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PREPARED BY AND UPON
RECORDATION RETURN TO:
Blank Rome LLP
One Logan Square
Philadelphia, Pennsylvania 19103
Attention: Steven A. Shoumer, Esquire

2015-011452

Klamath County, Oregon

10/19/2015 01:14:04 PM

Fee: \$262.00

LINE OF CREDIT INSTRUMENT

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

Grantor (Grantor): HAGGEN PROPERTY NORTH, LLC, a Delaware
limited liability company

Grantee (Lender): PNC BANK, NATIONAL ASSOCIATION, whose
address is:
4720 Piedmont Row Drive, Suite 300, Charlotte, North
Carolina 28210

Trustee (Trustee): FIRST AMERICAN TITLE INSURANCE
COMPANY, a Nebraska corporation, whose address is:
200 SW Market Street Suite 250
Portland, Oregon 97201

Legal Description: Legal on Exhibit A

Assessor's Tax Parcel ID No(s): R412716

This Security Instrument is a "Trust Deed" as that term is used in OREGON REVISED STATUTES § 86.705-815 and other applicable provisions of Oregon law.

The maximum principal amount to be advanced pursuant to the credit agreement secured by this Security Instrument is \$25,000,000.00. The maturity date of the credit agreement secured by this Security Instrument, exclusive of any option to renew or extend the maturity date, is February 11, 2020.

In the event of any conflict between the description of real property included in this Security Instrument and the foregoing tax account numbers, the description in the Security Instrument will control.

NOTICE TO RECORDER: THIS DOCUMENT SERVES AS A FIXTURE FILING
UNDER THE OREGON UNIFORM COMMERCIAL CODE.

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

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as amended, restated, supplemented or otherwise modified from time to time, this "Security Instrument") is made as of this 30 day of September, 2015, by **HAGGEN PROPERTY NORTH, LLC**, a Delaware limited liability company, having its principal place of business at 2211 Rimland Drive, Suite 300, Bellingham, Washington 98226, as grantor ("Grantor") to **FIRST AMERICAN TITLE INSURANCE COMPANY**, a Nebraska corporation, having an address at 200 SW Market Street Suite 250, Portland, Oregon 97201, as trustee (together with its successors as trustee hereunder, "Trustee"), for the benefit of **PNC BANK, NATIONAL ASSOCIATION** (the "Mortgagee"), with an address at 4720 Piedmont Row Drive, Suite 300, Charlotte, North Carolina 28210, in its capacity as agent for the Pre-Petition Lenders (as such term is defined in the Pre-Petition Credit Agreement (as defined herein)) under the Pre-Petition Credit Agreement (together with all of its successors and assigns in such capacity) and also in its capacity as agent for the Post-Petition Lenders (as such term is defined in the Post-Petition Credit Agreement (as defined herein)) under the Post-Petition Credit Agreement (together with all of its successors and assigns in such capacity), as beneficiary (in such collective capacities, together with its permitted successors and assigns in each such capacity, "Lender").

W I T N E S S E T H:

WHEREAS, **HAGGEN, INC.**, a Washington corporation ("Haggen"), **HAGGEN OPCO NORTH, LLC**, a Delaware limited liability company ("Haggen Opco North"), **HAGGEN OPCO SOUTH, LLC**, a Delaware limited liability company ("Haggen Opco South") and, together with Haggen Opco North, Haggen, and each Person joined thereto as a borrower from time to time, collectively, the "Borrowers", and each a "Borrower", **PNC CAPITAL MARKETS LLC**, as sole lead arranger and sole bookrunner ("PNCCM"), and Lender, as agent for Lenders (as defined in the Pre-Petition Credit Agreement (as hereinafter defined)) (such Lenders (together with their successors and assigns), the "Pre-Petition Lenders", and Lender in its capacity as agent for such Pre-Petition Lenders (together with its successors and assigns in such capacity), the "Pre-Petition Agent") entered into that certain Revolving Credit and Security Agreement dated as of February 12, 2015 (as amended, restated, supplemented or replaced from time to time, the "Pre-Petition Credit Agreement") pursuant to which, among other things, Pre-Petition Lenders agreed to make loans and provide other financial accommodations to Borrowers which are secured by substantially all of the assets of Borrowers, all as more particularly described in the Pre-Petition Credit Agreement. Pursuant to the provisions of the Pre-Petition Credit Agreement, Pre-Petition Lenders have made, inter alia, certain financing available to Borrowers in a maximum principal amount not to exceed TWO HUNDRED TEN

MILLION AND 00/100 DOLLARS (\$210,000,000.00) (the "Pre-Petition Loan"), which Pre-Petition Loan is evidenced by the Pre-Petition Credit Agreement and by certain promissory note(s) issued in favor of the Pre-Petition Lenders from time to time thereunder (such promissory notes, collectively, the "Pre-Petition Note").

WHEREAS, Borrowers, Haggen Operations Holdings, LLC, a Delaware limited liability company, Haggen Acquisition, LLC, a Delaware limited liability company, JPMorgan Chase Bank, N.A. and Keybank, N.A., as co-syndication agents, and Lender, as Pre-Petition Agent for the Pre-Petition Lenders, entered into that certain Forbearance Agreement, Second Amendment to Revolving Credit and Security Agreement and First Amendment to Guarantor Security Agreement dated as of August 21, 2015 (the "Pre-Petition Forbearance Agreement"). The Pre-Petition Credit Agreement, Pre-Petition Note and Pre-Petition Forbearance Agreement are hereinafter collectively referred to as the "Pre-Petition Loan Documents".

WHEREAS, in connection with the Pre-Petition Loan Documents, Grantor and certain of its affiliates executed and issued that certain Limited Guaranty Agreement dated as of August 21, 2015 (the "Pre-Petition Guaranty") made by Haggen Property North, LLC, a Delaware limited liability company, Haggen Property South, LLC, a Delaware limited liability company, Haggen Holdings, LLC, a Delaware limited liability company and Haggen Property Holdings, LLC, a Delaware limited liability company in favor of Mortgagee and Pre-Petition Lenders, pursuant to which Grantor and the other guarantors thereunder provided an unconditional limited guaranty with respect to payment, fulfillment, and performance by Borrowers of the "Obligations" (as defined in the Pre-Petition Guaranty), which includes but is not limited to the "Obligations" under and as defined in the Pre-Petition Credit Agreement of any kind or nature, present or future (including any interest accruing thereon after maturity, or after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding relating to any Borrower, whether or not a claim for post-filing or post-petition interest is allowed or allowable in such proceeding) and any post-petition financing or Debtor in Possession facility that includes a roll-up of the pre-petition obligations into the post-petition obligations (all collectively, the "Pre-Petition Guaranty Obligations").

WHEREAS, Borrowers, Lender, as agent for Lenders (as defined in the Post-Petition Credit Agreement (as hereinafter defined)) (such Lenders (together with their successors and assigns), the "Post-Petition Lenders", and together with the Pre-Petition Lenders, collectively, the "Lenders", and Lender in its capacity as agent for such Post-Petition Lenders (together with its successors and assigns in such capacity), the "Post-Petition Agent") entered into that certain Debtor in Possession Revolving Credit and Security Agreement dated as of September 11, 2015 (as amended, restated, supplemented or replaced from time to time, the "Post-Petition Credit Agreement" and collectively together with the Pre-Petition Credit Agreement, the "Credit Agreement") pursuant to which, among other things, Post-Petition Lenders agreed to make loans and provide other

financial accommodations to Borrowers which are secured by substantially all of the assets of Borrowers, all as more particularly described in the Post-Petition Credit Agreement. Pursuant to the provisions of the Post-Petition Credit Agreement, Post-Petition Lenders have made, inter alia, certain financing available to Borrowers in a maximum principal amount not to exceed TWO HUNDRED FIFTEEN MILLION AND 00/100 DOLLARS (\$215,000,000.00) (the "Post-Petition Loan", and collectively together with the Pre-Petition Loan, the "Loan"), which Post-Petition Loan is evidenced by the Post-Petition Credit Agreement and by certain promissory note(s) issued in favor of the Post-Petition Lenders from time to time thereunder (such promissory notes, collectively, the "Post-Petition Note" and collectively together with the Pre-Petition Note, the "Note"). The Post-Petition Credit Agreement and Post-Petition Note are hereinafter collectively referred to as the "Post-Petition Loan Documents", and collectively together with the Pre-Petition Loan Documents are hereinafter referred to as the "Loan Documents". Capitalized terms used herein and not otherwise defined shall have the meaning provided in the Post-Petition Credit Agreement.

WHEREAS, in connection with the Post-Petition Loan Documents, Grantor and certain of its affiliates executed and issued that certain Reaffirmation and Amendment Regarding Limited Guaranty Agreement and Collateral Pledge Agreement dated as of September 11, 2015 (the "Post-Petition Guaranty", and collectively, together with the Pre-Petition Guaranty, the "Guaranty") made by, among others, Haggen Property North, LLC, a Delaware limited liability company and Haggen Property South, LLC, a Delaware limited liability company, in favor of Mortgagee and Post-Petition Lenders, pursuant to which Grantor and the other guarantors thereunder provided an unconditional limited guaranty with respect to payment, fulfillment, and performance by Borrowers of the "Obligations" (as defined in the Post-Petition Guaranty), which includes but is not limited to the "Obligations" under and as defined in Post-Petition Credit Agreement of any kind or nature, present or future (all collectively, the "Post-Petition Guaranty Obligations", and collectively together with the Pre-Petition Guaranty Obligations, the "Guaranty Obligations").

WHEREAS, this Security Instrument is given pursuant to the Guaranty in favor of Mortgagee and Lenders, and to secure payment, fulfillment, and performance by Grantor of all its Guaranty Obligations and all of its obligations under the other Loan Documents, and each and every term and provision of each of the Pre-Petition Guaranty and the Post-Petition Guaranty, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument.

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Security Instrument:

ARTICLE 1 - GRANTS OF SECURITY

Section 1.1 PROPERTY CONVEYED. Grantor does hereby irrevocably grant, bargain, sell, pledge, assign, warrant, transfer and convey and grant a security interest to Trustee and its successors and assigns, in trust, with power of sale for the benefit of Lender as beneficiary in trust, the following property, rights, interests and estates now owned, or hereafter acquired by Grantor (collectively, the "Property"):

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "Land");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Grantor for use in connection with the Land and the development of the Land or for any other use and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument regardless of the ownership thereof (the "Additional Land");

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land or the Additional Land (collectively, the "Improvements");

(d) [Intentionally Omitted.]

(e) [Intentionally Omitted.]

(f) Easements and Other Beneficial Interests. 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 Land, the Additional Land and the Improvements 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 Grantor of, in and to the Land or the Additional Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(g) Equipment. All "equipment," as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Grantor, which is used at or in connection with the Improvements or the Land or the Additional Land or is located thereon or therein (including, but not limited to, all

machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Grantor and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "Equipment"). Notwithstanding the foregoing, Equipment shall not include any property belonging to tenants under leases except solely to the extent that Grantor shall have any right or interest therein;

(h) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Grantor which is so related to the Land or the Additional Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, any of the following to the extent deemed fixtures: all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land or the Additional Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, built-in refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Grantor's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply lines, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "Fixtures"). Notwithstanding the foregoing, "Fixtures" shall not include any property which tenants are entitled to remove pursuant to leases except solely to the extent that Grantor shall have any right or interest therein;

(i) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code as hereinafter defined), other than Fixtures, which are now or hereafter owned by Grantor and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "Personal Property"), and the right, title and interest of Grantor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by

the state or states where any of the Property is located (the "Uniform Commercial Code"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(j) **Leases and Rents.** All leases and other agreements affecting the use, possession or occupancy of the Land and the Improvements heretofore or hereafter entered into, whether before or after the filing by or against Grantor of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code") (collectively, the "Leases") and all right, title and interest of Grantor, its successors and assigns therein and thereunder, including, without limitation, any lease guaranties, letters of credit, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, fees payable under the Leases (including, without limitation, any fees or other amounts payable in connection with termination or cancellation of any Lease with respect to all or a portion of the space demised thereunder), issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Grantor of any petition for relief under the Bankruptcy Code (collectively, the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Obligations;

(k) **Condemnation Awards.** All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to 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 Property;

(l) **Insurance Proceeds.** All proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(m) **Tax Certiorari.** All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(n) **Rights.** The right, in the name and on behalf of Grantor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(o) **Agreements.** All agreements, contracts, certificates, instruments, letters of credit, franchises, permits, licenses, plans, specifications 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 Land and any part thereof and

any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Grantor therein and thereunder, including, without limitation, the right, upon the occurrence and during the continuance of any Event of Default hereunder, to receive and collect any sums payable to Grantor thereunder;

(p) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used exclusively in connection with the operation of the Property;

(q) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether cash, liquidation or other claims or otherwise; and

(r) Other Rights. Any and all other rights of Grantor in and to the items set forth in Subsections (a) through (q) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Grantor expressly grants to Trustee, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the "Real Property") appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and conveyed hereby.

Section 1.2 ASSIGNMENT OF RENTS. Grantor hereby absolutely and unconditionally assigns to Lender and Trustee all of Grantor's right, title and interest in and to all current and future Leases and Rents; it being intended by Grantor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Assignment of Leases and Section 7.1(h) of this Security Instrument, Lender grants to Grantor a revocable license to collect, receive, use and enjoy the Rents, and if so collected, Grantor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Obligations, for use in the payment of such sums. This assignment is intended as security for the Obligations, and, upon recording of this Security Instrument, shall immediately perfect the security interest in Beneficiary and shall not require any further action by Beneficiary to be perfected as to any subsequent purchase, mortgagee or assignee of any interest in the Property. The lien created by this assignment shall, when recorded, be deemed specific, perfected and choate.

Section 1.3 SECURITY AGREEMENT. This Security Instrument is both a real property deed of trust and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other

rights and interests, whether tangible or intangible in nature, of Grantor in the Property. By executing and delivering this Security Instrument, Grantor hereby grants to Lender, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property and other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "Collateral"). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other commercially reasonable measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Grantor shall, at its expense, assemble the Collateral and make it available to Lender (at the Land) during reasonable business hours. Grantor shall pay to Lender on demand any and all reasonable out of pocket expenses, including reasonable legal expenses and attorneys' fees, actually incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Grantor in accordance with the provisions hereof at least ten (10) business days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Grantor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Obligations in such priority and proportions as Lender in its discretion shall deem proper. The principal place of business of Grantor (Debtor) is as set forth on page one hereof and the address of Lender (Secured Party) is as set forth on page one hereof.

Section 1.4 FIXTURE FILING. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Security Instrument, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement naming Grantor as the Debtor and Lender as the Secured Party filed as a fixture filing in accordance with the ORS 79.0502(3) and applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5 PLEDGES OF MONIES HELD. Grantor hereby pledges to Lender any and all monies now or hereafter held by Lender or on behalf of Lender in connection with the Loan, including, without limitation, any Reserve Funds and Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Trustee and its successors and assigns;

IN TRUST, WITH POWER OF SALE, to secure payment to Lender of the Obligations at the time and in the manner provided for its payment in the Guaranty and in this Security Instrument.

PROVIDED, HOWEVER, these presents are upon the express condition that, if Grantor shall well and truly pay to Lender the Guaranty Obligations at the time and in the manner provided in the Guaranty and this Security Instrument, and shall well and truly perform the Other Obligations as set forth in this Security Instrument, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Grantor's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

ARTICLE 2 – GUARANTY OBLIGATIONS AND OBLIGATIONS SECURED

Section 2.1 GUARANTY OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Obligations (as defined in the Guaranty) including, but is not limited to, the obligations of Grantor to pay to Lender the principal and interest owing pursuant to the terms and conditions of the Guaranty.

Section 2.2 OTHER OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "Other Obligations"):

- (a) the performance of all other obligations of Grantor contained herein;
- (b) the performance of each obligation of Grantor contained in the Guaranty and any other Loan Document; and
- (c) the performance of each obligation of Grantor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Guaranty or any other Loan Document.

Section 2.3 GUARANTY OBLIGATIONS AND OTHER OBLIGATIONS. Grantor's obligations for the payment of the Guaranty Obligations and the performance of the Other Obligations may sometimes be referred to collectively herein as the "Obligations."

ARTICLE 3 - GRANTOR COVENANTS

Grantor covenants and agrees that:

Section 3.1 PAYMENT OF OBLIGATIONS. Grantor will pay the Obligations at the time and in the manner provided in the Guaranty.

Section 3.2 INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Credit Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3 INSURANCE. Grantor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Grantor and the Property as required pursuant to the Credit Agreement.

Section 3.4 MAINTENANCE OF PROPERTY. Grantor shall cause the Property to be maintained in a good and safe condition and repair, ordinary wear and tear excepted. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except in the ordinary course of Grantor's business, or for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the consent of Lender, not to be unreasonably withheld, conditioned or delayed. Grantor shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty, or become damaged, worn or dilapidated or which may be affected by any Condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land, unless Lender is expressly required pursuant to Section 5.3 of the Credit Agreement to make the applicable Net Proceeds available for Restoration and fails to do so.

Section 3.5 WASTE. Grantor shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Grantor will not, without the prior written consent of Lender, not to be unreasonably withheld, conditioned or delayed, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.6 PAYMENT FOR LABOR AND MATERIALS. (a) Subject to the express terms and provisions of the Credit Agreement, Grantor will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials ("Labor and Material Costs") incurred in connection with the Property and, subject to the terms and provisions of the Credit Agreement, not permit to exist beyond the due date thereof in

respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event, subject to the express terms and provisions of the Credit Agreement, not permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof except for the Permitted Encumbrances.

(b) Subject to the terms of the Credit Agreement, after prior written notice to Lender, Grantor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that (i) no Event of Default has occurred and is continuing under the Credit Agreement, the Note, this Security Instrument or any of the other Loan Documents, (ii) Grantor is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Labor and Material Costs from Grantor and from the Property or Grantor shall have paid all of the Labor and Material Costs under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Grantor is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, and (vi) Grantor shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by Lender to insure the payment of any contested Labor and Material Costs, together with all interest and penalties thereon.

Section 3.7 PERFORMANCE OF OTHER AGREEMENTS. Grantor shall observe and perform each and every term, covenant and provision to be observed or performed by Grantor pursuant to the Credit Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

Section 3.8 CHANGE OF NAME, IDENTITY OR STRUCTURE. Grantor will not cause or permit any change to be made to its name, identity (including its trade name or names) or corporate, partnership or other organizational structure without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and without first obtaining the prior consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed. Grantor shall execute and deliver to Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or amendment to financing statement required by Lender to establish or maintain the validity, perfection and priority of the security interests granted by the Loan Documents. At Lender's request, Grantor shall execute a certificate in form satisfactory to Lender listing each trade name under which Grantor operates or intends to operate the Property, and representing and warranting that Grantor does business under no other trade name with respect to the Property.

ARTICLE 4 - OBLIGATIONS AND RELIANCES

Section 4.1 RELATIONSHIP OF GRANTOR AND LENDER. The relationship between Grantor and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Grantor, and no term or condition of any of the Credit Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Grantor and Lender to be other than that of debtor and creditor.

Section 4.2 NO RELIANCE ON LENDER. The general partners, officers, shareholders, members, principals and/ or other beneficial owners of Grantor are experienced in the ownership and operation of properties similar to the Property, and Grantor and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Grantor is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 4.3 NO LENDER OBLIGATIONS. (a) Notwithstanding the provisions of Subsections 1.1(j) and (o) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Credit Agreement, the Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

Section 4.4 RELIANCE. Grantor recognizes and acknowledges that in accepting the Credit Agreement, the Note, this Security Instrument and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article III of the Credit Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof, that the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Article III of the Credit Agreement.

ARTICLE 5 - FURTHER ASSURANCES

Section 5.1 RECORDING OF SECURITY INSTRUMENT, ETC. Within ten (10) days of execution and delivery of this Security Instrument, and thereafter, from time to time, Grantor will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of, and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Grantor will pay all taxes, filing, registration or recording fees, and all reasonable out-of-pocket expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 5.2 FURTHER ACTS, ETC. Grantor will, at the cost of Grantor, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Grantor may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Grantor, on demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Lender to execute in the name of Grantor or without the signature of Grantor to the extent Lender may lawfully do so, one or more financing statements (including, without limitation, initial financing statements and amendments thereto and continuation statements) to evidence more effectively the security interest of Lender in the Property. Grantor also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. Grantor grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation such rights and remedies available to Lender pursuant to this Section 5.2, provided, however, Lender agrees it shall only exercise such power of attorney upon the occurrence and during the continuance of an Event of Default. To the extent not prohibited by applicable law, Grantor hereby ratifies

all acts Lender has lawfully done in the past or shall lawfully do or cause to be done in the future by virtue of such power of attorney in compliance with the foregoing.

Section 5.3 CHANGES IN TAX, OBLIGATIONS, CREDIT AND DOCUMENTARY STAMP LAWS. (a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Obligations from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Obligations or Lender's interest in the Property, Grantor will pay the tax (excluding Lender's income taxes), with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Grantor would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender shall have the option by written notice of not less than one hundred twenty (120) days to declare the Obligations immediately due and payable without any prepayment premium or fee.

(b) Grantor will not claim or demand or be entitled to any credit or credits on account of the Obligations for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Obligations. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Obligations immediately due and payable without any prepayment premium or fee.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Grantor will pay for the same, with interest and penalties thereon, if any, to the extent arising from Grantor's failure to timely pay the same upon written request therefor by Lender.

Section 5.4 SPLITTING OF DEED OF TRUST. This Security Instrument and the Note shall, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Grantor, upon written request of Lender, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of the Note, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be required by Lender.

Section 5.5 REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other

Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Grantor will issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

ARTICLE 6 - DUE ON SALE/ENCUMBRANCE

Section 6.1 LENDER RELIANCE. Grantor acknowledges that Lender has examined and relied on the experience of Grantor and its general partners, members, principals and (if Grantor is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Grantor's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Obligations and the performance of the Other Obligations. Grantor acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Grantor default in the repayment of the Obligations or the performance of the Other Obligations, Lender can recover the Obligations by a sale of the Property.

Section 6.2 NO TRANSFER. Grantor shall not permit or suffer any Transfer to occur, unless specifically permitted by Article VIII of the Credit Agreement or unless Lender shall consent thereto in writing.

Section 6.3 [RESERVED].

Section 6.4 LENDER'S RIGHTS. Without obligating Lender to grant any consent under Section 6.2 hereof which Lender may, except to the extent expressly provided to the contrary in the Credit Agreement, grant or withhold in its sole discretion, Lender reserves the right to condition the consent required hereunder upon (a) a modification of the terms hereof and of the Credit Agreement, the Note or the other Loan Documents; (b) an assumption of the Credit Agreement, the Note, this Security Instrument and the other Loan Documents as so modified by the proposed transferee, subject to the provisions of Section 11.22 of the Credit Agreement; (c) payment of all of Lender's reasonable expenses actually incurred in connection with such transfer; (d) [reserved]; (e) the proposed transferee's continued compliance with the representations and covenants set forth in Section 3.1.24 and 4.2.11 of the Credit Agreement; (f) the proposed transferee's ability to satisfy Lender's then-current underwriting standards; or (g) such other conditions as Lender shall determine in its reasonable discretion to be in the interest of Lender, including, without limitation, the creditworthiness, reputation and qualifications of the transferee with respect to the Loan and the Property. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Obligations immediately due and payable upon a Transfer not permitted under Article VIII of the Credit Agreement made without Lender's consent. This provision shall apply to every

Transfer, other than any Transfer permitted pursuant to the Credit Agreement, regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

ARTICLE 7 - RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 REMEDIES. Upon the occurrence and during the continuance of any Event of Default under either the Pre-Petition Credit Agreement or the Post-Petition Credit Agreement, Grantor agrees that Lender or Trustee, or both, may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Grantor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender or Trustee may determine, in their sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender or Trustee:

- (a) declare the entire unpaid Obligations to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, but only to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Obligations then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Obligations not then due, unimpaired and without loss of priority;
- (d) sell (or, in the case of Lender, cause Trustee to sell) for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Grantor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof, all as may be required or permitted by law; and, without limiting the foregoing:
 - (i) In connection with any sale or sales hereunder, Lender or the Trustee shall be entitled to elect to treat any of the Property which consists of a right in action or which is property that can be severed from the Real Property covered hereby or any improvements without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of Real Property. Where the Property consists of Real Property, Personal Property, Equipment or Fixtures, whether or not such Personal Property or Equipment is located on or within the Real Property, Lender and/or the Trustee shall be entitled to elect to exercise its rights and remedies against any or all of the Real Property, Personal Property,

Equipment and Fixtures in such order and manner as is now or hereafter permitted by applicable law;

(ii) Lender and/or the Trustee shall be entitled to elect to proceed against any or all of the Real Property, Personal Property, Equipment and Fixtures in any manner permitted under applicable law; and if Lender and/or the Trustee so elects pursuant to applicable law, the power of sale herein granted shall be exercisable with respect to all or any of the Real Property, Personal Property, Equipment and Fixtures covered hereby, as designated by Lender and/or the Trustee and Trustee is hereby authorized and empowered to conduct any such sale of any Real Property, Personal Property, Equipment and Fixtures in accordance with the procedures applicable to Real Property;

(iii) Should Lender and/or the Trustee elect to sell any portion of the Property which is Real Property or which is Personal Property, Equipment or Fixtures that the Lender and/or the Trustee has elected under applicable law to sell together with Real Property in accordance with the laws governing a sale of Real Property, Lender and/or the Trustee shall give such notice of Event of Default, if any, and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, and without the necessity of any demand on Grantor, Lender and/or the Trustee at the time and place specified in the notice of sale, shall sell such Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Lender or the Trustee may from time to time postpone any sale hereunder by public announcement thereof at the time and place noticed therefor and such other notice as is required by applicable law;

(iv) If the Property consists of several lots, parcels or items of property, Lender or the Trustee shall, subject to applicable law, (A) designate the order in which such lots, parcels or items shall be offered for sale or sold, or (B) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Lender or the Trustee designates. Any Person, other than the Trustee, including Grantor or Lender, may purchase at any sale hereunder. Should Lender or the Trustee desire that more than one sale or other disposition of the Property be conducted, Lender or the Trustee shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Lender or the Trustee may designate, and no such sale shall terminate or otherwise affect the lien of this Security Instrument on any part of the Property not sold until all the Obligations has been paid in full. In the event Lender or the Trustee elects to dispose of the Property through more than one sale, except as otherwise provided by applicable law, Grantor agrees to pay the reasonable costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Credit Agreement or in the other Loan Documents;

(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Obligations and without regard for the solvency of Grantor, any guarantor, indemnitor with respect to the Loan or of any Person, liable for the payment of the Obligations;

(h) the license granted to Grantor under Section 1.2 hereof shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Grantor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Grantor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Grantor agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender reasonably deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Grantor with respect to the Property, whether in the name of Grantor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Grantor to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Grantor; (vi) require Grantor to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Grantor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Obligations, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and the Personal Property, or any part thereof, and to take such other measures as Lender may

deem necessary for the care, protection and preservation of the Fixtures, the Equipment and the Personal Property, and (ii) request Grantor at its expense to assemble the Fixtures, the Equipment and the Personal Property and make them 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 Fixtures, the Equipment and/or the Personal Property sent to Grantor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Grantor;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Credit Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its uncontrolled discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note;

(v) All other sums payable pursuant to the Note, the Credit Agreement, this Security Instrument and the other Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument;

(k) pursue such other remedies as Lender may have under applicable law; or

(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Obligations in such order, priority and proportions as Lender shall deem to be appropriate in its discretion.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Security Instrument shall, subject to applicable law, continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Section 7.2 APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Obligations in such priority and proportions as Lender in its discretion shall deem proper, to the extent consistent with law.

Section 7.3 RIGHT TO CURE DEFAULTS. Upon the occurrence and during the continuance of any Event of Default, Lender may remedy such Event of Default in such manner and to such extent as Lender may deem necessary to protect the security hereof, but without any obligation to do so and without notice to or demand on Grantor, and without releasing Grantor from any obligation hereunder. Lender is authorized to enter upon the Property during reasonable hours for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Obligations, and the reasonable cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Obligations and shall be due and payable to Lender upon demand. All such costs and expenses actually incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Obligations and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 7.4 ACTIONS AND PROCEEDINGS. Lender or Trustee has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Grantor, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 7.5 RECOVERY OF SUMS REQUIRED TO BE PAID. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Obligations as the same become due, without regard to whether or not the balance of the Obligations shall be due, and without prejudice to the right of Lender or Trustee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Grantor existing at the time such earlier action was commenced.

Section 7.6 EXAMINATION OF BOOKS AND RECORDS. At reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Grantor which reflect upon its financial condition, at the Property or at any office regularly maintained by Grantor where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Grantor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Grantor where the books and records are located. This Section 7.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

Section 7.7 OTHER RIGHTS, ETC. (a) The failure of Lender or Trustee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Grantor shall not be relieved of Grantor's obligations hereunder by reason of (i) the failure of Lender or Trustee to comply with any request of Grantor or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Grantor, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Obligations to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender or Trustee may take action to recover the Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender or Trustee thereafter to foreclose this Security Instrument. The rights of Lender or Trustee under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender or Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Neither Lender nor Trustee shall be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 7.8 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 7.9 [RESERVED].

Section 7.10 RECOURSE AND CHOICE OF REMEDIES. Notwithstanding any other provision of this Security Instrument or the Credit Agreement, including, without limitation, Section 11.22 of the Credit Agreement, Lender and other Indemnified Parties (as hereinafter defined) are entitled to enforce the obligations of Grantor, any guarantor and indemnitor contained in Sections 9.2 and 9.3 herein without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure, exercise of a power of sale or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Lender commences a foreclosure action against the Property, or otherwise causes Trustee to exercise the power of sale pursuant to this Security Instrument, Lender is entitled to pursue a deficiency judgment with respect to such obligations against Grantor and any guarantor or indemnitor with respect to the Loan. The provisions of Sections 9.2 and 9.3 herein are exceptions to any non-recourse or exculpation provisions in the Credit Agreement, the Note, this Security Instrument or the other Loan Documents, and Grantor and any guarantor or indemnitor with respect to the Loan are fully and personally liable for the obligations pursuant to Sections 9.2 and 9.3 herein. The liability of Grantor and any guarantor or indemnitor with respect to the Loan pursuant to Sections 9.2 and 9.3 herein is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender or Trustee from foreclosing or exercising a power of sale pursuant to this Security Instrument or exercising any other rights and remedies pursuant to the Credit Agreement, the Note, this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Grantor pursuant to Sections 9.2 and 9.3 herein, whether or not action is brought against any other Person or whether or not any other Person is joined in the action or actions. In addition, Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in the Environmental Indemnity.

Section 7.11 RIGHT OF ENTRY. Upon reasonable prior notice to Grantor, and subject to the rights of Tenants, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

ARTICLE 8 - INTENTIONALLY OMITTED

ARTICLE 9 - INDEMNIFICATION

Section 9.1 GENERAL INDEMNIFICATION. Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential

damages, of whatever kind or nature (including but not limited to reasonable attorneys' fees and other costs of defense) (collectively, the "Losses") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Security Instrument, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Obligations, the Guaranty and the Note, the Credit Agreement, this Security Instrument, or any other Loan Documents; (c) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Security Instrument or the Credit Agreement or the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Grantor, any guarantor or indemnitor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any failure on the part of Grantor to perform or be in compliance with any of the terms of this Security Instrument; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (h) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (i) any failure of the Property to be in material compliance with any Legal Requirements; (j) the enforcement by any Indemnified Party of the provisions of this Article 9; (k) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease, except as may be expressly agreed upon by Lender in writing; (l) the payment of any commission, charge or brokerage fee to anyone claiming through Grantor which may be payable in connection with the funding of the Loan; or (m) any misrepresentation made by Grantor in this Security Instrument or any other Loan Document. Any amounts payable to Lender by reason of the application of this Section 9.1 shall become due and payable upon five (5) Business Days of Lender's written demand therefor and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid. For purposes of this Article 9, the term "Indemnified Parties" means Lender and any Person who is or will have been involved in the origination of the Loan, any Person who is or will have been involved in the servicing of the Loan secured hereby, any Person in whose name the encumbrance created by this Security Instrument is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan secured hereby, as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives,

contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Lender's assets and business).

Section 9.2 MORTGAGE AND/OR INTANGIBLE TAX. Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes.

Section 9.3 ERISA INDEMNIFICATION. Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a default under Sections 3.1.8 or 4.2.10 of the Credit Agreement.

Section 9.4 DUTY TO DEFEND; ATTORNEYS' FEES AND OTHER FEES AND EXPENSES. Upon written request by any Indemnified Party, Grantor shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Grantor and any Indemnified Party and Grantor and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or additional to those available to Grantor, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Grantor's consent, which consent shall not be unreasonably withheld. Upon demand, Grantor shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

ARTICLE 10 - WAIVERS

Section 10.1 WAIVER OF COUNTERCLAIM. To the extent permitted by applicable law, Grantor hereby waives the right to assert a counterclaim, other than a mandatory or

compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Credit Agreement, the Note, any of the other Loan Documents, or the Obligations.

Section 10.2 MARSHALLING AND OTHER MATTERS. To the extent permitted by applicable law, Grantor hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Grantor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Grantor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

Section 10.3 WAIVER OF NOTICE. To the extent permitted by applicable law, Grantor shall not be entitled to any notices of any nature whatsoever from Lender or Trustee except with respect to matters for which this Security Instrument or the Loan Documents specifically and expressly provide for the giving of notice by Lender or Trustee to Grantor and except with respect to matters for which Lender or Trustee is required by applicable law to give notice, and Grantor hereby expressly waives the right to receive any notice from Lender or Trustee with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender or Trustee to Grantor.

Section 10.4 WAIVER OF STATUTE OF LIMITATIONS. To the extent permitted by applicable law, Grantor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Obligations or performance of its Other Obligations.

Section 10.5 SURVIVAL. The indemnifications made pursuant to Section 9.3 herein and the representations and warranties, covenants, and other obligations arising under the Environmental Indemnity, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: any satisfaction, release or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including but not limited to foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Credit Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Grantor or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Credit Agreement, the Note or the other Loan

Documents, and any act or omission that might otherwise be construed as a release or discharge of Grantor from the obligations pursuant hereto.

ARTICLE 11 - EXCULPATION

The provisions of Section 11.22 of the Credit Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

ARTICLE 12 - NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 11.6 of the Credit Agreement.

ARTICLE 13 - APPLICABLE LAW

Section 13.1 GOVERNING LAW. (A) **THIS SECURITY INSTRUMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY GRANTOR AND ACCEPTED BY LENDER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE SECURED HEREBY WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY**

INSTRUMENT OR THE OTHER LOAN DOCUMENTS, AND THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR GRANTOR ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND GRANTOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GRANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. GRANTOR DOES HEREBY DESIGNATE AND APPOINT

**NATIONAL REGISTERED AGENTS, INC.
111 EIGHTH AVENUE
NEW YORK, NY 10011**

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO GRANTOR IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON GRANTOR IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. GRANTOR (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 13.2 USURY LAWS. Notwithstanding anything to the contrary, (a) all agreements and communications between Grantor and Lender are hereby and shall

automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the maximum lawful rate or amount, (b) in calculating whether any interest exceeds the lawful maximum, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Grantor to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the lawful maximum, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Grantor to Lender, or if there is no such indebtedness, shall immediately be returned to Grantor.

Section 13.3 PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

ARTICLE 14 - DEFINITIONS

All capitalized terms not defined herein shall have the respective meanings set forth in the Credit Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Grantor" shall mean "each Grantor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

ARTICLE 15 - MISCELLANEOUS PROVISIONS

Section 15.1 NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Grantor or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 15.2 SUCCESSORS AND ASSIGNS. This Security Instrument shall be binding upon and inure to the benefit of Grantor and Lender and their respective successors and assigns forever.

Section 15.3 INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Credit Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Credit Agreement, the Note and this Security Instrument shall be construed without such provision.

Section 15.4 HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 15.5 NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 15.6 SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, 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 the repayment of the Obligations, the performance and discharge of Grantor's obligations hereunder, under the Credit Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 15.7 ENTIRE AGREEMENT. The Note, the Credit Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Grantor and Lender with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Grantor and Lender with respect thereto. Grantor hereby acknowledges that, except as incorporated in writing in the Note, the Credit Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Credit Agreement, this Security Instrument and the other Loan Documents.

Section 15.8 LIMITATION ON LENDER'S RESPONSIBILITY. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other

Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

ARTICLE 16 - DEED OF TRUST PROVISIONS

Section 16.1 CONCERNING THE TRUSTEE. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for willful negligence or misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Grantor and to Lender. Lender may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Lender may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Lender. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

Section 16.2 TRUSTEE'S FEES. Unless required pursuant to applicable Legal Requirements, no fees, costs or expenses shall be or become payable to Trustee or Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder; provided that, in connection with services rendered by Trustee in connection with any foreclosure or sale in accordance with the terms hereof or with respect to the release and discharge of the lien and security interest of this Security Instrument upon the full and final payment of the Obligations, Trustee shall be entitled to reasonable and customary fees and reimbursement of reasonable out-of-pocket costs and expenses incurred by Trustee. The foregoing permitted fees, costs and expenses shall be paid by Grantor to Trustee and Trustee's agents and counsel promptly upon request and such fees, costs and expenses shall be secured by this Security Instrument.

Section 16.3 CERTAIN RIGHTS. With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Credit

Agreement, the Note, this Security Instrument or the other Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through Trustee's agents or attorneys, (iii) to select and employ, in and about the execution of Trustee's duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual reasonable out-of-pocket expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

Section 16.4 RETENTION OF MONEY. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

Section 16.5 PERFECTION OF APPOINTMENT. Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute trustee to more fully and certainly vest in and confirm to the Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by the Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.

Section 16.6 SUCCESSION INSTRUMENTS. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and

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

ARTICLE 17 - [RESERVED]

ARTICLE 18 - STATE-SPECIFIC PROVISIONS

Section 18.1 PRINCIPLES OF CONSTRUCTION. In the event of any inconsistencies between the terms and conditions of this Article 18 and the terms and conditions of any other part of this Security Instrument, the terms and conditions of this Article 18 shall control and be binding.

Section 18.2 SECURITY AGREEMENT. Article 1, Section 1.3 entitled "Security Agreement" is hereby modified by inserting the following immediately after the first sentence of the section and immediately prior to the sentence which begins, "The Property includes":

"Grantor is simultaneously herewith executing Uniform Commercial Code-1 and Uniform Commercial Code-1A Financing Statements which are intended to be recorded in the Office of the Secretary of State of Delaware and in the Office of the Recorder of the County in which the Property is located."

Section 18.3 APPOINTMENT OF RECEIVER. Article 7, Section 7.1(g) is hereby modified by inserting the following sentence to the end of the section, immediately following the words "liable for the payment of the Obligations": "Any receiver appointed pursuant to this Section 7.1(g) may serve without a bond."

Section 18.4 POWER OF SALE. (a) Upon default by Grantor in payment of any indebtedness secured hereby or in its performance of any agreement hereunder, the Lender may declare all sums secured hereby immediately due and payable. In such an event the Lender at his election may proceed to foreclose this Security Instrument in equity as a mortgage or direct the Trustee to foreclose this Security Instrument in accordance with applicable law. In the latter event the Lender or the Trustee shall execute and cause to be recorded a written notice of default and its election to sell the Property to satisfy the obligation secured hereby whereupon the Trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this Security Instrument in the manner provided in ORS 86.735 to 86.795.

(b) After the Trustee has commenced foreclosure by advertisement and sale, and at any time prior to five days before the date the Trustee conducts the sale, the Grantor or any other person so privileged by ORS 86.753, may cure the default or defaults. If the default consists of a failure to pay, when due, sums secured by the Security Instrument, the default may be cured by paying the entire amount due at the time of the cure, other than

such portion as would not then be due had no default occurred. Any other default that is capable of being cured may be cured by tendering the performance required under the Security Instrument or the obligation secured by the Security Instrument. In any case, in addition to curing the default or defaults, the person effecting the cure shall pay to the Lender all costs and expenses actually incurred in enforcing the obligation of the Security Instrument together with Trustee's and attorney's fees not exceeding the amounts provided by law.

(c) Otherwise, the sale shall be held on the date and at the time and place designated in the notice of sale or the time to which said sale may be postponed as provided by law. The Trustee may sell the Property either in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash, payable at the time of sale. Trustee shall deliver to the purchaser its deed in form as required by law conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters of fact shall be prima facie evidence of the truthfulness thereof, but the recitals shall be conclusive in favor of a purchaser for value in good faith relying on them. Any person, excluding the Trustee, but including the Grantor and Lender, may purchase at the sale.

(d) When Trustee sells pursuant to the powers provided herein, Trustee shall apply the proceeds of sale to payment of (1) the expense of sale, including the compensation of the Trustee and a reasonable charge by Trustee's attorney, (2) to the obligation secured by the Security Instrument, (3) to all persons having recorded liens subsequent to the interest of the Trustee as their interests may appear in the order of their priority and (4) the surplus, if any, to the Grantor or to its successor in interest entitled to such surplus.

Section 18.5 ATTORNEY'S FEES. Grantor shall pay all costs, fees and expenses of this Security Instrument, including the cost of title search, as well as the other costs and expenses of the Trustee and Lender incurred in connection with or in enforcing this obligation, including the Trustee and/or Lender's attorney's fees actually incurred at any trial appellate or bankruptcy proceeding, or on an appeal thereof.

Section 18.6 HANDICAPPED ACCESS. (a) Grantor agrees that the Property shall at all times strictly comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access, and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively "Access Laws"). As a condition precedent to the obligation of Lender to disburse any funds with respect to the loan secured hereby, Lender may require a certificate of Access Law compliance and indemnification in a form reasonably acceptable

to Lender. Lender may also require a certificate of Access Law compliance from an architect, engineer, or other third party acceptable to Lender.

(b) Notwithstanding any limits set forth herein or in any other document on Grantor's obligation to obtain Lender's approval of alterations of the Property, Grantor shall not alter the Property in any manner which would increase Grantor's responsibilities for compliance with the applicable Access Laws without the prior written approval of Lender. The foregoing shall apply to tenant improvements constructed by Grantor or by any of its tenants. Lender may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to Lender.

(c) Grantor agrees to give prompt notice to Lender of the receipt by Grantor of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

(d) Grantor shall indemnify, defend, and hold harmless Lender from and against any and all claims, demand, damages, costs, expenses, losses, liabilities, penalties, fines, and other proceedings including without limitation reasonable attorneys' fees and expenses arising directly or indirectly from or out of or in any way connected with any failure of the Property to comply with applicable Access Laws. The obligations and liabilities of Grantor under this section shall survive any termination, satisfaction, assignment, entry of a judgment of foreclosure, delivery of trustee's deed in a nonjudicial foreclosure proceeding, or delivery of a deed in lieu of foreclosure.

Section 18.7 NOT RESIDENTIAL OR AGRICULTURAL TRUST DEED. Grantor warrants that (i) this Security Instrument is not, and will at all times continue not to be, a "residential trust deed" as defined in ORS 86.705(3); (ii) the Property is not used principally for agricultural purposes; and (iii) the Loan is not primarily for personal, family or household use. The maturity date of the obligations secured by this instrument is February 11, 2020.

Section 18.8

WARNING

UNLESS YOU PROVIDE US WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY THE LOAN DOCUMENTS, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT YOUR INTEREST. IF THE COLLATERAL BECOMES DAMAGED, THE COVERAGE WE PURCHASE MAY NOT PAY ANY

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

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

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

UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY US CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE GRANTOR'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY US TO BE ENFORCEABLE.

For purposes of this Article 18, the terms "You" and "Your" and other terms of similar import shall be understood to refer to Grantor, and the terms "Us" and "We" and other words of similar import shall be understood to refer to Lender.

ARTICLE 19 – EXCLUDED GUARANTY OBLIGATIONS

19.1 Collateralization of Swap Agreement. The parties hereto acknowledge that this Security Instrument is intended to act as (i) a “Credit Support Document” (or any defined term of similar use and import) with respect to each party and is hereby made part of the applicable agreement effecting an Interest Rate Hedge (and/or any schedule thereto) if applicable, between the Grantor and the Mortgagee, and (ii) a “transfer” under a swap agreement, made by or to a swap participant, in connection with a swap agreement within the meaning of the U.S. Bankruptcy Code Section 546 (g).

19.2 No Liability for Excluded Hedging Obligations. Notwithstanding anything to the contrary set forth in this Security Instrument, the Grantor is not liable for, and this Security Instrument does not secure, any payment obligation, debt, or other liability, arising under or in connection with this Security Instrument or any other Loan Document, that constitutes an Excluded Hedging Obligation.

For purposes hereof, “Excluded Hedging Obligation” means, with respect to the Grantor, any Hedging Obligation if, and to the extent that, all or a portion of the agreement obligating the Grantor to pay, or the grant by the Grantor of a security interest to secure, such Hedging Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of the Grantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time such agreement or the grant of such security interest becomes effective with respect to such Hedging Obligation. If a Hedging Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Hedging Obligation that is attributable to swaps for which such agreement or security interest is or becomes illegal.

ARTICLE 20 – INTERCREDITOR AGREEMENT

Reference is hereby made to that certain Propco Intercreditor Agreement dated as of August 21, 2015, as reaffirmed and amended by that certain Reaffirmation and Amendment Regarding Propco Intercreditor Agreement dated as of September 11, 2015 (collectively, the “Intercreditor Agreement”), by and among Lender (in its respective capacities as agent for the Pre-Petition Lenders under the Pre-Petition Credit Agreement and as agent for the Post-Petition Lenders under the Post-Petition Credit Agreement), Haggen Property Lender, LLC, a Delaware limited liability company (“Junior Lender”), Haggen Property Holdings, LLC, a Delaware limited liability company, Haggen Property North, LLC, a Delaware limited liability company, and Haggen Property South, LLC, a Delaware limited liability company. The proceeds of any foreclosure of this Security Instrument shall be allocated among Lender and Junior Lender pursuant to the terms and conditions of the Intercreditor Agreement. Notwithstanding the foregoing, irrespective of

any allocation of foreclosure proceeds set forth in the Intercreditor Agreement, the lien secured by this Security Instrument is unconditionally senior and paramount in all respects to the lien secured by that certain Deed of Trust in favor of Junior Lender recorded at 2015-009119 of the Official Records (the "Subordinate Deed of Trust"), and the lien of the Subordinate Deed of Trust is unconditionally subject and subordinate in all respects to the lien of this Security Instrument.

[NO FURTHER TEXT ON THIS PAGE]

FOR THE PURPOSES OF CONSENTING TO THE TERMS AND PROVISIONS OF ARTICLE 20 ONLY

Haggen Property Lender, LLC,
a Delaware limited liability company

By: MAN
Michael Niegsch, Authorized Signatory

STATE OF FLORIDA)

) ss: West Palm Beach

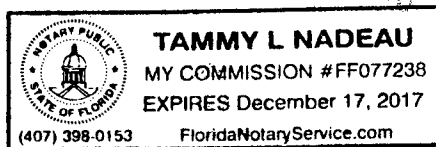
COUNTY OF WEST PALM)

The foregoing instrument was acknowledged before me this 7th day of October, 2015, by Michael Niegsch, the Authorized Signatory of Haggen Property Lender, LLC, a Delaware limited liability company, for and on behalf of said limited liability company. He [check one]:

X is personally known to me; or
_____ has produced _____ as identification.

My Commission expires: 12/17/17

[Notarial Seal]



Tammy L. Nadeau
NOTARY PUBLIC
Printed Name of Notary:
Tammy L. Nadeau

IN WITNESS WHEREOF, this Security Instrument has been executed by Borrower as of the day and year first above written.

HAGGEN PROPERTY NORTH, LLC,
a Delaware limited liability company

By: MAW

Name: Michael Niegsch

Title: Authorized Signatory

ACKNOWLEDGMENT

STATE OF FLORIDA)

COUNTY OF WEST PALM)

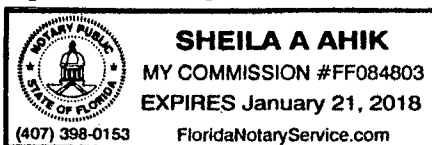
) ss: West Palm Beach

The foregoing instrument was acknowledged before me this 7th day of October, 2015, by Michael Niegsch, the Authorized Signatory of Haggen Property North, LLC, a Delaware limited liability company, for and on behalf of said limited liability company. He [check one]:

✓ is personally known to me; or
_____ has produced _____ as identification.

My Commission expires: 1/21/18

[Notarial Seal]



Sheila Ahik

NOTARY PUBLIC

Printed Name of Notary:

Sheila A. Ahik

EXHIBIT A
LEGAL DESCRIPTION

LOTS 1, 2, 3, 4, 5, 6, 7 AND 8 IN BLOCK 12 OF THE ORIGINAL TOWN OF KLAMATH FALLS FORMERLY LINKVILLE, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY, OREGON.

For Informational Purposes Only:
Property ID No. R412716