claims against Borrower exceed \$100,000.
- 6.5. **MERGER, CONSOLIDATION, TRANSFER OF ASSETS.** Borrower shall not: (a) merge or consolidate with any other entity or permit Borrower to merge or consolidate with any other entity; (b) make any substantial change in the nature of Borrower's business or structure; (c) acquire all or substantially all of the assets of any other entity; or (d) sell, lease, assign, transfer or otherwise dispose of a material part of Borrower's assets except in the ordinary course of Borrower's business.
- 6.6. **ACCOUNTING RECORDS.** Borrower shall maintain adequate books and records in accordance with the same accounting standard used by Borrower to prepare the financial statements delivered to and approved by Lender in connection with the making of the Loan or other accounting standards approved by Lender. Borrower shall permit any representative of Lender, at any reasonable time and from time to time, to inspect, audit and examine such books and records and make copies of same.
- 6.7. **COSTS, EXPENSES AND ATTORNEYS' FEES.** Borrower shall pay to Lender the full amount of all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses of Lender's in house or outside counsel, incurred by Lender in connection with: (a) appraisals and inspections of the Property or Collateral required by Lender as a result of (i) a Transfer or proposed Transfer (as defined

below), or (ii) a Default; (b) appraisals and inspections of the Property or Collateral required by applicable law, including, without limitation, federal or state regulatory reporting requirements; and (c) any acts performed by Lender at Borrower's request or wholly or partially for the benefit of Borrower (including, without limitation, the preparation or review of amendments, assumptions, waivers, releases, reconveyances, estoppel certificates or statements of amounts owing under any Secured Obligation). In connection with appraisals and inspections, Borrower specifically (but not by way of limitation) acknowledges that: (aa) a formal written appraisal of the Property by a state certified or licensed appraiser may be required by federal regulatory reporting requirements on an annual or more frequent basis; and (bb) Lender may require inspection of the Property by an independent supervising architect, a cost engineering specialist, or both. Borrower shall pay all indebtedness arising under this Section immediately upon demand by Lender together with interest thereon following notice of such indebtedness at the rate of interest then applicable to the principal balance of the Note as specified therein.

- 6.8. **LIENS, ENCUMBRANCES AND CHARGES.** Borrower shall immediately discharge by bonding or otherwise any lien, charge or other encumbrance which attaches to the Property in violation of Section 6.15. Subject to Borrower's right to contest such matters under this Security Instrument or as expressly permitted in the Loan Documents, Borrower shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or any interest therein, whether senior or subordinate hereto, including, without limitation, all claims for work or labor performed, or materials or supplies furnished, in connection with any work of demolition, alteration, repair, improvement or construction of or upon the Property, except such as Borrower may in good faith contest or as to which a bona fide dispute may arise (provided provision is made to the satisfaction of Lender for eventual payment thereof in the event that Borrower is obligated to make such payment and that any recorded claim of lien, charge or other encumbrance against the Property is immediately discharged by bonding or otherwise).

- 6.9. **TAXES AND OTHER LIABILITIES.** Borrower shall pay and discharge when due any and all indebtedness, obligations, assessments and taxes, both real and personal and including federal and state income taxes and state and local property taxes and assessments. Borrower shall promptly provide to Lender copies of all tax and assessment notices pertaining to the Property. Borrower hereby authorizes Lender to obtain, at Borrower's expense, a tax service contract which shall provide tax information on the Property to Lender for the term of the Loan and any extensions or renewals of the Loan.

- 6.10. **INSURANCE COVERAGE.** Borrower shall obtain and maintain all insurance coverage required pursuant to that certain Agreement Regarding Required Insurance dated as of the date hereof by and between Borrower and Lender.

- 6.11. **CONDEMNATION AND INSURANCE PROCEEDS.**

- a. **Assignment of Claims.** Borrower absolutely and irrevocably assigns to Lender all of the following rights, claims and amounts (collectively, "Claims"), all of which shall be paid to Lender: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property; (ii) all other claims and awards for damages to or decrease in value of all or any part of, or any interest in, the Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property; and (iv) all interest which may accrue on any of the foregoing. Borrower shall give Lender prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof. So long as no Default has occurred and is continuing at the time, (i) Borrower shall have the right to adjust, compromise and settle any Claim or group of related Claims of \$100,000 or less without the participation or consent of Lender and (ii) Lender shall have the right to participate in and consent to any adjustment, compromise or settlement of any Claim or group of related Claims exceeding \$100,000. If a Default has occurred and is continuing at the time, Borrower hereby irrevocably empowers Lender, in the name of Borrower, as Borrower's true and lawful attorney in fact, to commence, appear in, defend, prosecute, adjust, compromise and settle all Claims; provided, however, Lender

shall not be responsible for any failure to undertake any or all of such actions regardless of the cause of the failure. All awards, proceeds and other sums described herein shall, in all cases, be payable to Lender.

- b. **Application of Proceeds; No Default.** So long as no Default has occurred and is continuing at the time of Lender's receipt of the proceeds of the Claims ("Proceeds") and no Default occurs thereafter, the following provisions shall apply:

- (i) **Condemnation.** If the Proceeds are the result of Claims described in clauses 6.11(a)(i) or (ii) above, or interest accrued thereon, Lender shall apply the Proceeds in the following order of priority: First, to Lender's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the portion of the Property, if any, not condemned or proposed for condemnation and not otherwise the subject of a claim or award; and Third, to the Secured Obligations in any order without suspending, extending or reducing any obligation of Borrower to make installment payments.
- (ii) **Insurance.** If the Proceeds are the result of Claims described in clause 6.11(a)(iii) above or interest accrued thereon, Lender shall apply the Proceeds in the following order of priority: First, to Lender's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the Property; and Third, (aa) if the repair or restoration of the Property has been completed and all costs incurred in connection with the repair or restoration have been paid in full, to Borrower or (bb) in all other circumstances, to the Secured Obligations in any order without suspending, extending or reducing any obligation of Borrower to make installment payments.
- (iii) **Restoration.** Notwithstanding the foregoing Sections 6.11(b)(i) and (ii), Lender shall have no obligation to make any Proceeds available for the repair or restoration of all or any portion of the Property unless and until all the following conditions have been satisfied: (aa) delivery to Lender of the Proceeds plus any additional amount which is needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (bb) establishment of an arrangement for lien releases and disbursement of funds acceptable to Lender; (cc) delivery to Lender in form and content acceptable to Lender of all of the following: (1) plans and specifications for the work; (2) a contract for the work, signed by a contractor acceptable to Lender; (3) a cost breakdown for the work; (4) if required by Lender, a payment and performance bond for the work; (5) evidence of the continuation of all Leases unless consented to in writing by Lender; (6) evidence that, upon completion of the work, the size, capacity, value, and income coverage ratios for the Property will be at least as great as those which existed immediately before the damage or condemnation occurred; (7) evidence that the work can reasonably be completed on or before that date which is 6 months prior to the Maturity Date; and (8) evidence of the satisfaction of any additional conditions that Lender may reasonably establish to protect Lender's security. Borrower acknowledges that the specific conditions described above are reasonable.

- c. **Application of Proceeds; Default.** If a Default has occurred and is continuing at the time of Lender's receipt of the Proceeds or if a Default occurs at any time thereafter, Lender may, at Lender's absolute discretion and regardless of any impairment of security or lack of impairment of security, but subject to applicable law governing use of the Proceeds, if any, apply all or any of the Proceeds to Lender's expenses in settling, prosecuting or defending the Claims and then apply the balance to the Secured Obligations in any order without suspending, extending or reducing any obligation of Borrower to make installment payments, and may release all or any part of the Proceeds to Borrower upon any conditions Lender chooses.

6.12. **IMPOUNDS.**

- a. **Post-Default Impounds.** If required by Lender at any time after a Default occurs (and regardless of whether such Default is thereafter cured), Borrower shall deposit with Lender such amounts ("Post-Default Impounds") on such dates (determined by Lender as provided below) as will be sufficient to pay any or all "Costs" (as defined below) specified by Lender. Lender in its sole discretion shall estimate the amount of such Costs that will be payable or required during any period selected by Lender not exceeding 1 year and shall determine the fractional portion thereof that Borrower shall deposit with Lender on each date specified by Lender during such period. If the Post-Default Impounds paid by Borrower is not sufficient to pay the related Costs, Borrower shall deposit with Lender upon demand an amount equal to the deficiency. All Post-Default Impounds shall be payable by Borrower in addition to (but without duplication of) any other Impounds (as defined below).
- b. **All Impounds.** Post-Default Impounds and any other impounds that may be payable by Borrower under the Note are collectively called "Impounds". All Impounds shall be deposited into one or more segregated or commingled accounts maintained by Lender or its servicing agent. Except as otherwise provided in the Note, such account(s) shall not bear interest. Lender shall not be a trustee, special depository or other fiduciary for Borrower with respect to such account, and the existence of such account shall not limit Lender's rights under this Security Instrument, any other agreement or any provision of law. If no Default exists, Lender shall apply all Impounds to the payment of the related Costs, or in Lender's sole discretion may release any or all Impounds to Borrower for application to and payment of such Costs. If a Default exists, Lender may apply any or all Impounds to any Secured Obligation and/or to cure such Default, whereupon Borrower shall restore all Impounds so applied and cure all Defaults not cured by such application. The obligations of Borrower hereunder shall not be diminished by deposits of Impounds made by Borrower, except to the extent that such obligations have actually been met by application of such Impounds. Upon any assignment of this Security Instrument, Lender may assign all Impounds in its possession to Lender's assignee, whereupon Lender and Trustee shall be released from all liability with respect to such Impounds. Within 60 days following full repayment of the Secured Obligations (other than as a consequence of foreclosure or conveyance in lieu of foreclosure) or at such earlier time as Lender may elect, Lender shall pay to Borrower all Impounds in its possession, and no other party shall have any right or claim thereto. "Costs" means (i) all taxes and other liabilities payable by Borrower under Section 6.9, (ii) all insurance premiums payable by Borrower under Section 6.10, (iii) all other costs and expenses for which Impounds are required under the Note, and/or (iv) all other amounts that will be required to preserve the value of the Property. Borrower shall deliver to Lender, promptly upon receipt, all bills for Costs for which Lender has required Post-Default Impounds.

- 6.13. **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** Borrower shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Security Instrument and the rights and powers of Lender and Trustee hereunder at Borrower's sole expense against all adverse claims, whether the claim: (a) is against a possessory or non-possessory interest; (b) arose prior or subsequent to the Effective Date; or (c) is senior or junior to Borrower's or Lender's rights. Borrower shall give Lender and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Property and of any condemnation offer or action.

- 6.14. **RIGHT OF INSPECTION.** Lender and its independent contractors, agents and employees may enter the Property from time to time at any reasonable time for the purpose of inspecting the Property and ascertaining Borrower's compliance with the terms of this Security Instrument. Lender shall use reasonable efforts to assure that Lender's entry upon and inspection of the Property shall not materially and unreasonably interfere with the business or operations of Borrower or Borrower's tenants on the Property.

6.15. **DUE ON SALE/ENCUMBRANCE.**

- a. **Definitions.** The following terms shall have the meanings indicated:

"**Restricted Party**" shall mean each of (i) Borrower, (ii) any entity obligated under any guaranty or indemnity made in favor of Lender in connection with the Loan and (iii) any shareholder, partner, member or non-member manager, or any direct or indirect legal or beneficial owner of Borrower, or any entity obligated under a guaranty or indemnity made in favor of Lender in connection with the Loan.

"**Transfer**" shall mean any sale, installment sale, exchange, mortgage, pledge, hypothecation, assignment, encumbrance or other transfer, conveyance or disposition, whether voluntarily, involuntarily or by operation of law or otherwise.

- b. **Property Transfers.**

- (i) **Prohibited Property Transfers.** Borrower shall not cause or permit any Transfer of all or any part of or any direct or indirect legal or beneficial interest in the Property or the Collateral (collectively, a "Prohibited Property Transfer"), including, without limitation, (A) a Lease of all or a material part of the Property for any purpose other than actual occupancy by a space tenant; and (B) the Transfer of all or any part of Borrower's right, title and interest in and to any Leases or Payments.

- (ii) **Permitted Property Transfers.** Notwithstanding the foregoing, none of the following Transfers shall be deemed to be a Prohibited Property Transfer: (A) a Transfer which is expressly permitted under the Note; (B) a Lease which is permitted under Article 3; and (C) the sale of inventory in the ordinary course of business.

- c. **Equity Transfers.**

- (i) **Prohibited Equity Transfers.** Borrower shall not cause or permit any Transfer of any direct or indirect legal or beneficial interest in a Restricted Party (collectively, a "Prohibited Equity Transfer"), including without limitation, (A) if a Restricted Party is a corporation, any merger, consolidation or other Transfer of such corporation's stock or the creation or issuance of new stock in one or a series of transactions; (B) if a Restricted Party is a limited partnership, limited liability partnership, general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Transfer of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new limited partnership interests; (C) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the Transfer of a non-managing membership interest or the creation or issuance of new non-managing membership interests; or (D) if a Restricted Party is a trust, any merger, consolidation or other Transfer of any legal or beneficial interest in such Restricted Party or the creation or issuance of new legal or beneficial interests.

- (ii) **Permitted Equity Transfers.** Notwithstanding the foregoing, none of the following Transfers shall be deemed to be a Prohibited Equity Transfer: (A) a Transfer by a natural person who is a member, partner or shareholder of a Restricted Party to a revocable inter vivos trust having such natural person as both Borrower and trustee of such trust and one or more immediate family members of such natural person as the sole beneficiaries of such trust ("Revocable Family Trust"); (B) a Transfer by devise or descent or by operation of law upon the death of a member, partner or shareholder of a Restricted Party where such Transfer does not result in a Default under Section 7.1(a)(vi) below; and (C) a

Transfer, in one or a series of transactions, of not more than 49% of the stock, limited partnership interests or non-managing membership interests (as the case may be) in a Restricted Party where such Transfer does not result in a change in management control in the Restricted Party.

- (iii) **SPE Status.** Nothing contained in this Section 6.15(c) shall be construed to permit any Transfer which would result in a breach of any representation, warranty or covenant of Borrower under Section 5.2 above.

- d. **Certificates of Ownership.** Borrower shall deliver to Lender, at any time and from time to time, not more than 5 days after Lender's written request therefor, a certificate, in form acceptable to Lender, signed and dated by Borrower, listing the names of all persons and entities holding direct or indirect legal or beneficial interests in the Property or any Restricted Party and the type and amount of each such interest.

- 6.16. **ACCEPTANCE OF TRUST; POWERS AND DUTIES OF TRUSTEE.** Trustee accepts this trust when this Security Instrument is recorded. From time to time upon written request of Lender and presentation of this Security Instrument, or a certified copy thereof, for endorsement, and without affecting the personal liability of any person for payment of any indebtedness or performance of any Secured Obligation, Trustee may, without liability therefor and without notice: (a) reconvey all or any part of the Property; (b) consent to the making of any map or plat of the Property; (c) join in granting any easement on the Property; (d) join in any declaration of covenants and restrictions; or (e) join in any extension agreement or any agreement subordinating the lien or charge of this Security Instrument. Nothing contained in the immediately preceding sentence shall be construed to limit, impair or otherwise affect the rights of Borrower in any respect. Except as may otherwise be required by applicable law, Trustee or Lender may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trusts hereunder and the enforcement of the rights and remedies available hereunder, and Trustee or Lender may obtain orders or decrees directing or confirming or approving acts in the execution of said trusts and the enforcement of said remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding (including, without limitation, actions in which Borrower, Lender or Trustee shall be a party) unless held or commenced and maintained by Trustee under this Security Instrument. Trustee shall not be obligated to perform any act required of it hereunder unless the performance of the act is requested in writing and Trustee is reasonably indemnified and held harmless against loss, cost, liability and expense.
- 6.17. **COMPENSATION OF TRUSTEE.** Borrower shall pay to Trustee reasonable compensation and reimbursement for services and expenses in the administration of this trust, including, without limitation, reasonable attorneys' fees. Borrower shall pay all indebtedness arising under this Section immediately upon demand by Trustee or Lender together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Note as specified therein.
- 6.18. **EXCULPATION.** Lender shall not directly or indirectly be liable to Borrower or any other person as a consequence of: (a) the exercise of the rights, remedies or powers granted to Lender in this Security Instrument; (b) the failure or refusal of Lender to perform or discharge any obligation or liability of Borrower under any agreement related to the Property or under this Security Instrument; or (c) any loss sustained by Borrower or any third party resulting from Lender's failure to lease the Property after a Default (hereafter defined) or from any other act or omission of Lender in managing the Property after a Default unless the loss is caused by the willful misconduct and bad faith of Lender and no such liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.
- 6.19. **INDEMNITY.** Without in any way limiting any other indemnity contained in this Security Instrument, Borrower agrees to defend, indemnify and hold harmless Trustee and Lender Group from and against any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (a) the making of the Loan, except for violations of banking laws or regulations by Lender Group; (b) this Security Instrument; (c) the execution of this trust or the performance of any act required or permitted hereunder or by law; (d) any failure of Borrower to perform Borrower's obligations under this Security Instrument or the other Loan Documents; (e) any alleged obligation or undertaking on Lender Group's part to perform or discharge

any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Property; (f) any act or omission by Borrower or any contractor, agent, employee or representative of Borrower with respect to the Property; or (g) any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (i) the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any Hazardous Materials which are found in, on, under or about the Property (including, without limitation, underground contamination); or (ii) the breach of any covenant, representation or warranty of Borrower under Sections 5.1(p), 5.1(q), 5.1(r), or 6.2 above. The foregoing to the contrary notwithstanding, this indemnity shall not include any claim, loss, damage, cost, expense or liability directly or indirectly arising out of the gross negligence or willful misconduct of any member of Lender Group or Trustee or any claim, loss, damage, cost, expense or liability incurred by Lender Group or Trustee arising from any act or incident on the Property occurring after the full reconveyance and release of the lien of this Security Instrument on the Property, or with respect to the matters set forth in clause (g) above, any claim, loss, damage, cost, expense or liability incurred by Lender Group resulting from the introduction and initial release of Hazardous Materials on the Property occurring after the transfer of title to the Property at a foreclosure sale under this Security Instrument, either pursuant to judicial decree or the power of sale, or by deed in lieu of such foreclosure. This indemnity shall include, without limitation: (aa) all consequential damages (including, without limitation, any third party tort claims or governmental claims, fines or penalties against Trustee or Lender Group); (bb) all court costs and reasonable attorneys' fees (including, without limitation, expert witness fees) paid or incurred by Trustee or Lender Group; and (cc) the costs, whether foreseeable or unforeseeable, of any investigation, repair, cleanup or detoxification of the Property which is required by any governmental entity or is otherwise necessary to render the Property in compliance with all laws and regulations pertaining to Hazardous Materials. "Lender Group", as used herein, shall mean (1) Lender (including, without limitation, any participant in the Loan), (2) any entity controlling, controlled by or under common control with Lender, (3) the directors, officers, employees and agents of Lender and such other entities, and (4) the successors, heirs and assigns of the entities and persons described in foregoing clauses (1) through (3). Borrower shall pay immediately upon Trustee's or Lender's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of interest applicable to the principal balance of the Note as specified therein. Borrower agrees to use legal counsel reasonably acceptable to Trustee and Lender Group in any action or proceeding arising under this indemnity.

THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION AND/OR RECONVEYANCE OR RELEASE AND/OR DISCHARGE OF THIS SECURITY INSTRUMENT, BUT BORROWER'S LIABILITY UNDER THIS INDEMNITY SHALL BE SUBJECT TO THE PROVISIONS OF THE SECTION IN THE NOTE ENTITLED "BORROWER'S LIABILITY."

- 6.20. **SUBSTITUTION OF TRUSTEE.** From time to time, by a writing signed and acknowledged by Lender and recorded in the Office of the Recorder of the County in which the Property is situated, Lender may appoint another trustee(s) to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee(s) as the trustee hereunder with the same effect as if originally named trustee herein. A writing recorded pursuant to the provisions of this Section shall be conclusive proof of the proper substitution of such new trustee.
- 6.21. **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations ("Interested Parties"), Lender may, from time to time: (a) fully or partially release any person or entity from liability for the payment or performance of any Secured Obligation; (b) extend the maturity of any Secured Obligation; (c) make any agreement with Borrower increasing the amount or otherwise altering the terms of any Secured Obligation; (d) accept additional security for any Secured Obligation; or (e) release all or any portion of the Property, Collateral and other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Security Instrument upon the Property.

- 6.22. **SALE OR PARTICIPATION OF LOAN.** Lender may at any time sell, assign, participate or securitize all or any portion of Lender's rights and obligations under the Loan Documents, and that any such sale, assignment, participation or securitization may be to one or more financial institutions or other entities, to private investors, or into the public securities market, in Lender's sole discretion. Borrower further agrees that Lender may disseminate to any such actual or potential purchaser(s), assignee(s) or participant(s) (and to any investment banking firms, rating agencies, accounting firms, law firms and other third party advisory firms and investors involved with the Loan and the Loan Documents or the applicable sale, assignment, participation or securitization) all documents and financial and other information heretofore or hereafter provided to or known to Lender with respect to: (a) the Property and its operation; (b) any party connected with the Loan (including, without limitation, Borrower, any partner or member of Borrower, any constituent partner or member of Borrower, any guarantor and any nonborrower Borrower). In the event of any such sale, assignment, participation or securitization, Lender and the other parties to the same shall share in the rights and obligations of Lender set forth in the Loan Documents as and to the extent they shall agree among themselves. In connection with any such sale, assignment, participation or securitization, Borrower further agrees that the Loan Documents shall be sufficient evidence of the obligations of Borrower to each purchaser, assignee or participant, and Borrower shall, within 15 days after request by Lender; (c) deliver to Lender such information and documents relating to Borrower, the Property and its operation and any party connected with the Loan as Lender or any rating agency may request; (d) deliver to Lender an estoppel certificate for the benefit of Lender and any other party designated by Lender verifying the status and terms of the Loan, in form and content satisfactory to Lender; (e) enter into such amendments to the Loan Documents as may be requested in order to facilitate any such sale, assignment, participation or securitization without impairing Borrower's rights or increasing Borrower's obligations; (f) if, as a condition to the closing of the Loan, Borrower was required to be a special-purpose bankruptcy-remote entity, enter into such amendments to the organizational documents of Borrower as any rating agency may request to preserve or enhance Borrower's special-purpose bankruptcy-remote status; and (g) if, as a condition to the closing of the Loan, Borrower was required to provide Lender with any non-consolidation opinions, provide Lender with such amendments and restatements of such opinions as any rating agency may request. The indemnity obligations of Borrower under the Loan Documents shall also apply with respect to any purchaser, assignee or participant.
- 6.23. **RECONVEYANCE.** Upon Lender's written request, and upon surrender of this Security Instrument or certified copy thereof and any note, instrument or instruments setting forth all obligations secured hereby to Lender for cancellation, Lender shall reconvey, without warranty, the Property or that portion thereof then held hereunder. The recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto". Neither Lender nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto.
- 6.24. **SUBROGATION.** Lender shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Lender pursuant to this Security Instrument or by the proceeds of any loan secured by this Security Instrument.

ARTICLE 7. DEFAULT

- 7.1. **DEFAULT.** For all purposes hereof, "Default" shall mean either an "Optional Default" (as defined below) or an "Automatic Default" (as defined below).
- a. **Optional Default.** An "Optional Default" shall occur, at Lender's option, upon the occurrence of any of the following events:
- (i) **Monetary.** Borrower shall fail to (aa) pay when due any sums which by their express terms require immediate payment without any grace period or sums which are payable on the Maturity Date, (bb) pay within 5 days when due any other sums payable under the Note, this Security Instrument or any of the other Loan Documents, including without

limitation, any monthly payment due under the Note, or (cc) reimburse either Ross Stores, Inc. or Office Depot, Inc. for unamortized tenant improvement costs in accordance with the co-tenancy provisions contained in each of their respective leases.

- (ii) **Failure to Perform.** Borrower shall fail to observe, perform or discharge any of Borrower's obligations, covenants, conditions or agreements, other than Borrower's payment obligations, under the Note, this Security Instrument or any of the other Loan Documents, and (aa) such failure shall remain uncured for 30 days after written notice thereof shall have been given to Borrower, as the case may be, by Lender or (bb) if such failure is of such a nature that it cannot be cured within such 30 day period, Borrower shall fail to commence to cure such failure within such 30 day period or shall fail to diligently prosecute such curative action thereafter.
- (iii) **Representations and Warranties.** Any representation, warranty, certificate or other statement (financial or otherwise) made or furnished by or on behalf of Borrower or a guarantor, if any, to Lender or in connection with any of the Loan Documents, or as an inducement to Lender to make the Loan, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished.
- (iv) **Condemnation; Attachment.** The condemnation, seizure or appropriation of any material portion (as reasonably determined by Lender) of the Property; or the sequestration or attachment of, or levy or execution upon any of the Property, the Collateral or any other collateral provided by Borrower under any of the Loan Documents, or any material portion of the other assets of Borrower, which sequestration, attachment, levy or execution is not released or dismissed within 45 days after its occurrence; or the sale of any assets affected by any of the foregoing.
- (v) **Uninsured Casualty.** The occurrence of an uninsured casualty with respect to any material portion (as reasonably determined by Lender) of the Property unless: (aa) no other Default has occurred and is continuing at the time of such casualty or occurs thereafter; (bb) Borrower promptly notifies Lender of the occurrence of such casualty; and (cc) not more than 45 days after the occurrence of such casualty, Borrower delivers to Lender immediately available funds in an amount sufficient, in Lender's reasonable opinion, to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period). So long as no Default has occurred and is continuing at the time of Lender's receipt of such funds and no Default occurs thereafter, Lender shall make such funds available for the repair or restoration of the Property. Notwithstanding the foregoing, Lender shall have no obligation to make any funds available for repair or restoration of the Property unless and until all the conditions set forth in clauses (bb) and (cc) of Section 6.11(b)(iii) of this Security Instrument have been satisfied. Borrower acknowledges that the specific conditions described above are reasonable.

b. **Automatic Default.** An "Automatic Default" shall occur automatically upon the occurrence of any of the following events:

- (i) **Voluntary Bankruptcy, Insolvency, Dissolution.** (aa) Borrower's filing a petition for relief under the Bankruptcy Reform Act of 1978, as amended or recodified ("Bankruptcy Code"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "Debtor Relief Law"); or (bb) Borrower's filing any pleading in any involuntary proceeding under the Bankruptcy Code or other Debtor Relief Law which admits the jurisdiction of a court to regulate Borrower or the Property or the petition's material allegations regarding Borrower's insolvency; or (cc) Borrower's making a general assignment for the benefit of creditors; or (dd) Borrower's applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its property; or (ee) the filing by or against Borrower of a petition

seeking the liquidation or dissolution of Borrower or the commencement of any other procedure to liquidate or dissolve Borrower.

- (ii) **Involuntary Bankruptcy.** Borrower's failure to effect a full dismissal of any involuntary petition under the Bankruptcy Code or other Debtor Relief Law that is filed against Borrower or in any way restrains or limits Borrower or Lender regarding the Loan or the Property, prior to the earlier of the entry of any order granting relief sought in the involuntary petition or 45 days after the date of filing of the petition.
- (iii) **Partners, Guarantors.** The occurrence of an event specified in Sections (i) or (ii) as to Borrower, any general partner or managing member of Borrower, or any guarantor or other person or entity in any manner obligated to Lender under the Loan Documents.

7.2. **ACCELERATION.** Upon the occurrence of an Optional Default, Lender may, at its option, declare all sums owing to Lender under the Note and the other Loan Documents immediately due and payable. Upon the occurrence of an Automatic Default, all sums owing to Lender under the Note and the other Loan Documents shall automatically become immediately due and payable.

7.3. **RIGHTS AND REMEDIES.** In addition to the rights and remedies in Section 7.2 above, at any time after a Default, Lender shall have all of the following rights and remedies:

- a. **Entry on Property.** With or without notice, and without releasing Borrower from any Secured Obligation, and without becoming a mortgagee in possession, to enter upon the Property from time to time and to do such acts and things as Lender or Trustee deems necessary or desirable in order to inspect, investigate, assess and protect the security hereof or to cure any Default, including, without limitation: (i) to take and possess all documents, books, records, papers and accounts of Borrower, the then owner of the Property which relate to the Property; (ii) to make, terminate, enforce or modify leases of the Property upon such terms and conditions as Lender deems proper; (iii) to make repairs, alterations and improvements to the Property necessary, in Trustee's or Lender's sole judgment, to protect or enhance the security hereof; (iv) to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Trustee or Lender hereunder; (v) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Trustee or Lender, is or may be senior in priority hereto, the judgment of Trustee or Lender being conclusive as between the parties hereto; (vi) to obtain insurance; (vii) to pay any premiums or charges with respect to insurance required to be carried hereunder or under any other Loan Document; (viii) to obtain a court order to enforce Lender's right to enter and inspect the Property for Hazardous Materials, in which regard the decision of Lender as to whether there exists a release or threatened release of Hazardous Materials onto the Property shall be deemed reasonable and conclusive as between the parties hereto; (ix) to have a receiver appointed pursuant to applicable law to enforce Lender's rights to enter and inspect the Property for Hazardous Materials; and/or (x) to employ legal counsel, accountants, engineers, consultants, contractors and other appropriate persons to assist them;
- b. **Appointment of Receiver.** With or without notice or hearing to apply to a court of competent jurisdiction for and obtain appointment of a receiver, trustee, liquidator or conservator of the Property, for any purpose, including, without limitation, to enforce Lender's rights to collect Payments and to enter on and inspect the Property for Hazardous Materials, as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; (iii) the filing of a notice of default; or (iv) the solvency of Borrower or any other guarantor or other person or entity in any manner obligated to Lender under the Loan Documents;
- c. **Judicial Foreclosure; Injunction.** To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Borrower hereunder, and Borrower agrees that such covenants

shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Borrower waives the defense of laches and any applicable statute of limitations;

- d. **Nonjudicial Foreclosure.** To execute a written notice of such Default and of the election to cause the Property to be sold to satisfy the Secured Obligations. Trustee shall give and record such notice as the law then requires as a condition precedent to a trustee's sale. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Borrower except as required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Lender in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Borrower nor any other person or entity other than Lender shall have the right to direct the order in which the Property is sold. Subject to requirements and limits imposed by law, Trustee may, from time to time postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time may postpone the sale by public announcement at the time and place fixed by the preceding postponement. A sale of less than the whole of the Property or any defective or irregular sale made hereunder shall not exhaust the power of sale provided for herein. Trustee shall deliver to the purchaser at such sale a deed conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Borrower or Lender may purchase at the sale;

Upon sale of the Property at any judicial or nonjudicial foreclosure, Lender may credit bid (as determined by Lender in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Lender may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Lender in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Lender with respect to the Property prior to foreclosure; (iii) expenses and costs which Lender anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g. commissions, attorneys' fees, and taxes), costs of any Hazardous Materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Lender; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Lender (in its sole and absolute discretion) deems appropriate. In regard to the above, Borrower acknowledges and agrees that: (viii) Lender is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (ix) this paragraph does not impose upon Lender any additional obligations that are not imposed by law at the time the credit bid is made; (x) the amount of Lender's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Borrower and Lender; and (xi) Lender's credit bid may be (at Lender's sole and absolute discretion) higher or lower than any appraised value of the Property;

- e. **Multiple Foreclosures.** To resort to and realize upon the security hereunder and any other security now or later held by Lender concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken nonjudicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Trustee and Lender or either of them determine in their sole discretion;
- f. **Rights to Collateral.** To exercise all rights Trustee or Lender may have with respect to the Collateral under this Security Instrument, the UCC or otherwise at law; and

- g. **Other Rights.** To exercise such other rights as Trustee or Lender may have at law or in equity or pursuant to the terms and conditions of this Security Instrument or any of the other Loan Documents.

In connection with any sale or sales hereunder, Lender may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the Property (including, without limitation, any improvements forming a part thereof) without causing structural damage thereto as if the same were personal property or a fixture, as the case may be, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Property. Any sale of Collateral hereunder shall be conducted in any manner permitted by the UCC.

- 7.4. **APPLICATION OF FORECLOSURE SALE PROCEEDS.** If any foreclosure sale is effected, Trustee shall apply the proceeds of such sale in the following order of priority: First, to the costs, fees and expenses of exercising the power of sale and of sale, including, without limitation, the payment of Trustee's fees and attorneys' fees permitted pursuant to applicable law; Second, to the payment of the Secured Obligations which are secured by this Security Instrument, in such order as Lender shall determine in its sole discretion; Third, to satisfy the outstanding balance of obligations secured by any junior liens or encumbrances in the order of their priority; and Fourth, to Borrower or Borrower's successor in interest, or in the event the Property has been sold or transferred to another, to the vested owner of record at the time of Trustee's sale.
- 7.5. **WAIVER OF MARSHALING RIGHTS.** Borrower, for itself and for all parties claiming through or under Borrower, and for all parties who may acquire a lien on or interest in the Property, hereby waives all rights to have the Property and/or any other property, including, without limitation, the Collateral, which is now or later may be security for any Secured Obligation, marshaled upon any foreclosure of this Security Instrument or on a foreclosure of any other security for any of the Secured Obligations.
- 7.6. **NO CURE OR WAIVER.** Neither Lender's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor any the exercise of any other right or remedy by Lender or Trustee or any receiver shall cure or waive any Default or notice of default under this Security Instrument, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid or performed and Borrower has cured all other Defaults hereunder), or impair the status of the security, or prejudice Lender or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Lender of any tenancy, lease or option or a subordination of the lien of this Security Instrument.
- 7.7. **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Borrower agrees to pay to Lender immediately and upon demand all costs and expenses incurred by Trustee and Lender in the enforcement of the terms and conditions of this Security Instrument (including, without limitation, statutory trustee's fees, court costs and reasonable attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest applicable to the principal balance of the Note as specified therein.
- 7.8. **POWER TO FILE NOTICES AND CURE DEFAULTS.** Borrower hereby irrevocably appoints Lender and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to perform any obligation of Borrower hereunder upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, provided, however, that: (a) Lender as such attorney-in-fact shall only be accountable for such funds as are actually received by Lender; and (b) Lender shall not be liable to Borrower or any other person or entity for any failure to act under this Section.
- 7.9. **REMEDIES CUMULATIVE.** All rights and remedies of Lender and Trustee under this Security Instrument and the other Loan Documents are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this Security Instrument as though

it were a mortgage). Lender may enforce any one or more remedies or rights under the Loan Documents either successively or concurrently.

ARTICLE 8. MISCELLANEOUS PROVISIONS

- 8.1. **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Lender and contain further agreements and affirmative and negative covenants by Borrower which apply to this Security Instrument and to the Property and such further rights and agreements are incorporated herein by this reference. THE OBLIGATIONS AND LIABILITIES OF BORROWER UNDER THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS ARE SUBJECT TO THE PROVISIONS OF THE SECTION IN THE NOTE ENTITLED "BORROWER'S LIABILITY".
- 8.2. **NON-WAIVER.** By accepting payment of any amount secured hereby after its due date or late performance of any other Secured Obligation, Lender shall not waive its right against any person obligated directly or indirectly hereunder or on any Secured Obligation, either to require prompt payment or performance when due of all other sums and obligations so secured or to declare default for failure to make such prompt payment or performance. No exercise of any right or remedy by Lender or Trustee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law. No failure by Lender or Trustee to exercise any right or remedy hereunder arising upon any Default shall be construed to prejudice Lender's or Trustee's rights or remedies upon the occurrence of any other or subsequent Default. No delay by Lender or Trustee in exercising any such right or remedy shall be construed to preclude Lender or Trustee from the exercise thereof at any time while that Default is continuing. No notice to nor demand on Borrower shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances.
- 8.3. **CONSENTS AND APPROVALS.** Wherever Lender's consent, approval, acceptance or satisfaction is required under any provision of this Security Instrument or any of the other Loan Documents, such consent, approval, acceptance or satisfaction shall not be unreasonably withheld, conditioned or delayed by Lender unless such provision expressly so provides.
- 8.4. **PERMITTED CONTESTS.** After prior written notice to Lender, Borrower may contest, by appropriate legal or other proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any lien, levy, tax or assessment, or any lien of any laborer, mechanic, materialman, supplier or vendor, or the application to Borrower or the Property of any law or the validity thereof, the assertion or imposition of which, or the failure to pay when due, would constitute a Default; provided that (a) Borrower pursues the contest diligently, in a manner which Lender determines is not prejudicial to Lender, and does not impair the lien of this Security Instrument; (b) the Property, or any part hereof or estate or interest therein, shall not be in any danger of being sold, forfeited or lost by reason of such proceedings; (c) in the case of the contest of any law or other legal requirement, Lender shall not be in any danger of any civil or criminal liability; and (d) if required by Lender, Borrower deposits with Lender any funds or other forms of assurance (including a bond or letter of credit) satisfactory to Lender to protect Lender from the consequences of the contest being unsuccessful. Borrower's right to contest pursuant to the terms of this provision shall in no way relieve Borrower of its obligations under the Loan or to make payments to Lender as and when due.
- 8.5. **FURTHER ASSURANCES.** Borrower shall, upon demand by Lender or Trustee, execute, acknowledge (if appropriate) and deliver any and all documents and instruments and do or cause to be done all further acts reasonably necessary or appropriate to effectuate the purposes of the Loan Documents and to perfect any assignments contained therein.
- 8.6. **ATTORNEYS' FEES.** If any legal action, suit or proceeding is commenced between Borrower and Lender regarding their respective rights and obligations under this Security Instrument or any of the other Loan Documents, the prevailing party shall be entitled to recover, in addition to damages or other relief, costs and expenses, reasonable attorneys' fees and court costs (including, without limitation, expert witness

fees). As used herein the term "prevailing party" shall mean the party which obtains the principal relief it has sought, whether by compromise settlement or judgment. If the party which commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

- 8.7. **BORROWER AND LENDER DEFINED.** The term "Borrower" includes both the original Borrower and any subsequent owner or owners of any of the Property, and the term "Lender" includes the original Lender and any future owner or holder, including assignees, pledges and participants, of the Note or any interest therein.

8.8. **DISCLAIMERS.**

- a. **Nominee Capacity of MERS.** MERS serves as mortgagee of record and secured party solely as nominee, in an administrative capacity, for Lender and its successors and assigns and only holds legal title to the interests granted, assigned, and transferred herein. All payments or deposits with respect to the Secured Obligations shall be made to Lender, all advances under the Loan Documents shall be made by Lender, and all consents, approvals, or other determinations required or permitted of Lender herein shall be made by Lender. MERS shall at all times comply with the instructions of Lender and its successors and assigns. If necessary to comply with law or custom, MERS (for the benefit of Lender and its successors and assigns) may be directed by Lender to exercise any or all of those interests, including without limitation, the right to foreclose and sell the Property, and take any action required of Lender, including without limitation, a release, discharge or reconveyance of this Security Instrument. Subject to the foregoing, all references herein to "Lender" shall include Lender and its successors and assigns.
- b. **Relationship.** The relationship of Borrower and Lender under this Security Instrument and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender; (the role of MERS hereunder being solely that of nominee as set forth in subsection (a) above and not that of a lender) and Lender neither undertakes nor assumes any responsibility or duty to Borrower or to any third party with respect to the Property. Notwithstanding any other provisions of this Security Instrument and the other Loan Documents: (i) Lender is not, and shall not be construed to be, a partner, joint venturer, member, alter ego, manager, controlling person or other business associate or participant of any kind of Borrower, and Lender does not intend to ever assume such status; (ii) Lender's activities in connection with this Security Instrument and the other Loan Documents shall not be "outside the scope of activities of a lender of money" within the meaning of California Civil Code Section 3434, as amended or recodified from time to time, and Lender does not intend to ever assume any responsibility to any person for the quality, suitability, safety or condition of the Property; and (iii) Lender shall not be deemed responsible for or a participant in any acts, omissions or decisions of Borrower.
- c. **No Liability.** Lender shall not be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any person or property arising from any construction on, or occupancy or use of, the Property, whether caused by or arising from: (i) any defect in any building, structure, grading, fill, landscaping or other improvements thereon or in any on-site or off-site improvement or other facility therein or thereon; (ii) any act or omission of Borrower or any of Borrower's agents, employees, independent contractors, licensees or invitees; (iii) any accident in or on the Property or any fire, flood or other casualty or hazard thereon; (iv) the failure of Borrower or any of Borrower's licensees, employees, invitees, agents, independent contractors or other representatives to maintain the Property in a safe condition; or (v) any nuisance made or suffered on any part of the Property.
- 8.9. **SEVERABILITY.** If any term of this Security Instrument or any other Loan Document, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Security Instrument or such other Loan Document, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and

each term of this Security Instrument or such other Loan Document shall be valid and enforceable to the fullest extent permitted by law.

- 8.10. **RELATIONSHIP OF ARTICLES.** The rights, remedies and interests of Lender under the Security Instrument established by Article 1 and the security agreement established by Article 4 are independent and cumulative, and there shall be no merger of any lien created by the Security Instrument with any security interest created by the security agreement. Lender may elect to exercise or enforce any of its rights, remedies or interests under either or both the Security Instrument or the security agreement as Lender may from time to time deem appropriate. The absolute assignment of rents and leases established by Article 3 is similarly independent of and separate from the Security Instrument and the security agreement.
- 8.11. **MERGER.** No merger shall occur as a result of Lender's acquiring any other estate in, or any other lien on, the Property unless Lender consents to a merger in writing.
- 8.12. **OBLIGATIONS OF BORROWER, JOINT AND SEVERAL.** If more than one person has executed this Security Instrument as "Borrower", the obligations of all such persons hereunder shall be joint and several.
- 8.13. **SEPARATE AND COMMUNITY PROPERTY.** Any married person who executes this Security Instrument as a "Borrower" agrees that any money judgment which Lender or Trustee obtains pursuant to the terms of this Security Instrument or any other obligation of that married person secured by this Security Instrument may be collected by execution upon any separate property or community property of that person.
- 8.14. **INTEGRATION; INTERPRETATION.** The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference in any of the Loan Documents to the Property or Collateral shall include all or any part of the Property or Collateral. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Lender in writing. When the identity of the parties or other circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- 8.15. **CAPITALIZED TERMS.** Capitalized terms not otherwise defined herein shall have the meanings set forth in the Note.
- 8.16. **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions contained herein and in the other Loan Documents shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Borrower to assign the Loan except as otherwise permitted under the Note or the other Loan Documents.
- 8.17. **GOVERNING LAW.** This Security Instrument was accepted by Lender in the state of California and the proceeds of the Note secured hereby were disbursed from the state of California, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby. Accordingly, in all respects, including without limiting the generality of the foregoing, matters of construction, validity, enforceability and performance, this Security Instrument, the Note and the other Loan Documents and the obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the state of California applicable to contracts made and performed in such state and any applicable law of the United States of America, except that all times the provisions for enforcement of the liens, assignments and security interests in and to the Property and all other remedies of Lender, including but not limited to foreclosure or exercise of Lender's STATUTORY POWER OF SALE or other POWER OF SALE (as permitted by law) and the creation, perfection and enforcement of the security interests created pursuant hereto and pursuant to the other Loan Documents in any Collateral which is located in the state where the Property is located shall be governed by and construed according to the law of the state where the Property is located. Except as provided in the immediately preceding sentence, Borrower hereby unconditionally and irrevocably waives, to the fullest extent permitted by law,

any claim to assert that the law of any jurisdiction other than California governs this Security Instrument, the Note and other Loan Documents.

- 8.18. **CONSENT TO JURISDICTION.** Borrower irrevocably submits to the jurisdiction of: (a) any state or federal court sitting in the state of California over any suit, action, or proceeding, brought by Borrower against Lender, arising out of or relating to this Security Instrument, the Note or the Loan; (b) any state or federal court sitting in the state where the Property is located or the state in which Borrower's principal place of business is located over any suit, action or proceeding, brought by Lender against Borrower, arising out of or relating to this Security Instrument, the Note or the Loan; (c) any state court sitting in the county of the state where the Property is located over any suit, action, or proceeding, brought by Lender to enforce the liens, assignments and security interests in and to the Collateral and all other rights or remedies of Lender, including but not limited to foreclosure or exercise of Lender's STATUTORY POWER OF SALE or other POWER OF SALE (as permitted by law). Borrower irrevocably waives, to the fullest extent permitted by law, any objection that Borrower may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in an inconvenient forum.
- 8.19. **EXHIBITS.** Exhibit A is incorporated into this Security Instrument by this reference.
- 8.20. **ADDRESSES; REQUEST FOR NOTICE.** All notices and other communications that are required or permitted to be given to a party under this Security Instrument or the Loan Documents shall be in writing, refer to the Loan number, and shall be sent to such party, either by personal delivery, by overnight delivery service, by certified first class mail, return receipt requested, or by facsimile transmission to the addressee or facsimile number below. All such notices and communications shall be effective upon receipt of such delivery or facsimile transmission. The addresses of the parties are set forth on page 1 of this Security Instrument and the facsimile numbers for the parties are as follows:

<u>Lender:</u>	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. FAX No.: (703) 748-0183
<u>Trustee:</u>	CHICAGO TITLE COMPANY c/o Amerititle FAX No.: (541) 882-0620
<u>Borrower:</u>	KLAMATH-JEFFERSON, LLC FAX No.: (541) 754-3690

Borrower's principal place of business is at the address set forth on page 1 of this Security Instrument.

Any Borrower whose address is set forth on page 1 of this Security Instrument hereby requests that a copy of notice of default and notice of sale be delivered to it at that address. Failure to insert an address shall constitute a designation of Borrower's last known address as the address for such notice. Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving 30 days notice to the other parties in the manner set forth above.

- 8.21. **COMMERCIAL LOAN.** Borrower warrants that the Loan evidenced by the Note and this Security Instrument is being made solely to acquire or carry on a business or commercial enterprise, and/or Borrower is a business or commercial organization. Borrower further warrants that all of the proceeds of the Note and this Security Instrument shall be used for commercial purposes and stipulates that the Loan evidenced by the Note and this Security Instrument shall be construed for all purposes as a commercial loan, and is made for other than personal, family or household purposes.

- 8.22. **COUNTERPARTS.** This Security Instrument may be executed in any number of counterparts, each of which, when executed and delivered, will be deemed an original and all of which taken together, will be deemed to be one and the same instrument.
- 8.23. **ADVERTISING.** In connection with the Loan, Borrower hereby agrees that Wells Fargo & Company and its subsidiaries (together "Wells Fargo") may publicly identify details of the Loan in Wells Fargo advertising and public communications of all kinds, including, but not limited to, press releases, direct mail, newspapers, magazines, journals, e-mail or internet advertising or communications. Such details may include the name of the Property, address of the Property, the Loan amount, the date of the closing and a description of the size/location of the Property.
- 8.24. **WAIVER OF JURY TRIAL.** TO THE EXTENT NOW OR HEREAFTER PERMITTED BY APPLICABLE LAW, LENDER AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS SECURITY INSTRUMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF LENDER OR BORROWER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO ENTER INTO THIS SECURITY INSTRUMENT.
- 8.25. **FINAL EXPRESSION/NO ORAL AGREEMENTS.** READ THIS DOCUMENT CAREFULLY. THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Borrower has executed this Security Instrument as of the day and year set forth above.

"BORROWER"

Klamath-Jefferson, LLC, an Oregon limited liability company

By: M. Eugene Dickerhoof
Name: M. Eugene Dickerhoof
Title: Operating Manager

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

STATE OF Oregon)
COUNTY OF Klamath) ss.

On July 18, 2007, before me, Kristi L. Redd a notary public, personally appeared M. Eugene Dickerhoof ~~*see below~~ 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. *as Operating Manager of Klamath-Jefferson, LLC, an Oregon limited liability company

WITNESS my hand and official seal.

Signature Kristi L. Redd (Seal)

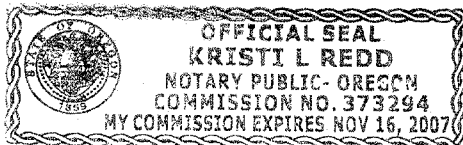


EXHIBIT A

Description Of Land

Exhibit A to DEED OF TRUST and ABSOLUTE ASSIGNMENT OF RENTS AND LEASES and SECURITY AGREEMENT (AND FIXTURE FILING) ("Security Instrument") between Klamath-Jefferson, LLC, an Oregon limited liability company, as "Borrower", CHICAGO TITLE COMPANY, as "Trustee" and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation, as "Lender".

Description of Land. The Land referred to in this Security Instrument is situated in the County of Klamath, State of Oregon, and is described as follows:

Parcel 2 of Land Partition No. 48-05, said Land Partition being a replat of a portion of Lots 34 and 44 of Enterprise Tracts located in the West 1/2 of the NW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

TOGETHER WITH a non-exclusive Reciprocal Easement for pedestrian and vehicular ingress and egress granted in Volume M95, Page 33582, Microfilm records of Klamath County, Oregon.

TOGETHER WITH those non-exclusive easements granted in that certain Declaration of Easements, Covenants, Conditions and Restrictions recorded December 21, 2005, in Volume M05, Page 71541, Microfilm Records of Klamath County, Oregon.

The assessor's real property tax account number for the Land is 3909-003BC-00901-000.