

2009-008912

Klamath County, Oregon



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06/29/2009 01:46:12 PM

Fee: \$191.00

RECORDER REQUESTED BY AND,  
WHEN RECORDED, RETURN TO:

c/o Sterling Savings

Duane M. Swinton

Witherspoon, Kelley, Davenport

& Toole, P.S.

422 West Riverside Ave., Suite 1100

Spokane, Washington 99201

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

Grantors: RUSSELL HEWS and VIVIEN HEWS

Trustee:

Beneficiary: STERLING SAVINGS BANK

Legal Description: A complete legal description is attached as Exhibit A.

THIS INSTRUMENT CONSTITUTES A SECURITY AGREEMENT AS THAT TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE. PORTIONS OF THE COLLATERAL ARE GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE LAND DESCRIBED IN EXHIBIT A HERETO. THIS INSTRUMENT IS INTENDED TO SERVE AS A FIXTURE FILING AND IS TO BE RECORDED IN THE REAL PROPERTY RECORDS OF EACH COUNTY IN WHICH SAID LAND OR ANY PORTION THEREOF IS LOCATED AND INDEXED AS BOTH A DEED OF TRUST AND A FIXTURE FILING. GRANTORS ARE THE OWNER OF A RECORD INTEREST IN THE LAND DESCRIBED IN EXHIBIT A HERETO.

DEED OF TRUST . . . - 1

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

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter called "Deed of Trust") is made this 29 day of June, 2009, between RUSSELL HEWS and VIVIEN HEWS, as tenants by the entirety (hereinafter referred to as "Grantors"); **TICOR TITLE INSURANCE COMPANY, whose address is 4800 SW Meadows Road, Suite 175, Lake Oswego, Oregon 97035** (hereinafter called "Trustee"); and STERLING SAVINGS BANK, whose address is 540 Main St., 3<sup>rd</sup> Floor, Klamath Falls, OR 97601, Attention: Jennifer Scanlan (hereinafter referred to as "Beneficiary").

WITNESSETH:

That Grantors do hereby irrevocably GRANT, BARGAIN, SELL, and CONVEY TO TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the County of Klamath, State of Oregon, described in Exhibit A attached hereto and by this reference incorporated herein, which is herein collectively called the "Property."

TOGETHER WITH all right, title and interest of Grantors in and to all contract rights, chattel paper, rents, general intangibles and all accounts now in existence or hereafter acquired which arise out of the operation of the Property, including, but not limited to, all monies due and to become due thereunder and all guaranties and security for the payment of monies due and to become due thereunder;

TOGETHER WITH all rents, issues, profits, royalties, income, room receipts and other benefits derived from the Property (collectively called "rents"), subject to the right, power and authority hereinafter given to Grantors to collect and apply such rents;

TOGETHER WITH all leasehold estate, right, title and interest of Grantors in and to all leases or subleases covering the Property or any portion thereof now or hereafter existing or entered into; and all right, title and interest of Grantors thereunder, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature;

TOGETHER WITH all right, title and interest of Grantors in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired;

TOGETHER WITH all interests, estate or other claims, both in law and in equity, which Grantors now have or may hereafter acquire in the Property;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same;

TOGETHER WITH all right, title and interest of Grantors, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property; and any and all sidewalks, alleys, and strips and gores of land adjacent to or used in connection with the Property;

TOGETHER WITH all timber, whether standing, fallen or harvested, located on or removed from the Property;

TOGETHER WITH any and all buildings and improvements now or hereafter erected thereon, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery and other articles attached to said buildings and improvements (the "Improvements");

TOGETHER WITH all the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Grantors now have or may hereafter acquire in the Property, and any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of the Trust Estate, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages; and

TOGETHER WITH the proceeds and products of the foregoing.

The entire estate, property, and interest hereby conveyed to Trustee may hereafter be referred to as the "Trust Estate."

#### FOR THE PURPOSE OF SECURING:

1. Payment of indebtedness in the original principal amount of Fifty Eight Thousand and 00/100 Dollars (\$58,000.00) with interest thereon at a variable rate, together with all costs and fees, including attorneys' fees, incurred by Beneficiary in enforcing the obligations of 97 North Storage, LLC (the "Borrower") and Grantors, evidenced by that certain Promissory Note of even date herewith (the "Note"), guaranteed by Grantors, which has been delivered to, and is payable to, the order of Beneficiary and which, by this reference, is made a part hereof, and any and all modifications, extensions and renewals thereof. Principal and interest are payable on the Note which matures February 20, 2010. It is the intent of Beneficiary and Grantors that this Deed of Trust secures all obligations of Borrower to Beneficiary under the Note. Accordingly, all references to Grantors' obligations under the Note described in this Deed of Trust shall be deemed to include Grantors' obligations under the Note.

2. In addition to the Note, all obligations, debts and liabilities, plus interest thereon, of Grantors to Beneficiary, as well as all claims by Beneficiary against Grantors, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated whether Grantors may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise.

3. Payment of all sums which may become due from Borrower and Grantors or advances by Beneficiary or its successor, with interest thereon at the Note rate, which include but are not limited to, fire and other hazard insurance and taxes upon the real property herein described, according to the terms of this Deed of Trust; payment by Grantors of all attorneys' fees and costs incurred by Trustee or Beneficiary in foreclosing this Deed of Trust or realizing upon any of the collateral for the obligations which this Deed of Trust secures; payment by Grantors of all attorneys' fees and costs incurred by Trustee or Beneficiary in defending the priority or validity of this Deed of Trust or the title to the Property; payment by Grantors of all sums advanced by Beneficiary to or on behalf of Grantors for the purpose of clearing encumbrances or defects from the title to the Trust Estate where Beneficiary, in good faith, believes such encumbrances to be superior to the lien of this Deed of Trust, including, without limitation, payment of ad valorem taxes and mechanics' or materialmen's liens which may have gained priority over the lien of this Deed of Trust, payment of costs incurred by Trustee or Beneficiary in any bankruptcy proceedings or any reorganization or arrangement proceeding under 11 U.S.C. §101, et seq. (the "Bankruptcy Code") affecting Grantors, this Deed of Trust, or the covenant of Grantors herein contained or incorporated herein by reference and payment of all other sums advanced by Beneficiary to protect the Trust Estate, with interest thereon at the Note rate.

4. Payment of all other sums, with interest thereon, which may hereafter be loaned to Borrower, its successors, or assigns, by Beneficiary, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

This Deed of Trust, the Note, the Application Documents and any other document or instrument given to evidence or further secure the payment and performance of any obligation secured hereby may hereafter be referred to as the "Loan Documents." Provided, however, any document or instrument, which recites that it is not secured by this Deed of Trust, shall not be deemed part of the "Loan Documents."

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, GRANTORS HEREBY COVENANT AND AGREE AS FOLLOWS:

ARTICLE I  
COVENANTS AND AGREEMENTS OF GRANTORS

Grantors hereby covenant and agree:

1.01 Warranties of Title and Authority. Grantors hereby represents and warrants that they are lawfully seized of an indefeasible fee title to the Trust Estate; that it has the authority and right to execute and deliver this Deed of Trust; that it shall defend the title to the Trust Estate against all claims and demands whatsoever; that the Trust Estate is free and clear of any and all liens, claims, encumbrances, restrictions, encroachments, and interest whatsoever in favor of any third party except as may be described in Exhibit B attached hereto, Beneficiary's title insurance policy, or as approved by Beneficiary in writing; that the Trust Estate is in compliance with and does not violate any applicable local, state, federal or other law, statute, rule or ordinance; and that any and all obligations it may have incurred in connection with the Property are current and without default. In the event any Grantor hereunder is a partnership, limited liability company or a corporation, each person executing this instrument on behalf of such entity individually and personally represents and warrants that this Deed of Trust and each other instrument signed in the name of such entity and delivered to evidence or further secure the obligations secured hereby is, in all respects, binding upon such entity as an act and obligation of said partnership, limited liability company or corporation.

1.02 Payment of Secured Obligations. To pay when due the principal of, and the interest on, the indebtedness evidenced by the Note; charges, fees, and all other sums as provided in the Loan Documents; and the principal of, and interest on, any future advances secured by this Deed of Trust.

1.03 Maintenance, Repair, Alterations. To keep the Trust Estate in good condition and repair; not to remove, demolish, or substantially alter (except such alterations as may be required by laws, ordinances, or regulations) any of the Improvements; to complete promptly and in a good and workmanlike manner any building or other improvement which may be constructed on the Property and promptly restore in like manner any Improvement which may be damaged or destroyed thereon; to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws, ordinances, regulations, covenants, conditions, and restrictions now or hereafter affecting the Trust Estate or any part thereof or requiring any alterations or improvements to the Trust Estate; not to commit or permit any waste or deterioration of the Trust Estate; to keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; to comply with the provisions of any Lease; not to commit, suffer, nor permit any act to be done in or upon the Trust Estate in violation of any law, ordinance, or regulation.

1.04 Required Insurance. At all times to provide, maintain, and keep in force, or cause to be provided, maintained, and kept in force, the following policies of insurance:

A. Insurance against loss or damage to the Improvements by fire and any of the risks covered by insurance of the type known as "broad form of extended coverage," and flood insurance (or evidence satisfactory to Beneficiary that the Property is not within a 100 year flood plain as defined in the Flood Disaster Protection Act of 1973, as amended) if required by Beneficiary, in an amount not less than the greater of (i) the original amount of the Note, (ii) one hundred percent (100%) of the full replacement cost of the Improvements (exclusive of the cost of excavations, foundations, and footings below the lowest basement floor), or (iii) an amount sufficient to prevent Grantors and/or Beneficiary from becoming a co-insurer within the terms of the applicable policies; and with not more than One Thousand Dollars (\$1,000.00) deductible from the loss payable for any casualty. The policies of insurance carried in accordance with this subparagraph A. shall contain the "Replacement Cost Endorsement";

B. Insurance against loss or damage to the Personal Property by fire and other risks covered by insurance of the type known as "fire and extended coverage";

C. Insurance against the loss of "rental value" of the buildings which constitute a part of the Property on a "rented or vacant basis" arising out of the perils insured against, pursuant to subparagraph A. above, in an amount equal to six (6) months' gross "rental value" of the Improvements. "Rental value," as used herein, is defined as the sum of (i) the total anticipated gross rental income from tenant occupancy or room receipts of such building as furnished and equipped by Grantors; (ii) the amount of all charges which are the legal obligation of tenants and which would otherwise be the obligation of Grantors; and (iii) the fair rental value of any portion of such building which is occupied by Grantors. The proceeds of such insurance shall be assigned to Beneficiary, to be applied in payment of the interest and principal of the Note secured by this Deed of Trust, insurance premiums, taxes, assessments, and private impositions until such time as such building shall have been restored and placed in full operation, at which time, provided Grantors are not then in default under this Deed of Trust, the balance of such insurance proceeds, if any, held by Beneficiary shall be returned to Grantors;

D. General liability insurance (in connection with which Beneficiary is to be named insured) against claims for bodily injury or death or for damage or injury to property occurring upon, in or about the Property, in such amount as may be reasonably required by Beneficiary but in no event less than One Million Dollars (\$1,000,000.00) for bodily injury for one person for each occurrence and One Million Dollars (\$1,000,000.00) for property damage for each occurrence. Such insurance shall be in a form satisfactory to Beneficiary and provide that it may not be cancelled without ten (10) days' prior notice to Beneficiary;

E. Such other insurance and in such amounts as may, from time to time, be required by Beneficiary against the same or other hazards; and

F. All policies of insurance required by the terms of this Deed of Trust shall contain CP12 and BFU forms of endorsement or their equivalent.

**1.05 Delivery of Policies; Payment of Premiums.** That all policies of insurance shall be issued by companies and in amounts satisfactory to Beneficiary. All policies of insurance shall have attached thereto a lender's loss payable endorsement for the benefit of Beneficiary in a form satisfactory to Beneficiary. Grantors shall furnish Beneficiary with a duplicate original of all required insurance policies. If Beneficiary consents to Grantors providing any of the required insurance through blanket policies carried by Grantors and covering more than one (1) property, then Grantors shall furnish Beneficiary with a certificate of insurance for each such policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number, and the expiration date. At least thirty (30) days prior to the expiration of each such policy, Grantors shall furnish Beneficiary with evidence satisfactory to Beneficiary of the payment of premium and the re-issuance of a policy continuing insurance in force as required by this Deed of Trust. All such policies shall contain a provision that such policies will not be cancelled or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days' prior written notice to Beneficiary. In the event Grantors fail to provide, maintain, keep in force, or deliver and furnish to Beneficiary the policies of insurance required by this section, Beneficiary may procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and Grantors will pay all premiums thereon promptly upon demand by Beneficiary and, until such payment is made by Grantors, the amount of all such premiums, together with interest thereon at the Note rate, shall be secured by this Deed of Trust. **At any time, Beneficiary may require Grantors to deposit with Beneficiary in monthly installments, an amount equal to one-twelfth (1/12) of the estimated aggregate annual insurance premiums on all policies of insurance required by this Deed of Trust. In such event, Grantors further agree, upon Beneficiary's request, to cause all bills, statements, or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements, or other documents and providing Grantors has deposited sufficient funds with Beneficiary pursuant to this section, Beneficiary shall pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds deposited with Beneficiary are or will be insufficient to pay amounts as may then or subsequently be due, Beneficiary shall notify Grantors and Grantors shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this section. Beneficiary may commingle said reserve with its own funds and Grantors shall be entitled to no interest thereon.**

**1.06 Assignment of Policies Upon Foreclosure.** In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the debt secured hereby, all right, title, and interest of Grantors in and to all policies of insurance required by this Deed of Trust shall inure to the benefit of and pass to the successor in interest to Grantors or the purchaser or grantee of the Trust Estate.

1.07 Indemnification; Subrogation; Waiver of Offset.

A. If Beneficiary is made a party defendant to any litigation concerning this Deed of Trust or the Trust Estate or any part thereof or interest therein, or the occupancy thereof by Grantors, then Grantors shall indemnify, defend, and hold Beneficiary harmless from all liability by reason of said litigation, including attorneys' fees and expenses incurred by Beneficiary in any such litigation, whether or not any such litigation is prosecuted to judgment. If Beneficiary commences an action against Grantors to enforce any of the terms hereof or because of the breach by Grantors of any of the terms hereof or for the recovery of any sum secured hereby, Grantors shall pay to Beneficiary attorneys' fees and expenses, and such fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Grantors breach any term of this Deed of Trust, Beneficiary may employ an attorney or attorneys to protect its rights hereunder and, in the event of such employment following any breach by Grantors, Grantors shall pay Beneficiary's attorneys' fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Grantors by reason of such breach.

B. Grantors waive any and all right to claim or recover against Beneficiary, its officers, employees, agents, and representatives, for loss of or damage to Grantors, the Trust Estate, Grantors' property, or the property of others under Grantors' control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

C. All sums payable by Grantors hereunder shall be paid without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction; and the obligations and liabilities of Grantors hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference with any use of the Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim which Grantors has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Grantors; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing and whether or not Grantors shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Grantors waive all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of any sum secured hereby and payable by Grantors.



#### 1.08 Taxes and Impositions.

A. Grantors agree to pay or cause to be paid, at least ten (10) days prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including, without limitation nongovernmental levies or charges resulting from covenants, conditions, and restrictions affecting the Trust Estate, which are assessed or imposed upon the Trust Estate or become due and payable, and which create, may create, or appear to create a lien upon the Trust Estate or any part thereof or upon any Personal Property, equipment, or other facility used in the operation or maintenance thereof (all of which taxes, assessments, and other governmental charges of like nature are hereinafter referred to as "Impositions"); provided, however, that if, by law, any such Imposition is payable or may, at the option of the taxpayer, be paid in installments, Grantors may pay or cause to be paid the same, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same become due; and before any fine, penalty, interest, or cost may be added thereto for the nonpayment of any such installment and interest.

B. If, at any time after the date hereof, there shall be assessed or imposed (i) a tax or assessment on the Trust Estate in lieu of or in addition to the Impositions payable by Grantors pursuant to subparagraph A. hereof; or (ii) a license fee, tax, or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments, or fees shall be deemed to be included within the term "Impositions" as defined in subparagraph A. hereof; and Grantors shall pay and discharge or cause to be paid and discharged the same as herein provided with respect to the payment of Impositions or, at the option of Beneficiary, all obligations secured hereby, together with all accrued interest thereon, shall immediately become due and payable.

C. Subject to the provisions of subparagraph D. of this section, Grantors covenants to furnish to Beneficiary, within forty-five (45) days after the date upon which any such Imposition is due and payable by Grantors, official receipts of the appropriate taxing authority or other proof satisfactory to Beneficiary evidencing the payments thereof.

D. Grantors shall have the right, before any delinquency occurs, to contest or object to the amount or validity of any such Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending Grantors' covenant to pay or cause to be paid any such Imposition at the time and in the manner provided in this Section, unless Grantors have given prior written notice to Beneficiary of Grantors' intent to so contest or object to an Imposition; and unless, at Beneficiary's sole option, (i) Grantors shall demonstrate to Beneficiary's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Trust Estate or any part thereof to satisfy such Imposition prior to final determination of

such proceedings; or (ii) Grantors shall furnish a good and sufficient bond or surety as requested by and satisfactory to Beneficiary; or (iii) Grantors shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

**E. At any time, Beneficiary may require Grantors to pay to Beneficiary, on the day monthly installments of principal and interest are payable under the Note and until the Note is paid in full, an amount equal to one-twelfth (1/12) of the annual Impositions reasonably estimated by Beneficiary to pay the installment of taxes next due on the Trust Estate. In such event, Grantors further agree to cause all bills, statements, or other documents relating to Impositions to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements, or other documents and providing Grantors have deposited sufficient funds with Beneficiary pursuant to this Section, Beneficiary shall pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If, at any time and for any reason, the funds deposited with Beneficiary are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary shall notify Grantors and Grantors shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this section. Beneficiary shall not be obliged to pay or allow any interest on any sums held by Beneficiary pending disbursement or application hereunder, and Beneficiary may impound or reserve for future payment of Impositions such portion of such payments as Beneficiary may in its absolute discretion deem proper, applying the balance on the principal of or interest on the obligations secured hereby. Should Grantors fail to deposit with Beneficiary (exclusive of that portion of said payments which has been applied by Beneficiary on the principal of or interest on the indebtedness secured by the Loan Documents) sums sufficient to fully pay such Impositions at least thirty (30) days before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary as herein elsewhere provided or, at the option of Beneficiary, the latter may, without making any advance whatever, apply any sums held by it upon any obligation of the Grantors secured hereby. Should any default occur or exist on the part of the Borrower in the payment or performance of any of Borrower's and/or any guarantor's obligations under the terms of the Loan Documents, Beneficiary may, at any time at Beneficiary's option, apply any sums or amounts in its hands received pursuant hereto, or as rents or income of the Trust Estate or otherwise, upon any indebtedness or obligation of the Grantors secured hereby in such manner and order as Beneficiary may elect. The receipt, use or application of any such sums paid by Grantors to Beneficiary hereunder shall not be construed to affect the maturity of any indebtedness secured by this Deed of Trust or any of the rights or powers of Beneficiary or Grantors under the terms of the**

**Loan Documents or any of the obligations of Grantors and/or Borrower under this Loan Instrument.**

F. Grantors covenant and agree not to suffer, permit, or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Trust Estate as a single lien.

G. If requested by Beneficiary, Grantors shall cause to be furnished to Beneficiary a tax reporting service covering the Trust Estate of the type, duration and with a company satisfactory to Beneficiary.

1.09 Utilities. To pay or cause to be paid when due all utility charges which are incurred by Grantors for the benefit of the Trust Estate or which may become a charge or lien against the Trust Estate for gas, electricity, water or sewer services furnished to the Trust Estate and all other assessments or charges of a similar nature, whether public or private, affecting the Trust Estate or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

1.10 Leases. To pay when due all rents and other payments and perform all covenants and agreements contained in any lease, sublease or ground lease which may constitute a portion of or an interest in the Trust Estate; not surrender, assign or sublease any such lease, sublease or ground lease, nor take any action which would affect or permit the termination of any such lease, sublease or ground lease. If requested by Beneficiary, Grantors covenants to furnish to Beneficiary within thirty (30) days after the date upon which such rents or other payments are due and payable by Grantors, receipts or other evidence satisfactory to Beneficiary evidencing the payment thereof.

1.11 Actions Affecting Trust Estate. To appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear.

1.12 Actions by Trustee and/or Beneficiary to Preserve Trust Estate. That should Grantors fail to make or cause to be made any payment or to do or cause to be done any act as and in the manner provided in any of the Loan Documents, Beneficiary and/or Trustee, each in its own discretion, without obligation so to do and without notice to or demand upon Grantors and without releasing Grantors from any obligation, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. In connection therewith (without limiting their general powers), Beneficiary and/or Trustee shall have and are hereby given the right, but not the obligation, (i) to enter upon and take possession of the Trust Estate; (ii) to make additions, alterations, repairs and improvements to the Trust Estate which they or either of them may consider necessary or proper to keep the Trust Estate in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which

may affect the security hereof or the rights or powers of Beneficiary or Trustee; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of either may affect or appears to affect the security of this Deed of Trust or be prior or superior hereto; and (v) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Grantors shall, immediately upon demand therefor by Beneficiary, pay all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary or Trustee of the foregoing rights, including without limitation costs of evidence of title, court costs, appraisals, surveys and attorneys' fees. All costs, charges and expenses so incurred shall accrue interest at the rate set forth herein, and shall be secured by the lien of this Deed of Trust.

1.13 Additional Security. That in the event Beneficiary at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder.

1.14 Appointment of Successor Trustee. Beneficiary may substitute a trustee or trustees to execute the trust hereby created, and when such substitution has been filed for record in the office of the Recorder of the County in which the Trust Estate is located, it shall be conclusive evidence of the appointment of such trustee or trustees, and such new trustee or trustees shall succeed to all of the powers and duties of the trustee or trustees named herein.

1.15 Successors and Assigns. That this Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" shall mean the owner and holder of the Note, whether or not named as Beneficiary herein.

1.16 Inspections. That Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents.

1.17 Liens. To pay and promptly discharge or cause to be paid and discharged, at Grantors' cost and expense, all liens, encumbrances and charges upon the Trust Estate, or any part thereof or interest therein which have priority over this Deed of Trust; Grantors shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Grantors shall first deposit with Beneficiary a bond or other security satisfactory to Beneficiary in such amounts as Beneficiary shall reasonably require, but not more than one and one-half (150%) of the amount of the claim, and provided further that Grantors shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Grantors shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by

depositing in court a bond or the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law.

1.18 Trustee's Powers. At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of said Trust Estate, Trustee may (i) reconvey any part of said Trust Estate; (ii) consent in writing to the making of any map or plat thereof; (iii) join in granting any easement thereon; or (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof.

1.19 Beneficiary's Powers. Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Trust Estate not then or theretofore released as security for the full amount of all unpaid obligations, Beneficiary may, from time to time without notice (i) release any person so liable; (ii) extend the maturity or alter any of the terms of any such obligation; (iii) grant other indulgences; (iv) release or reconvey, or cause to be released or reconveyed at any time at Beneficiary's option any parcel or portion of the Trust Estate so long as the release or reconveyance does not materially affect the security value of the Trust Estate; (v) take or release any other or additional security for any obligation herein mentioned; or (vi) make compositions or other arrangements with debtors in relation thereto. By accepting payment of any obligation herein mentioned after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other obligations herein mentioned or to declare default for failure so to pay.

1.20 Financial Statements. Grantors will keep full, complete and correct books of accounts reflecting transactions relating to the Trust Estate and at any and all times permit Beneficiary, by its agents or attorneys, to examine all of his books of accounts, records, reports and other papers relating to the Trust Estate, and to take copies and extracts therefrom and to examine the Trust Estate. Grantors will furnish to the Beneficiary as soon as available, and in any event within ninety (90) days after the end of each fiscal year of Grantors, certified as correct by Grantors, copies of operating statements showing the gross income (itemized as to minimum and percentage rent and other sources) during the preceding fiscal year received from the operations of the Trust Estate and the expenses of maintaining the Trust Estate (itemized including depreciation charges) during the preceding fiscal year. Concurrently with the furnishing of the aforesaid financial statements, Grantors will deliver to Beneficiary a statement of income of Grantors for such fiscal year. In addition, Grantors shall furnish Beneficiary, within sixty (60) days from the end of each fiscal year, a rent roll, including but not limited to a listing of each tenant, the space occupied, the amount of rent and the expiration of the lease. If required by Beneficiary, such operating statements and statement of income shall be accompanied by the certificate or opinion of an independent certified public accountant or firm selected by Grantors subject to approval by Beneficiary, which approval shall not be unreasonably withheld, attesting

that such statements fairly represent the financial condition of Grantors and that said accountants are independent.

1.21 Trade Names. Grantors have disclosed to Beneficiary in writing, a list of all trade names under which Grantors intend to operate the Trust Estate, and represents and warrants that Grantors do business under no other trade names with respect to the Trust Estate. Grantors shall immediately notify Beneficiary in writing of any change in said trade names, and will, upon request of Beneficiary, execute any additional documents and other certificates revised to reflect the change in trade name.

1.22 Application of Insurance and Awards.

A. Grantors will give the Beneficiary prompt notice of any damage to or destruction of the Trust Estate. In case of loss covered by policies of insurance, the Beneficiary (whether before or after foreclosure sale) is hereby authorized at its option without the consent of the Grantors to settle and adjust any claim arising out of such policies and collect and receipt for the proceeds payable therefrom. Any expense incurred by the Beneficiary in the adjustment and collection of insurance proceeds (including the cost of any independent appraisal of the loss or damage on behalf of Beneficiary) shall be reimbursed to the Beneficiary first out of any proceeds. In the event of any insured damage to or destruction of the Property, or any part thereof, Beneficiary, in its sole discretion, may apply the proceeds or any part thereof upon or in reduction of the indebtedness secured hereby then most remotely to be paid, whether due or not, without the application of any prepayment premium, or may apply the same to the restoration or repair of the Trust Estate, in which event, provided no default or an event of default be existing under this Deed of Trust or the Note, the proceeds of insurance shall be applied to reimburse the Grantors for the cost of so restoring or repairing the Trust Estate with the proceeds to be paid out in the manner as provided for in subparagraph C. of this section; provided, always, that Grantors shall pay all costs of restoring or repairing, in excess of the proceeds of insurance.

B. Grantors will give Beneficiary prompt notice of any action, actual or threatened, in condemnation or eminent domain and hereby assigns, transfers, and sets over to the Beneficiary the entire proceeds of any award or claim for damages for all or any part of the Trust Estate taken or damaged under the power of eminent domain or condemnation, the Beneficiary being hereby authorized to intervene in any such action in the name of Grantors and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Any expenses incurred by the Beneficiary in intervening in such action or collecting such proceeds shall be reimbursed to the Beneficiary first out of the proceeds. The Beneficiary may elect to apply the proceeds of the award upon or in reduction of the indebtedness secured hereby then most remotely to be paid, whether due or not, without application of any prepayment premium, or to apply the same to the restoration or repair of the Trust Estate, in which event, provided no default or an event of default be existing under this Deed of Trust or the

Note, the proceeds shall be applied to reimburse Grantors for the cost of such restoration or repair with the proceeds of the award to be paid out in the manner provided for in subparagraph C. of this section; provided, always Grantors shall pay all costs of such restoring or repairing in excess of the proceeds.

C. Should any insurance or condemnation proceeds be applied to the restoration or repair of the Trust Estate the restoration or repair shall be done under the supervision of an architect acceptable to Beneficiary and pursuant to plans and specifications approved by Beneficiary. In such case, the proceeds shall be held by Beneficiary for such purposes and will from time to time be disbursed by Beneficiary to defray the costs of such restoration or repair under such safeguards and controls as Beneficiary may reasonably require to assure completion in accordance with the approved plans and specifications and free of liens or claims. Any surplus which may remain after payment of all costs of restoration or repair may at the option of Beneficiary be applied on account of the indebtedness secured hereby then most remotely to be paid, whether due or not, without application of any prepayment premium or shall be returned to Grantors as their interest may appear, the choice of application to be solely at the discretion of Beneficiary.

D. Notwithstanding anything to the contrary contained in this section, in the event of insured damage to the improvements or in the event of a taking by condemnation of only a portion of the improvements or land area of the Trust Estate and provided the portion remaining can, with restoration or repair, continue to be operated for the purposes utilized immediately prior to such damage or taking, and if the appraised value of the Trust Estate after such restoration or repair shall not have been reduced, and provided further, no event of default exists under this Deed of Trust and the tenants under any lease of the Trust Estate sufficient to cover operating expenses and debt service coverage, certify to Beneficiary their intention to remain in possession of the Trust Estate without any abatement or adjustment of rental payments (other than temporary abatements during the period of restoration and repair), the Beneficiary agrees to make the proceeds available to the restoration or repair of the improvements on the Trust Estate in accordance with the provisions of subparagraph C. of this section.

1.23 Repayment of Advances. Upon receipt of notice, Grantors shall repay immediately all sums expended or advanced hereunder by or on behalf of Beneficiary or Trustee, with interest from the date of such advance or expenditure at the rate contained in the Note, and the repayment thereof shall be secured hereby. Failure to repay such expenditure or advance and interest thereon within ten (10) days of such notice will, at Beneficiary's option, constitute an event of default hereunder; or Beneficiary may, at its option, commence an action against Grantors for the recovery of such expenditure or advance and interest thereon, and in such event Grantors agree to pay, in addition to the amount of such expenditure or advance, all costs and expenses incurred in such action, together with attorneys' fees.

ARTICLE II  
ASSIGNMENT OF RENTS, ISSUES AND PROFITS

2.01 Assignment of Rents and Profits Under All Leases and Rental Agreements. Grantors absolutely and irrevocably assigns and transfers to Beneficiary the rents, issues and profits of the Trust Estate and all of the right, title and interest of Grantors in and under all leases and rental agreements now or hereafter affecting said Trust Estate. So long as no default shall exist in compliance with any covenants, terms, conditions or obligations hereof or of any Loan Instrument, Grantors may collect assigned rents and profits as the same fall due, but upon the occurrence of any such default, all right of Grantors to collect or receive rents or profits shall wholly terminate. All rents, issues or profits receivable from or in respect to said Trust Estate which Grantors shall be permitted to collect hereunder shall be received by it in trust to pay the usual and reasonable operating expenses of, and the taxes upon, said Trust Estate and the sums owing to Beneficiary as they become due and payable as provided in this Deed of Trust or in the Note or in any modification of either.

2.02 Leases Subordinate to Deed of Trust. All leases or rental agreements of the whole or any part of the Trust Estate shall be subject and subordinate to the lien of this Deed of Trust unless Beneficiary consents in writing to the priority of certain leases or rental agreements. Beneficiary may, at its option, require that specific leases be made superior to the lien of this Deed of Trust. Grantors shall pay all costs incident to making such leases superior to such lien, including attorneys' fees. In the event of any default hereunder and the exercise by Beneficiary of its rights hereby granted, Grantors agree that payments made by tenants or occupants to Beneficiary shall, as to such tenants, be considered as though made to Grantors and in discharge of tenants' obligations as such to Grantors. Nothing herein contained shall be construed as obligating Beneficiary to perform any of Grantors' covenants under any lease or rental agreement. Grantors shall execute and deliver to Beneficiary upon demand any further or supplemental assignments deemed desirable by Beneficiary in order to further carry out and confirm the intentions of this section and upon failure of Grantors to so comply, Beneficiary may, in addition to any other rights or remedies, at its option, declare all obligations secured by this Deed of Trust to be immediately due and payable.

2.03 Leases. Grantors agree as follows:

A. They will promptly perform and observe all the terms, covenants and conditions required to be performed and observed by them, as landlord under all leases and rental agreements and will do all things necessary to preserve and keep unimpaired their rights thereunder and will maintain all leases and rental agreements in full force and effect and will enforce the same and will take such action to that end as Beneficiary may request;



B. To fully comply with all of the terms, conditions and provisions of all leases on said Trust Estate so that the same shall not become in default and to do all that is needful to preserve all said leases in force.

C. To permit no assignment of any lease, or any subletting thereunder, unless the right to assign or sublet is expressly reserved by the lessee under such lease.

D. That save and except for Impositions, the lien of this Deed of Trust or as provided in this Deed of Trust, Grantors will not create or suffer or permit to be created, any lien, charge or encumbrance affecting any lease or rents of the Trust Estate.

E. That if any part of the automobile parking areas included within Trust Estate is taken by condemnation or before said areas are otherwise reduced, Grantors will provide parking facilities in kind, size and location to comply with all leases, and before making any contract for such substitute parking facilities, Grantors will furnish to Beneficiary satisfactory assurance of completion thereof, free of liens and in conformity with all governmental zoning and regulations.

2.04 Security, Rents, Profits and Zoning. Grantors shall not, without first obtaining Beneficiary's written consent, assign any of the rents or profits of the Trust Estate or collect any rent for more than one (1) month in advance of the date on which such payment is due or change the general nature of the occupancy or initiate or acquiesce in any zoning reclassification, or do or suffer any act or thing which would impair the security for said debt or Beneficiary's lien upon said Trust Estate or the rents thereof. In the event of breach of any requirement of this section, Beneficiary may, in addition to any other rights or remedies, at any time thereafter declare the whole of said principal sum immediately due and payable.

### ARTICLE III SECURITY AGREEMENT

3.01 Creation of Security Interest. Grantors hereby grant to Beneficiary a security interest in the Personal Property, including without limitation any and all property of similar type or kind hereafter located on or at the Property for the purpose of securing all obligations of Grantors contained in any of the Loan Documents.

3.02 Warranties, Representations and Covenants of Grantors. Grantors hereby warrant, represents and covenants as follows:

A. Except for the security interest granted hereby, Grantors are, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owners of the Personal Property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever. Grantors will notify Beneficiary of, and will defend the Personal Property against, all claims and demands of all persons at any time claiming the same or any interest therein.

B. Grantors will not lease, sell, convey or in any manner transfer the Personal Property without the prior written consent of Beneficiary.

C. The Personal Property will not be used or bought for personal, family or household purposes.

D. The Personal Property will be kept on or at the Property and Grantors will not remove the Personal Property from the Property without the prior written consent of Beneficiary, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Grantors.

E. Grantors, if individuals, resides in the State of Oregon. Grantors, if an entity are duly incorporated, formed or organized in the State of Oregon. Grantors maintain a place of business in the State of Oregon. Grantors will immediately notify Beneficiary in writing of any change in the state where they reside, if an individual, in its state of incorporation, formation or organization if an entity, or in their place of business.

F. Grantors hereby authorize Beneficiary to file a financing statement to perfect Beneficiary's lien and security interest in the Personal Property and Improvements as described in the Loan Documents (including any required continuation statements, amendment statements or other such documents necessary to perfect and continue the lien) and Grantors hereby expressly ratify any financing statements Beneficiary may have filed prior to the date of this Deed of Trust. At the request of Beneficiary, Grantors will execute one or more financing statements, continuations and/or amendments thereof pursuant to the Uniform Commercial Code of Oregon in form satisfactory to Beneficiary, and will pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary to be necessary or desirable.

G. All covenants and obligations of Grantors contained herein relating to the Trust Estate shall be deemed to apply to the Personal Property whether or not expressly referred to herein.

H. This Deed of Trust constitutes a security agreement as that term is used in the Uniform Commercial Code of Oregon.

3.03 Real Property. Grantors and Beneficiary agree that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in any way derogating from or impairing this declaration and hereby stated intention of the parties hereto, that everything used in connection with the production of income from the Trust Estate and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be, regarded as part of the real estate.

3.04 Fixture Filing. As to all of the Personal Property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under the Oregon Uniform Commercial Code, as amended or recodified from time to time.

#### ARTICLE IV REMEDIES UPON DEFAULT

4.01 Events of Default. Any of the following events shall be deemed an event of default hereunder:

A. Default shall be made in the payment of any installment of principal or interest on the Note or any other sum secured hereby when due; or

B. Grantors shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Grantors or of all or any part of the Trust Estate, or of any or all of the royalties, revenues, rents, issues or profits thereof, or shall make any general assignment for the benefit of creditors, or shall admit in writing their inability to pay their debts generally as they become due; or

C. A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Grantors seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of Grantors or of all or any part of the Trust Estate, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed without the consent or acquiescence of Grantors and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

D. A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Trust Estate, or any judgment involving monetary damages shall be entered against Grantors which shall become a lien on the Trust Estate or any portion thereof or interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within sixty (60) days after their entry or levy; or

E. If Grantors shall transfer, assign, alienate, mortgage, encumber, pledge, hypothecate or grant an interest in Trust Estate without Beneficiary's prior written consent; or

F. There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in any of the Loan Documents or any part thereof, not referred to in this Section and the failure to cure such default within fifteen (15) days after written notice of default to Grantors.

G. There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in any other agreement, whether now existing or hereafter arising, between Grantors and Beneficiary or any part thereof, and the failure of Grantors to cure such default with the applicable grace period, if any.

4.02 Acceleration Upon Default, Additional Remedies. In the event of default, Beneficiary may declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Beneficiary may:

A. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Trust Estate or the collection, receipt and application of rents, issues or profits, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any event of default, including the right to exercise the power of sale;

B. Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

C. Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code of Oregon, including, but not limited to:

(1) Either personally or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Grantors and all others claiming under Grantors, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Grantors in respect to the Personal Property or any part thereof. In the event Beneficiary demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Documents, Grantors promise and agree to promptly turn over and deliver complete possession thereof to Beneficiary;

(2) Without notice to or demand upon Grantors, make such payments and do such acts as Beneficiary may deem necessary to protect its security interest in the Personal Property, including without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority to pay all expenses incurred in connection therewith;

(3) Require Grantors to assemble the Personal Property or any portion thereof, at a place designated by Beneficiary and reasonably convenient to both parties, and promptly to deliver such Personal Property to Beneficiary, or an agent or representative designated by it. Beneficiary, and its agents and representatives shall have the right to enter upon any or all of Grantors' Trust Estate and property to exercise Beneficiary's rights hereunder;

(4) Sell, lease or otherwise dispose of the Personal Property at public or private sale, with or without having the Personal Property at the place of sale, and upon such terms and in such manner as Beneficiary may determine. Beneficiary may be a purchaser at any such sale;

(5) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Beneficiary shall give Grantors at least ten (10) days' prior written notice of the time and place of any public or private sale of the Personal Property or other intended disposition thereof. Such notice may be mailed to Grantors at the address set forth in this Deed of Trust; and

D. Execute or cause the Trustee to execute a written notice of such default and election to cause to be sold the Trust Estate to satisfy the obligations hereof, in whole or in part, and shall cause such notice to be recorded in the office of the Recorder of each recording district in which the Trust Estate or some part thereof is located.

4.03 Foreclosure by Power of Sale. Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with

Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

A. Upon receipt of such notice from Beneficiary, Trustee shall cause to be given such Notice of Default as then required by law. Trustee shall, without demand on Grantors, after lapse of such time as may then be required by law and after Notice of Sale having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in said Notice of Sale, either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustee or Beneficiary, but excepting Grantors, may purchase at such sale.

B. After deducting all costs, fees and expenses of Trustee, including costs of evidence of title and counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the highest applicable rate provided in the Note, all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto.

4.04 Appointment of Receiver. Upon an event of default, Beneficiary, as a matter of right and without notice to Grantors or anyone claiming under Grantors, and without regard to the then value of the Trust Estate or the interest of Grantors therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate, and Grantors hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and shall continue as such and exercise all such powers until the date such receivership is terminated, released or discharged.

4.05 Remedies Not Exclusive. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under any Loan Instrument or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion

determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and either of them may pursue inconsistent remedies.

4.06 Sale of Trust Estate Pursuant to a Foreclosure. In case of a sale pursuant to a foreclosure of this Deed of Trust, the Trust Estate, real, personal or mixed, may be sold as an entirety or in parcels, by one sale or by several sales held at one time or at different times, all as Trustee, in its unrestricted discretion, may elect, and Grantors for and on behalf of itself and all persons claiming by, through or under it, waives any and all rights to have the property and estates comprising the Trust Estate marshalled upon any foreclosure sale and agrees that upon foreclosure, the Trust Estate may be sold as an entirety and not in parcels.

4.07 Restoration of Former Positions. In case Beneficiary shall proceed to enforce any right under this Deed of Trust and the proceedings for enforcement thereof shall have been discontinued or abandoned for any reason or shall have been determined adversely to Beneficiary, then and in every such case Beneficiary, Trustee and Grantors shall, subject to any determination in such proceedings, severally and respectively be restored to their former positions and rights hereunder, and thereafter all rights and remedies and powers of Beneficiary and Trustee shall continue as though no such proceeding had been taken.

4.08 Sale, Transfer, Vacation or Encumbrance of Property Prohibited. So long as any obligation secured hereby remains unpaid, Grantors covenant and agree that neither the Trust Estate nor any portion thereof nor interest therein nor a greater than twenty-five percent (25%) or more interest of Grantors (if a corporation or limited liability company) nor a general partnership interest in Grantors (if a partnership) shall be sold, conveyed, transferred or encumbered by Grantors without Beneficiary's prior written consent. If title to the Trust Estate or any portion or interest in the Trust Estate or a twenty-five (25%) or more interest of Grantors (if a corporation or limited liability company) or a general partnership interest in Grantors (if a partnership) shall pass from Grantors by deed or otherwise, voluntarily or involuntarily or if the Trust Estate or any portion or interest therein is sold on contract, or if the Trust Estate or any portion or interest therein is vacated by Grantors, or if the Trust Estate or any portion or interest therein or a controlling interest of Grantors (if a corporation or limited liability company) or a general partnership interest in Grantors (if a partnership) is further encumbered without the consent of Beneficiary, such change in title or occupancy or interest of Grantors or further encumbrance shall be deemed to increase the risk of Beneficiary, and Beneficiary may declare all sums secured hereby immediately due and payable, or may at its sole option consent to such change in title or occupancy or interest of Grantors and increase the interest rate on the indebtedness hereby secured. In the event Beneficiary accelerates said indebtedness pursuant to the terms of this section, Grantors shall pay, in addition to the indebtedness, the prepayment premium as set forth in the Note, if any.

In the event ownership of the Trust Estate or any portion thereof becomes vested in a person other than Grantors herein named, or if a twenty-five percent (25%) or more interest in Grantors (if a corporation or limited liability company) or a general partnership interest in Grantors (if a partnership) is sold or encumbered, Beneficiary may, without notice to Grantors herein named, whether or not Beneficiary has given written consent to such change in ownership, deal with such successor or successors in interest with reference to this Deed of Trust and the obligations secured hereby, in the same manner as with Grantors herein named, without in any way vitiating or discharging Grantors' liability hereunder or the obligations hereby secured.

4.09 Waiver. No right or obligation under this Deed of Trust will be deemed to have been waived unless evidenced by a writing signed by the party against whom the waiver is asserted. Any waiver given will be effective only with respect to the specific instance involved, and will not impair or limit the right of the waiving party to insist upon strict performance of the right or obligation in any other instance, in any other respect, or at any other time. No failure on the part of the Beneficiary or Trustee to exercise, and no delay in exercising any right or remedy under this Deed of Trust, shall operate as a waiver thereof.

## ARTICLE V MISCELLANEOUS

5.01 Governing Law. This Deed of Trust shall be governed by the laws of the State of Oregon. In the event that any provision or clause of any of the Loan Documents conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Documents which can be given effect without the conflicting provision, and to this end the provisions of the Loan Documents are declared to be severable.

5.02 Limitation of Interest. It is the intent of Grantors and Beneficiary in the execution of this Deed of Trust, the Note and all other Loan Documents in strict compliance with the usury laws of the State of Oregon governing the loan evidenced by the Note. In furtherance thereof, Beneficiary and Grantors stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of Oregon governing the loan evidenced by the Note. Borrower, Grantors, any endorser or other party now or hereafter becoming liable for the payment of the Note shall never be liable for unearned interest on the Note and shall never be required to pay interest on the Note at a rate in excess of the maximum interest that may be lawfully charged under the laws of the State of Oregon and the provisions of this section shall control over all other provisions of the Note and any other instrument executed in connection herewith which may be in apparent conflict herewith. If a court of competent jurisdiction shall make a final determination that the performance of any provision of the Note shall result in a payment of an amount for such use, forbearance or detention in excess of such rate, then (i) such provision shall be deemed to be appropriately modified to the extent necessary to reduce such amount to an amount not in excess of such rate; and (ii) any such excess amounts theretofore



received by the holder of the Note shall be deemed to have been applied in like amount to principal on the Note, and all necessary reallocations of subsequent payments with respect to such Note shall be made and appropriately annotated on such Note.

5.03 Statements by Grantors. Grantors, within ten (10) days after being given notice by mail, will furnish to Beneficiary a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Deed of Trust and stating whether any offset or defense exists against such principal and interest.

5.04 Reconveyance by Trustee. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Grantors of Trustee's fees, Trustee shall reconvey to Grantors, or the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto." When the Trust Estate has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Trust Estate to the person or persons legally entitled thereto. To the extent permitted by applicable law, Grantors shall pay to Trustee, on the date of each reconveyance of all or part of the Trust Estate pursuant to this section, a reasonable fee for such reconveyance.

5.05 Notices. Whenever Beneficiary, Grantors or Trustee shall desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust, each such notice, demand, request or other communication shall be in writing and shall be effective only if the same is delivered by personal service or mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the address set forth at the beginning of this Deed of Trust. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

5.06 Acceptance by Trustee. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

5.07 Captions. The captions or headings at the beginning of each section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

5.08 Invalidity of Certain Provisions. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Trust Estate, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust.

Further, the invalidity or unenforceability of any portion or provision of this Deed of Trust shall in no way affect the validity or enforceability of the remainder hereof.

5.09 Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Trust Estate, such proceeds have been or will be advanced by Beneficiary at Grantors' or Borrower's request and Beneficiary shall be subrogated to any and all rights and liens owed by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

5.10 No Merger. If both the lessor's and lessee's estates under any lease or portion thereof which constitutes a part of the Trust Estate shall at any time become vested in one (1) owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any leases or subleases then existing and created by Grantors shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

5.11 Late Charge. In the event that any payment or portion thereof is not paid within fifteen (15) days after the date it is due, Beneficiary may collect, and the Grantors agree to pay with such payment, a "late charge" of five percent (5.000%) of the regularly scheduled payment so over due or \$50.00, whichever is greater, as liquidated damages for the additional expense of handling such delinquent payments. Such late charge represents the reasonable estimate of Beneficiary and Grantors of a fair, average compensation due to the failure of Grantors to make timely payments. Such late charge shall be paid without prejudice to the right of Beneficiary to collect any other amounts provided to be paid or to declare a default hereunder.

5.12 Costs and Fees. If Grantors shall default under or breach any term or condition of this Deed of Trust, Grantors agree to pay on demand all costs and expenses of Trustee and/or Beneficiary in connection with said default or breach by Grantors, including all attorneys' fees, costs and expenses incurred by Trustee and/or Beneficiary in enforcing any term or provision of this Deed of Trust, or in collecting payments due under this Deed of Trust whether through litigation, dispute resolution or otherwise. Such fees, costs and other expenses shall include without limitation all costs and disbursements, all costs associated with discovery, depositions and expert witness fees, and all out-of-pocket costs incurred by Trustee and/or Beneficiary in the prosecution or defense of any action. For purposes of this section, the phrase "litigation or other dispute resolution" shall be deemed to include any proceeding commenced in any court of general or limited jurisdiction, any arbitration or mediation, any proceeding commenced in the bankruptcy courts of the United States, and any appeal from any of the foregoing. The amount of

all such fees, costs and expenses shall bear interest at the highest applicable rate provided in the Note from the date of demand.

#### 5.13 Hazardous Waste.

A. Grantors represent and warrant to Beneficiary that to the best of Grantors' knowledge, after due and diligent inquiry, no hazardous or toxic waste or substances are being stored on the Trust Estate or any adjacent property nor have any such waste or substances been stored or used on the Trust Estate or any adjacent property prior to Grantors' ownership, possession or control of the Trust Estate. Grantors agree to provide written notice to Beneficiary immediately upon Grantors becoming aware that the Trust Estate or any adjacent property is being or has been contaminated with hazardous or toxic waste or substances. Grantors will not cause nor permit any activities on the Trust Estate which directly or indirectly could result in the Trust Estate or any other property becoming contaminated with hazardous or toxic waste or substances. For purposes of this Deed of Trust, the term "hazardous or toxic waste or substances" means any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance or other similar term by any applicable federal, state or local statute, regulation or ordinance now or hereafter in effect.

B. Grantors covenant and agree that in the event at any time there is discovered hazardous or toxic waste or substances on, in or under the Trust Estate or on, in or under any other property which becomes contaminated with hazardous or toxic waste or substances as a result of activities on or hazardous or toxic waste or substances from the Trust Estate, Beneficiary shall be permitted to incur and pay any and all costs and expenses necessary or reasonably required to perform site tests and to completely clean up said hazardous or toxic waste or substances, whether or not the clean up is required by any governmental authority, and which tests and clean up shall not require prior notice to Grantors and all such costs and expenses shall be repaid to Beneficiary by Grantors. Grantors hereby give Beneficiary and its agent(s) the unrestricted right to enter the Trust Estate at any time to perform site tests for hazardous or toxic waste or substances and to clean up said hazardous or toxic waste or substances.

5.14 Compliance with Americans With Disabilities Act. Grantors represent and warrant to Beneficiary that Grantors have not and will not cause nor permit any activities on the Trust Estate which directly or indirectly could result in the violation of the Americans With Disabilities Act of 1990 (Pub. L. 101-336), 42 U.S.C. §§12101-12213 and 47 U.S.C. §§225 and 611, and any and all regulations thereunder and any similar state or local laws, regulations or ordinances (collectively, the "ADA") with respect to the Trust Estate.

A. Grantors acknowledge that, as between it and Beneficiary, it will be solely responsible for compliance with the ADA regarding the Trust Estate. Grantors'

obligations under this section are unconditional and shall not be limited by any nonrecourse or other limitations of liability provided for in the Loan Documents.

B. In the event Grantors shall, at any time, be or have been in default under the Note, this Deed of Trust, or under the Loan Documents, or in the event Beneficiary shall have reasonable cause to believe that Grantors have breached the warranties herein, or in the event there is otherwise reasonable cause to believe that there has or may have been a violation of the ADA, then Beneficiary, at Grantors' sole expense, shall have the right, but not the obligation, to enter upon the Trust Estate, either by itself or through an agent, for the purpose of conducting a compliance audit or assessment of the Trust Estate. The costs of such audit or assessment shall be payable by Grantors to Beneficiary on demand, and shall bear interest at the highest applicable rate provided in the Note. It is expressly agreed and understood by Grantors that the occurrence of a default, or the cause to believe a violation of the ADA has occurred, shall be deemed to increase Beneficiary's risk hereunder, thereby creating a need for Beneficiary to have the information to be contained in such audit or assessment.

5.15 Time of Essence. The parties hereto agree that time is of the essence and that all obligations hereunder shall be timely performed on the dates on which complete performance is specified according to the provisions of this agreement.

5.16 Construction. In this Deed of Trust, whenever the context so requires, the neuter gender includes the feminine and/or masculine and visa versa, and the singular number includes the plural and visa versa. If this Deed of Trust is executed by more than one Grantor, each Grantor's liability hereunder shall be joint and several.

5.17 Modification. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

5.18 Statute of Frauds. The following provisions apply to the extent this Deed of Trust is governed by the law of the state identified in each subsection, if any:

**GRANTORS EXPRESSLY ACKNOWLEDGE AND UNDERSTAND THAT ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE AND HEREBY CONFIRMS THAT BENEFICIARY HAS NOT MADE OR GIVEN ANY PROMISES OR COMMITMENTS THAT ARE NOT EXPRESSLY SET FORTH HEREIN OR IN THE OTHER LOAN DOCUMENTS.**

UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY LENDERS AFTER 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 LENDER TO BE ENFORCEABLE.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 [2004]). THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 [2004]).

IN WITNESS WHEREOF, Grantors have executed this Deed of Trust as of the day and year first above written.

GRANTORS:

By:

Russell W. Hews

By:

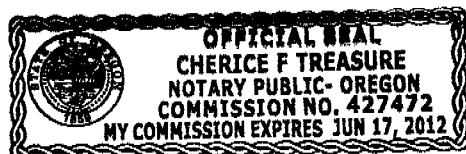
Vivien A. Hews

STATE OF OREGON       )  
                                  )  
COUNTY OF Klamath )

On June 29, 2009, before me, a Notary Public in and for said State, personally appeared Russell W. Hews, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same freely and voluntarily in his authorized capacity, and that by his

signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

DATED this 29 day of June, 2009.



*Cherice F. Treasure*

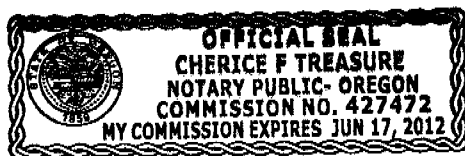
Print Name: Cherice F. Treasure  
NOTARY PUBLIC in and for the State of  
Oregon, residing at Klamath County  
My commission expires: 6/17/2012

STATE OF OREGON )

COUNTY OF Klamath )

On June 29, 2009, before me, a Notary Public in and for said State, personally appeared Vivien A. Hews, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same freely and voluntarily in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

DATED this 29 day of June, 2009.



*Cherice F. Treasure*

Print Name: Cherice F. Treasure  
NOTARY PUBLIC in and for the State of  
Oregon, residing at Klamath County  
My commission expires: 6/17/2012

## **EXHIBIT A**

### **Legal Description**

LOT 3, BLOCK 5, and the Southeasterly 8 feet of the vacated alley adjoining said Lot 3, FIRST ADDITION TO THE CITY OF KLAMATH FALLS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

**EXHIBIT B**

Permitted Exceptions