

**2016-009080**

**Klamath County, Oregon**



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Prepared by, recording requested by,  
and after recording return to:

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DOCUMENT TITLE  
AND TRANSACTIONS:

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

GRANTOR:

**EVERGREEN ENTERPRISES, INC., an Oregon corporation**

TRUSTEE:

**FIRST AMERICAN TITLE INSURANCE COMPANY**

LENDER:

**CITIZENS BANK, N.A.**

PROPERTY:

2947 South 6th Street, Klamath Falls, OR 97603

Dated: Effective as of August 16 2016

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

THIS LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING, dated as of August **16**, 2016 (this "Instrument"), made by **EVERGREEN ENTERPRISES, INC.**, an Oregon corporation (together with its successors and assigns, "Grantor"), having an address at 15051 Leffingwell Road #201, Whittier, California 90604, in favor of FIRST AMERICAN TITLE INSURANCE COMPANY (together with its successors and assigns, "Trustee"), whose address is 200 Market St., Suite 250, Portland, OR 97201, for the benefit of **CITIZENS BANK, N.A.**, as lender (together with its successors and assigns, "Lender"), having an address at 28 State Street, MS 1420, Boston, Massachusetts 02109, Attention: Franchise Finance.

**WITNESSETH THAT:**

WHEREAS, Grantor is on the date of delivery hereof the holder of a valid and subsisting leasehold interest in the parcel or parcels of land described in Schedule 1 hereto (the "Land") and of the Improvements (as defined below); and

WHEREAS, Grantor ("Borrower") and Lender have executed that certain Loan and Security Agreement dated August **16**, 2016 (as amended, restated, supplemented or otherwise modified, the "Loan Agreement") whereby Borrower is or will be indebted to Lender for the Loans (as defined in the Loan Agreement) and the other Obligations (as defined in the Loan Agreement), such Loans being evidenced by one or more Notes (as defined in the Loan Agreement); and

WHEREAS, this Instrument is given by Grantor to secure to Lender: (a) the Note in the original principal amount of up to \$3,480,000; (b) the payment and performance of all other Obligations, whether now existing or hereafter arising, including, without limitation, any renewal, extension or modification thereof and all future advances and readvances that may subsequently be made to Borrower by the Secured Parties under the Loan Documents (as defined in the Loan Agreement), other than any Loan Document with respect to state and federal environmental laws, rules, regulations and permits, hazardous materials and other environmental conditions, environmental investigations, the release or threatened release of any hazardous materials, and all material remediation requirements; and (c) the payment and performance of all obligations under any other document or instrument that recites that it is secured hereby, whether now existing or hereafter arising, including, without limitation, any renewal, extension or modification thereof ((a) through (c) are referred to herein as the "Obligations"); and

WHEREAS, as a condition precedent to Lender making the Loans and entering into the Loan Agreement and other Loan Documents, Grantor is required to execute and deliver this Instrument for the benefit of Lender to secure the payment and performance of the Obligations; and

WHEREAS, Grantor has duly authorized the execution, delivery and performance of this Instrument.

**G R A N T:**

NOW, THEREFORE, for and in consideration of the premises, and of the mutual covenants herein contained, and in order to induce Lender making the Loans and entering into the Loan Agreement and other Loan Documents, and in order to secure the full, timely and proper payment and performance of and compliance with each and every one of the Obligations, Grantor hereby irrevocably grants, bargains, sells, mortgages, warrants, aliens, demises, releases, hypothecates, pledges, assigns, transfers, conveys and grants a security interest in and to Trustee, in trust, WITH THE POWER OF SALE, all of Grantor's estate, right, title and interest, if any, now or hereafter arising, in and to the following (collectively, the "Collateral");

(a) **Premises.** All estate, right, title and interest of Grantor in, under or derived from the lease described in Schedule 2 (the "Site Lease") affecting the Land; together with all amendments, supplements, consolidations, extensions, renewals and other modifications of the Site Lease now or hereafter entered into in accordance with the provisions thereof (the "Leasehold Estate"); together with all other, further, additional or greater estate, right, title or interest of Grantor in, to, under or derived from the Land, the Leasehold Estate and the Improvements now or hereafter located thereon which may at any time be acquired by Grantor by the terms of the Site Lease by reason of the exercise of any option thereunder or otherwise. (collectively, the "Premises");

(b) **Improvements.** All buildings, structures and other improvements and any additions and alterations thereto or replacements thereof, now or hereafter built, constructed or located upon the Premises; and all furnishings, fixtures, fittings, appliances, apparatus, equipment, machinery, building and construction materials and other articles of property of every kind and nature whatsoever, now or hereafter affixed or attached to, erected on or used in connection with the operation of the Premises or such buildings, structures and other improvements, including, without limitation, all partitions, furnaces, boilers, oil burners, radiators and piping, plumbing and bathroom fixtures, refrigeration, heating, ventilating, air conditioning and sprinkler systems, other fire prevention and extinguishing apparatus and materials, vacuum cleaning systems, gas and electric fixtures, incinerators, compactors, elevators, engines, motors, generators and all other articles of property that are considered fixtures under applicable law (collectively together with all additions and accessions thereto and all replacements and substitutions thereof, the "Improvements"; the Premises and the Improvements are collectively referred to herein as the "Property");

(c) **Leases.** All leases (other than the Site Lease assigned under (a) above), licenses, occupancy agreements, concessions and other arrangements, oral or written, now existing or hereafter entered into, whereby any Person agrees to pay money or any other consideration for the use, possession or occupancy of, or any estate in, the Property or any portion thereof or interest therein (collectively, the "Leases");

(d) **Permits and Approvals.** To the extent assignable under applicable law, all permits, franchises, licenses, approvals and other authorizations respecting the use, occupation or operation of the Property or any part thereof and respecting any business or other activity conducted on or from the Property, and any product or proceed thereof or therefrom, including, without limitation, all building permits, certificates of occupancy and other licenses, permits and approvals issued by governmental authorities having jurisdiction;

(e) **Rents.** All rents, issues, profits, royalties, avails, income, proceeds and other benefits derived or owned, directly or indirectly, by Grantor from the Collateral, including, without limitation, all rents and other consideration payable by Tenants, claims against guarantors, any guaranties with respect to any Tenant's obligations under any Lease and any cash or other securities deposited to secure performance by Tenants, under the Leases (collectively, "Rents");

(f) **Plans.** To the extent assignable under applicable law, all plans, specifications, contracts and agreements relating to the design or construction of the Improvements, any payment, performance, or other bond provided in connection with the design or construction of the Improvements, all contracts, agreements and purchase orders with contractors, subcontractors, suppliers and materialmen incidental to the design or construction of the Improvements, all other contracts and agreements pertaining to or affecting the Property, including, without limitation, all options or contracts to acquire other property for use in connection with operation or development of the Property and management contracts, service or supply contracts with respect to the Property;

(g) **Trademarks and Trade Names.** All trademarks, trade names, symbols, assumed names, and other rights and interest in and to the name and marks owned and used by Grantor in connection with the Property, together with the goodwill associated therewith;

(h) **Deposits.** Any moneys on deposit with or for the benefit of Lender in connection with any of the Collateral, including deposits for the payment of real estate taxes, public assessments and repairs;

(i) **Claims.** All claims, demands, judgments, insurance proceeds, awards of damages and settlements hereafter made resulting from the taking of the Property or any portion thereof under the power of eminent domain, or for any damage (whether caused by such taking, by casualty or otherwise) to the Property or any portion thereof;

(j) **Other Rights.** All other property and rights of Grantor relating to any of the foregoing; and

(k) **Addition; Replacements; Proceeds.** All additions, accessions, replacements, substitutions, proceeds and products of the property, tangible and intangible, described herein.

AND, without limiting any of the other provisions of this Instrument, Grantor expressly grants to Lender, as secured party, a security interest in all of those portions of the Collateral that are or may be subject to the UCC provisions applicable to secured transactions; and

TO HAVE AND TO HOLD the Collateral unto Trustee for the benefit of Lender forever.

PROVIDED, HOWEVER, that nothing contained herein shall create an obligation on the part of Lender to make future advances or readvances to Borrower; and

PROVIDED, FURTHER, that if Borrower shall pay, in full, the principal of and premium, if any, and interest on the Obligations in accordance with the terms of the Loan Documents and hereof and all other sums payable hereunder by Grantor then on such date, this Instrument shall be (except as provided herein) null and void and of no further force and effect and the Collateral shall thereupon be, and be deemed to have been, reconveyed, released and discharged from this Instrument without further notice on the part of either Grantor or Lender, but upon the request of Grantor, Lender, at Grantor's sole cost and expense, shall request Trustee execute a satisfactory release of lien.

FURTHER to secure the full, timely and proper payment and performance of the Obligations, Grantor hereby covenants and agrees with and warrants to Trustee for the benefit of Lender as follows:

## **ARTICLE I DEFINITIONS**

The following terms shall have the following meanings for all purposes of this Instrument, and capitalized terms used herein but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement:

"Environmental Indemnity" means the Environmental Indemnity dated as of the date hereof executed by Grantor for the benefit of Lender, and any amendment or supplement thereto.

"Event of Default" has the meaning set forth in Section 4.01.

"Impositions" has the meaning set forth in Section 2.04.

"Indemnified Liabilities" has the meaning set forth in Section 2.12.

"Indemnified Parties" has the meaning set forth in Section 2.12.

"Permitted Liens" has the meaning ascribed to such term in the Loan Agreement.

"Property" has the meaning set forth in the granting clause.

"Premises" has the meaning set forth in the granting clause.

"Rents" has the meaning set forth in the granting clause.

"State" means the State of Oregon.

"Taking" has the meaning set forth in Section 3.02.

"Tenant" means any tenant of the Property, and its successors and assigns.

"UCC" means the Uniform Commercial Code as enacted in the State.

## ARTICLE II COVENANTS AND AGREEMENTS OF GRANTOR

**Section 2.01. Payment and Performance of Obligations.** Grantor agrees that it will duly and punctually pay and perform or cause to be paid and performed each of the Obligations at the time and in accordance with the terms specified in the Loan Documents.

**Section 2.02. Title to Collateral.** Grantor represents and warrants to Lender that:

(a) as of the date hereof and at all times hereafter while this Instrument is outstanding, Grantor is and shall be the sole, absolute owner and holder of the leasehold interest in the Property and the absolute owner of the legal and beneficial title to all other property included in the Collateral, subject in each case only to this Instrument and Permitted Liens;

(b) Grantor has good and lawful right, power and authority to execute this Instrument and to convey, transfer, assign, mortgage and grant a security interest in the Collateral, all as provided herein;

(c) the Site Lease creates and constitutes in the tenant thereunder a valid and subsisting leasehold interest in the Leasehold Estate; the Site Lease has not been modified or amended, except as disclosed to Lender in writing; there is no default under the Site Lease, all rents due have been paid in full; no action has commenced and is pending to terminate the Site Lease; and Grantor is the owner of the leasehold interest under the Site Lease and Grantor is the owner of the Improvements, in each case subject to the provisions of the Site Lease;

(d) this Instrument has been duly executed, acknowledged and delivered on behalf of Grantor, all consents and other actions required to be taken by the officers, directors, shareholders and partners, as the case may be, of Grantor have been duly and fully given and performed and this Instrument constitutes the legal, valid and binding obligation of Grantor, enforceable against Grantor in accordance with its terms; and

(e) Grantor, at its expense, will and hereby does warrant and defend to Lender and any purchaser under the power of sale herein or at any foreclosure sale such title to the Collateral (as described in subsection (a) of this Section) and the first mortgage lien and first priority perfected security interest of this Instrument thereon and therein against all claims and demands and will maintain, preserve and protect such Lien and will keep this Instrument a valid, first mortgage lien of record on and a first priority perfected security interest in the Collateral, subject only to the Permitted Liens.

(f) Grantor has duly paid in full all fees, premiums and other charges due in connection with (i) the recording of this Instrument and the issuance of a loan policy or policies of title insurance in form and amount satisfactory to Lender naming Lender as the insured, insuring the title to and the first Instrument lien of this Instrument on the Property with endorsements reasonably requested by Lender and (ii) a survey of the Property in form and substance acceptable to Lender and title insurer.

**Section 2.03. Title Insurance.** All proceeds received by and payable to Lender for any loss under any loan policy or policies of title insurance delivered to Lender shall be the property of Lender and shall, except as expressly provided to the contrary in the Loan Agreement, be applied by Lender in accordance with the provisions of Sections 3.03 or 3.04, as applicable.

**Section 2.04. Impositions.** Grantor will pay or cause to be paid all taxes, insurance premiums, assessments, water and sewer rates, ground rents, fees and other charges (collectively, the "Impositions") that at any time may be assessed, levied, confirmed or imposed or that may become a Lien upon the Collateral, or any portion thereof, or that are payable with respect thereto, prior to delinquency, before any fine, penalty or interest may be added for non-payment and before the commencement of any action to foreclose any Lien against all or any portion of the Collateral with respect thereto. Grantor will deliver to Lender, upon request, copies of official receipts or other satisfactory proof evidencing such payments. Grantor shall not be entitled to any credit against the Obligations by reason of the payment of any Imposition.

Upon the occurrence of an Event of Default (hereinafter defined), after the expiration of any applicable grace or cure period, and at Lender's sole option at any time thereafter, Grantor shall pay in addition to each monthly payment under the Loan Agreement, one-twelfth of the Impositions payable during each year (as estimated by Lender in its sole discretion), to be held by Lender without interest to Grantor, for the payment of such obligations. If the amount of such additional payments held by Lender (the "Funds") at the time of the annual accounting thereof shall exceed the amount deemed necessary by Lender to provide for the payment of Impositions as they fall due, such excess shall be at Grantor's option, either repaid to Grantor or credited to Grantor on the next monthly installment or installments of Funds due. If at any time the amount of the Funds held by Lender shall be less than the amount deemed necessary by Lender to pay Impositions as they fall due, Grantor shall pay to Lender any amount necessary to make up the deficiency within 30 days after notice from Lender to Grantor requesting payment thereof. Lender may apply, in any amount and in any order as Lender shall determine in Lender's sole discretion, any Funds held by Lender at the time of application (i) to pay Impositions which are now or will hereafter become due, or (ii) as a credit against the Obligations. Upon payment in full of the Obligations, Lender shall refund to Grantor any Funds held by Lender.

**Section 2.05. Liens.** Grantor will not directly or indirectly create or permit or suffer to be created or to remain, and will promptly discharge or cause to be discharged, any deed of trust, mortgage, encumbrance or charge on, pledge of, security interest in or conditional sale or other title retention agreement with respect to or any other Lien on or in the Collateral or any part thereof or the interest of Grantor or Lender therein, or any proceeds or Rents or other sums arising therefrom other than Permitted Liens.

**Section 2.06. Compliance with Instruments.** Grantor, at its expense, will promptly comply with all rights of way or use, privileges, franchises, servitudes, licenses, easements, tenements, hereditaments and appurtenances forming a part of the Collateral and all instruments creating or evidencing the same, in each case, to the extent compliance therewith is required of Grantor under the terms thereof. Grantor will not terminate, forfeit or materially amend rights afforded to Grantor under any such instruments, without the prior written consent of Lender.

**Section 2.07. Maintenance and Repair.** Subject to ordinary wear and tear, Grantor will keep or cause to be kept all presently and subsequently erected or acquired Improvements and the sidewalks, curbs, vaults and vault space, if any, located on or adjoining the same, and the streets and the ways adjoining the same, in good and substantial order and repair and in such a fashion that the value and utility of the Collateral will not be materially diminished, and, at its sole cost and expense, will promptly

make or cause to be made all necessary and appropriate repairs, replacements and renewals thereof, whether interior or exterior, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, so that its business carried on in connection therewith may be properly conducted at all times. All repairs, replacements and renewals shall be equal or greater in quality and class to the original Improvements. Grantor, at its expense, will do or cause to be done all shoring of foundations and walls of any building or other Improvements on the Premises and (to the extent permitted by law) of the ground adjacent thereto, and every other act necessary or appropriate for the preservation and safety of the Property by reason of or in connection with any excavation or other building operation upon the Premises and upon any adjoining property, whether or not Grantor shall be required to take such action or be liable for failure to do so.

**Section 2.08. Alterations, Additions.** Except as provided in the Loan Agreement, Grantor shall not make or cause to be made any alterations of and additions to the Property or any part thereof without prior written consent of Lender; *provided, however*, Grantor may make nonstructural additions to the Property costing less than \$250,000 in the aggregate without Lender's consent. If Lender consents to any alterations or additions to the Property, such alterations or additions shall be made at Grantor's sole expense by a licensed contractor and according to the plans and specifications approved by Lender and subject to any other conditions required by Lender. Any work commenced on the Property shall be diligently completed, shall be of good workmanship and materials and shall comply with the terms of this Instrument. Upon the completion of any alterations or additions, Grantor shall promptly provide Lender with (a) evidence of full payment to all laborers, materialmen contributing to the alterations or additions, (b) an architect's certificate certifying the alterations conform to the plans and specification approved by Lender, (c) a certificate of occupancy (if such alterations or additions require the issuance thereof) and (d) any other documents or information reasonably requested by Lender.

**Section 2.09. Acquired Property Subject to Lien.** All right, title and interest of Grantor in and to all alterations, improvements, substitutions, restorations and replacements of, and all additions and appurtenances to, the Property hereafter acquired by Grantor, whether such property is acquired by exchange, purchase, construction or otherwise, shall forthwith become subject to the Lien of this Instrument without further action on the part of Grantor or Lender. Upon the request of Lender, Grantor, at its expense, will execute and deliver (and will record and file as provided herein) an instrument or document supplemental to this Instrument satisfactory in substance and form to Lender, whenever such an instrument or document is necessary under applicable law to subject to the Lien of this Instrument all right, title and interest of Grantor in and to all property provided or required by this Instrument to be subject to the Lien hereof.

**Section 2.10. Assignment of Rents and Leases.**

(a) The assignment, grant and conveyance of the Leases, Rents and all other rents, income, proceeds and benefits of the Collateral contained in the granting clause of this Instrument shall constitute an absolute, present and irrevocable assignment, grant and conveyance, provided that, until an Event of Default has occurred, a license is hereby given to Grantor to collect, receive and apply Rents, as they become due and payable, but not in advance thereof, and in accordance with all of the other terms, conditions and provisions hereof and of the Leases, contracts, agreements and other instruments with respect to which such payments are made. Upon the occurrence of an Event of Default, such license shall be revoked and shall terminate, immediately and automatically without notice to Grantor or any other Person (to the extent permitted by law), and shall not be reinstated upon a cure of such Event of Default without the express written consent of Lender. Such assignment shall be fully effective without any further action on the part of Grantor or Lender, and Lender shall be entitled, at its option, upon the occurrence of an Event of Default hereunder, to collect, receive and apply all Rents and all other rents, income, proceeds and benefits from the Collateral, including all right, title and interest of Grantor in any escrowed sums or deposits or any portion thereof or interest therein, whether or not Lender takes possession of the Collateral or any part thereof. The collection of such amounts by Lender shall in no way waive the right of Lender to foreclose this Instrument in the event of any Event of Default. Nothing contained herein and no exercise of any right or privilege

hereunder by Lender shall be construed to constitute Lender as a mortgagee-in-possession. All Rents and all other rents, income, proceeds and benefits of the Collateral received by Grantor from or related to the Collateral or any part thereof, from and after the occurrence of an Event of Default, shall be deemed received in trust and shall be turned over to Lender within one Business Day after Grantor's receipt thereof. Grantor further grants to Lender the right, at Lender's option, to:

(i) enter upon and take possession of the Property for the purpose of collecting Rents and all other rents, income, proceeds and other benefits;

(ii) dispossess by the customary summary proceedings any Tenant, purchaser or other Person defaulting in the payment of any amount when and as due and payable, or in the performance of any other obligation, under the Leases, contract or other instrument to which said Rents or other rents, income, proceeds or benefits relate;

(iii) let or convey the Collateral or any portion thereof or any interest therein; and

(iv) apply Rents and such other rents, income, proceeds and benefits, after the payment of all necessary fees, charges and expenses, on account of the Obligations in accordance with Section 3.03.

(v) Lender shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Grantor in the Leases. It is further understood that the assignment granted hereunder shall not operate to place responsibility for the control, care, management or repair of the Property, or parts thereof, upon Lender, nor shall it operate to make Lender liable for the performance of any of the terms and conditions of any of the Leases, or for any waste of the Property by any Tenant under any of the Leases 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 lessee, licensee, employee or stranger.

(b) Grantor represents, warrants, covenants and agrees with Lender as follows:

(i) Grantor will not enter into any other Lease without the prior written consent of Lender. Grantor has delivered to Lender true, correct and complete copies of all existing Leases and all amendments and modifications thereto. The Leases are and shall be valid and enforceable in accordance with their terms. The Leases shall not be altered, modified, amended, terminated, canceled, renewed or surrendered, nor shall any of the terms and conditions thereof be waived in any manner whatsoever except with the prior written consent of Lender.

(ii) There are no defaults now existing under any of the Leases, and no event has occurred or circumstance exists that, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases.

(iii) Grantor shall give prompt notice to Lender of any notice received by Grantor claiming that a default has occurred under any of the Leases on the part of Grantor, together with a complete copy of any such notice.

(iv) Each of the Leases shall remain in full force and effect irrespective of any merger of the interest of Grantor and any Tenant under any of the Leases.



(v) Grantor will not permit any Lease to become subordinate to any Lien other than the Lien of this Instrument.

(vi) Grantor shall not permit or consent to the assignment by any Tenant of its rights under its Lease. Without limitation of the foregoing, Grantor shall not permit or consent to the filing of any encumbrance against the Tenant's interest under any Lease, including, without limitation, any leasehold mortgage.

(c) Grantor hereby irrevocably appoints Lender its true and lawful attorney-in-fact with power of substitution and with full power for Lender in its own name and capacity or in the name and capacity of Grantor, from and after the occurrence of a Default or an Event of Default, to demand, collect, receive and give complete acquittances for any and all Rents accruing from the Property that Lender may deem necessary or desirable in order to collect and enforce the payment of the Rents and to demand, correct, receive, endorse, and deposit all checks, drafts, money orders or notes given in payment of such Rents. Such appointment is coupled with an interest and is irrevocable. Lender shall not be liable for or prejudiced by any loss of any note, checks, drafts, etc., unless such loss shall have been found by a court of competent jurisdiction to have been due to the gross negligence or willful misconduct of Lender. Grantor also hereby irrevocably appoints Lender as its true and lawful attorney-in-fact to appear in any state or federal bankruptcy, insolvency, or reorganization proceeding in any state or federal court involving any of the Tenants of the Leases. Lessees of the Property are hereby expressly authorized and directed, from and after service of a notice by Lender to pay any and all amounts due Grantor pursuant to the Leases to Lender or such nominee as Lender may designate in writing delivered to and received by such Tenants, and such Tenants are expressly relieved of any and all duty, liability or obligation to Grantor in respect of all payments so made.

**Section 2.11. No Claims Against Lender or Secured Parties.** Nothing contained in this Instrument shall constitute any consent or request by Lender, express or implied, for the performance of any labor or the furnishing of any materials or other property in respect of the Property or any part thereof, or be construed to permit the making of any claim against Lender or the other Secured Parties in respect of labor or services or the furnishing of any materials or other property or any claim that any Lien based on the performance of such labor or the furnishing of any such materials or other property is prior to the Lien of this Instrument. Grantor shall make all contractors, subcontractors, vendors and other persons dealing with the Property, or with any persons interested therein, take notice of the provisions of this Section.

**Section 2.12. Indemnification.**

(a) Whether or not covered by insurance, Grantor hereby assumes responsibility for and agrees to reimburse Lender, the other Secured Parties, their respective affiliates and their respective officers, directors, employees and agents (individually and collectively, the "Indemnified Parties") for and will indemnify, defend and hold the Indemnified Parties harmless from and against any and all liabilities, obligations, losses, damages, penalties, claims, suits, actions, proceedings, judgments, awards, amounts paid in settlements, debts, diminutions in value, fines, penalties, charges, fees, costs and expenses (including reasonable attorneys' fees and expenses) of whatsoever kind and nature, imposed on, incurred by or asserted against any Indemnified Party that in any way relate to or arise out of any of the Loan Documents, the transactions contemplated thereby and the Collateral, including, without limitation, (i) the selection, manufacture, construction, acquisition, acceptance or rejection of the Collateral, (ii) the ownership of the Collateral, (iii) the delivery, installation, lease, possession, maintenance, use, condition, return or operation of the Collateral, (iv) the condition of the Collateral sold or otherwise disposed of after possession by Grantor, (v) any patent or copyright infringement, (vi) any act or omission on the part of Grantor, Guarantor or any of its or their officers, employees, agents, contractors, lessees, licensees or invitees, (vii) any material misrepresentation or inaccuracy in any representation or warranty of Grantor or any Guarantor, or a breach of Grantor or any Guarantor of any of its covenants or obligations under any of the Loan Documents, (viii) any

claim, loss, cost or expense involving alleged damage to the environment relating to the Collateral, including, without limitation, investigation, removal, cleanup and remedial costs, (ix) any personal injury, wrongful death or property damage arising under any statutory or common law or tort law theory, including, without limitation, damages assessed for the maintenance of a private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Collateral, (x) any past, present or threatened injury to, or destruction of, the Collateral, including, without limitation, costs to investigate and assess such injury or damage, (xi) any administrative process or proceeding or judicial or other similar proceeding (including, without limitation, any alternative dispute resolution process and any bankruptcy proceeding) in any way connected with any matter addressed in any of the Loan Documents, (xii) any use, non-use or condition of the Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (xiii) performance of any labor or services or the furnishing of any materials or other property in respect of the Collateral or any part thereof made or suffered to be made by or on behalf of Grantor or any Tenant, (xiv) any work in connection with any alterations, changes, new construction or demolition of or additions to the Property or (xv) any violation or claim of violation by Grantor or any Tenant of any environmental laws.

(b) If any action or proceeding be commenced, to which action or proceeding the Indemnified Parties are made a party by reason of the execution of this Instrument or the Loan Documents, or in which it becomes necessary to defend or uphold the Lien of this Instrument, all sums paid by the Indemnified Parties, for the expense of any litigation to prosecute or defend the rights and Lien created hereby or otherwise, shall be paid by Grantor to such Indemnified Parties, as the case may be, as hereinafter provided. Grantor will pay and save the Indemnified Parties harmless against any and all liability with respect to any intangible personal property tax or similar imposition of the State or any subdivision or authority thereof now or hereafter in effect, to the extent that the same may be payable by the Indemnified Parties in respect of this Instrument or any Obligation.

(c) All amounts payable to the Indemnified Parties under this Section shall be deemed indebtedness secured by this Instrument, and any such amounts that are not paid within 30 days after written demand therefor by any Indemnified Party shall bear interest at the highest Default Rate from the date of such demand. In case any action, suit or proceeding is brought against the Indemnified Parties by reason of any such occurrence, Grantor, upon request of such Indemnified Parties, will, at Grantor's expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel designated by Lender. The obligations of Grantor under this Section shall survive any satisfaction, discharge or reconveyance of this Instrument and payment in full of the Obligations. If and to the extent that the foregoing undertaking may be unenforceable for any reason, Grantor hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities that is permissible under applicable law.

**Section 2.13. Right of Lender To Require Appraisal.** Following the occurrence of an Event of Default, Lender shall have the right, from time to time during the term of this Instrument, to obtain one or more fair market value appraisals of the Property from one or more MAI certified appraisers in such form as is satisfactory to Lender. The cost of any such appraisal(s) shall be paid by Grantor. So long as no Event of Default has occurred and is continuing, Lender shall not require any such appraisal more frequently than once in any two-year period unless otherwise required by Law.

**Section 2.14. Instrument as UCC Security Agreement and Fixture Filing.** This Instrument shall constitute a security agreement, a financing statement and a fixture filing pursuant to the UCC for any of the items specified herein as part of the Collateral that, under applicable law, may be subject to a security interest pursuant to the UCC. The Collateral includes goods that are or are to become fixtures. Grantor agrees that Lender may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index as a fixture filing or other financing statement for any of the items specified above as part of the Collateral. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement.

## **Section 2.15. Site Lease.**

(a) Grantor represents and warrants that (i) Schedule 2 contains a description of the Site Lease; (ii) Grantor has furnished to Lender a copy of the Site Lease certified as true and correct by Grantor; (iii) except as described in Schedule 2, the Site Lease has not been modified, assigned by Grantor or, to the knowledge of Grantor, assigned by the landlord thereunder; (iv) the Site Lease is in full force and effect and, to the knowledge of Grantor, there is no default, or existing condition which with the giving of notice or passage of time or both would cause a default under the Site Lease; and (v) the execution, delivery and performance of this Deed of Trust do not require any consent under, and will not contravene any provision of or cause a default under the Site Lease.

(b) Grantor (i) shall duly and punctually pay, perform and observe all of its obligations under the Site Lease; (ii) shall do all things reasonably necessary or appropriate to enforce, preserve and keep unimpaired the rights of Grantor; (iii) shall not enter into any amendment or other agreement or take any other action or fail to take any action that would modify or terminate any rights or obligations of Grantor or of the landlord under the Site Lease or subordinate any right of Grantor under the Site Lease to any lien; (iv) shall notify Lender in writing not later than ninety (90) days prior to the last date on which Grantor can exercise (A) any right to extend the term of the Site Lease or (B) any option to purchase or otherwise acquire the interest of the landlord under the Site Lease, of the existence of such right or option; (v) to the extent the current term of the Site Lease does not extend beyond the maturity date of the Loan, shall exercise (not later than thirty (30) days prior to the last date on which Grantor may timely do so) each right or option of Grantor under the Site Lease to extend the term thereof; (vi) shall notify Lender (promptly after receipt or contemporaneously when given, as the case may be) of the receipt or giving by Grantor of any notice of default under, or any notice of the possible or actual termination of, the Site Lease, accompanied by a copy of such notice (the failure of Grantor to comply with this subclause (vi) shall constitute an Event of Default hereunder); and (vii) shall promptly notify Lender, upon Grantor's acquisition of knowledge thereof, of the occurrence of any event or condition which with the passage of time or giving of notice would constitute a default under the Site Lease. Lender is hereby irrevocably appointed the true and lawful attorney of Grantor and any subsequent owner of the Premises to exercise, in its own name and stead or in the name of Grantor, each right or option of Grantor under the Site Lease to extend the term thereof or to purchase or otherwise acquire the interest of the landlord under the Site Lease, and for that purpose Lender may execute all necessary documents and instruments to exercise each option and may substitute Persons with like power, Grantor or any subsequent owner of the Premises hereby ratifying and confirming all that their said attorney or such substitutes shall lawfully do by virtue hereof. Nevertheless, Grantor or any subsequent owner of the Premises, if so requested in writing by Lender shall ratify and confirm the exercise of any such option by executing and delivering to Lender or to such purchasers any instrument which, in the judgment of Lender, is suitable or appropriate therefor. Grantor acknowledges (i) that this power of attorney is given to Lender in consideration for Lender's (A) making of the Loan and (B) not requiring Grantor to exercise the option to extend the term of the Site Lease or exercise any purchase option before the Closing Date, (ii) that it is reasonable for Lender to require the leasehold term to extend beyond the maturity of the Note; (iii) that if any option is exercised by Lender, Grantor agrees it is and shall remain solely liable with respect thereto as tenant under the Site Lease and releases Lender from any and all liability with respect thereto or claims relating thereto.

(c) So long as any portion of the Obligations shall remain unpaid, unless Lender shall otherwise consent, the fee title to the Land and the leasehold estate therein created pursuant to the provisions of the Site Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Grantor, the owner, or in any other person by purchase, operation of law or otherwise. Lender reserves the right, at any time, to release portions of the Trust Estate, including, but not limited to, the leasehold estate created by the Site Lease, with or without consideration, at Lender's election, without waiving or affecting

any of its rights hereunder or under the Loan Documents and any such release shall not affect Lender's rights in connection with the portion of the Trust Estate not so released.

(d) So long as any portion of the Obligations remains unpaid, if Grantor shall become the owner and holder of the fee title to the Land, the lien of this Deed of Trust shall be spread to cover Grantor's fee title to the Land and said fee title shall be deemed to be included in the Trust Estate. Grantor agrees to execute any and all documents or instruments necessary to subject its fee title to the Land to the lien of this Deed of Trust, in form and substance satisfactory to Lender.

(e) Grantor hereby unconditionally assigns, transfers and sets over to Lender all of Grantor's claims and rights to the payment of damages arising from any rejection by the owner of the Site Lease under the Bankruptcy Code. Lender shall have the right to proceed in its own name or in the name of Grantor in respect of any claim, suit, action or proceeding relating to the rejection of the Site Lease, including, without limitation, the right to file and prosecute, to the exclusion of Grantor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the owner under the Bankruptcy Code. Subject to the provisions of Section 2.10, this assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Obligations shall have been satisfied and discharged in full. Any amounts received by Lender as damages arising out of the rejection of the Site Lease as aforesaid shall be applied first to all costs and expenses of Lender (including, without limitation, attorneys' fees and disbursements) incurred in connection with the exercise of any of its rights or remedies under this Section 2.16(e).

(f) Grantor shall not, without Lender's prior written consent, elect to treat the Site Lease as terminated under Section 365(h)(1) of the Bankruptcy Code. Any such election made without Lender's prior written consent shall be void.

(g) If pursuant to Section 365(h)(1) of the Bankruptcy Code, Grantor seeks to offset against the Rents reserved in the Site Lease the amount of any damages caused by the non-performance by the owner of any of the owner's obligations under the Site Lease after the rejection by the owner of the Site Lease under the Bankruptcy Code, Grantor shall, prior to effecting such offset, notify Lender of its intention to do so, setting forth the amounts proposed to be so offset and the basis therefor. Lender shall have the right, within (10) days after receipt of such notice from Grantor, to reasonably object to all or any part of such offset, and, in the event of such reasonable objection, Grantor shall not effect any offset of the amounts so objected to by Lender for a period of thirty (30) days after Lender has delivered its objection notice to Grantor during which time Lender shall have the right to bring its objections to the attention of any court supervising the bankruptcy of the owner of the Site Lease and both Lender and Grantor agree to abide by the decision of any such court. If (A) Lender has failed to object as aforesaid within ten (10) days after notice from Grantor or (B) the court fails to render its decision within the above-mentioned thirty (30) day period, Grantor may proceed to effect such offset in the amounts set forth in Grantor's notice. Neither Lender's failure to object as aforesaid nor any objection or other communication between Lender and Grantor relating to such offset shall constitute an approval of any such offset by Lender.

(h) If any action, proceeding, motion or notice shall be commenced or filed in respect of Grantor or the Trust Estate in connection with any case under the Bankruptcy Code (other than a case under the Bankruptcy Code commenced with respect to Grantor), Lender shall have the option, to the exclusion of Grantor, exercisable upon notice from Lender to Grantor, to conduct and control any such litigation with counsel of Lender's choice. Lender may proceed in its own name or in the name of Grantor in connection with any such litigation, and Grantor agrees to execute any and all powers, authorizations, consents and other documents required by Lender in connection therewith. Grantor shall pay to Lender all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) paid or incurred by Lender in connection with the prosecution or conduct of any such proceedings within five (5) days after

notice from Lender setting forth such costs and expenses in reasonable detail. Any such costs or expenses not paid by Grantor as aforesaid shall be secured by the lien of this Deed of Trust and shall be added to the principal amount of the indebtedness secured hereby. Grantor shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Site Lease in any such case under the Bankruptcy Code (other than a case under the Bankruptcy Code commenced with respect to Grantor) without the prior written consent of Lender, which consent shall not be unreasonably withheld.

(i) Grantor shall promptly, after obtaining knowledge thereof, notify Lender of any filing by or against the owner of the Land of a petition under the Bankruptcy Code, setting forth any information available to Grantor as to the date of such filing, the court in which such petition was filed, and the relief sought therein. Grantor shall promptly deliver to Lender following receipt any and all notices, summonses, pleadings, applications and other documents received by Grantor in connection with any such petition and any proceedings relating thereto.

(j) If there shall be filed by or against Grantor a petition under the Bankruptcy Code, and Grantor, as the tenant under the Site Lease, shall determine to reject the Site Lease pursuant to Section 365(a) of the Bankruptcy Code, then Grantor shall give Lender not less than ten (10) days' prior notice of the date on which Grantor shall apply to the bankruptcy court for authority to reject the Site Lease. Lender shall have the right, but not the obligation, to serve upon Grantor within such 10-day period a notice stating that (i) Lender demands that Grantor assume and assign the Site Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of prompt cure of all defaults and provide adequate assurance of future performance of Grantor's obligations under the Site Lease. If Lender serves upon Grantor the notice described in the preceding sentence, Grantor shall not seek to reject the Site Lease and shall seek court approval to comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

(k) Effective upon the entry of an order for relief in respect of Grantor under the Bankruptcy Code, Grantor hereby assigns and transfers to Lender a non-exclusive right to apply to the bankruptcy court under Section 365(d)(4) of the Bankruptcy Code for an order extending the period during which the Site Lease may be rejected or assumed.

### **ARTICLE III INSURANCE; DAMAGE, DESTRUCTION OR TAKING**

#### **Section 3.01. Insurance.**

(a) Grantor will, at its expense, maintain or cause to be maintained with insurance carriers approved by Lender insurance with respect to the Collateral in such amounts and against such insurable hazards as Lender from time to time may require, including, without limitation the following: (i) "all risk" property and fire insurance in an amount not less than the full replacement value of the Property (with a deductible not to exceed \$10,000), naming Lender under a lender's loss payable endorsement as mortgagee and loss payee and including agreed amount, inflation guard, replacement cost and waiver of subrogation endorsements; (ii) general liability insurance in an amount not less than \$1,000,000 per occurrence and on an occurrence basis, insuring against personal injury, death and property damage and naming Lender as additional insured; (iii) flood hazard insurance if the Property is located in an area designated by the Federal Emergency Management Act if and to the extent that the Property is located within an area that has been or is hereafter designated or identified as an area having special flood hazards by the Department of Housing and Urban Development or such other official as shall from time to time be authorized by federal or state law to make such designation pursuant to any national or state program of flood insurance, Grantor shall carry flood insurance with respect to the Property in amounts not less than the maximum limit of coverage then available with respect to the Property

or the amount of the Obligations, whichever is less; (iv) worker's compensation insurance to the full extent required by applicable law for all employees of Grantor engaged in any work on or about the Property and employer's liability insurance with a limit of not less than \$1,000,000 for each occurrence; (v) environmental liability insurance in the amount of \$1,000,000; and (ix) such other types of insurance or endorsements to existing insurance as may be required from time to time by Lender in accordance with its standard commercial lending practices.

(b) All insurance maintained by Grantor pursuant to Section 3.01(a) shall (i) (except for worker's compensation insurance) name Lender as additional insured and/or loss payee, as applicable, (ii) (except for worker's compensation and public liability insurance) provide that the proceeds for any losses shall be adjusted by Grantor subject to the approval of Lender and shall be payable to Lender, to be held and applied as provided in Section 3.03, (iii) include effective waivers by the insurer of all rights of subrogation against any named insured, the indebtedness secured by this Instrument and the Collateral and all claims for insurance premiums against Lender, (iv) provide that any losses shall be payable notwithstanding (A) any act, failure to act or negligence of or breach of warranties, declarations or conditions contained in such policy by any named insured, (B) the occupation or use of the Property for purposes more hazardous than permitted by the terms thereof, (C) any foreclosure or other action or proceeding taken by Trustee or Lender pursuant to any provision of this Instrument or (D) any change in title or ownership of the Property, (v) provide that no cancellation, reduction in amount or material change in coverage thereof or any portion thereof shall be effective until at least 30 days after receipt by Lender of written notice thereof, (vi) provide that any notice under such policies shall be simultaneously delivered to Lender and (vii) be satisfactory in all other respects to Lender. Any insurance maintained pursuant to Section 3.01 may be evidenced by blanket insurance policies covering the Property and other properties or assets of Grantor, provided that any such policy shall specify the portion, if less than all, of the total coverage of such policy that is allocated to the Property and shall in all other respects comply with the requirements of Section 3.01.

(c) Grantor will deliver to Lender, promptly upon request, (i) the originals of all policies evidencing all insurance required to be maintained under Section 3.01(a) (or, in the case of blanket policies, certificates thereof by the insurers together with a counterpart of each blanket policy), and (ii) evidence as to the payment of all premiums due thereon (with respect to insurance policies payable other than by a single lump sum, all installments for the current year due thereon to such date), provided that Lender shall not be deemed by reason of its custody of such policies to have knowledge of the contents thereof. Grantor will also deliver to Lender not later than 30 days prior to the expiration of any policy a binder or certificate of the insurer evidencing the replacement thereof.

(d) Grantor will not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained pursuant to Section 3.01.

**Section 3.02. Damage, Destruction or Taking; Notice; Assignment of Awards.** In case of any damage to or destruction of the Collateral or any material part thereof or any taking, whether for permanent or temporary use, of all or any part of the Collateral or any interest therein or right accruing thereto, as the result of or in anticipation of the exercise of the right of condemnation or eminent domain (a "Taking"), or the commencement of any proceedings or negotiations that may result in a Taking, Grantor will promptly give written notice thereof to Lender, generally describing the nature and extent of such damage, destruction or Taking and Grantor's best estimate of the cost of restoring the Collateral, or the nature of such proceedings or negotiations and the nature and extent of the Taking that might result therefrom, as the case may be. Lender shall be entitled to all insurance proceeds payable on account of such damage or destruction and to all awards or payments allocable to the Collateral on account of such Taking, and Grantor hereby irrevocably assigns, transfers and sets over to Lender all rights of Grantor to any such proceeds, awards or payments and irrevocably authorizes and, in the event Grantor has not filed for such proceeds by the first to occur of (i) 10 Business Days prior to the expiration of the applicable time for such filing or (ii) 30 days after damage to the Collateral or any Taking, empowers Lender, at its option, in the name of Grantor or otherwise, to file and prosecute what would otherwise be Grantor's

claim for any such proceeds, award or payment and to collect, receipt for and retain the same for disposition in accordance with Section 3.03 or Section 3.04, as applicable. Grantor will pay all reasonable costs and expenses, if any, incurred by Lender in connection with any such damage, destruction or Taking and seeking and obtaining any insurance proceeds, awards or payments in respect thereof.

**Section 3.03. Application of Insurance Proceeds.**

(a) Subject to Sections 3.03(b) and 3.04, Lender may, in its sole discretion, apply all amounts recovered under any insurance policy required to be maintained by Grantor hereunder in any one or more of the following ways:

(i) to the payment of the reasonable costs and expenses incurred by Trustee or Lender in obtaining any such insurance proceeds or awards, including the fees and expenses of attorneys and insurance and other experts and consultants, the costs of litigation, arbitration, mediation, investigations and other judicial, administrative or other proceedings and all other out-of-pocket expenses;

(ii) to the payment of any Obligation;

(iii) to fulfill any of the other covenants contained herein or in any other Loan Document, in accordance therewith as Lender may determine after the occurrence of a Default or an Event of Default;

(iv) to Grantor for application to the cost of restoring or replacing the Collateral destroyed, damaged or taken; or

(v) to Grantor.

(b) Notwithstanding the provisions of subsection (a) of this Section to the contrary (but subject to the provisions of the Loan Agreement and the provisions of Section 3.04), if each of the following conditions is satisfied, Lender, upon request of Grantor, shall apply insurance proceeds received by it to the restoration or replacement of the Collateral, to the extent necessary for the restoration or replacement thereof:

(i) there shall then exist no uncured Default or Event of Default; and

(ii) Grantor shall furnish to Lender a certificate of an architect or engineer acceptable to Lender stating (A) that the Collateral is capable of being restored, prior to the maturity of the Notes, to substantially the same condition as existed prior to the casualty, (B) the aggregate estimated direct and indirect costs of such restoration do not exceed \$500,000, (C) the insurance proceeds are sufficient for such restoration and (D) the restoration or replacement is reasonably capable of being fully completed by no later than six months prior to the latest Stated Maturity Date for any Note.

(c) In the event that such insurance proceeds are to be utilized in the restoration or replacement of the Collateral, Lender shall disburse such amounts for such restoration or replacement after receipt of a written request for disbursement, on not fewer than 10 Business Days' notice and, to the extent applicable, in accordance with customary construction loan procedures and conditions. In the event that, after the restoration or replacement of the Collateral, any insurance proceeds shall remain, such amount shall be paid to Grantor.

(d) If, prior to the receipt by Lender of such insurance proceeds, the Collateral shall have been sold on foreclosure, Lender shall have the right to receive said insurance proceeds to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether

or not a deficiency judgment shall have been sought or recovered or denied, and the reasonable attorneys' fees, costs and disbursements incurred by Lender in connection with the collection of such proceeds.

**Section 3.04. Taking and Total Destruction.** If all or any part of the Property is lost, stolen, destroyed or damaged beyond repair (and the Property is not fully replaced to Lender's satisfaction) or a Taking shall occur, Lender shall apply all amounts recovered under any insurance policy referred to in Section 3.01(a) and all awards received by it on account of any such Taking as follows:

(a) first, to the payment of the reasonable costs and expenses incurred by Lender in obtaining any such insurance proceeds or awards, including the fees and expenses of attorneys and insurance and other experts and consultants, the costs of litigation, arbitration, mediation, investigations and other judicial, administrative or other proceedings and all other out-of-pocket expenses;

(b) second, to the payment of any Obligation;

(c) third, to fulfill any of the other covenants contained herein or in the Loan Documents in accordance with such Loan Documents as Lender may determine after the occurrence of a Default or an Event of Default; and

(d) fourth, the balance, if any, to Grantor.

#### **ARTICLE IV EVENTS OF DEFAULT; REMEDIES**

**Section 4.01. Events of Default.** The occurrence of an "Event of Default" as defined in the Loan Agreement (after the expiration of any applicable grace or cure period) shall constitute an "Event of Default" under this Instrument.

**Section 4.02. Acceleration.** Following the occurrence of an Event of Default described in Section 7 of the Loan Agreement, all of the outstanding principal amount of the Obligations shall be due and payable, whereupon the full unpaid amount of such Obligations which shall be so declared due and payable shall be and become immediately due and payable, without presentment, notice of dishonor, protest or further notice of any kind, all of which are hereby expressly waived by Grantor. Following the occurrence of any other Event of Default, Lender may by notice to Grantor, declare all or any portion of the outstanding principal amount of the Obligations to be due and payable, whereupon the full unpaid amount of such Loans and other Obligations which shall be so declared due and payable shall be and become immediately due and payable, without presentment, notice of dishonor, protest or further notice of any kind, all of which are hereby expressly waived by Grantor. Grantor will pay on demand all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred by or on behalf of Lender in enforcing this Instrument, the Obligations or the Loan Documents or occasioned by any Event of Default hereunder or thereunder.

**Section 4.03. Legal Proceedings; Foreclosure.** If an Event of Default shall have occurred (after the expiration of any applicable grace or cure period), Lender at any time may, at Lender's sole discretion, proceed at law or in equity or otherwise to enforce the payment of the Obligations and the Trustee shall have the right to foreclose the Lien of this Instrument as against all or any part of the Collateral and to have the same sold under the judgment or decree of a court of competent jurisdiction. Lender and/or Trustee shall be entitled to recover in such proceedings all costs incident thereto, including, without limitation, reasonable attorneys' fees and expenses in such amounts as may be fixed by the court. Any Person, including Lender, may bid at any sale or auction.

**Section 4.04. Power of Sale.**



(a) If an Event of Default shall have occurred, the Trustee or Lender may (as permitted by law), at Lender's sole discretion, sell, assign, transfer and deliver the whole or, from time to time, any part of the Collateral, or any interest in any part thereof, at any private sale or at public auction, with or without demand, advertisement or notice, for cash, on credit or for other property, for immediate or future delivery, and for such price or prices and on such terms as Trustee may determine, or as may be required by Law. Without limiting the authority granted in the immediately preceding sentence, Trustee shall, without demand on Grantor, after the lapse of such time as may then be required by Law, and notice of default and notice of sale having been given as then required by Law, sell the Collateral on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels and in such order as Trustee may determine, but subject to any statutory right of Grantor to direct the order in which such property, if consisting of several known lots, parcels or interests, shall be sold, at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. Trustee, or the one conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such Person at the time and place last appointed for the sale; provided that, if the sale is postponed for longer than 10 days beyond the day designated in the notice of sale, notice of sale and notice of the time, date and place of sale shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser at any such sale a deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any Person, including Lender, may bid at the sale.

(b) In the event of any foreclosure, to the extent permitted by applicable law, Lender will be entitled to a judgment which will provide that if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for any amount by which the unpaid balance of the Obligations exceeds the net sale proceeds payable to Lender.

(c) Trustee, in the name of Grantor, shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, with general warranty of title by Grantor. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof.

**Section 4.05. UCC Remedies.** If an Event of Default shall have occurred, Lender may exercise from time to time and at any time any rights and remedies available to it under applicable law upon default in the payment of indebtedness, including, without limitation, any right or remedy available to it as a secured party under the UCC. Grantor shall, promptly upon request by Lender, assemble the Collateral, or any portion thereof generally described in such request, and make it available to Lender at such place or places designated by Lender and reasonably convenient to Lender. If Lender elects to proceed under the UCC to dispose of portions of the Collateral, Lender, at its option, may give Grantor notice of the time and place of any public sale of any such property, or of the date after which any private sale or other disposition thereof is to be made, by sending notice by registered or certified first class mail, postage prepaid, to Grantor at least 10 days before the time of the sale or other disposition. If any notice of any proposed sale, assignment or transfer by Lender of any portion of the Collateral or any interest therein is required by Law, Grantor conclusively agrees that 10 days' notice to Grantor of the date, time and place thereof is reasonable.

**Section 4.06. Trustee Authorized To Execute Deeds.** Grantor irrevocably appoints Trustee (which appointment is coupled with an interest) the true and lawful attorney of Grantor, in its name and stead and on its behalf, for the purpose of effectuating any sale, assignment, transfer or delivery for the enforcement hereof, whether pursuant to power of sale, foreclosure or otherwise in connection with enforcing this Instrument, to execute and deliver all such deeds, bills of sale, assignments, releases and other instruments as may be designated in any such request.

**Section 4.07. Purchase of Collateral by Lender.** Lender may be a purchaser of the Collateral or of any part thereof or of any interest therein at any sale thereof, whether pursuant to power of sale, foreclosure or otherwise, and Lender may apply the purchase price thereof to the Obligations.

**Section 4.08. Receipt a Sufficient Discharge to Purchaser.** Upon any sale of the Collateral or any part thereof or any interest therein, whether pursuant to power of sale, foreclosure or otherwise, the receipt of Trustee or the officer making the sale under judicial proceedings shall be a sufficient discharge to the purchaser for the purchase money, and such purchaser shall not be obliged to see to the application thereof.

**Section 4.09. Waivers.** To the fullest extent Borrower may lawfully do so, Borrower hereby agrees with Lender as follows:

(a) Borrower will not at any time, insist on, plead, claim or take the benefit or advantage of any statute or rule of law now or hereafter in force providing for any appraisement, valuation, stay, extension, moratorium or redemption, or of any statute of limitations, and Borrower, for itself and its heirs, devisees, representatives, successors and assigns, and for any and all Persons ever claiming an interest in the Property (other than Lender) hereby, to the extent permitted by applicable law, waives and releases all rights of redemption, valuation, appraisement, notice of intention to mature or declare due the whole of the Obligations, and all rights to a marshaling of the assets of Borrower, including the Property, or to a sale in inverse order of alienation, in the event of foreclosure of the liens and security interests created hereunder. In the event of foreclosure pursuant to the provisions hereof, Lender may, at Lender's option, obtain an appraisal of the Property and any funds expended by Lender for such propose shall become indebtedness of Borrower to Lender secured by this Instrument and shall be paid by Borrower to Lender within 10 days of demand.

(b) Borrower shall not have or assert any right under any statute or rule of law pertaining to any of the matters set forth in this Section 4.09, to the administration of estates of decedents or to any other matters whatsoever to defeat, reduce or affect any of the rights or remedies of Trustee and Lender hereunder, including the rights of Trustee and/or Lender hereunder to a sale of the Property for the collection of the Obligations without any prior or different resort for collection, or to the payment of the Obligations out of the proceeds of sale of the Property in preference to any other Person.

(c) If any statute or rule of law referred to in this Section 4.10 and now in force, of which Borrower or any of its representatives, successors or assigns and such other Persons claiming any interest in the Property might take advantage despite this Section 4.10, shall hereafter be repealed or cease to be in force, such statute or rule of law shall not thereafter be deemed to preclude the application of this Section 4.09.

(d) Borrower shall not be relieved of its obligation to pay the Obligations at the time and in the manner provided herein and in the other Loan Documents, nor shall the lien or priority of this Instrument or any other Loan Documents be impaired by any of the following actions, non-actions or indulgences by Trustee or Lender:

(i) any failure or refusal by Trustee or Lender to comply with any request by Borrower (X) to consent to any action by Borrower or (Y) to take any action to foreclose this Instrument or otherwise enforce any of the provisions hereof or of the other Loan Documents;

(ii) any release, regardless of consideration, of the whole or any part of the Property or any other security for the Obligations or any Person liable for payment of the Obligations;

(iii) any waiver by Lender of compliance by Borrower with any provision of this Instrument or the other Loan Documents, or consent by Lender to the performance by Borrower of any action which would otherwise be prohibited thereunder, or to the failure by Borrower to take any action which would otherwise be required hereunder or thereunder; and

(iv) any agreement or stipulation between Trustee or Lender and Borrower, or, with or without Borrower's consent, between Trustee or Lender and any subsequent owner or owners of the Property or any other security for the Obligations, renewing, extending or modifying the time of payment or the terms of this Instrument or any of the other Loan Documents (including a modification of any interest rate), and in any such event Borrower shall continue to be obligated to pay the Obligations at the time and in the manner provided herein and in the other Loan Documents, as so renewed, extended or modified, unless expressly released and discharged by Lender.

(e) Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Property, Lender may release any Person at any time liable for the payment of the Obligations or any portion thereof or any part of the security held for the Obligations and may extend the time of payment or otherwise modify the terms of this Instrument or of any of the Loan Documents, including a modification of the interest rate payable on the principal balance of the Note, without in any manner impairing or affecting this Instrument, as so extended and modified, as security for the Obligations under any such subordinate lien, encumbrance, right, title or interest. Lender may resort for the payment of the Obligations to any other security held by Lender (or any trustee for the benefit of Lender) in such order and manner as Lender in its discretion, may elect. Lender may take or cause to be taken action to recover the Obligations, or any portion thereof, or to enforce any provision hereof or of the other Loan Documents without prejudice to the right of Lender thereafter to foreclose or cause to be foreclosed this Instrument. Lender shall not be limited exclusively to the right and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by law or equity. The rights of Trustee and Lender under this Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Trustee and/or Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

**Section 4.10. Obligations to Become Due on Sale.** Upon any sale of the Collateral or any portion thereof or interest therein by virtue of the exercise of any remedy by Lender or Trustee under or by virtue of this Instrument, whether pursuant to power of sale, foreclosure or otherwise in accordance with this Instrument or by virtue of any other remedy available at law or in equity or by statute or otherwise, at the option of Lender, all Obligations shall, if not previously declared due and payable, immediately become due and payable, together with interest accrued thereon and all other indebtedness secured by this Instrument.

**Section 4.11. Application of Proceeds of Sale and Other Moneys.** The proceeds of any sale of the Collateral or any part thereof or any interest therein under or by virtue of this Instrument, whether pursuant to power of sale, foreclosure or otherwise, and all other moneys at any time held by Lender or Trustee as part of the Collateral, shall be applied as follows:

FIRST, to pay fees, expenses or indemnities to enforce this Instrument or then due to Lender or Trustee;

SECOND, to pay Obligations in respect of any other fees, expenses or indemnities then due to Lender;

THIRD, to pay interest due in respect of the Loans;

FOURTH, to pay the principal outstanding with respect to the Loans; and

FIFTH, to the payment of all other Obligations.

**Section 4.12. Appointment of Receiver.** If an Event of Default shall have occurred (after the expiration of any applicable grace or cure period), Lender shall, as a matter of right and without regard to the adequacy of any security for the Obligations secured hereby or the solvency of Grantor, be entitled to the appointment of a receiver for all or any part of the Collateral, whether such receivership be incidental to a proposed sale of the Collateral or otherwise, and Grantor hereby consents to the appointment of such a receiver and will not oppose any such appointment.

**Section 4.13. Possession, Management and Income.** If an Event of Default shall have occurred (after the expiration of any applicable grace or cure period), in addition to, not in limitation of, the rights and remedies provided in Section 2.10, Lender, upon five days' notice to Grantor, may enter upon and take possession of the Collateral or any part thereof by force, summary proceeding, ejectment or otherwise and may remove Grantor and all other Persons and any and all property therefrom and may hold, operate, maintain, repair, preserve and manage the same and receive all earnings, income, Rents, issues and proceeds accruing with respect thereto or any part thereof. Lender shall be under no liability for or by reason of any such taking of possession, entry, removal or holding, operation or management.

**Section 4.14. Right of Lender to Perform Grantor's Covenants.** During the continuance of an Event of Default (after the expiration of any applicable grace or cure period), Lender, without notice to or demand upon Grantor and without waiving or releasing any obligation or Event of Default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Grantor, and may enter upon the Collateral for such purpose and take all such action thereon as, in Lender's opinion, may be necessary or appropriate therefor. No such entry and no such action shall be deemed an eviction of any Tenant or other person with the right to use or occupy all or any portion of the Property or any part thereof. After the occurrence of an Event of Default, all sums so paid by Lender and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred, together with interest thereon at the highest rate provided for in the Loan Agreement from the date of payment or incurring, shall constitute additional indebtedness secured by this Instrument and shall be paid by Grantor to Lender within 10 days of demand.

**Section 4.15. Subrogation.** To the extent that Lender, on or after the date hereof, pays any sum due under any provision of any legal requirement or any instrument creating any Lien prior or superior to the Lien of this Instrument, or Grantor or any other Person pays any such sum with the proceeds of the Loans evidenced by the Note, Lender shall have and be entitled to a Lien on the Collateral equal in priority to the Lien discharged, and Lender shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such Lien, that shall remain in existence and benefit Lender in securing the Obligations.

**Section 4.16. Remedies Cumulative.** Each right, power and remedy of Lender and Trustee provided for in this Instrument or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Instrument or the other Loan Documents, or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lender or Trustee of any one or more of the rights, powers or remedies provided for in this Instrument, or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Lender or Trustee of any or all such other rights, powers or remedies.

**Section 4.17. Provisions Subject to Applicable Law.** All rights, powers and remedies provided in this 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 Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Instrument and any other application of such term shall not be affected thereby.

**Section 4.18. No Waiver, Compromise of Actions.** No failure by Lender to insist upon the strict performance of any term hereof or of any other Loan Documents, or to exercise any right, power or remedy consequent upon a breach hereof or thereof, shall constitute a waiver of any such term or of any such breach. No waiver of any breach shall affect or alter this Instrument, which shall continue in full force and effect with respect to any other then existing or subsequent breach. By accepting payment or performance of any amount or other Obligation before or after its due date, Lender shall not be deemed to have waived its right either to require prompt payment or performance when due of all other amounts payable hereunder and the Obligations or to declare a default for failure to effect such prompt payment. Any action, suit or proceeding brought by Lender pursuant to any of the terms of this Instrument, any Loan Document or otherwise, and any claim made by Lender hereunder or thereunder may be compromised, withdrawn or otherwise dealt with by Lender without any notice to or approval of Grantor.

**Section 4.19. Additional Provisions as to Remedies.**

(a) Neither Trustee nor Lender shall have any obligation to pursue any rights or remedies they may have under any other agreement prior to pursuing their rights or remedies hereunder or under the other Loan Documents.

(b) No recovery of any judgment by Trustee or Lender and no levy of an execution upon the Property or any other property of Borrower shall affect, in any manner or to any extent, the lien of this Instrument upon the Property, or any liens, rights, powers or remedies of Trustee or Lender hereunder, and such liens, rights, powers and remedies shall continue unimpaired as before.

(c) Lender may resort or cause Trustee to resort to any security given by this Instrument or any other security now given or hereafter existing to secure the Obligations, in whole or in part, in such portions and in such order as Lender may deem advisable, and no such action shall be construed as a waiver of any of the liens, rights or benefits granted hereunder.

(d) Acceptance of any payment after the occurrence of any Event of Default shall not be deemed a waiver or a cure of such Event of Default, and acceptance of any payment less than any amount then due shall be deemed an acceptance on account only.

(e) In the event that Trustee or Lender shall have proceeded to enforce any right or remedy hereunder by foreclosure, sale, entry or otherwise, and such proceeding shall be discontinued, abandoned or determined adversely for any reason, then Borrower, Trustee and Lender shall be restored to their former positions and rights hereunder with respect to the Property, subject to the lien hereof.

**ARTICLE V  
MISCELLANEOUS**

**Section 5.01. Further Assurances; Financing Statements; Recordation.**

(a) Grantor, at its expense, will execute, acknowledge and deliver all such instruments and take all such other action as Lender from time to time may reasonably request in order to further effectuate the purposes of this Instrument and to carry out the terms hereof and to better assure and confirm to Lender its rights, powers and remedies hereunder.

(b) Notwithstanding any other provision of this Instrument, Grantor hereby agrees that, without notice to or the consent of Grantor, Lender may file with the appropriate public officials such financing statements, continuation statements, amendments and similar documents as are or may become necessary to perfect, preserve or protect the security interest granted by this Instrument.

(c) Grantor, at its expense, will at all times cause this Instrument and any document, agreement or instrument amendatory hereof or supplemental hereto or thereof (and any appropriate financing statements or other instruments and continuations thereof), and each other document, agreement and instrument delivered in connection with the Loan Documents and intended thereunder to be recorded, registered and filed, to be kept recorded, registered and filed, in such manner and in such places, and will pay all such recording, registration, filing fees, taxes and other charges, and will comply with all such statutes and regulations as may be required by Law in order to establish, preserve, perfect and protect the Lien of this Instrument as a valid, first mortgage lien and first priority perfected security interest in the Collateral, subject only to the Permitted Liens. Grantor will pay or cause to be paid, and will indemnify Lender in respect of, all taxes and other fees and charges (including interest and penalties) at any time payable in connection with the filing and recording of this Instrument and any and all supplements and amendments hereto.

**Section 5.02. Additional Security.** Without notice to or consent of Grantor, and without impairment of the Lien and rights created by this Instrument, Lender may accept from Grantor or any other Person additional security for the Obligations. Neither the giving of this Instrument nor the acceptance of any such additional security shall prevent Lender from resorting, first, to such additional security, or, first, to the security created by this Instrument, or concurrently to both, in any case without affecting Lender's Lien and rights under this Instrument.

**Section 5.03. Provisions Regarding Trustee.** Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever. Trustee shall not be personally liable in case of entry by it or anyone acting by virtue of the powers herein granted it upon the Collateral for debts contracted or liability or damages incurred in the management or operation of the Collateral. All monies 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 monies (except to the extent required by Law) and Trustee shall be under no liability for interest on any monies received by it hereunder. Trustee may resign by giving 30 days' prior written notice of such resignation to Lender. If Trustee shall die, resign or become disqualified from acting, or shall fail or refuse to exercise its powers hereunder when requested by Lender so to do, or if for any reason and without cause Lender shall prefer to appoint a substitute trustee to act instead of the original Trustee named herein, or any prior successor or substitute trustee, Lender shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the aforementioned Trustee. Upon appointment by Lender and upon recording of the substitution in the land records of the county of recordation of this Instrument, any new 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 predecessor in the rights hereunder with the same effect as if originally named as Trustee herein.

**Section 5.04. Notices.** Except as otherwise provided herein, all notices, certificates, requests, demands and other communications provided for hereunder or under any Loan Document shall be in writing and shall be (a) personally delivered or (b) sent by overnight courier of national reputation, and shall be deemed to have been given on (i) the date received if personally delivered and (ii) the next Business Day if sent by overnight courier. All communications shall be addressed to the party to whom notice is being given at its Notice Address.

**Section 5.05. Waivers, Amendments.** The provisions of this Instrument may be amended, discharged or terminated only by an instrument in writing executed by Grantor and Lender, and the observance or performance of any provision of this Instrument may be waived, either generally or in a particular instance and either retroactively or prospectively, only by an instrument in writing executed by Lender.

**Section 5.06. Governing Law.** THIS INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE LAWS OF THE STATE, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

**Section 5.07. Successors and Assigns.** This Instrument shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; *provided, however*, that Grantor may not assign or transfer its rights or obligations hereunder without the prior written consent of Lender.

**Section 5.08. Waiver of Jury Trial.** GRANTOR HEREBY WAIVES GRANTOR'S RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS INSTRUMENT, ANY OF THE LOAN DOCUMENTS, ANY DEALINGS BETWEEN LENDER AND GRANTOR RELATING TO THE SUBJECT MATTER OF THE TRANSACTIONS CONTEMPLATED BY THIS INSTRUMENT OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN LENDER AND GRANTOR. GRANTOR ACKNOWLEDGES AND AGREES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER ENTERING INTO THIS INSTRUMENT AND THE OTHER LOAN DOCUMENTS. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS INSTRUMENT, ANY LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED BY THIS INSTRUMENT OR ANY RELATED TRANSACTIONS. IN THE EVENT OF LITIGATION, THIS INSTRUMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**Section 5.09. Time of Essence.** Time is of the essence with respect to Grantor's obligations under this Instrument.

**Section 5.10. No Offset.** Grantor's obligation to make payments and perform all obligations, covenants and warranties under this Instrument and under the other Loan Documents shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or other right that Grantor or any guarantor may have or claim against Lender. The foregoing provisions of this section, however, do not constitute a waiver of any claim or demand which Grantor or any guarantor may have in damages or otherwise against Lender or any other person, or preclude Grantor from maintaining a separate action thereon; *provided, however*, that Grantor waives any right it may have at law or in equity to consolidate such separate action with any action or proceeding brought by Lender.

**Section 5.11. Severability.** Any provision of this Instrument or other Loan Documents that is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Instrument or such Loan Documents or affecting the validity or unenforceability of such provision in any other jurisdiction.

## **ARTICLE VI STATE SPECIFIC PROVISIONS**

**Section 6.01. Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Article VI and the terms and conditions of the rest of this Deed of Trust, the terms and conditions of this Article VI shall control and be binding.

**Section 6.02. Forced Place Insurance Warning (Oregon).** **UNLESS GRANTOR PROVIDES LENDER WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY THE LOAN**

DOCUMENTS, THE LENDER MAY PURCHASE SUCH INSURANCE AT GRANTOR'S EXPENSE TO PROTECT LENDER'S INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT GRANTOR'S INTEREST. IF THE COLLATERAL BECOMES DAMAGED, THE COVERAGE LENDER PURCHASES MAY NOT PAY ANY CLAIM GRANTOR MAKES OR ANY CLAIM MADE AGAINST GRANTOR. GRANTOR MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE THAT GRANTOR HAS OBTAINED PROPERTY COVERAGE ELSEWHERE.

GRANTOR IS RESPONSIBLE FOR THE REASONABLE COST OF ANY SUCH INSURANCE PURCHASED BY LENDER. THE COST OF THIS INSURANCE MAY BE ADDED TO THE LOAN BALANCE. IF THIS COST IS ADDED TO THE LOAN BALANCE, THE INTEREST RATE PAYABLE UNDER THE UNDERLYING LOAN WILL APPLY TO THE ADDED AMOUNT. THE EFFECTIVE DATE OF THE COVERAGE MAY BE THE DATE GRANTOR'S PRIOR COVERAGE LAPSED OR THE DATE GRANTOR FAILED TO PROVIDE PROOF OF COVERAGE.

THE COVERAGE LENDER PURCHASES MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE BORROWER CAN OBTAIN ON GRANTOR'S OWN AND MAY NOT SATISFY ANY NEED FOR PROPERTY DAMAGE COVERAGE OR ANY MANDATORY LIABILITY INSURANCE REQUIREMENTS IMPOSED BY APPLICABLE LAW.

**Section 6.03. No Oral Commitments Notice.** UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY LENDER CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE GRANTOR'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY THE LENDER TO BE ENFORCEABLE.

**Section 6.04. Additional Fixture Filing Language.** This instrument constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the County in which the Land is located with respect to any and all fixtures included in the term Trust Estate, as used herein, and with respect to any goods or other personal property that may now be or hereafter becomes fixtures.

**Section 6.05. Attorneys' Fees and Costs.** As used in this Deed of Trust and in the Loan Documents, "attorneys' fees" or "expenses" (or similar references to attorneys' fees and costs or expenses of Lender) shall include, without limitation, all attorneys' and paralegals' fees and expenses, if any, which shall be incurred whether or not legal action is commenced and any such fees and expenses incurred at trial, arbitration, interpleader, bankruptcy, hearing, or any judicial proceeding, and any appeal therefrom or petition for review, or in connection with any action for rescission. Upon the occurrence and during the continuance of any Event of Default, Lender shall also be entitled to recover all costs of searching records, obtaining title reports, title insurance, trustee fees and other reasonable costs incurred by Lender and its successors and/or any servicing agent engaged by Lender in connection with the loan evidenced by the Loan Documents, that are necessary or advisable at any time in the opinion of any such person for the protection of its interest or enforcement of its rights.

**Section 6.06. Nonresidential Deed of Trust.** Grantor warrants that this Deed of Trust is not and will at all times continue not to be a "residential" trust deed (as that term is defined in ORS 86.705(6)).

**Section 6.07. Warranty of Business Purpose and Use of Proceeds.** Grantor warrants that it is engaging in this transaction exclusively for business, commercial or investment purposes, and not for personal, family or household purposes. Grantor warrants that the proceeds of the Loan and the execution and delivery of this Deed of Trust are for business purposes.

**Section 6.08. Handling of Payments on Loan.** If at any time the accrued interest, late charge (if any) and any costs, fees or other charges under this Deed of Trust or the Loan Documents exceed the actual payment received from Grantor, then Lender shall have the right to add the difference to (and have it become part of) the unpaid principal balance, and bear interest at the applicable "default rate" of interest provided in the Loan Documents. All moneys available to Lender for application in payment or reduction



of the amounts owed under this Deed of Trust and the Loan Documents may be applied by Lender in such manner and in such amounts and at such time or times and in such order and priority as Lender may see fit to the payment or reduction of such portion of this Deed of Trust and the Loan Documents, as Lender may elect.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK; EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, Grantor has caused this Instrument to be duly executed as of the day and year first above written.

GRANTOR:

EVERGREEN ENTERPRISES, INC., an Oregon corporation

By

Name: Rahul Marwah

Title: President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

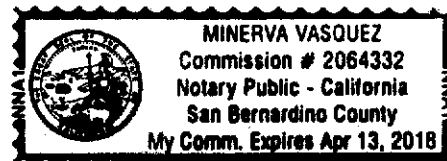
STATE OF California )

COUNTY OF Los Angeles )

On August 10 2016 before me, Minerva Vasquez, notary Public  
(here insert name and title of the officer), personally appeared Rahul Marwah,  
president  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature  
(Seal)

Minerva Vasquez

Signature page to Deed of Trust

## SCHEDULE 1

### DESCRIPTION OF LAND

Commencing at the Northwest corner of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon and running thence South  $00^{\circ}00'1/2''$  East along the Westerly boundary of Section 3, 826.8 feet more or less, to its intersection with a line parallel with and 75 feet distant at right angles Northeastly from the center line of the Dulles California State Highway, also known as South Sixth Street, as the same is now located and constructed, said parallel line being also the Northerly right of way line of said street and highway; thence South  $55^{\circ}52'1/2''$  East along said parallel line 1,550.79 feet to the true point of beginning of this description; said point marking boundary between lands of Swan Lake Moulding Company and J.R. and Maude Brown from which point the witness monument cross chiseled in the concrete sidewalk by the Oregon State Highway Department on July 15, 1947, bears South  $34^{\circ}07'1/2''$  West 10 feet; running thence from said true beginning point North  $34^{\circ}07'1/2''$  East at right angles to South Sixth Street 175 feet along said boundary to an iron pipe on the Southerly line of Pershing Way, thence North  $55^{\circ}52'1/2''$  West parallel to South Sixth Street along said Southerly line of Pershing Way 134.55 feet to an iron rod marking the boundary between the lands of Swan Lake Moulding Company and Sheldon and Catherine Brumbaugh; thence along said boundary South  $34^{\circ}07'1/2''$  West at right angles to South Sixth Street 175 feet to a point on the Northerly line of South Sixth Street from which the witness monument cross chiseled by the Oregon State Highway Department bears South  $34^{\circ}07'1/2''$  West 10 feet; thence South  $55^{\circ}52'1/2''$  East along the Northerly line of South Sixth Street 134.55 feet to the true beginning point.

## SCHEDULE 2

### DESCRIPTION OF SITE LEASE

Lease Agreement by and between Omid Navran, as landlord, and Evergreen Enterprises, Inc., as tenant, dated June 21, 2016.