

RETURN TO

To: Michael J. Martinis  
MARTINIS & HILL  
110 Madrona Avenue SE  
Salem, OR 97302

2008-015348

Klamath County, Oregon

SEND TAX STATEMENTS TO:  
Unchanged

AFTER RECORDING, RETURN TO:  
Evans, Freeby & Jennings, LLP  
280 Court St. NE, Suite One  
Salem, OR 97301



00056184200800153480180183

11/13/2008 10:00:04 AM

Fee: \$121.00

The true and actual consideration for this transfer is a loan of \$1,000,000.00.

The debt secured by this Trust Deed is due and payable on or before October 1, 2002.

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

**LINE OF CREDIT INSTRUMENT**

This Line of Credit Instrument secures amounts which have been or will be advanced to Grantor pursuant to the terms of a Note dated September 21, 2001. The maximum principal amount to be advanced to Grantor pursuant to the Note is \$1,000,000.00. The Note will mature on October 1, 2002, but may be renewed or extended. The maximum principal amount to be advanced may be exceeded by advances to complete construction, pursuant to ORS 86.155(2)(c), if applicable.

**DATE:** September 21, 2001

**PARTIES:** CRYSTAL TERRACE RETIREMENT COMMUNITY, LLC, an Oregon limited liability company  
GRANTOR, also referred to as "Borrower"  
2735 12<sup>th</sup> Street SE, Salem, OR 97302

JAY T. JENNINGS, attorney at law, TRUSTEE

CAPITAL MANAGERS LLC, an Oregon limited liability company, BENEFICIARY, also referred to as  
"Lender"  
PO Box 12888, Salem, OR 97309

**RECITALS:**

A. Lender has offered to make a loan to Borrower in the sum of \$1,000,000.00, which loan is to be evidenced by a Promissory Note of even date herewith. (The Promissory Note as modified, supplemented, extended, renewed, or replaced from time to time is referred to below as the "Note").

B. As a condition to the making of the loan to Borrower, Lender has required, and Borrower has agreed to execute and deliver, this Trust Deed.

C. Although this Trust Deed is entitled "Line of Credit Instrument," Lender is under no obligation to advance any sums in excess of \$1,000,000.00, and this Trust Deed is so entitled to comply with the provisions of ORS 86.155(2).

**AGREEMENT:**

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and for the purpose of securing the Obligations described in Section 1 below, Borrower irrevocably grants, bargains, sells, conveys, assigns, and transfers to Trustee in trust for the benefit and security of the Lender, with power of sale and right of entry and possession, all of Borrower's right, title, and interest in and to the real property located in Klamath County, State of Oregon, and more particularly described on Exhibit "A" attached hereto (the "Property");

TOGETHER WITH all interests, estates, and rights that Borrower now has or may acquire in (1) the Property; (2) any and all options, agreements, and contracts for the purchase or sale of all or any part or parts of the Property or interests in the Property; (3) all easements, rights-of-way, and rights used in connection with the Property or as a means of access to the Property; and (4) all tenements, hereditaments, and appurtenances in any manner belonging, relating, or appertaining to the Property; and

TOGETHER WITH all interests, estates, and rights of Borrower, now owned or hereafter acquired, in and to any land lying within any streets, sidewalks, alleys, strips, and gores adjacent to or used in connection therewith; and

TOGETHER WITH all rights, titles, and interests of Borrower, now owned or hereafter acquired, in and to any and all buildings and other improvements of every nature now or hereafter located on the Property and all fixtures, machinery, equipment, and other personal property located on the Property or attached to, contained in, or used in any such buildings and other improvements, and all appurtenances and additions to and substitutions and replacements of the Property (all of the foregoing being collectively referred to below as the "Improvements"); and

TOGETHER WITH any and all mineral, oil and gas rights, air rights, development rights, water rights, water stock, and water service contracts, drainage rights, zoning rights, and other similar rights or interests that benefit or are appurtenant to the Property or the Improvements or both, and any of their proceeds; and

TOGETHER WITH all present and future rights in and to the trade name by which all or any portion of the Property and the Improvements are known; all books and records relating to the use and operation of all or any portion of the Property and Improvements; all right, title, and interest of Borrower in, to, and under all present and future plans, specifications, and contracts relating to the design, construction, management, or inspection of any Improvements; all rights, titles, and interests of Borrower in and to all present and future licenses, permits, approvals, and agreements with or from any municipal corporation, county, state, or other governmental or quasi-governmental entity or agency relating to the development, improvement, division, or use of all or any portion of the Property to the extent such trade names, licenses, permits, approvals, and agreements are assignable by law; and all other general intangibles relating to the Property, the Improvements, or their use and operation; and

TOGETHER WITH all rights of Borrower in and to any escrow or withhold agreements, title insurance, surety bonds, warranties, management contracts, leasing and sales agreements, land sale contracts, service contracts, accounts and other rights to the payment of money that are in any way relevant to the ownership, development, improvement, management, sale, or use of all or any portion of the Property or any of the Improvements; and

TOGETHER WITH Borrower's rights under any payment, performance, or other bond in connection with construction of any Improvements, and all construction materials, supplies, and equipment delivered to the Property or intended to be used in connection with the construction of any Improvements; and

TOGETHER WITH all rights, interests, and claims that Borrower now has or may acquire with respect to any damage to or taking of all or any part of the Property or the Improvements, including without limitation any and all proceeds of insurance in effect with respect to the Improvements, any and all awards made for taking by eminent domain or by any proceeding or purchase in lieu thereof, of the whole or any part of the Property or the Improvements, and any and all awards resulting from any other damage to the Property or the Improvements, all of which are assigned to Lender, and, subject to the terms of this Trust Deed, Lender is authorized to collect and receive such proceeds, to give proper receipts and acquittances for the proceeds, and to apply them to the Obligations secured by this Trust Deed.

All of the above is sometimes referred to below as the "Trust Property."

TO HAVE AND TO HOLD the Trust Property to Trustee and its successors and assigns for the benefit of Lender and its successors and assigns, forever.

PROVIDED ALWAYS, that if all the Obligations (as defined in Section 1 below) shall be paid, performed, and satisfied in full, then the lien and estate granted by this Trust Deed shall be reconveyed.

This Trust Deed, the Note, and all other agreements or instruments executed at any time in connection therewith, as they may be amended or supplemented from time to time, are sometimes collectively referred to below as the "Loan Documents."

TO PROTECT THE SECURITY OF THIS TRUST DEED, Borrower HEREBY COVENANTS AND AGREES AS FOLLOWS:

1. **Particular Covenants and Warranties of Borrower.**
  - a. **Obligations Secured.** This Trust Deed secures the following, collectively referred to as the "Obligations":
    - i. The payment of all indebtedness, including but not limited to principal and interest, and the

performance of all covenants and obligations of Borrower, under the Note, whether such payment and performance is now due or becomes due in the future;

ii. The payment and performance of all covenants and obligations in this Trust Deed, in the other Loan Documents, and in all other security agreements, notes, agreements, and undertakings now existing or hereafter executed by Borrower with or for the benefit of Lender; and

iii. The payment and performance of any and all other indebtedness and obligations of Borrower to Lender of any nature whatsoever, whether direct or indirect, primary or secondary, joint or several, liquidated or unliquidated, whenever and however arising, whether of the same nature and purpose of the advances made under the Note or otherwise, and whether or not reflected in a written agreement or instrument.

**b. Payment of Indebtedness; Performance of Covenants.** Borrower shall duly and punctually pay and perform all of the Obligations.

**c. Property.** Borrower warrants that it holds good and merchantable title to the Property and the Improvements, free and clear of all liens, encumbrances, reservations, restrictions, easements, and adverse claims except those specifically listed in Exhibit B. Borrower covenants that it shall forever defend Lender's and Trustee's rights under this Trust Deed against the adverse claims and demands of all persons.

**d. Further Assurances; Filing; Refiling; Etc.**

i. Borrower shall execute, acknowledge, and deliver, from time to time, such further instruments as Lender or Trustee may require to accomplish the purposes of this Trust Deed.

ii. This Trust Deed shall not be recorded when executed and delivered; Lender may record a request pursuant to ORS 86.785. Should Lender become entitled to record this Trust Deed, Borrower shall cause this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and each instrument of further assurance, to be recorded and rerecorded in such manner and in such places as may be required by any present or future law in order to perfect, and continue perfected, the lien and estate of this Trust Deed.

iii. Borrower shall pay all filing and recording fees, and all expenses incident to the execution, filing, recording, and acknowledgment of this Trust Deed; any security agreement, mortgage, or deed of trust supplemental hereto and any instrument of further assurance; and all federal, state, county, and municipal taxes, assessments and charges arising out of or in connection with the execution, delivery, filing, and recording of this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and any instrument of further assurance.

**e. Compliance with Laws.** Borrower further represents, warrants, and covenants that:

i. The Property, if developed, has been developed, and all Improvements, if any, have been constructed and maintained, in full compliance with all applicable laws, statutes, ordinances, regulations, and codes of all federal, state, and local governments (collectively "Laws"), and all covenants, conditions, easements, and restrictions affecting the Property (collectively "Covenants"); and

ii. Borrower and its operations upon the Property currently comply, and will hereafter comply in all material respects with all applicable Laws and Covenants.

**f. Definitions; Environmental Covenants; Warranties and Compliance**

i. For purposes of this section, "Environmental Law" means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 USC §§9601-9675, and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended, 42 USC §§6901-6992.

ii. For the purposes of this section, "Hazardous Substance" includes without limitation:

(1) All "hazardous substances" as designated pursuant to 40 CFR Part 302 or any similar regulation now existing or hereafter promulgated;

(2) All "hazardous wastes" within the meaning provided in 40 CFR §261.3 or any similar regulation now existing or hereafter promulgated;

(3) All "extremely hazardous substances" as listed in 40 CFR Part 355 or any similar regulation now existing or hereafter promulgated;

(4) All "hazardous chemicals" as defined under 29 CFR §1910.1200(c) or any similar regulation now existing or hereafter promulgated;

(5) All "toxic chemicals" listed in 40 CFR Part 372 or any similar regulation now existing or hereafter promulgated;

(6) Those substances defined as "hazardous" or "toxic" in the Hazardous Materials Transportation Act, 49 USC §§1801-1819 or in any amendment thereto, or listed in 49 CFR Part 172 or any similar regulation now existing or hereafter promulgated;

(7) All materials, wastes, and substances that are designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 USC §§1251-1387 (33 USC §1321) or listed pursuant to Section 3076 of the Clean Water Act (33 USC §1317);

(8) All "hazardous wastes" as defined in ORS 466.005(7), in any amendments thereto and in any rule or order promulgated pursuant thereto;

(9) All materials, substances, and wastes that are or which contain (A) asbestos; (B) polychlorinated biphenyls; (C) explosives, except such explosives as are used during construction in accordance with law; (D) petroleum, and any fractions thereof; or (E) radioactive materials; and

(10) Such other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations.

iii. Borrower will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Property or the Property's groundwater, or transport to or from the Property, any Hazardous Substance and will not permit any other person to do so, except for such Hazardous Substances that may be used in the ordinary course of Borrower's business and in compliance with all Environmental Laws, including but not limited to those relating to licensure, notice, and record keeping.

iv. Borrower will keep and maintain the Property in compliance with, and shall not cause or permit all or any portion of the Property, including groundwater, to be in violation of any Environmental Law.

v. Borrower shall give prompt written notice to Lender of:

(1) Any proceeding, inquiry, or notice by or from any governmental authority with respect to any alleged violation of any Environmental Law or the presence of any Hazardous Substance on the Property or the migration of any Hazardous Substance from or to other premises;

(2) All known claims made or threatened by any person against Borrower or with respect to the Property or Improvements relating to any loss or injury resulting from any Hazardous Substance or the violation of any Environmental Law;

(3) The existence of any Hazardous Substance on or about all or any portion of the Property;

or

(4) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could in Borrower's judgment cause any restrictions on the ownership, occupancy, transferability, or use of the Property under any Environmental Law.

vi. Borrower shall promptly provide to Lender copies of all reports, documents, and notices provided to or received from any agency administering any Environmental Laws. Lender shall have the right to join and participate, in its own name if it so elects, in any legal proceeding or action initiated with respect to the Property or Improvements in connection with any Environmental Law and have its attorney fees in connection with such an action paid by Borrower, if Lender determines that such participation is reasonably necessary to protect its interest in the Trust Property.

vii. If, at any time, Lender has reason to believe that any release, discharge, or disposal of any Hazardous Substance affecting the Property or Improvements has occurred or is threatened, or if Lender has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Property or Improvements, Lender may require Borrower to obtain or may itself obtain, at Borrower's expense, an environmental assessment of such condition or threatened condition by a qualified environmental consultant. Borrower shall promptly provide to Lender a complete copy of any environmental assessment obtained by Borrower.

viii. In the event that any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is required under any applicable Environmental Law, any judicial order, or by any governmental agency or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance on, under, or about all or any portion of the Property, or the contamination (whether presently existing or occurring after the date of this Trust Deed) of the buildings, facilities, soil, groundwater, surface water, air, or other elements on or under any other property as a result of Hazardous Substances emanating from the Property, Borrower shall, within 30 days after written demand by Lender for Borrower's performance under this provision (or such shorter period of time as may be required under any applicable law, regulation, order, or agreement), commence and thereafter diligently prosecute to completion, all such Remedial Work. All costs and expenses of such Remedial Work shall be paid by Borrower including, without limitation, Lender's reasonable attorney fees and costs incurred in connection with monitoring or review of the legal aspects of such Remedial Work. In the event Borrower shall fail to timely commence, or cause to be commenced, such Remedial Work, Lender may, but shall not be required to, cause such Remedial Work to be performed. In that event, all costs and expenses incurred in connection with the Remedial Work shall become part of the Obligations secured by this Trust Deed and shall bear interest until paid at the rate provided in the Note.

ix. Borrower shall hold Lender, its directors, officers, employees, agents, successors, and assigns, harmless from, indemnify them for, and defend them against any and all losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to any violation of any Environmental Law, any breach of Borrower's warranties in this Section 1(f), or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property, including without limitation the costs of any required repair, cleanup, containment, or detoxification of the Property, the preparation and implementation of any closure, remedial or other required plans, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines.

x. Borrower represents and warrants to Lender that:

(1) Neither the Property nor Borrower is in violation of or subject to any existing, pending, or threatened investigation by any governmental authority under any Environmental Law.

(2) Borrower has not and is not required by any Environmental Law to obtain any permit or license other than those it has obtained to construct or use the Improvements.

(3) To the best of Borrower's knowledge, no Hazardous Substance has ever been used, generated, manufactured, produced, stored, released, discharged, or disposed of on, under, or about the Property in violation of any Environmental Law.

xi. All representations, warranties, and covenants in this Section shall survive the satisfaction of the Obligations, the reconveyance of the Trust Property, or the foreclosure of this Trust Deed by any means.

**g. Maintenance and Improvements.** Borrower shall not permit all or any part of the Improvements to be removed, demolished, or materially altered without Lender's prior written consent; provided, however, that Borrower may remove, demolish, or materially alter such Improvements as become obsolete in the usual conduct of Borrower's business, if the removal or material alteration does not materially detract from the operation of the Borrower's business and if all Improvements that are demolished or removed are promptly replaced with Improvements of like value and quality. Borrower shall maintain every portion of the Property and Improvements in good repair, working order, and condition, except for reasonable wear and tear, and shall at Lender's election restore, replace, or rebuild all or any part of the Improvements now or hereafter damaged or destroyed by any casualty (whether or not insured against or insurable) or affected by any Condemnation (as defined in Section 2 below). Borrower shall not commit, permit, or suffer any waste, strip, or deterioration of the Trust Property.

**h. Liens.** Borrower shall pay when due all claims for labor, materials, or supplies that if unpaid might become a lien on all or any portion of the Trust Property. Borrower shall not create, or suffer, or permit to be created, any mortgage,

deed of trust, lien, security interest, charge, or encumbrance upon the Trust Property prior to, on a parity with, or subordinate to the lien of this Trust Deed, except as specifically provided in Exhibit B.

**i. Impositions**

i. **Borrower's Responsibility to Pay all Impositions.** Borrower shall pay or cause to be paid, when due and before any fine, penalty, interest, or cost attaches, all taxes, assessments, fees, levies, and all other governmental and nongovernmental charges of every nature now or hereafter assessed or levied against any part of the Trust Property (including, without limitation, levies or charges resulting from Covenants), or on the lien or estate of Lender or Trustee (collectively, the "Impositions"); provided, however, that if by law any such Imposition may be paid in installments, whether or not interest shall accrue on the unpaid balance, Borrower may pay the same in installments, together with accrued interest on the unpaid balance, as the same become due, before any fine, penalty, or cost attaches.

ii. **Good Faith Contest.** Borrower may, at its expense and after prior notice to Lender, contest by appropriate legal, administrative, or other proceedings conducted in good faith and with due diligence, the amount, validity, or application, in whole or in part, of any Imposition or lien on the Trust Property or any claim of any laborer, materialman, supplier, or vendor or lien, and may withhold payment of the same pending completion of such proceedings if permitted by law, provided that (a) such proceedings shall suspend collection from the Trust Property; (b) no part of or interest in the Trust Property will be sold, forfeited, or lost if Borrower pays the amount or satisfies the condition being contested, and Borrower would have the opportunity to do so in the event of Borrower's failure to prevail in the contest; (c) neither Lender nor Trustee shall, by virtue of such permitted contest, be exposed to any risk of liability for which Borrower has not furnished additional security as provided in clause (d) below; and (d) Borrower shall have furnished to Lender cash, corporate surety bond, or other additional security in respect of the claim being contested or the loss or damage that may result from Borrower's failure to prevail in such contest in an amount sufficient to discharge the Imposition and all interest, costs, attorney fees, and other charges that may accrue in connection with the Imposition. Borrower shall promptly satisfy any final judgment.

iii. **Proof of Payment.** Borrower shall furnish to Lender, promptly upon request, satisfactory evidence of the payment of all Impositions. Lender is hereby authorized to request and receive from the responsible governmental and nongovernmental personnel written statements with respect to the accrual and payment of all Impositions.

**j. Books and Records; Inspection of the Property.** Borrower shall keep complete and accurate records and books of account with respect to the Trust Property and its operation in accordance with generally accepted accounting principles consistently applied. Borrower shall permit Trustee, Lender, and their authorized representatives to enter and inspect the Property and the Improvements, and to examine and make copies or extracts of the records and books of account of the Borrower with respect to the Property and the Improvements, all at such reasonable times as Lender or Trustee may choose.

**k. Limitations of Use.** Borrower shall not initiate, join in, or consent to any rezoning of the Property or any change in any Covenant or other public or private restrictions limiting or defining the uses that may be made of all or any part of the Property and the Improvements without the prior written consent of Lender.

**l. Insurance**

i. **Property and Other Insurance.** Borrower shall obtain and maintain in full force and effect during the term of this Trust Deed: (a) all risk property insurance together with endorsements for replacement cost, inflation adjustment, malicious mischief, and sprinkler damage coverages, all in amounts not less than the full replacement cost of all Improvements, without reduction for co-insurance; (b) comprehensive general liability insurance, including liabilities assumed under contract, with limits, coverages, and risks insured acceptable to Lender, and in no event less than \$1,000,000 combined single limit coverage; and (c) unless Lender otherwise agrees in writing, rent loss or business interruption insurance in an amount no less than the total annual rents provided for in all leases for the Trust Property. In addition, Borrower shall obtain and maintain all such other insurance coverages, which at the time are commonly carried for similar property, in such amounts as Lender may require.

**WARNING**

UNLESS YOU [BORROWER] PROVIDE US [LENDER] WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY OUR CONTRACT OR LOAN AGREEMENT, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT YOUR INTEREST. IF THE COLLATERAL BECOMES DAMAGED, THE COVERAGE WE PURCHASE MAY NOT PAY ANY CLAIM YOU MAKE OR ANY CLAIM MADE AGAINST YOU. YOU MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE THAT YOU HAVE OBTAINED PROPERTY COVERAGE ELSEWHERE.

YOU ARE RESPONSIBLE FOR THE COST OF ANY INSURANCE PURCHASED BY US. THE COST OF THIS INSURANCE MAY BE ADDED TO YOUR CONTRACT OR LOAN BALANCE. IF THE COST IS ADDED TO YOUR CONTRACT OR LOAN BALANCE, THE INTEREST RATE ON THE UNDERLYING CONTRACT OR LOAN WILL APPLY TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE YOUR PRIOR COVERAGE LAPSED OR THE DATE YOU FAILED TO PROVIDE PROOF OF COVERAGE.

THE COVERAGE WE PURCHASE MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE YOU CAN OBTAIN ON YOUR OWN AND MAY NOT SATISFY ANY NEED FOR PROPERTY DAMAGE COVERAGE OR ANY MANDATORY LIABILITY INSURANCE REQUIREMENTS IMPOSED BY APPLICABLE LAW.

**ii. Insurance Companies and Policies.** All insurance shall be written by a company or companies reasonably acceptable to Lender with a rating of A VIII or better as provided in Best's Rating Guide; shall contain a long form mortgagee clause in favor of Lender with loss proceeds under any policy payable to Lender, subject to the terms of this Trust Deed and the rights of any superior mortgagee or trust deed beneficiary; shall require 30 days' prior written notice to Lender of cancellation or reduction in coverage; shall contain waivers of subrogation and endorsements that no act or negligence of Borrower or any occupant, and no occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policy will affect the validity or enforceability of such insurance as against Lender, shall be in full force and effect on the date of this Trust Deed; and shall be accompanied by proof of premiums paid for the current policy year. Lender shall be named as additional insured on all liability policies. Borrower shall forward to Lender, upon request, certificates evidencing the coverages required under this Trust Deed and copies of all policies.

**iii. Blanket Policy.** If a blanket policy is issued, a certified copy of such policy shall be furnished together with a certificate indicating that the Trust Property and Lender are insured under such policy in the proper designated amount.

**iv. Insurance Proceeds.** All proceeds from any insurance on the Trust Property shall be used in accordance with the provisions of Section 1(m).

**v. Assignments of Policies upon Foreclosure.** In the event of foreclosure of the lien of this Trust Deed or other transfer of title, or assignment of the Trust Property in whole or in part, all right, title, and interest of Borrower in and to all policies of insurance procured hereunder shall inure to the benefit of and pass to the successors in interest of Borrower or the purchaser or grantee of all or any part of the Trust Property.

**m. Casualty/Loss Restoration.**

i. After the occurrence of any casualty to the Property, whether or not required to be insured against as provided in this Trust Deed, Borrower shall give prompt written notice of the casualty to Lender, specifically describing the nature and cause of such casualty and the extent of the damage or destruction to the Trust Property. Lender may make proof of loss if it is not made promptly and to Lender's satisfaction by Borrower.

ii. Subject to the rights of any superior mortgagee or trust deed beneficiary as provided in Section 1.q. below, Borrower assigns to Lender all insurance proceeds that Borrower may be entitled to receive with respect to any casualty. Lender may, at its sole option, apply the insurance proceeds to the reduction of the Obligations in such order as Lender may determine, whether or not such obligations are then due, or apply all or any portion of the insurance proceeds to the cost of restoring and rebuilding the portion of the Trust Property that was damaged or destroyed. In the event that Lender elects to apply the insurance proceeds to rebuilding and restoration, Lender shall be entitled to hold the proceeds, and the proceeds shall be released only on such terms and conditions as Lender shall require in its sole discretion, including but not limited to prior approval of plans and release of liens. No proceeds shall be released if Borrower is in default under this Trust Deed.

**n. Actions to Protect Trust Property; Reserves.**

i. If Borrower shall fail to obtain the insurance required by Section 1(l), make the payments required by Section 1(i) (other than payments that Borrower is contesting in accordance with Section 1(i)(ii)), or perform or observe any of its other covenants or agreements under this Trust Deed, Lender may, without obligation to do so, obtain or pay the same or take other action that it deems appropriate to remedy such failure. All sums, including reasonable attorney fees, so expended or expended to maintain the lien or estate of this Trust Deed or its priority, or to protect or enforce any of Lender's rights, or to recover any indebtedness secured by this Trust Deed, shall be a lien on the Trust Property, shall be secured by this Trust Deed, and shall be paid by Borrower upon demand, together with interest at the rate provided in the Note. No payment or other action by Lender under this section shall impair any other right or remedy available to Lender or constitute a waiver of any default.

ii. If Borrower fails to promptly perform any of its obligations under Section 1(l) or 1(i) of this Trust Deed, Lender may require Borrower thereafter to pay and maintain with Lender reserves for payment of such obligations. In that event, Borrower shall pay to Lender each month a sum estimated by Lender to be sufficient to produce, at least 20 days before due, an amount equal to the Impositions and/or insurance premiums. If the sums so paid are insufficient to satisfy any Imposition or insurance premium when due, Borrower shall pay any deficiency to Lender upon demand. The reserves may be commingled with Lender's other funds, and Lender shall not be required to pay interest to Borrower on such reserves. Lender shall not hold the reserve in trust for Borrower, and Lender shall not be the agent of Borrower for payment of the taxes and assessments required to be paid by Borrower.

**o. Estoppel Certificates.** Borrower, within five days of the request, shall furnish Trustee and Lender a written statement, duly acknowledged, of the amount of the Obligations secured by this Trust Deed and whether any offsets or defenses exist against such Obligations. If Borrower shall fail to furnish such a statement within the time allowed, Lender shall be authorized, as Borrower's attorney-in-fact, to execute and deliver such statement. Upon request, Borrower shall also use its best efforts to obtain and deliver to Lender a written certificate from each lessee of all or any portion of the Property that its lease is in effect, that there are no defaults by the lessor under the lease, and that rent is not paid more than 30 days in advance.

**p. Financial Information.** Borrower shall furnish to Lender within 90 days after the end of each of Borrower's fiscal years a complete copy of Borrower's financial statement for such year, audited or reviewed by a certified public accountant (including balance sheet, income statement, and statement of changes in financial position). Borrower shall promptly furnish to Lender any and all such other financial information as Lender shall reasonably request from time to time.

**q. Existing Liens.** This Trust Deed may be junior to the lien securing payment of an existing obligation, described as a Trust Deed dated May, 2001 and recorded June 8, 2001 in Volume M01 Page 27208, records of Klamath County. The lien has a current principal balance of \$ 4,800,000.00 and is in the original principal amount of \$4,800,000.00. Borrower shall pay this lien as it becomes due and shall prevent any default on such lien and the debt secured by it; any default under the lien and other instruments evidencing the debt shall be a default under this Trust Deed. Further, Borrower shall not enter into any agreement modifying, amending, extending or renewing any lien which is prior to this Trust Deed without the prior written consent of Lender. Borrower shall neither request nor accept any future advances under such lien without the prior written consent of Lender.

## 2. Condemnation.

**a.** Should any part of or interest in the Trust Property be taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any similar manner (a "Condemnation"), or should Borrower receive any notice or other information regarding such action, Borrower shall give immediate notice of such action to Lender.

**b.** Subject to the rights of any superior mortgagee or trust deed beneficiary, Lender shall be entitled to all compensation, awards, and other payments or relief ("Condemnation Proceeds") up to the full amount of the Obligations, and shall be entitled, at its option, to commence, appear in, and prosecute any Condemnation proceeding in its own or Borrower's name and make any compromise or settlement in connection with such Condemnation. In the event the Trust Property is taken in its entirety by condemnation, all Obligations secured by this Trust Deed, at Lender's election, shall become immediately due and collectible.

**c.** Lender may, at its sole option, apply the Condemnation Proceeds to the reduction of the Obligations in such order as Lender may determine, or apply all or any portion of the Condemnation Proceeds to the cost of restoring and improving the remaining Trust Property. In the event that Lender elects to apply the Condemnation Proceeds to restoration and improvement, the proceeds shall be held by Lender and shall be released only upon such terms and conditions as Lender shall require in its sole discretion, including but not limited to prior approval of plans and release of liens. No Condemnation Proceeds shall be released if Borrower is in default under this Trust Deed.

## 3. Assignment of Leases, Rents, Issues, and Profits.

**a. Assignment.** Borrower assigns and transfers to Lender (1) all leases, subleases, licenses, rental contracts, and other agreements, whether now existing or hereafter arising, and relating to the occupancy or use of all or any portion of the Trust Property, including all modifications, extensions, and renewals thereof (the "Leases"), and (2) all rents, revenues, issues, profits, income, proceeds, and benefits derived from the Trust Property and the lease, rental, or license of all or any portion thereof, including but not limited to lease and security deposits (collectively, the "Rents"). This assignment is intended by Borrower and Lender to create a present and unconditional assignment to Lender, subject only to the license set forth in Section 3(d) below.

**b. Rights of Lender.** Subject to the provisions of Section 3(d) below giving Borrower a revocable, limited license, Lender shall have the right, power, and authority to:

i. Notify any and all tenants, renters, licensees, and other obligors under any of the Leases that the same have been assigned to Lender and that all Rents are to be paid directly to Lender, whether or not Lender shall have foreclosed or commenced foreclosure proceedings against the Trust Property, and whether or not Lender has taken possession of the Trust Property;

ii. Discount, settle, compromise, release, or extend the time for payment of, any amounts owing under any of the Leases and any Rents, in whole or in part, on terms acceptable to Lender;

iii. Collect and enforce payment of Rents and all provisions of the Leases, and to prosecute any action or proceeding, in the name of Borrower or Lender, with respect to any and all Leases and Rents; and

iv. Exercise any and all other rights and remedies of the lessor in connection with any of the Leases and Rents.

**c. Application of Receipts.** Lender shall have the right, power, and authority to use and apply any Rents received under this Trust Deed (1) for the payment of any and all costs and expenses incurred in connection with enforcing or defending the terms of this assignment or the rights of Lender, and in collecting any Rents; and (2) for the operation and maintenance of the Trust Property and the payment of all costs and expenses in connection therewith, including but not limited to the payment of utilities, taxes, assessments, governmental charges, and insurance. After the payment of all such costs and expenses, and after Lender shall have set up such reserves as it shall deem necessary in its sole discretion for the proper management of the Trust Property, Lender shall apply all remaining Rents collected and received by it to the reduction of the Obligations in such order as Lender shall determine. The exercise or failure by Lender to exercise any of the rights or powers granted in this assignment shall not constitute a waiver of default by Borrower under this Trust Deed, the Note, or any of the other Loan Documents.

**d. License.** Lender hereby grants to Borrower a revocable license to collect and receive the Rents. Such license may be revoked by Lender, without notice to Borrower, upon the occurrence of any event of default under this Trust Deed, including any default by Borrower of its covenants in this Article III. Unless and until such license is revoked, Borrower agrees to apply the proceeds of Rents to the payment of the Obligations and to the payment of taxes, assessments, governmental charges, insurance premiums, and other obligations in connection with the Trust Property, and to the maintenance of the Trust Property, before using such proceeds for any other purpose. Borrower agrees to (1) observe and perform every obligation of Borrower under the Leases; (2) enforce or secure at its expense the performance of every obligation to be performed by any lessee or other party under the Leases; (3) promptly give notice to Lender of any default by any such lessee or other party under any of the Leases, and promptly provide Lender a copy of any notice of default given to any such lessee or other party; (4) not collect any Rents more than 30 days in advance of the time when the same shall become due, or anticipate any other payments under the Leases, except for bona fide security deposits not in excess of an amount equal to two months' rent; (5) not further assign or hypothecate any of the Leases or Rents; (6) except with Lender's prior written consent, not waive, release, or in any other manner discharge any lessee or other party from any of its obligations under any of the Leases; (7) except with Lender's prior written consent, not modify or amend any of the Leases; (8) except with Lender's prior written consent, not cancel, terminate, or accept surrender of any of the Leases unless Borrower shall have entered into a Lease for the space to be vacated on terms at least as favorable to Borrower, commencing within 30 days after such cancellation, termination, or surrender; (9) obtain Lender's prior written approval as to the form and content of all future leases and any modifications of any present or future leases; (10) deliver copies of all present and future leases to Lender promptly; and (11) appear in and defend, at Borrower's sole cost and expense, any action or proceeding arising out of or in connection with the Leases or the Rents.

**e. Limitation of Lender's Obligations.** Notwithstanding the assignment provided for in this Article III, Lender shall not be obligated to perform or discharge, and Lender does not undertake to perform or discharge, any obligation or liability with respect to the Leases or the Rents. This assignment shall not operate to place responsibility for the control, care, maintenance, or repair of the Trust Property upon Lender, or to make Lender responsible for any condition of the Property. Lender shall be accountable to Borrower only for the sums actually collected and received by Lender pursuant to this assignment. Borrower shall hold Lender fully harmless from, indemnify Lender for, and defend Lender against any and all claims, demands, liabilities, losses, damages, and expenses, including attorney fees, arising out of any of the Leases, with respect to any of the Rents, or in connection with any claim that may be asserted against Lender on account of this assignment or any obligation or undertaking alleged to arise therefrom.

**f. Termination.** The assignment provided for in this Article III shall continue in full force and effect until all the

Obligations have been fully paid and satisfied. At such time, this assignment and the authority and powers herein granted by Borrower to Lender shall cease and terminate.

**g. Attorney-in-Fact.** Borrower irrevocably constitutes and appoints Lender, and each of its officers, as its true and lawfully attorney-in-fact, with power of substitution, to undertake and execute any and all of the rights, powers, and authorities described in this Article 3 with the same force and effect as if undertaken or performed by Borrower, and Borrower ratifies and confirms any and all such actions that may be taken or omitted to be taken by Lender, its employees, agents, and attorneys.

**4. Security Agreement and Fixture Filing.** To secure the Obligations, Borrower grants to Lender a security interest in the following:

- a.** All personal property that is used or will be used in the construction of any Improvements on the Trust Property;
- b.** All personal property that is now or will hereafter be placed on or in the Trust Property or Improvements;
- c.** All personal property that is derived from or used in connection with the use, occupancy, or enjoyment of the Trust Property;
- d.** All property defined in the Uniform Commercial Code as adopted in the state of Oregon, as accounts, equipment, fixtures, and general intangibles, to the extent the same are used at, or arise in connection with the ownership, maintenance, or operation of, the Trust Property;
- e.** All causes of action, claims, security deposits, advance rental payments, utility deposits, refunds of fees or deposits paid to any governmental authority, refunds of taxes, and refunds of insurance premiums relating to the Trust Property; and
- f.** All present and future attachments, accessions, amendments, replacements, additions, products, and proceeds of every nature of the foregoing.

This Trust Deed shall constitute a security agreement and "fixture filing" under the Uniform Commercial Code Secured Transactions statutes of the State of Oregon. The mailing address of Borrower and the address of Lender from which information may be obtained are set forth in the introductory paragraph of this Trust Deed.

**5. Events of Default; Remedies.**

**a. Events of Default.** Each of the following shall constitute an event of default under this Trust Deed and under each of the other Loan Documents:

- i. Nonpayment.** Failure of Borrower to pay any of the Obligations before the due date.
- ii. Breach of Other Covenants.** Failure of Borrower to perform or abide by any other covenant included in the Obligations, including without limitation those covenants in the Note, in this Trust Deed, or in any other Loan Document.
- iii. Misinformation.** Falsity when made in any material respect of any representation, warranty, or information furnished by Borrower or its agents to Lender in or in connection with any of the Obligations.
- iv. Other Default.** The occurrence of any other event of default under the Note or any of the other Obligations.
- v. Other Indebtedness, Secondary Financing.** Borrower's default beyond the applicable grace periods in the payment of any other indebtedness owed by Borrower to any person, if such indebtedness is secured by all or any portion of the Trust Property.

**vi. Bankruptcy.** The occurrence of any of the following with respect to Borrower, any guarantor of the Obligations, or the then-owner of the Trust Property: (a) appointment of a receiver, liquidator, or trustee for any such party or any of its properties; (b) adjudication as a bankrupt or insolvent; (c) filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium or insolvency law; (d) institution of any proceeding for dissolution

or liquidation; (e) inability to pay debts when due; (f) any general assignment for the benefit of creditors; or (g) abandonment of the Trust Property.

**vii. Transfer; Due-on-Sale; Due-on-Encumbrance.** Any sale, gift, conveyance, contract for conveyance, transfer, assignment, encumbrance, pledge, or grant of a security interest in all or any part of the Trust Property, or any interest therein, either voluntarily, involuntarily, or by the operation of law (a "Transfer"), without Lender's prior written consent, shall constitute an event of default. For the purpose of clarification, and without limiting the generality of the foregoing, the occurrence at any time of any sale, conveyance, assignment, or other transfer of, or the grant of a pledge of or security interest in, any shares of the capital stock of Borrower shall be deemed to be a Transfer in violation of this paragraph. The provisions of this subsection (5(a)(vii)) shall apply to each and every Transfer, regardless of whether or not Lender has consented or waived its rights in connection with any previous Transfer. Lender may attach such conditions to its consent under this subsection as Lender may determine in its sole discretion, including without limitation an increase in the interest rate or the payment of transfer or assumption fees, and the payment of administrative and legal fees and costs incurred by Lender.

**viii. Certain Taxes.** For purposes of this subsection, State Tax shall mean:

(1) A specific tax on mortgages, trust deeds, secured indebtedness, or any part of the Obligations secured by this Trust Deed.

(2) A specific tax on the grantor of property subject to a trust deed that the taxpayer is authorized or required to deduct from payments on the trust deed.

(3) A tax on property chargeable against Lender or Trustee under a trust deed or holder of the note secured by the trust deed.

(4) A specific tax (other than an income tax or a gross receipts tax) on all or any portion of the Obligations or on payments of principal and interest made by Borrower.

If any State Tax is enacted after the date of this Trust Deed applicable to this Trust Deed, enactment of the State Tax shall constitute an event of default, unless the following conditions are met:

(1) Borrower may lawfully pay the tax or charge imposed by the State Tax without causing any resulting economic disadvantage or increase of tax to Lender or Trustee, and

(2) Borrower pays or agrees in writing to pay the tax or charge within 30 days after notice from Lender or Trustee that the State Tax has been enacted.

**b. Remedies in Case of Default.** If an Event of Default shall occur, Lender or Trustee may exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available by law, in equity, or otherwise:

**i. Recording.** Lender may record this Trust Deed without notice to Beneficiary. Lender may also record this Trust Deed upon the occurrence of any of the following, whether or not such occurrence is an Event of Default:

(1) Any Condemnation of the Property, receipt of notice of a pending Condemnation, or any event that would give Lender rights to compensation under the Condemnation section above;

(2) Commencement of any lawsuit (including a filing of stipulated judgment), or arbitration action, or similar alternative dispute resolution action, against Borrower.

**ii. Acceleration.** Lender may declare all or any portion of the Obligations immediately due and payable.

**iii. Protection of Trust Property.** Lender may, without waiver of such default by Borrower or of any of Lender's other rights or remedies, cause any other lien secured by the Trust Property, whether permitted by this Trust Deed or not, to be discharged (or may accept an assignment of the rights of the lienholder) by any lawful means. All cost incurred by Lender in connection with such lien shall be repaid to Lender immediately upon demand, and until repaid such sums shall bear interest at the default rate under the Note and shall be secured by the Trust Deed.

**iv. Receiver.** Lender may have a receiver appointed for the Trust Property. Lender shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Trust Property exceeds the amount of the indebtedness secured by this Trust Deed. Employment by Trustee or Lender shall not disqualify a person from serving as receiver. Borrower consents to the appointment of a receiver at Lender's option and waives any and all defenses to such an appointment.

**v. Bankruptcy.** In any bankruptcy, insolvency or similar proceeding affecting creditors' rights, Lender shall be entitled to interest on any arrearage being paid through the bankruptcy or similar proceeding at the then applicable rate of interest as provided by the Loan Documents.

**vi. Possession.** Lender may, either through a receiver or as lender-in-possession, enter and take possession of all or any part of the Trust Property and use, operate, manage, and control it as Lender shall deem appropriate in its sole discretion. Upon request after an Event of Default, Borrower shall peacefully relinquish possession and control of the Trust Property to Lender or any receiver appointed under this Trust Deed.

**vii. Rents.** Lender may revoke Borrower's right to collect the Rents, and may, either itself or through a receiver, collect the same. Lender shall not be deemed to be in possession of the Property solely by reason of exercise of the rights contained in this subsection (iv). If Rents are collected by Lender under this subsection (iv), Borrower hereby irrevocably appoints Lender as Borrower's attorney-in-fact, with power of substitution, to endorse instruments received in payment thereof in the name of Borrower and to negotiate such instruments and collect their proceeds. After payment of all Obligations, any remaining amounts shall be paid to Borrower and this power shall terminate.

**viii. Power of Sale.** Lender may direct Trustee, and Trustee shall be empowered, to foreclose the Property by advertisement and sale under applicable law.

**ix. Foreclosure.** Lender may judicially foreclose this Trust Deed and obtain a judgment foreclosing Borrower's interest in all or any part of the Property and giving Lender the right to collect any deficiency remaining due after disposition of the Trust Property.

**x. Fixtures and Personal Property.** With respect to any Improvements and other personal property subject to a security interest in favor of Lender, Lender may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code.

**xi. Abandonment.** Lender may abandon all or any portion of the Trust Property by written notice to Borrower.

**c. Sale.** In any sale under this Trust Deed or pursuant to any judgment, the Trust Property, to the extent permitted by law, may be sold as an entirety or in one or more parcels and in such order as Lender may elect, without regard to the right of Borrower, any person claiming under Borrower, or any guarantor or surety to the marshalling of assets. The purchaser at any such sale shall take title to the Trust Property or the part thereof so sold, free and clear of the estate of Borrower, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Any person, including Lender, its officers, agents, and employees, may purchase at any such sale. Lender and each of its officers are irrevocably appointed Borrower's attorney-in-fact, with power of substitution, to make all appropriate transfers and deliveries of the Trust Property or any portions thereof so sold and, for that purpose, Lender and its officers may execute all appropriate instruments of transfer. Nevertheless, Borrower shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered, to Lender or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Lender, for such purpose.

**d. Cumulative Remedies.** All remedies under this Trust Deed are cumulative and not exclusive. Any election to pursue one remedy shall not preclude the exercise of any other remedy. An election by Lender to cure under Section 1.15 shall not constitute a waiver of the default or of any of the remedies provided in this Trust Deed. No delay or omission in exercising any right or remedy shall impair the full exercise of that or any other right or remedy or constitute a waiver of the default.

**e. Receiver or Trustee-in-Possession.** Upon taking possession of all or any part of the Trust Property, Trustee, Lender, or a receiver may:

**i. Management.** Use, operate, manage, control, and conduct business with the Trust Property and make expenditures for such purposes and for such maintenance and improvements as are deemed reasonably necessary.

ii. **Rents and Revenues.** Collect all rents, revenues, income, issues, and profits from the Trust Property and apply such sums to the reasonable expenses of use, operation, management, maintenance, and improvements.

iii. **Construction.** At its option, complete any construction in progress on the Property, and in that connection pay bills, borrow funds, employ contractors, and make any changes in plans and specifications as it deems appropriate.

iv. **Additional Indebtedness.** If the revenues produced by the Trust Property are insufficient to pay expenses, Lender, Trustee, or the receiver may borrow or advance such sums upon such terms as it deems reasonably necessary for the purposes stated in this section. All advances shall bear interest, unless otherwise provided, at the rate set forth in the Note, and repayment of such sums shall be secured by this Trust Deed.

f. **Application of Proceeds.** All proceeds realized from the exercise of the rights and remedies under this Section 5 shall be applied as follows:

i. **Costs and Expenses.** To pay all costs of exercising such rights and remedies, including the costs of maintaining and preserving the Trust Property, the costs and expenses of any receiver or lender-in-possession, the costs of any sale, and the costs and expenses provided for in Section 6(g) below.

ii. **Indebtedness.** To pay all Obligations, in such order as Lender shall determine in its sole discretion.

iii. **Surplus.** The surplus, if any, remaining after satisfaction of all the Obligations shall be paid to the clerk of the court in the case of a judicial foreclosure proceeding, otherwise to the person or persons legally entitled to the surplus.

g. **Deficiency.** No sale or other disposition of all or any part of the Trust Property pursuant to this Section 5 shall be deemed to relieve Borrower of any of the Obligations, except to the extent that the proceeds are applied to the payment of such Obligations. If the proceeds of a sale, a collection, or other realization of or upon the Trust Property are insufficient to cover the costs and expenses of such realization and the payment in full of the Obligations, Borrower shall remain liable for any deficiency to the fullest extent permitted by law.

h. **Waiver of Stay, Extension, Moratorium, and Valuation Laws.** To the fullest extent permitted by law, Borrower waives the benefit of any existing or future stay, extension, or moratorium law that may affect observance or performance of the provisions of this Trust Deed and any existing or future law providing for the valuation or appraisal of the Trust Property prior to any sale.

## 6. General Provisions.

a. **Time is of the Essence.** Time is of the essence with respect to all covenants and obligations of Borrower under this Trust Deed.

b. **Reconveyance by Trustee.** At any time upon the request of Lender, payment of Trustee's fees, if any, and presentation of this Trust Deed, without affecting liability of any persons for the payment of the Obligations, Trustee may reconvey, without warranty, all or any part of the Trust Property. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any facts shall be conclusive proof of the truthfulness thereof.

c. **Notice.** Except as otherwise provided in this Trust Deed, all notices pertaining to this Trust Deed shall be in writing and may be delivered by hand, or mailed by first class, registered, or certified mail, return-receipt requested, postage prepaid, and addressed to the appropriate party at its address set forth at the outset of this Trust Deed. Any party may change its address for such notices from time to time by notice to the other parties. Notices given by mail in accordance with this paragraph shall be deemed to have been given upon the date of mailing; notices given by hand shall be deemed to have been given when actually received.

d. **Substitute Trustee.** In the event of dissolution or resignation of Trustee, Lender may substitute one or more trustees to execute the trust hereby created, and the new trustee(s) shall succeed to all the powers and duties of the prior trustee(s).

e. **Trust Deed Binding on Successors and Assigns.** This Trust Deed shall be binding upon and inure to the

benefit of the successors and assigns of Borrower, Trustee, and Lender. If the Trust Property or any portion thereof shall at any time be vested in any person other than Borrower, Lender shall have the right to deal with such successor regarding this Trust Deed, the Trust Property, and the Obligations in such manner as Lender deems appropriate in its sole discretion, without notice to or approval by Borrower and without impairing Borrower's liability for the Obligations.

**f. Indemnity.** Borrower shall hold Lender and Trustee and their respective directors, officers, employees, agents, and attorneys, harmless from and indemnify them for any and all claims, demands, damages, liabilities, and expenses, including but not limited to attorney fees and court costs, arising out of or in connection with Trustee's or Lender's interest under this Trust Deed, except Borrower shall not be liable for acts performed by Lender or Trustee in violation of applicable law.

**g. Expenses and Attorney Fees.** Upon demand, Borrower shall immediately reimburse or cause any Guarantors and Debtors to immediately reimburse Lender for all amounts (including reasonable attorneys' fees and legal expenses) expended by Lender, to the extent permitted by applicable law, in the:

- i. Negotiation, preparation, amendment, extension, modification, replacement or substitution of this Agreement or the Loan Documents;
- ii. Attachment, creation filing, perfection, and recording of Lender's liens, security interests, and other encumbrances in the Property or any UCC and other searches and title or insurance policies in connection therewith;
- iii. Interpretation or construction of any of the various Loan Documents;
- iv. Defense of the validity and priority of Lender's liens, security interests and other encumbrances against the Property;
- v. Enforcement or defense of any obligation or the exercise of any right or remedy described in this Agreement or the Loan documents;
- vi. Refinancing or restructuring of the advances, loans and/or other financial accommodations provided under this Agreement in the nature of a "work out" or in any insolvency or bankruptcy proceedings; or
- vii. Any action in any bankruptcy, insolvency or similar proceeding affecting creditors' rights generally (including, without limitation, prosecution of a motion for relief from stay, proposal of a Chapter 11 plan, objection to a disclosure statement or Chapter 11, 12, or 13 plan, or objection to proposed use, sale or lease of property).

Reimbursement shall include costs incurred in any legal action, arbitration, mediation, or other proceeding, both at trial and on any appeal therefrom or petitions for review thereof. If a court construes this provision to award attorney fees and costs to the prevailing party, then the term "prevailing party" shall mean that party prevailing on issues related to the Loan Documents only. All reimbursable costs shall bear interest at the lower of the highest rate described in any of the Loan Documents or the highest rate allowed by law from the date of payment until the date of reimbursement and be secured by the Property.

**h. Applicable Law.** The Trust Deed and the validity, interpretation, performance, and enforcement of the Trust Deed shall be governed by the laws of the state of Oregon.

**i. Captions.** The captions to the sections and paragraphs of this Trust Deed are included only for the convenience of the parties and shall not have the effect of defining, diminishing, or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Trust Deed.

**j. Rights of Prior Mortgagee.** In the event that all or any portion of the Trust Property is subject to a superior mortgage or trust deed specifically permitted under Exhibit B, the rights of Lender with respect to insurance and condemnation proceeds as provided in Sections 1(l) and 2, and all other rights granted under this Trust Deed that have also been granted to such a superior mortgagee or trust deed beneficiary, shall be subject to the rights of the superior mortgagee or trust deed beneficiary. Borrower hereby authorizes all such superior mortgagees and beneficiaries, on satisfaction of the indebtedness secured by their mortgage or trust deed, to remit all remaining insurance or Condemnation proceeds and all other sums held by them to Lender to be applied in accordance with this Trust Deed.

k. **Person Defined.** As used in this Trust Deed, the word person shall mean any natural person, partnership, trust, corporation, or other legal entity of any nature.

l. **Severability.** If any provision of this Trust Deed shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Trust Deed, and such other provisions shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Trust Deed.

m. **Entire Agreement.** This Trust Deed contains the entire agreement of the parties with respect to the Trust Property. No prior agreement, statement, or promise made by any party to this Trust Deed that is not contained herein shall be binding or valid.

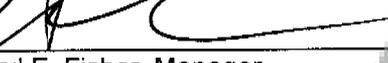
n. **Commercial Property.** Borrower covenants and warrants that the Property and Improvements are used by Borrower exclusively for business and commercial purposes. Borrower also covenants and warrants that the Property and Improvements are not now, and at no time in the future will be, occupied as the principal residence of Borrower, Borrower's spouse, or Borrower's minor or dependent child.

**UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY A LENDER AFTER OCTOBER 3, 1989, CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY THAT LENDER TO BE ENFORCEABLE.**

**GRANTOR**

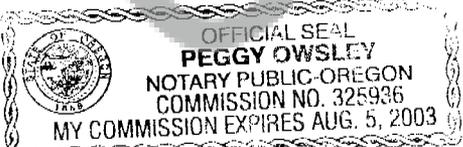
**CRYSTAL TERRACE RETIREMENT COMMUNITY, LLC**

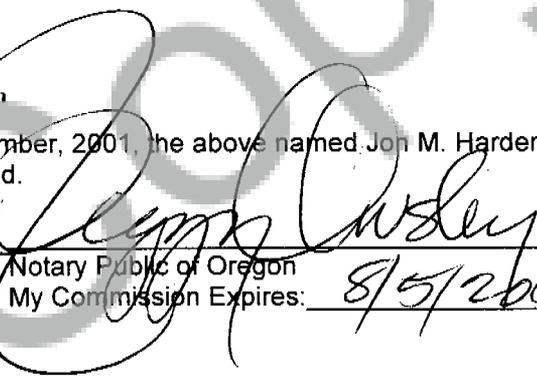
  
By: Jon M. Harder, Manager

  
By: Barry E. Fisher, Manager

State of Oregon )  
County of Marion ) ss.

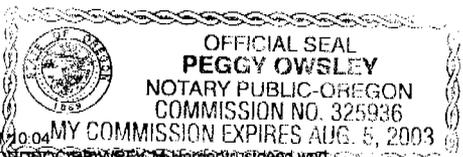
Personally appeared before me this 21st day of September, 2001, the above named Jon M. Harder, and acknowledged the foregoing instrument to be his voluntary act and deed.

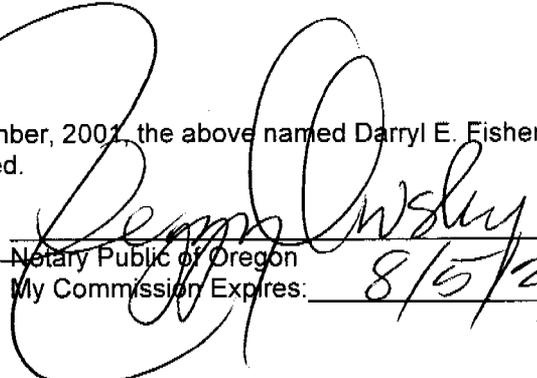


  
Notary Public of Oregon  
My Commission Expires: 8/5/2003

State of Oregon )  
County of Marion ) ss.

Personally appeared before me this 21st day of September, 2001, the above named Darryl E. Fisher, and acknowledged the foregoing instrument to be his voluntary act and deed.



  
Notary Public of Oregon  
My Commission Expires: 8/5/2003

**REQUEST FOR FULL RECONVEYANCE**  
To Be Used When Paid in Full

**To: JAY T. JENNINGS, TRUSTEE**

**From: CAPITAL MANAGERS LLC, BENEFICIARY**

The undersigned is the legal owner and holder of the Indebtedness secured by this Deed of Trust. Said Indebtedness has been paid in full and you are hereby directed to cancel said Indebtedness and reconvey, without warranty, all estates held pursuant to this Deed of Trust to the person or persons legally entitled thereto.

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

**BENEFICIARY**

STATE OF OREGON            )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

PERSONALLY appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, the above named \_\_\_\_\_ and acknowledged the foregoing instrument to be \_\_\_\_\_ voluntary act and deed.

NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

Unofficial Copy

EXHIBIT "A"

**Parcel A:**

A Parcel of land situated in the SE ¼ NE ¼ of Section 20, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Parcel 1 of Land Partition 62-00, according to the official plat thereof, as filed with the office of the Klamath County Clerk.

**Parcel B:**

Easement as disclosed in Agreement for Reciprocal Access Easement, recorded June 8, 2001 in Volume M01 page 27242, records of Klamath County, Oregon.

Unofficial  
Copy

## Exceptions:

1. An easement created by instrument, including the terms and provisions thereof;  
Recorded: November 19, 1929 in Deed Volume 88 on page 290, Records of Klamath County, Oregon  
Favor of: The Pacific Telephone and Telegraph Company  
For: telephone line
2. An easement created by instrument, including the terms and provisions thereof;  
Recorded: August 24, 1959 in Volume 315 on page 236, records of Klamath County, Oregon  
Favor of: Beaver State Telephone Company  
For: telephone service
3. An easement created by instrument, including the terms and provisions thereof;  
Recorded: September 1, 1964 in Deed Volume 355 on page 643, records of Klamath County, Oregon  
Favor of: Presbyterian Intercommunity Hospital  
For: water-line easement
4. Access and Utility Easements for Parcels 2 and 3, as disclosed on Partition 62-00, filed in Klamath County, Oregon.
5. Reciprocal Access Easement, including the terms and provisions thereof,  
Between: Merle West Medical Center, Inc., Crystal Terrace Retirement Community, LLC, CT Acres LLC,  
Plum Ridge Care Community, LLC, and Klamath Falls Intercommunity Hospital Authority  
Dated: June 8, 2001  
Recorded: June 8, 2001 in M01 on page 27242, records of Klamath County, Oregon.
6. Trust Deed, including the terms and provisions thereof, given to secure an indebtedness of \$4,800,000.00  
Dated: May, 2001  
Recorded: June 8, 2001 in Volume M01 page 27208, records of Klamath County, Oregon.  
Grantor: Crystal Terrace Retirement Community, LLC, an Oregon limited liability company  
Trustee: First American Title Insurance Corporation  
Beneficiary: Heller Healthcare Finance, Inc., a Delaware corporation
7. An assignment of all leases and rents, as additional security for the payment of indebtedness secured by the above referenced Trust Deed  
Recorded: June 8, 2001 in Volume M01 page 27230, records of Klamath County, Oregon  
Executed by: Crystal Terrace Retirement Community, LLC, an Oregon limited liability company, by Jon Harder, manager  
To: Heller Healthcare Finance, Inc., a Delaware corporation.
8. Right of First Refusal Agreement, including the terms and provisions thereof,  
Dated: June 8, 2001  
Recorded: June 8, 2001 in Volume M01 page 27256, records of Klamath County  
Between: Crystal Terrace Retirement Center, LLC and Merle West Medical Center, Inc.