



2014-010182

Klamath County, Oregon

10/01/2014 01:35:44 PM

Fee: \$217.00

Recording Requested by and
When Recorded Return to:

Troutman Sanders LLP
P. O. Box 1122
Richmond, Virginia 23218-1122
Attn: Matthew J. Murcko, Esq.

Space above this line reserved for Recorder's use.

LINE OF CREDIT INSTRUMENT

LITHIA REAL ESTATE, INC., as trustor

to

FIDELITY NATIONAL TITLE INSURANCE COMPANY, as trustee

for the benefit of

TOYOTA MOTOR CREDIT CORPORATION, as beneficiary

DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,

SECURITY AGREEMENT AND FIXTURE FILING

Dated: October 1, 2014

Property: 2675 Washburn Way, Klamath Falls, Oregon

Assessor's Parcel Identification No. 527335

The maximum principal amount to be advanced pursuant to the credit agreement secured by this line of credit instrument is \$4,005,000.00. The maturity date of the credit agreement secured by this line of credit instrument, exclusive of any option to renew or extend such maturity date, is November 1, 2021. The maximum principal amount to be advanced pursuant to the credit agreement secured by this line of credit instrument may be exceeded by advances to complete construction pursuant to ORS 86.155(2)(c)

LAWYERS TITLE INS. CORP. 3240004285
Commercial Services
AMERI TITLE # 010646



LINE OF CREDIT INSTRUMENT

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

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (the "**Security Instrument**") is made as of October 1, 2014, by LITHIA REAL ESTATE, INC., an Oregon corporation, having an address at 150 North Barlett Street, Medford, Oregon 97501, as trustor ("**Borrower**") to FIDELITY NATIONAL TITLE INSURANCE COMPANY, having an address at _____, as trustee ("**Trustee**"), for the benefit of TOYOTA MOTOR CREDIT CORPORATION, a California corporation, having an address at 19001 S. Western Avenue, Torrance, California 90509-2958, as beneficiary (together with its successors and assigns, "**Lender**").

BACKGROUND

Borrower and Lender are entering into a certain Loan and Security Agreement of even date herewith ("**Loan Agreement**") pursuant to which Lender will make a loan ("**Loan**") to Borrower in the maximum principal amount of Four Million Five Thousand Dollars And No Cents (\$4,005,000.00). The Loan also will be evidenced by Borrower's promissory note to Lender of even date herewith ("**Note**"). Borrower desires to secure payment and performance of Borrower's obligations in respect of the Loan by granting to Lender the security described in this Security Instrument.

NOW, THEREFORE, to induce Lender to make the Loan to Borrower, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Borrower agrees as follows:

ARTICLE 1 **DEFINED TERMS**

1.01 **Defined Terms.** Capitalized terms used in this Security Instrument and not specifically defined in this Security Instrument have the meaning provided in the Loan Agreement.

ARTICLE 2 **GRANT OF SECURITY**

2.01 **Property Mortgaged.** Borrower does hereby irrevocably deed, mortgage, grant, bargain, sell, assign, pledge, warrant, transfer and convey to Trustee, and to its successors and assigns as trustee, in trust for the benefit of Lender, as security for the Obligations, with power of sale, the following property, rights, interests and estates, now owned or hereafter acquired by Borrower (collectively, "**Collateral**"):



(a) Land. The land described in Exhibit A attached hereto and made a part hereof, together with all estates and development rights now existing or hereafter acquired for use in connection therewith (the "Land");

(b) Additional Land. All land that, from time to time, by supplemental deed or otherwise, may be expressly made subject to this Security Instrument, and all estates and development rights hereafter acquired by Borrower for use in connection with such land (also, "Land");

(c) Improvements. All buildings, structures, improvements and fixtures now or hereafter erected or located on the Land ("Improvements" and together with the Land, "Real Property");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Real Property and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof, and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Real Property and every part and parcel thereof, with all appurtenances thereto;

(e) Fixtures. All fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), along with all accessions, replacements or substitutions of all or any portion thereof;

(f) Leases and Rents. All leases (including without limitation the Dealer Lease), subleases, licenses, occupancy agreements, concession agreements pertaining thereto, and other agreements granting others the right to use or occupy all or any part of the Real Property together with all restatements, renewals, extensions, amendments and supplements thereto ("Leases"), now existing or hereafter entered into, and whether entered before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code, and all of Borrower's right, title and interest in the Leases, including, without limitation (i) all guarantees, letters of credit and any other credit support given by any tenant or guarantor in connection therewith ("Lease Guaranties"), (ii) all cash, notes, or security deposited thereunder to secure the performance by the tenants of their obligations thereunder ("Security Deposits"), (iii) all claims and rights to the payment of damages and other claims arising from any rejection by a tenant of its Lease under the Bankruptcy Code ("Bankruptcy Claims"), (iv) all of the landlord's rights in casualty or condemnation proceeds of a tenant in respect of the leased premises ("Casualty Claims"), (v) all revenues, rents, ground rents, additional rents, termination and similar payments, issues, profits and other benefits (including all oil and gas or other mineral royalties and bonuses) from the Real Property arising from or relating to any construction or the operation of any business now or later conducted on the Real Property (collectively with the Lease Guaranties, Security Deposits, Bankruptcy Claims and Casualty Claims, "Rents"), whether paid or accruing before or after the



filing by or against Borrower of any petition for relief under the Bankruptcy Code, (vi) all proceeds or streams of payment from the sale or other disposition of the Leases or disposition of any Rents, and (vii) the right to receive and apply the Rents to the payment of the Debt and to do all other things which Borrower or a lessor is or may become entitled to do under the Leases or with respect to the Rents;

(g) Condemnation. All claims, causes of action, damages, recoveries, compensations, awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Real Property, whether from the exercise of the right of eminent domain (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Real Property;

(h) Insurance Proceeds. All proceeds of, and any unearned premiums on, any insurance policies covering the Real Property or the Personal Property, including, without limitation, the exclusive right to receive and apply the proceeds of any claim awards, judgments, or settlements made in lieu thereof, for damage to the Real Property or the Personal Property, and any return premiums or other payments upon any insurance at any time provided for the benefit of Lender and refunds or rebates of taxes or assessments on the Real Property;

(i) Tax Certiorari. All refunds, rebates or credits in connection with a reduction in Taxes, including, without limitation, rebates as a result of tax certiorari or any other applications or proceedings for reduction;

(j) Agreements. All agreements (including, without limitation, agreements for construction of any improvements on the Real Property), contracts (including, without limitation, service, supply and maintenance contracts, and purchase orders with contractors, subcontractors, suppliers and materialmen, architects and engineers incidental to construction of improvements on the Real Property), leases (including, without limitation, all leases, whether now existing or hereafter arising, of all tangible personal property installed in, affixed to, placed upon, or used or useful in connection with the Real Property or the operation of the Improvements or business thereon), registrations, permits, licenses, Borrower's rights under any payment, performance or other bond in connection with construction of improvements on the Real Property; all construction materials, supplies and equipment delivered to the Real Property or used or to be used in connection with the construction of improvements on the Real Property, and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Real Property, or respecting any business or activity conducted from the Real Property, and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, while a Default remains uncured, to receive and collect any sums payable to Borrower thereunder, and all drawings, plans, specifications, maps, plats, surveys of the Real Property prepared by or on behalf of Borrower (collectively, the "Operating Agreements"); provided, however, the term Operating Agreements shall not include any automobile dealership franchise agreements between Toyota Motor Sales, U.S.A., Inc. and Dealer (as that term is defined in the Loan Agreement);



(k) Intangibles. All accounts, escrows, chattel paper, claims, deposits, trade names, trademarks, service marks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Real Property;

(l) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Real Property, together with all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property from time to time held therein, and all proceeds, products, distributions, dividends or substitutions thereon or thereof;

(m) Rights to Conduct Legal Actions. The right, in the name and on behalf of Borrower, to commence any action or proceeding to protect the interest of Lender or Trustee in the Real Property and to appear in and defend any action or proceeding brought with respect to the Real Property;

(n) Proceeds. All proceeds and profits arising from the conversion, voluntary or involuntary, of any of the foregoing into cash (whether made in one payment or a stream of payments) and any liquidation claims applicable thereto;

(o) Contracts for Sale. All contracts entered into by or on behalf of Borrower for the sale of all or any portion of the Real Property;

(p) Warranties and Guaranties. All warranties and guarantees, whether now existing or hereafter arising, relating to the Improvements;

(q) Rights. Any and all other rights and substitutions, replacements, additions, accessions and proceeds, of Borrower in and to the items set forth in the foregoing subsections (a) through (q) (and the items set forth in any exhibit attached hereto, if any), inclusive.

TO HAVE AND TO HOLD the above granted and described Collateral unto Trustee, and its successors and assigns, in trust, with power of sale in accordance with the terms and conditions hereof, for the use and benefit of Lender, and the successors and assigns of Lender, forever; subject, however, to Section 2.06 below.

2.02 Grant of Security Interest; Security Agreement. This Security Instrument shall also constitute a security agreement within the meaning of, and shall create a security interest under, Article 9 of the Uniform Commercial Code as currently enacted in the state of Texas (the "**UCC**"). For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the purpose of further securing payment and performance of the Debt and the Obligations, Borrower hereby grants to Lender a security interest in all right, title or interest of the Borrower, now owned or hereafter acquired, in or to any and all accounts, chattel paper, deposit accounts, documents, equipment, fixtures, general intangibles, instruments, inventory, intellectual property, investment property, letter of credit rights, books and records pertaining to the assets and properties referred to in this Section 2.02, and all other property of the Borrower, whether tangible or intangible, and the proceeds and products thereof, including without limitation such portion of the Collateral in which a security interest can be created under the UCC (the "**Article 9 Collateral**"). Borrower represents and warrants that, except for any



financing statement filed by Lender, no presently effective financing statement covering the Article 9 Collateral, or any part thereof, has been filed with any filing officer, and no other security interest has attached thereto or has been perfected therein. Unless prohibited by applicable law, Borrower agrees to pay all reasonable expenses incident to the preparation, execution, filing and/or recording of any of the foregoing. With respect to any Article 9 Collateral in which a security interest is not perfected by the filing of a financing statement, Borrower consents and agrees to undertake, and to cooperate fully with Lender, to perfect the security interest hereby granted to Lender in such property. Without limiting the foregoing, if and to the extent any of the Article 9 Collateral is held by a bailee for the benefit of Borrower, Borrower shall promptly notify Lender thereof and, if required by Lender, promptly obtain an acknowledgment from such bailee that is satisfactory to Lender and confirms that such bailee holds such property for the benefit of Lender as secured party and shall only act upon instructions from Lender with respect thereto. Borrower hereby irrevocably authorizes Lender to prepare, execute and file all initial financing statements, and any restatements, extensions, continuations, renewals or amendments thereof, in such form as Lender may require to perfect or continue the perfection of this security interest or other statutory liens held by Lender. Without limiting the foregoing, Borrower hereby irrevocably authorizes Lender to file one or more financing statements indicating that such financing statements cover all assets or all personal property (or words of similar effect) of Borrower.

2.03 Fixture Filing.

(a) This Security Instrument constitutes a financing statement filed as a fixture filing pursuant to the UCC in the Official Records of the County Recorder of the county in which the Real Property is located with respect to any and all fixtures included within the term "Collateral" as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures. A carbon, photographic or other reproduction of this Security Instrument shall be sufficient as a financing statement. Lender shall have the right at any time to file a manually executed counterpart or a carbon, photographic or other reproduction of this Security Instrument as a financing statement in either the central or local UCC records of any jurisdiction wherein the Real Property is located, but the failure of Lender to do so shall not impair (i) the effectiveness of this Security Instrument as a fixture filing as permitted by the applicable UCC, or (ii) the validity and enforceability of this Security Instrument in any respect whatsoever.

(b) The following information is included for purposes of meeting the requirements of a financing statement:

The name of the debtor is set forth in the first paragraph hereof as "Borrower."

The mailing address of the debtor is set forth in the first paragraph hereof as the address of "Borrower."

The name of the secured party is Toyota Motor Credit Corporation.



The address of the secured party is 19001 S. Western Avenue, P.O. Box 2958, Torrance, California 90509-2958, Attention: Legal Department – Real Estate.

This financing statement covers all of the debtor's Article 9 Collateral (whether now owned or hereafter acquired). The Article 9 Collateral includes (i) goods which are or are to become fixtures on the Land described in Exhibit A, (ii) minerals or the like (including oil and gas) located on the Land described in Exhibit A, (iii) all proceeds and products of the Article 9 Collateral.

2.04 Assignment of Leases and Rents.

(a) Rights Granted to Lender. Borrower hereby irrevocably, absolutely and unconditionally assigns to Lender all of Borrower's right, title and interest in and to (but none of Borrower's obligations under) all current and future Leases and Rents, all proceeds or streams of payment arising from the sale or other disposition of all or any of the Leases or Rents, and the right to receive and apply the Rents to the payment of the Debt and to do all other things which Borrower or any lessor is or may become entitled to do under the Leases or the Lease Guaranties or with respect to the Rents. Borrower hereby declares its intention to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and Leases and to authorize and empower Lender to collect and receive all Rents and exercise all of Borrower's rights under the Leases (including, without limitation, the right to modify, extend or terminate any Lease) without any further action by Borrower; it being intended that this assignment is effective immediately and not an assignment made for security only, notwithstanding any provision hereof to the contrary. For purposes of giving effect to this assignment of Rents and Leases and for no other purpose, Rents and Leases shall not be deemed to be part of the "Collateral" as that term is defined in Section 2.01 of this Security Instrument. If, however, this assignment of Rents and Leases is not enforceable by its terms under the laws of the State where the Real Property is located, then Rents and Leases shall be included as part of the Collateral and it is Borrower's intention that, in this circumstance, this Security Instrument creates and perfects a lien on and security interest in the Rents and Leases in favor of Lender, which lien and security interest shall be effective as of the date of this Security Instrument.

(b) License to Borrower; Revocation. Nevertheless, subject to the terms of this Security Instrument, the Loan Agreement and the other Loan Documents, Lender grants to Borrower a revocable license (i) to manage the leasing activities of the Real Property as contemplated by the Loan Agreement, (ii) to exercise all of Borrower's rights under the Leases and (iii) to collect and receive the Rents in trust for Lender and to apply the Rents to discharge all current amounts due on the Debt and to pay the current costs of managing, operating and maintaining the Real Property. So long as no Default exists and subject to the provisions of the Loan Agreement, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Security Instrument. From and after the occurrence of a Default, and without the necessity of notice or prior demand or Lender's entering upon and taking and maintaining control of the Real Property (whether directly or through a receiver), the license granted to Borrower by this Section shall terminate automatically, and Lender shall be entitled to receive and collect the Rents as they become due and payable and exercise all of Borrower's rights or the



rights of lessor under the Leases and with respect to the Rent. Lender's right to revoke the license granted to Borrower is in addition to all other rights and remedies available to Lender following a Default.

(c) Notices to Tenants. At any time on or after Lender's demand for the Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Real Property (including without limitation the Dealer) instructing them to pay all Rents to Lender. Borrower agrees that each tenant may rely on Lender's notice without inquiring further as to Lender's right to receive the Rents and that no tenant shall be liable to Borrower for any amounts which are actually paid to Lender in response to such a notice. Borrower shall not interfere with, and shall cooperate with, Lender's collection of the Rents.

(d) Borrower Bankruptcy. If a petition under the Bankruptcy Code is filed by or against Borrower, and Borrower determines to exercise its rights under the Bankruptcy Code to reject any Lease, Borrower shall give Lender written notice not less than ten (10) days prior to the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender has the right to serve Borrower within such ten-day period a notice stating (a) that Lender demands that Borrower assume the Lease and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (b) that Lender agrees to cure Borrower's default under the Lease or provide adequate assurance of future performance under the Lease. If Lender so notifies Borrower, Borrower shall not seek to reject the Lease and shall assume and assign such Lease to Lender within thirty (30) days after Lender's notice is given.

(e) No Mortgagee in Possession. Neither the granting of this assignment of Rents and Leases to Lender, nor Lender's exercise of any rights or remedies hereunder, shall be construed to make Lender a "mortgagee in possession" of the Real Property in the absence of Lender itself taking actual possession of the Real Property.

(f) No Obligation for Lease Performance or Property Condition. Lender's acceptance of this assignment of Rents and Leases shall not at any time obligate Lender to take any action with respect to the Leases, including, without limitation, the performance of any obligation to be performed on the part of Borrower under any of the Leases, which shall remain exclusively with Borrower. Without limiting the foregoing, this assignment of Leases and Rents shall not operate to place on Lender any obligation or liability for: (a) the control, care, management or repair of the Collateral; (b) for carrying out any of the terms and conditions of the Leases; (c) any waste committed on the Real Property by tenants (including without limitation the Dealer) or any other parties; (d) any dangerous or defective condition of the Real Property (including, without limitation, the presence of any Hazardous Materials as defined in the Environmental Indemnity); or (e) any negligence in the management, upkeep, repair or control of the Real Property resulting in injury or death to any tenant or any other party or any loss of personal property. Borrower, for itself and any party claiming under or through Borrower, hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.



(g) Accountability for Rents Received. Lender shall be obligated to account only for Rents actually collected or received by Lender, and Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to lease the Real Property after a Default.

2.05 Pledge of Monies Held. Borrower hereby pledges to Lender, as security for the Obligations, all money now or hereafter held by Lender, if any, in escrow or reserve or on deposit pursuant to the terms hereof or any other Loan Document, until expended or applied as provided in this Security Instrument or such other Loan Document.

2.06 Release of Security. The grants, deed of trust, mortgage, liens, security interests, assignments, pledges and transfers by this Security Instrument are subject to the express condition that, if Borrower pays to Lender the Debt at the time and in the manner provided in the Loan Agreement and performs all Obligations when and as required by the Loan Agreement and each other Loan Document, Lender shall release the Collateral from the grants, deed of trust, mortgage, liens, security interests, assignments, pledges and transfers created by this Security Instrument and shall cause Trustee to reconvey the Real Property to Borrower. Lender shall prepare (at Borrower's expense) and deliver to Borrower such documents as are necessary to effect such release and reconveyance. Upon payment of its fees and any other sums owing to it under this Security Instrument, Lender shall cause Trustee to reconvey the Real Property without warranty to the person or persons legally entitled thereto. The recitals in such conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such full reconveyance, Trustee may destroy said notes and this Security Instrument unless otherwise directed by Lender.

ARTICLE 3 **DEBT AND OBLIGATIONS SECURED**

3.01 Debt. This Security Instrument and the interests created in favor of Lender hereunder are given FOR THE PURPOSE OF SECURING (a) payment of principal, interest and all other amounts due at any time under the Loan Agreement, the Note (including any increases, restatements, renewals, extensions, amendments and supplements thereto), and each of the other Loan Documents, including, without limitation, Default Interest and prepayment consideration (if any) provided in the Loan Agreement, and amounts advanced by Lender to protect and preserve the Collateral and the liens hereby created for the benefit of Lender (collectively "**Debt**"), and (b) performance of all obligations of Borrower contained in the Loan Agreement, the Note and each of the other Loan Documents (collectively with the Debt, "**Obligations**"). Notwithstanding any provision of this Security Instrument to the contrary, the obligations of Borrower and the other indemnitors under the Environmental Indemnity shall not be deemed secured by this Security Instrument unless and until Lender expressly declares in writing such obligations to be secured hereby.



ARTICLE 4 BORROWER COVENANTS

4.01 Payment of Debt and Performance of Obligations. Borrower will pay the Debt at the time and in the manner provided in the Loan Documents and fully and punctually perform the Obligations when and as required by the Loan Documents. Borrower may not prepay the Debt except in strict accordance with the Loan Agreement.

4.02 Compliance with Loan Agreement. Borrower shall comply with all covenants and agreements in the Loan Agreement, including, without limitation, all obligations regarding the ownership, operation, management and condition of the Collateral and the protection and perfection of the liens hereby created in favor of Lender. Without limiting the foregoing, Borrower agrees:

(a) No Transfers of the Real Property or Interests in Borrower. Borrower shall not cause or permit any Prohibited Transfer of the legal or beneficial ownership of the Real Property, Borrower or Guarantor in violation of the Loan Agreement. Notwithstanding the foregoing, Borrower may from time to time replace items of personal property and fixtures constituting a part of the Real Property, provided that: (i) the replacements for such items of personal property or fixtures are of equivalent value and quality; (ii) Borrower has good and clear title to such replacement property free and clear of any and all liens, encumbrances, security interests, ownership interests, claims of title (contingent or otherwise), or charges of any kind, or the rights of any conditional sellers, vendors or other third parties in or to such replacement property have been expressly subordinated, at no cost to Lender, to the lien of this Security Instrument in a manner satisfactory to Lender; and (iii) at the option of Lender, Borrower provides at no cost to Lender a satisfactory opinion of counsel to the effect that this Security Instrument constitutes a valid and subsisting first lien on and security interest in such replacement property and is not subject to being subordinated or the priority thereof affected under any applicable law.

(b) Payment of Taxes and Other Lienable Charges. Borrower shall pay all taxes and other charges assessed or imposed against the Collateral when and as required by the Loan Agreement.

(c) Insurance.

(i) Insurance Required During the Loan Term. Borrower, at Borrower's expense, shall obtain and maintain during the term of the Loan such insurance coverage (including, without limitation, type, minimum coverage amount, maximum deductible and acceptable exclusions) for Borrower and the Collateral as Lender deems reasonably necessary considering, among other things, the location and occupancy of the Real Property and all uses of the Collateral. Subject to the foregoing, Lender shall require the following insurance coverage to be effective during the term of the Loan: (1) "All Risk of Physical Loss" insurance, without any exclusion for "windstorm", on all improvements and personal property in amounts equal to the full replacement cost thereof, without deduction for depreciation, and with a deductible not exceeding an amount reasonably acceptable to Lender (such policy or policies shall include a standard "Mortgagee Clause" naming Lender as "Mortgagee"); (2) commercial general liability



insurance including products and completed operations liability (such coverage may be provided under a garage liability coverage form including automobile liability), with a minimum limit of \$2,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage (such policy must name Lender as an additional insured); (3) full replacement cost flood insurance must be maintained if any portion of the improvements is located in an area identified by the Federal Emergency Management Agency or any successor thereto as a 100-year flood zone or special hazard area; (4) adequate Workers' Compensation insurance with respect to all employees employed at the Real Property, in compliance with the laws of the state in which the Real Property is located; and (5) during construction, repair, restoration or replacement of improvements on the Real Property, Borrower shall obtain and keep in effect a standard builder's risk policy with extended coverage in the amount of one hundred percent (100%) of the value of the improvements, with a non-contributing mortgagee clause and non-surrender, non-cancellation, non-modification clauses.

(ii) Policy Requirements. All insurance must be issued under valid and enforceable policies of insurance acceptable to Lender and issued by one or more domestic primary insurers authorized to issue insurance in the state in which the Real Property is located. Each insurer must have a minimum investment grade rating of "A" or better from S & P and an A.M. Best rating of A-IX or better, or equivalent ratings from one or more comparable credit rating agencies acceptable to Lender. All policies must be for a term of not less than a year. Each policy must also contain: (i) an endorsement or provision that permits recovery by Lender notwithstanding the negligent or willful acts or omission of Borrower or Lender, (ii) a provision that prohibits cancellation or termination before the expiration date, denial of coverage upon renewal, or material modification without at least thirty (30) days prior written notice to Lender in each instance; and (iii) effective waivers by the insurer of all claims for insurance premiums against Lender. If the required insurance coverage is to be provided under a blanket policy covering the Real Property and other properties and assets not part of the Real Property, such blanket policy must specify the portion of the total coverage that is allocated to the Real Property and any sublimit in such blanket policy which is applicable to the Real Property and shall otherwise comply in all respects with the requirements of this Section.

(iii) Evidence of Insurance. Borrower must deliver to Lender on or before the Disbursement Date: (1) the original of each insurance policy required hereunder or (2) a certificate of insurance, acceptable to Lender. Certificates of all renewal and replacement policies shall be delivered to Lender before the expiration of such policies.

(iv) Lender's Right to Obtain Insurance for Borrower. If any insurance required to be carried hereunder is canceled and no reinstatement or replacement policy is received prior to termination of insurance, a Default shall be deemed to have occurred (without further cure period or notice) and Lender may procure, without notice to Borrower, such insurance at Borrower's expense, without prejudice to Lender's rights upon a Default. All amounts advanced by Lender to procure the required insurance shall be added to principal, secured by this Security Instrument and at Lender's sole option shall bear interest at the Default Rate. Lender shall not be responsible for, nor incur any liability for the insolvency of the insurer or other failure of the insurer to perform, even though Lender has approved, disapproved or caused the insurance to be placed with any insurer.



(d) Obligations upon Condemnation or Casualty.

(i) Generally. The insurance proceeds or condemnation award paid or payable on account of a casualty or condemnation, as applicable (including all business interruption insurance proceeds paid as a result of such casualty or condemnation, if any), less expenses to be reimbursed to Lender hereunder, is referred to herein as the “**Restoration Proceeds.**” Restoration Proceeds in connection with any casualty or condemnation are hereby assigned to and shall be paid to Lender. In addition, all causes of action, whether accrued before or after the date of this Security Instrument, of all types for damages or injury to the Collateral or any part thereof, or in connection with any transaction financed by funds loaned to Borrower by Lender, or in connection with or affecting the Collateral or any part thereof, including without limitation causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact, are hereby assigned to Lender as additional security, and the proceeds thereof shall be paid to Lender. Lender may at its option appear in and prosecute in its own name any action or proceeding to enforce any such cause of action and may make any compromise or settlement thereof.

(ii) Notice to Lender. Borrower, immediately upon obtaining knowledge of the institution of any proceedings relating to a condemnation or knowledge of any casualty to the Collateral, will immediately notify Lender in writing. Lender may participate in any condemnation proceedings and may join Borrower in adjusting any loss covered by insurance.

(iii) Proceeds. All Restoration Proceeds Borrower may receive or to which Borrower may become entitled with respect to the Collateral or any part thereof shall be paid over to Lender and shall be applied first toward reimbursement of all costs and expenses of Lender in connection with recovery of the same, and then shall be applied, in the sole and absolute discretion of Lender in the event of (i) a material decrease in the value of the Collateral, or if the Collateral is otherwise impaired, or (ii) a material change in the financial condition of Borrower or Guarantor, to the payment or prepayment (without premium) of the Obligations in such order as Lender may determine, or to the reimbursement of Borrower for expenses incurred by it in the restoration of the Collateral. Any application of such amounts or any portion thereof to the Obligations shall not be construed to cure or waive any Default or notice of default hereunder or invalidate any act done pursuant to any such Default or notice.

(iv) Restoration. In the event Lender elects to make any Restoration Proceeds available to Borrower, Lender may impose such reasonable requirements on the use or expenditure of such Restoration Proceeds as Lender may require, consistent with Lender’s customary standards, and Borrower shall proceed forthwith with the completion of construction of the improvements, including the necessary work of restoration of the Collateral in accordance with plans, specifications and drawings submitted to and approved by Lender, using only contractors acceptable to Lender, and any Restoration Proceeds which Lender so elects to make available for restoration of the Collateral shall be disbursed in accordance with Lender’s standard construction lending practices or in any other manner approved by Lender. In no event shall Lender incur any liability in connection with the giving or withholding of any approval or consent relating to any work to be carried on by Borrower, or otherwise arising out of any such



work performed by or for Borrower. Borrower hereby specifically, unconditionally and irrevocably waives all rights of a property owner, which provide for allocation of condemnation proceeds between property owner and a lienholder, and any other law or statute of similar import.

(e) Leases and Rents. Borrower shall not enter into any leases for all or any portion of the Real Property unless in accordance with the Loan Agreement. Borrower shall at any time or from time to time, upon request of Lender, transfer and assign to Lender, in such form as may be satisfactory to Lender, Borrower's interest in any lease, subject to and upon the condition, however, that prior to the occurrence of any Default Borrower shall have a license to collect and receive all Rents under such lease upon accrual, but not prior thereto, as set forth herein. Whenever requested by Lender, Borrower shall furnish to Lender a certificate of Borrower setting forth the names of all lessees under any leases, the terms of their respective leases, the space occupied, and the rents payable thereunder.

4.03 Warranty of Title. Borrower has good, marketable and insurable fee simple title of record to the Real Property, free and clear of all liens, encumbrances and charges whatsoever except for the Permitted Encumbrances (as hereinafter defined). Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender and/or Trustee against the claims of all Persons whomsoever.

As used herein, "Permitted Encumbrances" means (i) the lien and security interest of Lender arising under this Security Instrument, the Loan Agreement or under any security agreement; (ii) such matters as are expressly stated as exceptions to title in any title insurance policy accepted in writing by Lender; (iii) liens for taxes, assessments, or governmental charges or levies not yet due and payable, or being contested in good faith by appropriate proceedings promptly initiated and diligently conducted, provided that a reserve or other appropriate provision as may be required by generally accepted accounting principles shall have been made therefor and no foreclosure, distraint, sale or other similar proceedings shall have been commenced; (iv) the Lease; and (v) such other matters affecting the Property as Lender may accept in writing from time to time in Lender's sole and absolute discretion.

4.04 Duty to Defend. Borrower shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Lender or Trustee, and shall pay all costs and expenses, including without limitation cost of evidence of title and reasonable attorneys' fees, in any such action or proceeding in which Lender or Trustee may appear, and in any suit brought by Lender to foreclose this Security Instrument or to enforce or establish any other rights or remedies of Lender hereunder.

4.05 Funds for Taxes and Insurance.

(a) Deposit of Funds. Lender, by written notice to Borrower either prior to Borrower's execution of this Security Instrument or after a Default hereunder, may require the deposit with Lender or its designee by Borrower, at the time of each payment of an installment of interest or principal under the Note, of an additional amount sufficient to discharge the



obligations of Borrower under the Loan Agreement ("Tax and Insurance Payment Obligations") as and when they become due. The determination of the amount payable and of the fractional part thereof to be deposited with Lender shall be made by Lender in its sole discretion. Said amounts shall be held by Lender or its designee not in trust and not as agent of Borrower, and Borrower shall not be entitled to receive any interest that may be earned or payable thereon. Such funds may be commingled by Lender or its designee with its own or their own funds or with similar funds received from other borrowers, and shall be applied to the payment of the Tax and Insurance Payment Obligations in respect of which the amounts were deposited or, at the option of Lender, to the payment of the Tax and Insurance Payment Obligations in such order or priority as Lender shall determine. If at any time within thirty (30) days prior to the due date of any of the Tax and Insurance Payment Obligations the amounts then on deposit therefor shall be insufficient for the payment of such obligation in full, Borrower shall within ten (10) days after demand deposit the amount of the deficiency with Lender or its designee. If the amounts deposited are in excess of the actual Tax and Insurance Payment Obligations for which they were deposited, Lender or its designee may refund any such excess, or, at its option, may continue to hold the same in the manner provided above, and reduce proportionately the required monthly deposits for the ensuing year. Nothing herein contained shall be deemed to affect any right or remedy of Lender under any other provision of this Loan Agreement or under any statute or rule of law to pay any such amount and to add the amount so paid to the Obligations hereby secured.

(b) Additional Security. All amounts so deposited shall be held by Lender or its designee as additional security for the sums secured by this Security Instrument, and upon the occurrence of a Default hereunder Lender may, in its sole and absolute discretion and without regard to the adequacy of its security hereunder, apply or direct the application of such amounts or any portion thereof to any part of the Obligations secured hereby. Any such application of said amounts or any portion thereof to any Obligation secured hereby shall not be construed to cure or waive any default or notice of default hereunder or invalidate any act done pursuant to any such default or notice.

(c) Delivery of Statements. If Lender requires deposits to be made pursuant to this Section, Borrower shall deliver to Lender or its designee all tax bills, bond and assessment statements, statements of insurance premiums, and statements for any other obligations referred to above as soon as the same are received by Borrower.

(d) Transfer of Loan. If Lender sells or assigns this Loan, Lender shall have the right to transfer or direct the transfer of all amounts deposited under this section in accordance with the instructions of the purchaser or assignee, and Lender, and if applicable Lender's designee, shall thereupon be released and have no further liability hereunder for the application of such deposits, and Borrower shall look solely to such purchaser or assignee for such application and for all responsibility relating to such deposits.



ARTICLE 5 **SUBROGATION**

5.01 Subrogation. If the Loan is used to pay, satisfy, discharge, extend or renew any indebtedness secured by a pre-existing mortgage, deed of trust or other lien or security interest encumbering the Collateral ("**Prior Lien**"), then to the extent of funds so used, Lender shall automatically, and without further action on its part, be subrogated to all rights, including lien priority, held by the holder of the indebtedness secured by the Prior Lien, whether or not the Prior Lien is released, and such former rights are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for payment of the Debt and performance of the Obligations.

ARTICLE 6 **DEFAULT**

6.01 Events of Default. A default ("**Default**") shall occur under this Security Instrument if (a) Borrower fails to perform fully and timely any obligation under this Security Instrument when due (and without reference to any notice or cure permitted under the Loan Agreement or any other Loan Document), or (b) an "Default" as that term is defined under the Loan Agreement or any other Loan Document has occurred and remains uncured.

6.02 Remedies. If a Default occurs, Lender may, at its option, acting directly or through an agent and without prior notice or demand, exercise and hereby is authorized and empowered by Borrower so to exercise, any or all of the remedies set forth in the Loan Agreement (including, without limitation, the right to accelerate the Loan) or otherwise permitted by law or in equity. In addition to the remedies available to Lender in the Loan Agreement or otherwise permitted by law or in equity, Lender may, at its option, and without prior notice or demand, do and hereby is authorized and empowered by Borrower so to do, any or all of the following:

(a) Acceleration. Lender may declare the entire unpaid principal balance of the Loan to be immediately due and payable.

(b) Recovery of Unpaid Sums. Lender may, from time to time, take legal action to recover any sums as the same become due, without regard to whether or not the Loan shall be accelerated and without prejudice to Lender's right thereafter to accelerate the Loan or exercise any other remedy, if such sums remain uncollected.

(c) Foreclosure. Lender may institute proceedings, judicial or otherwise, for the complete or partial foreclosure of this Security Instrument or the complete or partial sale of the Real Property under power of sale or under any applicable provision of law. In connection with any such proceeding, Lender may sell the Real Property as an entirety or in parcels or units and at such times and place (at one or more sales) and upon such terms as it may deem expedient unless prohibited by law from so acting.



(d) Receiver. Lender may apply for the appointment of a receiver, trustee, liquidator or conservator of the Collateral, without regard for the adequacy of the security for the Debt or a showing of insolvency, fraud or mismanagement on the part of Borrower. Any receiver or other party so appointed has all powers permitted by law which may be necessary or usual in such cases for the protection, possession, control, management and operation of the Collateral. Borrower hereby consents, to the extent permitted under applicable law, to the appointment of a receiver or trustee of the Collateral upon Lender's request if a Default has occurred. At Lender's option, such receiver or trustee shall serve without any requirement of posting a bond. Appointment of a receiver for the Collateral by any court at the request of Lender or by agreement with Borrower, or the entering into possession of the Collateral or any part thereof by such receiver, shall not be deemed to make Lender a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Collateral or the use, occupancy, enjoyment or operation of all or any portion thereof.

(e) Recovery of Possession. Lender may enter into or upon the Real Property, either personally or by its agents, and dispossess and exclude Borrower and its agents and servants therefrom (without liability for trespass, damages or otherwise), and take possession of all books, records and accounts relating to the Real Property, and Borrower agrees to surrender possession of the Real Property and all other Collateral, including without limitation, all documents, books, records and accounts relating to the Real Property, to Lender upon demand. As a mortgagee-in-possession of the Real Property, Lender shall have all rights and remedies permitted by law or in equity to a mortgagee-in-possession, including, without limitation, the right to charge Borrower the fair and reasonable rental value for Borrower's use and occupation of any part of the Real Property that may be occupied or used by Borrower and the right to exercise all rights and powers of Borrower with respect to the Real Property, whether in the name of Borrower or otherwise (including, without limitation, the right to make, cancel, enforce or modify any Lease, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Real Property).

(f) UCC Remedies. Lender may exercise with respect to the Collateral, each right, power or remedy granted to a secured party under the UCC, including, without limitation, (i) the right to take possession of the Collateral and to take such other measures as Lender deems necessary for the care, protection and preservation of the Collateral, and (ii) the right to require that Borrower, at its expense, assemble the Collateral and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute reasonable notice to Borrower. Lender shall not have any obligation to clean-up or otherwise prepare the Collateral for sale.

(g) Insurance Policies. Lender may surrender any or all insurance policies maintained as required by this Security Instrument, collect the unearned insurance premiums and apply such sums as a credit on the Loan, in such priority and proportion as Lender deems appropriate. Borrower hereby appoints Lender its attorney-in-fact with full power of substitution (and which shall be deemed to be coupled with an interest and irrevocable until the Loan is paid and this Security Instrument is discharged of record, with Borrower hereby ratifying all that its said attorney shall do by virtue thereof) to surrender such insurance policies and collect such insurance premiums.



(h) Protection of Lender's Security and Right to Cure. Lender may, without releasing Borrower from any obligation hereunder or waiving the Default, perform the obligation which Borrower failed to perform in such manner and to such extent as Lender deems necessary to protect and preserve the Collateral and Lender's interest therein, including without limitation (i) appearing in, defending or bringing any action or proceeding with respect to the Collateral, in Borrower's name or otherwise; (ii) making repairs to the Collateral or completing improvements or repairs in progress; (iii) hiring and paying legal counsel, accountants, inspectors or consultants; and (iv) paying amounts which Borrower failed to pay. Amounts disbursed by Lender shall be added to the Loan, shall be immediately due and payable, and shall bear interest at the Default Rate from the date of disbursement until paid in full.

6.03 Cumulative Remedies; No Waiver; Other Security. Lender's remedies under this Security Instrument are cumulative with the remedies provided in the other Loan Documents, by law or in equity and may be exercised independently, concurrently or successively in Lender's sole discretion and as often as occasion therefor shall arise. Lender's delay or failure to accelerate the Loan or exercise any other remedy upon the occurrence of a Default shall not be deemed a waiver of such right as remedy. No partial exercise by Lender of any right or remedy will preclude further exercise thereof. Notice or demand given to Borrower in any instance will not entitle Borrower to notice or demand in similar or other circumstances nor constitute Lender's waiver of its right to take any future action in any circumstance without notice or demand (except where expressly required by this Security Instrument to be given). Lender may release other security for the Debt, may release any party liable for the Debt, may grant extensions, renewals or forbearances with respect thereto, may accept a partial or past due payment or grant other indulgences, or may apply any other security held by it to payment of the Debt, in each case without prejudice to its rights under this Security Instrument and without such action being deemed an accord and satisfaction or a reinstatement of the Debt. Lender will not be deemed as a consequence of its delay or failure to act, or any forbearances granted, to have waived or be estopped from exercising any of its rights or remedies. Neither Lender's nor any receiver's entry upon and taking possession of all or any part of the Real Property nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Obligations, nor the exercise of any other right or remedy by Lender or Trustee or any receiver shall impair the status of the security, or cure or waive any default or notice of default under this Security Instrument, or nullify the effect of any notice of default or sale (unless all Obligations which are then due have been paid and performed and Borrower has cured all other defaults), or prejudice Lender or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Lender of any tenancy, lease or option or a subordination of the lien of this Security Instrument.

6.04 Enforcement Costs. Borrower shall pay, on written demand by Lender, all costs incurred by Lender or Trustee in (a) collecting any amount payable under the Loan Documents, or (b) enforcing its rights under the Loan Documents, in each case whether or not legal proceedings are commenced. Such fees and expenses include, without limitation, reasonable fees for attorneys, paralegals, law clerks and other hired professionals, a reasonable assessment of the cost of services performed by Lender's default management staff, court fees, costs



incurred in connection with pre-trial, trial and appellate level proceedings, including discovery, and costs incurred in post-judgment collection efforts or in any bankruptcy proceeding. Amounts incurred by Lender shall be added to the Debt, shall be immediately due and payable, and shall bear interest at the Default Rate from the date of disbursement until paid in full, if not paid in full within five (5) days after Lender's written demand for payment. Lender shall be entitled to bid, at the sale of the Collateral held pursuant to the power of sale granted herein or pursuant to any judicial foreclosure of this instrument, the amount of said costs, expenses and interest in addition to the amount of the Obligations as a credit bid, the equivalent of cash.

6.05 Application of Proceeds. The proceeds from disposition of the Collateral shall be applied by Lender to the payment of the Debt (including, without limitation, advances made by Lender and enforcement costs incurred by Lender) in such priority and proportion as Lender determines in its sole discretion.

6.06 Continuing Lien; Right to Collateral. If less than all of the Collateral is, at any time, sold through foreclosure, power of sale, or otherwise, or if Lender releases any portion of the Collateral (for whatever consideration Lender deems appropriate), this Security Instrument shall continue as a lien and security interest on the remaining portion of the Collateral, unimpaired and without loss of priority. Without affecting the liability of Borrower, Guarantor or any other person (except any person expressly released in writing), for payment of any Obligations secured hereby or for performance of any Obligations contained herein, and without affecting the rights of Lender with respect to any security not expressly released in writing, Lender may, at any time and from time to time, either before or after maturity of said Note, and without notice or consent: (a) release any person liable for payment of all or any part of the Obligations or for performance of any Obligations; (b) make any agreement extending the time or otherwise altering terms of payment of all or any part of the Obligations, or modifying or waiving any Obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (c) exercise or refrain from exercising or waive any right Lender may have; (d) accept additional security of any kind; (e) release or otherwise deal with any property, real or personal, securing the Obligations, including all or any part of the Collateral.

6.07 Separate Sales. Any real estate or any interest or estate therein sold pursuant to any writ of execution issued on a judgment obtained by virtue of the Loan Agreement, this Security Instrument or the other Loan Documents, or pursuant to any other judicial proceedings under this Security Instrument, or pursuant to the power of sale granted herein, may be sold in one parcel, as an entirety or in such parcels, and in such manner or order as Lender, in its sole discretion, may elect.

6.08 No Conditions Precedent to Exercise of Remedies. Neither Borrower nor any other person now or hereafter obligated for payment of all or any part of the Obligations (including Guarantor) shall be relieved of such obligation by reason of the failure of Lender to comply with any request of Borrower or Guarantor or of any other person so obligated to take action to foreclose on this Security Instrument or otherwise enforce any provisions of the Loan Agreement, the Guaranty and the other Loan Documents, or by reason of the release, regardless of consideration, of all or any part of the security held for the Obligations, or by reason of any agreement or stipulation between any subsequent owner of the Real Property and Lender



extending the time of payment or modifying the terms of the Loan Agreement, this Security Instrument, the Guaranty and the other Loan Documents, without first having obtained the consent of Borrower, Guarantor or such other person; and in the latter event Borrower, Guarantor and all such other persons shall continue to be liable to make payment according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Lender.

ARTICLE 7
WAIVER OF RIGHT OF REDEMPTION AND OTHER RIGHTS

7.01 Waiver of Rights of Redemption, Marshalling and Other Rights. Borrower hereby waives, to the fullest extent permitted by law, the benefit of all laws, now or hereafter in force, providing for (a) the valuation or appraisal of the Collateral, or any part thereof, prior to any sale or sales thereof pursuant to this Security Instrument or any decree, judgment or order of a court of competent jurisdiction; (b) the right to stay or extend any such proceeding, to have this Security Instrument reinstated or to redeem the Collateral or any portion thereof so sold; (c) rights of marshalling relating to any such sale or sales; (d) any right to require that the Collateral be sold as separate tracts or units in connection with enforcement of this Security Instrument; (e) the benefit of any moratorium, exemption or homestead rights now or hereafter provided; and (f) all benefit that might accrue to Borrower by virtue of any present or future law exempting the Collateral, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution. Borrower makes such waivers on its own behalf and on behalf of all parties now or hereafter claiming or having an interest (direct or indirect) by, through or under Borrower.

7.02 Waiver of Counterclaim. Borrower hereby waives, to the fullest extent permitted by law, the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Trustee or Lender arising out of, or in any way connected with, the Obligations.

7.03 Waiver of Foreclosure Defense. Borrower hereby waives, to the fullest extent permitted by law, any defense Borrower might have by reason of Lender's failure to make any tenant or tenant of the Real Property a party defendant in any foreclosure instituted by Lender.

7.04 Waiver of Notices Generally. Borrower hereby waives, to the fullest extent permitted by law, its rights to notice from Lender (including without limitations, all notices of Borrower's default or of Lender's election to exercise, or Lender's actual exercise, of any option or remedy under the Loan Agreement, this Security Instrument, the Guaranty and the other Loan Documents) except when this Security Instrument or the other Loan Documents expressly provides for Lender to give notice to Borrower.

7.05 Waiver of Statute of Limitations and Laches. Borrower hereby waives, to the fullest extent permitted by law, the benefit of any statute of limitations or laches defense to payment of the Debt or performance of the Obligations.



7.06 WAIVER OF TRIAL BY JURY. BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT, TO THE FULLEST EXTENT PERMITTED BY LAW, AND AGREES NOT TO ELECT, A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS SECURITY INSTRUMENT OR IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS OR ANY OTHER LOAN DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY TO ANY LOAN DOCUMENT. THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR LENDER TO ACCEPT THE NOTE AND MAKE THE LOAN.

7.07 CONSENT TO JURISDICTION. BORROWER HEREBY CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE COURTS OF LOS ANGELES COUNTY, STATE OF CALIFORNIA, AS WELL AS TO THE JURISDICTION OF ALL COURTS FROM WHICH AN APPEAL MAY BE TAKEN FROM THE AFORESAID COURTS, WITH RESPECT TO ANY LEGAL ACTION OR PROCEEDING ARISING WITH RESPECT TO THIS SECURITY INSTRUMENT OR ANY OTHER LOAN DOCUMENT AND WAIVES ALL OBJECTIONS WHICH IT MAY HAVE TO SUCH JURISDICTION AND VENUE. NOTHING HEREIN SHALL, HOWEVER, PRECLUDE OR PREVENT LENDER FROM BRINGING ACTIONS AGAINST BORROWER IN ANY OTHER JURISDICTION AS MAY BE NECESSARY TO ENFORCE OR REALIZE UPON THE SECURITY HEREIN PROVIDED.

7.08 Discontinuance of Proceedings. In the event Lender shall have proceeded to enforce any right under any Loan Document and such proceedings shall have been discontinued or abandoned for any reason, then in every such case Borrower, Guarantor and Lender shall be restored to their former positions and the rights, remedies and powers of Lender shall continue as if no such proceedings had been taken.

7.09 Reinstatement. Notwithstanding anything to the contrary contained in the Loan Agreement, this Security Instrument or any of the other Loan Documents, the Lender's rights hereunder shall be reinstated and revived, and the enforceability of the Loan Agreement, this Security Instrument and the other Loan Documents shall continue, with respect to any amount at any time paid on account of the Debt or the Obligations which thereafter shall be required to be restored or returned by Lender, including, without limitation, the restoration or return of any amount pursuant to a court order or judgment (whether or not final or non-appealable), or pursuant to a reasonable, good faith settlement of a pending or threatened avoidance or recovery action, or pursuant to reasonable, good faith compliance with a demand made by a person or entity believed to be entitled to pursue an avoidance or recovery action such as a bankruptcy trustee or a person or entity having the avoiding powers of a bankruptcy trustee or similar avoiding powers (and without requiring Lender to oppose or litigate avoidance or recovery demands or actions that it believes in good faith to be meritorious or worthy of settlement or compliance, or pursue or exhaust appeals), all as though such amount had not been paid. The rights of Lender created or granted herein and the enforceability of the Loan Agreement, this Security Instrument and the other Loan Documents at all times shall remain effective to cover



the full amount of all the Debt and the Obligations even though the Debt and the Obligations, including any part thereof or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against any other Borrower.

ARTICLE 8

MISCELLANEOUS PROVISIONS

8.01 Severability. In the event any one or more of the provisions contained in this Security Instrument shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Security Instrument, but this Security Instrument shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

8.02 Certain Charges.

(a) Borrower agrees to pay Lender for each statement of Lender as to the obligations secured hereby, furnished at Borrower's request, the maximum fee allowed by law, or if there be no maximum fee, then such reasonable fee as is charged by Lender as of the time said statement is furnished. Borrower further agrees to pay the charges of Lender for any other service rendered Borrower, or on its behalf, connected with this Security Instrument or the Obligations secured hereby, including without limitation the delivery to an escrow holder of a request for full or partial reconveyance of this Security Instrument, transmitting to an escrow holder moneys secured hereby, changing its records pertaining to this Security Instrument and Obligations secured hereby to show a new owner of the Collateral, and replacing an existing policy of insurance held hereunder with another such policy.

(b) Borrower recognizes that in the event any payment secured hereby is not made within ten (10) days after it becomes due and payable, Lender will incur extra expenses in handling the delinquent payment, the exact amount of which is impossible to ascertain, but that a charge of two percent (2%) of the amount of the delinquent payment would be a reasonable estimate of the expense so incurred. Therefore, if any such payment is not received within ten (10) days after the date it becomes due and payable, Borrower shall without prejudicing or affecting any other rights or remedies of Trustee or Lender, pay to Lender, to cover expenses incurred in handling the delinquent payment, an amount calculated at two percent (2%) of the amount of the delinquent payment.

8.03 Notices. All notices expressly provided hereunder to be given by Lender to Borrower and all notices and demands of any kind or nature whatsoever which Borrower may be required or may desire to give to or serve on Lender shall be in writing and shall be given by personal delivery or by first-class or certified mail. Any such notice or demand so served by first-class or certified mail shall be deposited in the United States mail, with postage thereon fully prepaid, and addressed to the party so to be served at its address above stated or at such other address of which said party shall have theretofore notified in writing, as provided above, the party giving such notice. Service of any such notice or demand so made shall be deemed effective on the day of actual delivery as shown by the addressee's return receipt or the expiration of forty-eight (48) hours after the date of mailing, whichever is the earlier in time,



except that service of any notice of default or notice of sale provided or required by law shall, if mailed, be deemed effective on the date of mailing.

8.04 Borrower Not Released. Extension of the time for payment or modification of the terms of payment of any sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify the terms of payment of the sums secured by this Security Instrument by reason of any demand made by the original Borrower. Without affecting the liability of any person, including Borrower, for the payment of any Obligations secured hereby, or the lien of this Security Instrument on the remainder of the Collateral for the full amount of any such Obligations and liability unpaid, Lender and Trustee are respectively empowered as follows: Lender may from time to time and without notice (a) release any person liable for the payment of any of the Obligations, (b) extend the time or otherwise alter the terms of payment of any of the Obligations, (c) accept additional real or personal property of any kind as security therefor, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security, or (d) alter, substitute or release (or perfect or fail to perfect any lien on or security interest in) any property securing the Obligations; Trustee may, at any time, and from time to time, upon the written request of Lender (w) consent to the making of any map or plat of the Real Property or any part thereof, (x) join in granting any easement or creating any restriction thereon, (y) join in any subordination or other agreement affecting this Security Instrument or the lien or charge hereof, or (z) reconvey, without any warranty, all or part of the Collateral.

8.05 Inspection. Lender may at any reasonable time or times make or cause to be made entry upon the Real Property and inspection of the Collateral or any part thereof in person or by agent.

8.06 Indemnity. Without limiting any applicable indemnification provisions of the Loan Agreement or the other Loan Documents, Borrower hereby agrees to indemnify, defend, and hold harmless Lender and its respective officers, directors, shareholders, partners, agents, successors and assigns (collectively, the "Indemnified Parties"), from and against any and all claims, demands, liabilities, losses, lawsuits, judgments and costs and expenses ("Liabilities") (including, without limitation, reasonable attorneys' fees and costs, including reasonably allocated costs of in-house counsel) which Lender or any of the other Indemnified Parties may incur as a result of, or in connection with, this Security Instrument or the exercising of Lender's rights hereunder, but excluding Liabilities resulting from Lender's gross negligence or willful misconduct.

8.07 Notice of Change. Borrower shall give Lender prior written notice of any change in: (a) the location of Borrower's place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Collateral, including the books and records relating to any Collateral; and (c) Borrower's name or business structure. Unless otherwise approved by Lender in writing, all Collateral that consists of personal property (other than the books and records) will be located on the Real Property and all books and records



relating to any Collateral will be located at Borrower's place of business or chief executive office if Borrower has more than one place of business.

8.08 Merger. No merger of any interests shall occur as a result of Lender's acquiring any other estate in or any other lien on the Collateral unless Lender consents to a merger in writing, including without limitation any merger which may arise, upon foreclosure of the lien of this Security Instrument or acceptance of a deed in lieu thereof by Lender.

8.09 Interpretation. Wherever used in this Security Instrument, unless the context otherwise indicates a contrary intent, or unless otherwise specifically provided herein, the word "Borrower" shall mean and include each Borrower executing below and any subsequent owner or owners of the Real Property, and the word "Lender" shall mean and include not only the original Lender hereunder but also any future owner and holder, including pledgees, of the Note secured hereby. In this Security Instrument whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the neuter includes the feminine and/or masculine, and the singular number includes the plural and conversely. In this Security Instrument: (i) the use of the word "including" shall not be deemed to limit the generality of the term or clause to which it has reference, whether or not nonlimiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter; (ii) "or" shall not be exclusive; and (iii) "all" includes "any" and "any" includes "all." The captions and headings of the Articles and Sections of this Security Instrument are for convenience only and are not to be used to interpret, define or limit the provisions hereof.

8.10 Consent; Delegation to Sub-agents. The granting or withholding of consent by Lender to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions. Wherever a power of attorney is conferred upon Lender hereunder, it is understood and agreed that such power is conferred with full power of substitution, and Lender may elect in its sole discretion to exercise such power itself or to delegate such power, or any part thereof, to one or more sub-agents.

8.11 Successors and Assigns. All of the grants, obligations, covenants, agreements, terms, provisions and conditions herein shall run with the land and shall apply to, bind and inure to the benefit of, the heirs, administrators, executors, legal representatives, successors and assigns of Borrower and the successors in trust of Trustee and the endorsees, transferees, successors and assigns of Lender. In the event Borrower is composed of more than one party, the obligations, covenants, agreements, and warranties contained herein as well as the obligations arising therefrom are and shall be joint and several as to each such party.

8.12 Governing Law; Personal Jurisdiction; Waiver of Jury Trial. With respect to procedural matters related to the perfection and enforcement of Lender's rights against the Collateral, this Security Instrument shall be governed by and construed under federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Oregon. In all other respects, this Security Instrument will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of California



without regard to its conflicts of law provisions. However, if there ever is a question about whether any provision of this Security Instrument is valid or enforceable, the provision that is questioned will be governed by whichever state or federal law would find the provision to be valid and enforceable. The loan transaction that is evidenced by the Note and this Security Instrument has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of California.

8.13 Amendments. This Security Instrument may not be modified or amended except by a written agreement signed by Lender.

8.14 FINAL AGREEMENT. THIS WRITTEN INSTRUMENT AND OTHER DOCUMENTS EVIDENCING, RELATING TO AND SECURING THE OBLIGATIONS SECURED HEREUNDER AND THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

8.15 Consent. Except as otherwise provided for herein, wherever in this Security Instrument Lender's or Borrower's consent is required, such consent shall not be unreasonably withheld.

8.16 Request For Notices. Borrower hereby requests that a copy of any Notice of Default and Notice of Sale as may be required by law be mailed to Borrower at its address above stated.

8.17 Commercial Trust Deed; Commercial Property. Borrower warrants to Lender that this Security Instrument is a "commercial trust deed" and not a "residential trust deed" (as defined in ORS 86.705) and covenants that the Collateral will only be used for commercial purposes throughout the term of the Loan.

ARTICLE 9

TRUSTEE PROVISIONS

9.01 Trustee's Fees and Expenses. Borrower shall pay all reasonable fees and expenses incurred by Trustee for legal counsel and other professional advisors in connection with Trustee's performance of its duties hereunder. Amounts incurred by Trustee shall be deemed a part of the Debt secured by this Security Instrument and bear interest at the Default Rate if not paid in full within five (5) days after Trustee's written demand for payment. Trustee hereby waives any statutory fee or compensation for services rendered hereunder.

9.02 Duties of Trustee.

(a) Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts and duties herein created and conferred upon Trustee. Notwithstanding the foregoing, Trustee agrees not to execute any of the powers conferred upon Trustee hereunder,



nor to take any action to protect or enforce Lender's rights hereunder, nor to provide any interpretation of this Security Instrument or any of the other Loan Documents without Lender's prior written consent thereto in each instance. Trustee, however, has an affirmative duty to reasonably cooperate with Lender as Lender may require to protect the Real Property and to enforce Lender's rights hereunder, but Trustee shall not be obligated to institute or defend any suit in respect hereof or to perform any act which would involve Trustee in any expense or liability unless, in each case, properly indemnified to Trustee's reasonable satisfaction. Trustee also has no duty to see to any recording, filing or registration of this Security Instrument or any other instrument in addition or supplemental hereto, or to give any notice thereof, or to see to the payment of, or be under any duty in respect of, any tax or assessment or other governmental charge which may be levied or assessed on the Real Property or against Borrower, or to see to the performance or observance by Borrower of any of the covenants and agreements contained herein. Trustee shall not be responsible for the sufficiency of the security purported to be created hereby and makes no representation or warranty in respect thereof or in respect of the rights of Lender.

(b) Trustee shall not be liable for any error of judgment or act done by Trustee in good faith or otherwise responsible or accountable under any circumstances whatsoever (including Trustee's negligence), except for Trustee's gross negligence or willful misconduct. Trustee has the right to advice of counsel upon any matters arising hereunder and shall be fully protected in relying on the advice of counsel. Trustee has the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall not be personally liable in case of entry upon the Real Property by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, or for liability or damages incurred in the management or operation of the Real Property.

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

9.03 Resignation and Substitution of Trustee.

(a) Trustee may resign at any time upon written notice to Lender delivered not less than thirty (30) days prior to the intended date of resignation. In the event of Trustee's death, resignation, refusal to act, disqualification or other inability to act, or if Lender shall deem it desirable to remove Trustee for any reason with or without cause, Lender has the right, in its sole discretion, to select and appoint a successor trustee (who may be Lender or an affiliate of Lender if permitted by law), without application to court or compliance with any formality other than appointment and designation in writing by Lender. If Lender is a corporation or association and such appointment is executed in its behalf by an officer of such corporation or association, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation or association.



(b) Any successor appointed as Trustee shall, without further act, deed or conveyance, become vested with all of the estates, properties, rights, powers, privileges, immunities and duties herein conferred upon Trustee with like effect as if such successor were originally named as trustee herein. Nevertheless, upon the written request of Lender or of the successor as Trustee, the party ceasing to act as Trustee shall execute and deliver an instrument, in recordable form, transferring to such successor as Trustee, all of the estates, properties, rights, powers, privileges, immunities and duties herein conferred upon Trustee and shall duly assign, transfer and deliver to such successor, in trust, any of the property and money then held by the party ceasing to act as Trustee.

9.04 Multiple Trustees. If more than one Trustee is appointed hereunder at any one time, or from time to time, all rights granted to and all powers conferred upon Trustee hereunder may be exercised by any or all of such Trustees, independently or jointly. Action exercised by one Trustee shall be deemed valid and binding on all Trustees.

ARTICLE 10

ADDITIONAL EXHIBITS

10.01 Additional Exhibits. The provisions of the Exhibit(s) attached hereto, if any, are incorporated herein by this reference and shall constitute part of this Security Instrument.

ARTICLE 11

OREGON STATUTORY DISCLAIMER

11.01 ORS 93.040 Disclosure. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. 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 THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, 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 ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.



IN WITNESS WHEREOF, the undersigned hereby signs, seals and delivers this Security Instrument.

BORROWER:

LITHIA REAL ESTATE, INC.,
an Oregon corporation

By: _____

Name: _____

Title: _____

JOHN NORTH

AUTHORIZED AGENT



ACKNOWLEDGEMENT

STATE OF Oregon)
) ss.
COUNTY OF Jackson)

On September 26, 2014, before me, the undersigned notary public in and for said County and State, personally appeared John North,

☒ personally known to me [or]
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity(ies) and that, by his signature(s) on the instrument, the person(s) or the entity(ies) upon behalf of which the person(s) acted executed the instrument.

WITNESS my hand and official seal.

Margie R Davis

My commission expires on

3.18.2016





Exhibit A
to Security Instrument

Legal Description of the Land

Lot 2 in Block 5 of TRACT 1080 – WASHBURN PARK, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

Assessor's Map No. 3909-003CB-01100-000

Property ID: 527335



Exhibit B
to Security Instrument

Local Law Provisions

The interpretation of the Security Instrument is to be governed as set forth in Section 8.12 thereof. In the event that a court of competent jurisdiction rules that Oregon law shall govern interpretation of the Security Instrument in other than procedural matters related to the perfection and enforcement of Lender's rights against the Collateral or that the following provisions are applicable to procedural matters related to the perfection and enforcement of Lender's rights against the Collateral or that the following provisions are required to give effect to the requirements of Section 8.12, the following provisions shall be deemed incorporated into the Security Instrument and in the event of a conflict between the provisions of this Exhibit B and the foregoing terms of the Security Instrument, the following provisions shall govern and control:

1. Acceleration; Remedies.

- (a) At any time during the existence of a Default, Lender, at Lender's option, may declare the Debt to be immediately due and payable without further demand. After giving Borrower notice of the occurrence of a Default in the manner prescribed by Oregon law, Lender may invoke the power of sale and any other remedies permitted by Oregon law or provided in this Security Instrument or in any other Loan Document. Borrower acknowledges that the power of sale granted by this Security Instrument may be exercised by Lender without prior judicial hearing. Borrower has the right to bring an action to assert that a Default does not exist or to raise any other defense Borrower may have to acceleration and sale. Lender may also foreclose this Security Instrument judicially as a mortgage. Lender will be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees and costs and costs of documentary evidence, abstracts and title reports.
- (b) If Lender invokes the power of sale, Lender will give written notice to Trustee of the occurrence of a Default and of Lender's election to cause the Collateral to be sold. Trustee and Lender will give such notices as Oregon law may require to Borrower and to all other Persons entitled to receive notice under Oregon law. After the lapse of such time as may be required by Oregon law, Trustee will sell the Collateral according to Oregon law. Trustee may sell the Collateral at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone the sale of all or any part of the Collateral for a period or periods not exceeding a total of 180 days (or such period as may be fixed by ORS 86.755(2)) by public announcement at the time and place fixed in the notice of sale. Lender or Lender's designee may purchase the Collateral at any sale.



(c) Within a reasonable time after the sale, Trustee will deliver to the purchaser at the sale, a deed conveying the Collateral so sold without any covenant or warranty, express or implied. The recitals in the Trustee's deed will be prima facie evidence of the truth of the statements made in those recitals. Trustee will apply the proceeds of the sale in the following order:

- (i) To all costs and expenses of the sale, including Trustee's fees not to exceed the amount prescribed by ORS 86.795.
- (ii) To the Debt in such order as Lender, in Lender's discretion, directs.
- (iii) The excess, if any, to the Person or Persons legally entitled to the excess.

The purchaser at the sale will be entitled to possession of the Collateral on the 10th day after the sale.

2. **Reconveyance.** Upon payment of the Debt, Lender will request Trustee to reconvey the Collateral and will surrender this Security Instrument and the Note to Trustee. Trustee will reconvey the Collateral without warranty to the Person or Persons legally entitled thereto. Such Person or Persons will pay Trustee's reasonable costs incurred in so reconveying the Collateral and costs of recording, if any.
3. **Substitute Trustee.** In accordance with Oregon law, Lender may from time to time appoint a successor trustee to any Trustee appointed under this Security Instrument. Without conveyance of the Collateral, the successor trustee will succeed to all the title, power and duties conferred upon the predecessor Trustee and by Oregon law.
4. **Use of Collateral.** The Collateral is not used for agricultural, timber or grazing purposes.
5. **Attorneys' Fees.** As used in this Security Instrument, in the Loan Agreement and the Note, "attorneys' fees and costs" will include attorneys' fees, if any, which will be incurred whether or not legal action is commenced and any such fees incurred at trial, arbitration, interpleader, bankruptcy, hearing or any judicial proceeding, and on appeal.
6. **Time of Essence.** Time is of the essence of each covenant of this Security Instrument.
7. **FORCED PLACE INSURANCE NOTICE.**
 - (a) **WARNING: UNLESS YOU PROVIDE US WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY OUR CONTRACT OR LOAN AGREEMENT, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT YOUR INTEREST. IF THE COLLATERAL BECOMES DAMAGED, THE COVERAGE WE PURCHASE MAY NOT PAY ANY CLAIM YOU MAKE OR ANY CLAIM**



MADE AGAINST YOU. YOU MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE THAT YOU HAVE OBTAINED PROPERTY COVERAGE ELSEWHERE.

- (b) 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 THIS COST IS ADDED TO YOUR CONTRACT OR LOAN BALANCE, THE INTEREST RATE PAYABLE UNDER THE UNDERLYING LOAN WILL APPLY TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF THE COVERAGE MAY BE THE DATE YOUR PRIOR COVERAGE LAPSED OR THE DATE YOU FAILED TO PROVIDE PROOF OF COVERAGE.**
- (c) 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. (EACH REFERENCE TO "YOU" AND "YOUR" WILL REFER TO BORROWER AND EACH REFERENCE TO "US" AND "WE" WILL REFER TO LENDER.)**

8. NO ORAL COMMITMENTS NOTICE.

UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY LENDER 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.

9. WAIVER OF TRIAL BY JURY.

- (a) BORROWER AND LENDER EACH COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS SECURITY INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY.**
- (b) BORROWER AND LENDER EACH WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**