



2017-010197
Klamath County, Oregon
09/08/2017 04:06:00 PM
Fee: \$437.00

AFTER RECORDING RETURN TO:

WINSTEAD PC
600 Travis Street, Suite 1100
Houston, TX 77002
Attn: Cassandra D. Smith, Esq.

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

Maximum principal amount to be advanced: \$1,656,000.00; however, such maximum principal amount to be advanced may be exceeded to complete construction pursuant to ORS 86.155(2)(c).

This Deed of Trust secures an obligation incurred for the construction of improvements on land and constitutes a construction mortgage as defined in ORS 79.0334.

Maturity date: September 7, 2018, exclusive of options to renew or extend, if any.

Grantor: **CD DG CRESCENT, LLC**, whose address is 4336 Marsh Ridge Road, Carrollton, TX 75010.

Trustee: **AMERITITLE, INC.**, whose address is 300 Klamath Avenue, Klamath Falls, OR 97601.

Grantee: **SB FINCO AB, L.P.**, whose address is 301 Commerce St., Ste. 3200, Ft. Worth, TX 76102.

ADDITIONAL STATUTORY NOTICES:

(a) The tax account number for the property subject to the lien or in which the interest is created are: Account No. R153461, Map No. R-2409-030CA-01400-000 and Account No. R153434, Map No. R-2409-030CA-01300-000.

(b) Type of transaction: Creation of deed of trust lien and security interests encumbering the property described herein.

(c) The address of the entity holding a lien or other interest created by this instrument is:

SB FINCO AB, L.P.
301 Commerce St., Ste. 3200
Ft. Worth, TX 76102

(d) This document constitutes a fixture filing in accordance ORS 79.0502.

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

This instrument ("Deed of Trust") dated July 31, 2017, but to effective as of September 7, 2017 (the "Effective Date") is a deed of trust from:

Grantor Name: **CD DG CRESCENT, LLC**
Address: 4336 Marsh Ridge Road
Carrollton, Texas 75010

(called the "Grantor") to:

Trustee Name: **AMERITITLE, INC**
Address: 300 Klamath Avenue
Klamath Falls, OR 97601

as trustee (called the "Trustee"), for the use and benefit of:

Beneficiary Name: **SB FINCO AB, L.P.**
Address: 301 Commerce, Suite 3200
Fort Worth, Texas 76102
Attention: Loan Reporting Department

(called the "Beneficiary"), a security agreement between Grantor and Beneficiary and an assignment of rents from Grantor to Beneficiary.

The specific terms, conditions, and obligations of this Deed of Trust are set forth following the Table of Contents beginning on the next page.

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SECTION 1 DEFINITIONS

1.1 Definition. As used herein, the following terms shall have the following meanings:

"Affiliate" means with respect to any Person, any other Person that, directly or indirectly, controls, is controlled by, or is under common control with that Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") means possession, directly or indirectly, of the power to direct or cause the management and policies of that Person, whether through the ownership of voting securities, by contract, or otherwise.

"Anti-Terrorism Laws" means any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, orders, and ordinances of any Governmental Authority relating to terrorism or money laundering, including, without limiting the generality of the foregoing, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. No. 107-56); the Trading with the Enemy Act (50 U.S.C.A. App. 1 *et seq.*); the International Emergency Economic Powers Act (50 U.S.C.A. § 1701-06); Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (relating to "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism") and the United States Treasury Department's Office of Foreign Assets Control list of "Specifically Designated National and Blocked Persons" (as published from time to time in various mediums, including, without limitation, at <http://www.treas.gov/ofac/t11sdn.pdf>).

"Architectural Barrier Laws" means any and all architectural barrier laws including, without limitation, the Americans with Disabilities Act of 1990, P.L. 101-336, as amended, or any successor thereto.

"Assignment of Leases Statute" has the meaning set forth in *Section 9.7*.

"Beneficiary" means SB FINCO AB, L.P., a Texas limited partnership, whose address for notice hereunder is 301 Commerce, Suite 3200, Fort Worth, Texas 76102, Attention: Loan Reporting Department, and the subsequent holder or holders, from time to time, of the Note.

"Borrower" means Grantor.

"CGL" means the broadest available form of commercial general liability insurance (utilizing the then prevailing ISO form or an equivalent form acceptable to Beneficiary in its sole discretion).

"Charges" means all fees, charges, and/or other things of value that are treated as interest under applicable law, and are contracted for, charged, received, taken, or reserved by Beneficiary pursuant to the Note and the Loan Documents.

"Code" means the Uniform Commercial Code as enacted and in force in the State of Texas.

"Collateral" means all Contracts, Leases, Plans, if any, insurance claims relating to the Mortgaged Property, right to reimbursements, rebates, credits, refunds, tax credits, tax abatements, or other consideration or monies, with respect to the Mortgaged Property, to be received pursuant to any tax credits, tax abatement agreements, utility district reimbursement agreements, public improvement district reimbursement agreements or TIF contracts of any kind or character (or any similar writings), commitments issued by any lender or investor other than Beneficiary, any completion bond, performance bond and labor and material payment bond and any other bond relating to the Mortgaged Property or to any contract providing for construction of improvements to any of the Mortgaged Property to finance or invest in any of the Mortgaged Property, and any interest of Grantor now owned or hereafter acquired therein together with all substitutions for and proceeds of any of the foregoing received upon the rental, sale, exchange, transfer, collection or other disposition or substitution of it and together with all general intangibles now owned by Grantor or existing or hereafter acquired, created or arising, and all proceeds of the foregoing.

"Collateral Obligor" has the meaning set forth in *Section 10.13*.

"Constituent Party" means any (a) general partner or managing member of Grantor or (b) any signatory to this Deed of Trust that signs on Grantor's behalf that is a corporation, general partnership, limited partnership, limited liability company, joint venture, trust, or other type of business organization.

"Contracts" means all of the right, title, and interest of Grantor, including equitable rights, in, to, and under all: (a) contracts for the purchase or sale of all or any portion of the Mortgaged Property, whether such contracts are now or at any time hereafter existing, including without limitation, all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under the contracts, including all amendments, supplements, and restatements thereof, and together with all payments, earnings, income, profits, and all other sums due or to become due arising from the sale of any portion of the Mortgaged Property or from the contracts, and together with any and all earnest money, security, letters of credit, or other deposits under any of the contracts; (b) contracts, licenses, permits, and rights relating to living unit equivalents or other entitlements for water, wastewater, and other utility services whether executed, granted, or issued by a private person or entity or a governmental or quasi-governmental agency, which are directly or indirectly related to the development, ownership, maintenance, or operation of the Mortgaged Property, whether such contracts, licenses, and permits are now or hereafter existing, including without limitation, all rights of living unit equivalents or other entitlements with respect to water, wastewater, and other utility services, certificates, licenses, zoning variances, permits, and no-action letters from each Governmental Authority required (i) to evidence compliance by Grantor and all improvements constructed or to be constructed on the Mortgaged Property with all Legal Requirements applicable to the Mortgaged Property, and (ii) to develop and/or operate the Mortgaged Property as a commercial and/or residential project, as the case may be; (c) financing arrangements relating to the financing or purchase of any portion of the Mortgaged Property by future purchasers; (d) contracts for construction or supplying of Improvements to the Mortgaged Property; and (e) other contracts which in any way relate to the use, enjoyment, occupancy, operation, maintenance, repair, management, or ownership of the Mortgaged Property (save and

except the Leases), including without limitation maintenance and service contracts and management agreements.

"Debt" means the Indebtedness and the Obligations.

"Debtor Relief Laws" means Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension, or adjustment of debts, or similar laws affecting the rights of creditors.

"Default Interest Rate" has the meaning set forth in the Note.

"Disposition" means any sale, lease, exchange, assignment, mortgage, conveyance, transfer, trade, or other disposition of (a) all or any portion of the Mortgaged Property (or any interest therein) or (b) all or any part of the legal or beneficial ownership interest in Borrower (if Grantor is a corporation, partnership, general partnership, limited partnership, joint venture, trust, or other type of business association or legal entity), in either case except as may be expressly permitted under this Deed of Trust or other Loan Documents.

"Environmental Indemnity Agreement" means the Environmental Indemnity Agreement of even date herewith, executed by Grantor in favor of Beneficiary as it may from time to time be amended, supplemented, or restated.

"Environmental Laws" has the meaning set forth in the Environmental Indemnity Agreement.

"Equipment" has the meaning set forth in the Code together with all of the following to the extent, if any, the same are not included within such definition: all machinery, equipment, furniture, furnishings, fixtures, and other tangible personal property including, without limitation, data processing hardware and software, motor vehicles, aircraft, dies, tools, jigs, and office equipment, as well as all of such types of property that are leased and all rights and interests with respect thereto under such leases to the extent that any such lease does not prohibit or require a consent to the creation of a Lien in favor of the Beneficiary (including, without limitation, options to purchase) together with all present and future additions and accessions thereto, replacements therefor, component and auxiliary parts and supplies used or to be used in connection therewith, and all substitutes for any of the foregoing, and all manuals, drawings, instructions, warranties and rights with respect thereto wherever any of the foregoing is located to the extent that any of the foregoing are now owned or hereafter acquired by the Grantor and to the extent that any other Person now or hereafter grants or purports to grant a Lien upon all or any of the foregoing as security for all or any portion of the Indebtedness.

"ERISA" means the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, as amended, and all successor statutes thereof.

"Event of Default" means any happening or occurrence described in *Section 6*.

"Financial Statements" means all balance sheets, income statements, statements of profit and loss, surplus reconciliation statements, statements of cash flow, statements of sources and

uses of funds, and all other financial data, statements, and reports (whether of Borrower, its Subsidiaries, any Guarantor, any other Constituent Party, or otherwise) that are required to be furnished, have been furnished, or may from time to time be furnished to Beneficiary pursuant to or in connection with the Loan Documents.

"Fixtures" means all materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Grantor and now or hereafter attached to, installed in, or used in connection with (temporarily or permanently) any of the Improvements or the Land, including without limitation, all partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, call and sprinkler systems, alarm and security systems, intercom systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, refrigeration, plumbing, laundry, lighting, generating, cleaning, waste disposal, transportation systems (of people or things, including without limitation stairways, elevators, escalators, and conveyors), incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances, and equipment, disposals, dishwashers, refrigerators, ranges, recreational equipment and facilities of all kinds, lighting, traffic control, raw and potable water, gas, electrical, storm and sanitary sewer, telephone and cable television facilities, and all other utilities whether or not situated in easements, together with all accessions, appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof.

"Governmental Authority" means all applicable courts, boards, agencies, commissions, offices, or authorities of any nature for any governmental unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence.

"Grantor" means the individual or entity (or individuals or entities, if more than one) described as Grantor in the initial paragraph of this Deed of Trust and the successors, assigns, heirs, and legal representatives therefor, and all subsequent owners of all of any part of the Mortgaged Property (without hereby implying Beneficiary's consent to any Disposition of all or any part of the Mortgaged Property).

"Guarantor" means (individually and/or collectively, as the context may require) those persons, firms, or entities, if any, designated as Guarantor in the Guaranty.

"Guaranty" means (individually and/or collectively, as the context may require) that instrument or those instruments of guaranty, if any, now or hereafter in effect, from Guarantor to Beneficiary guaranteeing the repayment of all or any part of the Indebtedness or the satisfaction of, or continued compliance with, the Obligations, or both, as it or they may from time to time be amended, supplemented, or restated.

"Impositions" means: (a) all real estate and personal property taxes, charges, assessments, standby fees, excises, and levies and any interest, costs, or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time before or after the execution hereof may be assessed, levied, or imposed upon the Mortgaged Property or the ownership, use, occupancy, or enjoyment thereof, or any portion thereof, or the sidewalks, streets, or alleyways adjacent thereto; (b) any charges, fees, license payments, or other sums payable under any easement, license, or

agreement maintained for the benefit of the Mortgaged Property; (c) water, gas, sewer, electricity, and other utility charges and fees relating to the Mortgaged Property; and (d) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Mortgaged Property.

"Improvements" means any and all buildings, covered garages, air conditioning towers, open parking areas, structures, and other improvements of any kind or nature, and any and all additions, alterations, betterments, or appurtenances thereto, now or at any time hereafter situated, placed, or constructed upon the Land or any part thereof.

"Indebtedness" means (i) the principal of, interest on, or other sums evidenced by the Note or the Loan Documents; (ii) any other amounts, payments, or premiums payable under the Loan Documents; (iii) such additional or future sums (whether or not obligatory), with interest thereon, as may hereafter be borrowed or advanced from Beneficiary, its successors or assigns, by the then record owner of the Mortgaged Property, when evidenced by a promissory note which, by its terms, is secured hereby, it being contemplated by Grantor and Beneficiary that such future indebtedness may be incurred; and (iv) any and all other indebtedness, obligations, and liabilities of any kind or character of Grantor to Beneficiary, now or hereafter existing, absolute or contingent, due or not due, arising by operation of law or otherwise, direct or indirect, primary or secondary, joint, several, joint and several, fixed or contingent, secured or unsecured by additional or different security or securities, including indebtedness, obligations, and liabilities to Beneficiary of Grantor as a member of any partnership, joint venture, trust or other type of business association, or other group, and whether incurred by Grantor as principal, surety, endorser, guarantor, accommodation party or otherwise, and any and all renewals, modifications, amendments, restatements, rearrangements, consolidations, substitutions, replacements, enlargements, and extensions thereof, it being contemplated by Beneficiary and Grantor that Grantor may hereafter become indebted to Beneficiary in further sum or sums. Notwithstanding the above, the term "Indebtedness" shall not include any other loan, advance, Debt, obligation, or liability with respect to which Beneficiary is by applicable law prohibited from obtaining a Lien on real estate, nor shall this definition operate or be effective to constitute or require any assumption or payment by any person of any Debt or obligation of any other person if it would violate or exceed the limit provided in any applicable usury or other law.

"Land" means all of that certain real property or interest therein situated in Klamath County, Oregon, more particularly described in **Exhibit A**, together with all right, title, interest, and privilege of Grantor in and to: (a) all streets, ways, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights, and public places, existing or proposed, abutting, adjacent, used in connection with, or pertaining to such real property or the improvements thereon; (b) any strips or gores of real property between such real property and abutting or adjacent properties; (c) all air rights, all water and water rights, sands, gravel, rocks and soil, timber and crops pertaining to such real property; and (d) all other appurtenances, reversions, and remainders in or to such real property.

"Leases" has the meaning set forth in **Section 9.1**.

"Legal Requirements" means: (a) all present and future judicial decisions, statutes (including, without limitation, Architectural Barrier Laws, Anti-Terrorism Laws, and Environmental Laws), rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to Grantor, any Constituent Party, any Guarantor, or the Mortgaged Property, including without limitation the ownership, use, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction of the Mortgaged Property; (b) all covenants, conditions, and restrictions contained in any deeds, other forms of conveyance, or in any other instruments of any nature that relate in any way or are applicable to the Mortgaged Property or the ownership, use, or occupancy thereof; (c) Grantor's or any Guarantor's presently or subsequently effective bylaws and articles of incorporation, operating agreement and articles of organization, or partnership, limited partnership, joint venture, trust, or other form of business association agreement; (d) all Leases; (e) all Contracts; and (f) all other leases not described in (d) above, and all other contracts (written or oral) not described in (e) above, that relate in any way to the Mortgaged Property and to which Grantor or any Guarantor may be bound, including without limitation any lease or other contract pursuant to which Grantor is granted a possessory interest in and to the Land and/or the Improvements.

"Lessee" means individually or collectively, a lessee or tenant under any of the Leases.

"License" has the meaning set forth in *Section 9.2*.

"Lien" means any valid and enforceable interest in any property securing an indebtedness, obligation, or liability owed to or claimed by any Person other than the owner of that property, whether that indebtedness is based on the common law, statute, or contract, including, without limitation, liens created by or pursuant to a security interest, pledge, mortgage, assignment, conditional sale, trust receipt, lease, consignment, or bailment for security purposes.

"Loan" means the Indebtedness evidenced by the Note or otherwise arising under the Loan Documents.

"Loan Agreement" means that certain Construction Loan Agreement of even date herewith between Borrower and Beneficiary.

"Loan Documents" means the Loan Agreement, the Note, this Deed of Trust, the Environmental Indemnity Agreement, the Guaranty, if any, and all other documents now or hereafter executed by Borrower, Guarantor, or any other person or party in connection with the loan evidenced by the Note or in connection with the payment of the Indebtedness or the performance and discharge of the Obligations, as they may from time to time be amended, supplemented, or restated.

"Loan Party" means Grantor, any signatory to this Deed of Trust that executes this Deed of Trust on Grantor's behalf, and each other Person that is liable for the payment of all or any part of the Indebtedness, the performance of the Obligations, or who owns any property that is subject to (or purported to be subject to) a Lien that secures all or any portion of the Indebtedness and the Obligations.

"Material Adverse Event" means any act, event, condition, or circumstance which could materially and adversely affect (a) the business condition (financial or otherwise), operations, prospects, results of operations, capitalization, liquidity, or any properties of Grantor, or Guarantor, taken as a whole, (b) the value of the Mortgaged Property, (c) the ability of Borrower, Guarantor, or any Constituent Party to perform its obligations under any Loan Document to which it is a party or by which it is bound, or (d) the enforceability of any Loan Document.

"Maximum Rate" means the maximum lawful rate of interest that may be contracted for, charged, taken, received or reserved by Beneficiary in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that it permits Beneficiary to contract for, charge, take, receive, or reserve a greater amount of interest than under Texas law), taking into account all Charges made in connection with the transaction evidenced by the Note and the other Loan Documents. To the extent that Beneficiary is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Rate payable on the Note and/or the Related Indebtedness, Beneficiary shall utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent United States federal law permits Beneficiary to contract for, charge, take, receive, or reserve a greater amount of interest than under Texas law, Beneficiary shall rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Beneficiary may, at its option and from time to time, utilize any other method of establishing the Maximum Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect.

"Minerals" means all substances in, on, under, or above the Land which are now, or may become in the future, intrinsically valuable (that is, valuable in themselves) and which now or may be in the future enjoyed through extraction or removal from the property, including without limitation oil, gas, and all other hydrocarbons, coal, lignite, carbon dioxide, and all other non-hydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron, and all other metallic substances or ores.

"Mortgaged Property" means the Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Leases, Plans, if any, and any interest of Grantor now owned or hereafter acquired therein, together with an interest in the Rents, and all other security and collateral of any nature now or hereafter given for the performance and discharge of the Obligations. Where the context permits or requires, the term **"Mortgaged Property"** means all or any portion of the above.

"Note" means the Promissory Note of even date herewith, secured by, among other things, this Deed of Trust, executed by Borrower and payable to the order of Beneficiary, in the stated principal amount of ONE MILLION SIX HUNDRED FIFTY-SIX THOUSAND AND NO/100 DOLLARS (\$1,656,000.00), bearing interest as therein specified, containing an attorneys' fee clause, with interest and principal being payable as therein specified, finally maturing on the date that is twelve (12) months after the date of the Note, as it may from time to time be amended, supplemented, restated, or increased.

"Obligations" means any and all of the covenants, conditions, warranties, representations, and other obligations (other than including the obligation to repay the Indebtedness) made or undertaken by Borrower, Guarantor, or any other person or party to the Loan Documents to

Beneficiary, Trustee, or others as set forth in the Loan Documents, the Leases, and in any deed, lease, sublease, or other form of conveyance, or any other agreement pursuant to which Grantor is granted a possessory interest in the Mortgaged Property.

"Operating Expenses" means all expenses related to the ownership, operation, management, repair, and leasing of the Land and Improvements, including ground lease payments, garage operation expenses, Mortgaged Property insurance charges and premiums, ad valorem taxes and other impositions, waste prevention costs, ordinary repairs and maintenance costs, environmental audit costs, property management fees, security fees, normal accountant fees, reasonable marketing and promotional expenses, reasonable legal expenses, Lease obligation costs, and Governmental Authority compliance costs.

"PBGC" means the Pension Benefit Guaranty Corporation, and any successor to all or any of the Pension Benefit Guaranty Corporation's functions under ERISA.

"Pension Plan" means the employee benefit pension plans of Grantor and any Subsidiaries in effect from time to time (if any), as the term is defined in ERISA.

"Permitted Exceptions" means the liens, easements, restrictions, security interests, and other matters (if any) described on *Exhibit B* and the liens and security interests created by the Loan Documents.

"Person" means any individual, corporation, partnership (general or limited), joint venture, limited liability company, association, trust, unincorporated association, joint stock company, government, municipality, political subdivision, political agency, or other entity.

"Personalty" means all of the right, title, and interest of Grantor in and to: (a) furniture, furnishings, equipment, machinery, and goods (including, without limitation, crops, farm products, timber and timber to be cut, and as-extracted collateral); (b) general intangibles, money, insurance proceeds, accounts, contract and subcontract rights, trademarks, trade names, copyrights, chattel paper, instruments, investment property, letter of credit rights, and inventory; (c) all cash funds, fees (whether refundable, returnable, or reimbursable), deposit accounts, or other funds or evidences of cash, credit, or indebtedness deposited by or on behalf of Grantor with any governmental agencies, boards, corporations, providers of utility services, public or private, including, without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees, development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures, Contracts, or other personalty, including, but not limited to, those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; (d) the Plans, and (e) all other personal property of any kind or character as defined in and subject to the provisions of the Code; any and all of which are now owned or hereafter acquired by Grantor, and which are now or hereafter situated in, on, or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or

on the Land or the Improvements, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof.

"Plans" means any plans and specifications for the development of the Land and construction of the Improvements (if any such construction is approved by Beneficiary pursuant to **Section 5.2** or pursuant to any loan agreement between Grantor and Beneficiary), and all amendments and modifications thereof, and all other design, engineering, or architectural work, test reports, surveys, shop drawings, and related items.

"Potential Default" means the occurrence of any event or circumstance which could, with the giving of notice or the passage of time, or both, constitute an Event of Default.

"Prohibited Person" means any person or entity that (a) is specifically named or listed in, or otherwise subject to, any Anti-Terrorism Laws, (b) is owned or controlled by, or acting for or on behalf of any person or entity specifically named or listed in, or otherwise subject to, any Anti-Terrorism Laws, (c) beneficiary is prohibited from dealing with, or engaging in any transaction with, pursuant to any Anti-Terrorism Laws, or (d) is affiliated with any person or entity described in clauses (a) through (c) above.

"Related Indebtedness" means all Indebtedness paid or payable by Borrower to Beneficiary under the Loan Documents or under any other communication or writing by or between Borrower and Beneficiary related to the transaction or transactions described in the Loan Documents, except the debt that has been paid or is payable by Borrower to Beneficiary under the Note.

"Rents" has the meaning set forth in **Section 9.1**.

"Subordinate Mortgage" means any mortgage, deed of trust, pledge, lien (statutory, constitutional, or contractual), security interest, encumbrance, charge, conditional sale agreement, or other title retention agreement covering all or any portion of the Mortgaged Property executed and delivered by Grantor, the lien of which is subordinate and inferior to the lien of this Deed of Trust.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which: (i) 50% or more of the shares of all classes of stock or membership interests entitled to vote is at the time beneficially owned, (ii) the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person, or (iii) 50% or more of the ownership interests is at the time owned, directly or indirectly by such Person.

"Tax Code" means the U.S. Internal Revenue Code of 1986, as amended, any and all U.S. Department of Treasury Regulations issued pursuant thereto in temporary or final form, and any and all federal, state, county, municipal and city rules and rulings, notices, requirements, statutes, regulations or laws governing or relating to taxes and/or taxation, and any and all successor statutes thereof.

"Tenant" has the meaning set forth in **Section 9.1(a)(ii)**.

"**Trust**" has the meaning set forth in **Section 2.1**.

"**Trustee**" means the Person described as Trustee in the initial paragraph of this Deed of Trust, or, upon appointment, any substitute trustee appointed pursuant to **Section 11.4**.

1.2 Additional Definitions; Interpretive Provisions. As used herein, the following terms shall have the following meanings:

(a) "**hereof**," "**hereby**," "**hereto**," "**hereunder**," and similar terms mean of, by, to, under, and with respect to, this Deed of Trust;

(b) "**heretofore**" means before, "**hereafter**" means after, and "**herewith**" means concurrently with, the date of this Deed of Trust;

(c) "**including**" means including without limitation;

(d) words of any gender shall include the other gender where appropriate;

(e) all terms used herein, whether or not defined in **Section 1.1**, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require; and

(f) all references to a particular **Section** shall refer to a **Section** in this Deed of Trust, unless otherwise specifically stated.

SECTION 2 GRANT

2.1 Grant.

To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, in consideration of the uses and trusts (the "**Trust**") established and continued by this Deed of Trust and in consideration of \$10 and other valuable consideration paid before delivery of this Deed of Trust by each of Trustee and Beneficiary to Grantor, who hereby acknowledges its receipt and that it is reasonably equivalent value for this Deed of Trust and all other security and rights given by Grantor, Grantor hereby GRANTS, BARGAINS, SELLS and CONVEYS, unto Trustee, in trust, the Mortgaged Property subject only to the Permitted Exceptions, TO HAVE AND TO HOLD the Mortgaged Property unto Trustee forever, and Grantor hereby binds itself, its successors, and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof; *provided, however,* that if Borrower shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall fully perform and discharge (or cause to be fully performed and discharged) the Obligations on or before the date same are to be performed and discharged, then the liens, security interests, estates, and rights granted by the Loan Documents shall terminate, in accordance with the provisions hereof, otherwise same shall remain in full force and effect. A certificate or other written statement executed on behalf of Trustee or Beneficiary confirming that the Indebtedness has not been fully paid or the Obligations have not

been fully performed or discharged shall be sufficient evidence thereof for the purpose of reliance by third parties on such fact.

SECTION 3 REPRESENTATIONS AND WARRANTIES

Grantor hereby unconditionally represents and warrants to Beneficiary, as of the date hereof and at all times during the term of this Deed of Trust, as follows:

3.1 Organization and Power. If Grantor or any Constituent Party is a corporation, limited liability company, general partnership, limited partnership, joint venture, trust, or other entity, then Grantor and any Constituent Party, if any, (a) is either a corporation duly incorporated, a limited liability company duly organized with a legal status separate from its affiliates, or a partnership, trust, joint venture, or other entity duly organized, validly existing, and in good standing under the laws of the state of its formation or existence; (b) has complied with all conditions prerequisite to its doing business in the state in which the Mortgaged Property is located; and (c) has all requisite power and all governmental certificates of authority, licenses, permits, qualifications, and documentation to own, lease, and operate its properties and to carry on its business as now being, and as proposed to be, conducted.

3.2 Validity of Loan Documents. The execution, delivery, and performance by Grantor of and under the Loan Documents (other than the Guaranty) (a) if Grantor, or any signatory who signs on its behalf, is a corporation, general partnership, limited partnership, limited liability company, joint venture, trust, or other entity, are within Grantor's and each Constituent Party's powers and have been duly authorized by Grantor's and each Constituent Party's board of directors, shareholders, partners, members, managers, venturers, Trustees, or other necessary parties, and all requisite actions for such authorization have been taken, (b) have received all requisite prior governmental approvals in order to be legally binding and enforceable, and (c) does not violate, conflict with, result in a breach of, or constitute (with due notice, lapse of time, or both) a default under or violation of any Legal Requirement or result in the creation or imposition of any lien, charge, or encumbrance of any nature upon any of Grantor's and any Constituent Party's or Guarantor's property or assets, except as contemplated by the Loan Documents. The Loan Documents constitute the legal, valid, and binding obligations of Grantor, Guarantor, and others obligated under the Loan Documents, enforceable pursuant to their respective terms.

3.3 Information. All information, financial statements, reports, papers, and data given or to be given to Beneficiary regarding Grantor, each Constituent Party, any Guarantor, others obligated under the terms of the Loan Documents, or the Mortgaged Property are, or at the time of delivery will be, accurate, complete, and correct in all material respects and do not, or will not, omit any fact that is necessary to prevent the facts contained therein from being materially misleading. Since the date of the financial statements of Grantor, any Constituent Party, any Guarantor, or any other party liable for payment of the Indebtedness or performance of the Obligations or any part thereof previously furnished to Beneficiary, no Material Adverse Event has occurred, and except as previously disclosed in writing to Beneficiary, neither Grantor, any Constituent Party, any Guarantor, or any other such party has incurred any material liability, direct or indirect, fixed or contingent. Grantor acknowledges and understands that Beneficiary

may be required, and hereby authorizes Beneficiary, to obtain, verify, and record information that identifies Grantor, each Constituent Party, and/or Guarantor that may include the names and addresses of such parties and other information that will allow Beneficiary to identify such parties in accordance with the requirements of Anti-Terrorism Laws. Grantor has no material guarantees, contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, or other transaction or obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph.

3.4 Title and Lien. Grantor has good and indefeasible title to the Land (in fee simple, if the lien created hereunder be on the fee, or a first and prior leasehold estate, if it be created on the leasehold estate) and Improvements, and good and marketable title to the Fixtures and Personalty, in each case free of any Liens, charges, rights of first refusal or first offer, encumbrances, claims, easements, restrictions, options, leases (other than the Leases), covenants and other rights, titles or estates of any nature, except for the Permitted Exceptions. This Deed of Trust constitutes a valid, subsisting first lien on the Land, the Improvements, the Leases, Minerals, and the Fixtures; a valid, subsisting first priority security interest in and to the Personalty Contracts, and Leases (to the extent that the term Leases include items covered by the Code) and to the Rents; all in accordance with the terms hereof, and all subject to the Permitted Exceptions.

3.5 Business Purposes. The loan evidenced by the Note is solely for the purpose of carrying on or acquiring a business of Borrower, and is not for personal, family, household, or agricultural purposes. The Mortgaged Property forms no part of any property owned, used, or claimed by Grantor as a residence or business homestead and is not exempt from forced sale under the laws of the State in which the Mortgaged Property is located. Grantor disclaims and renounces all claims to all or any portion of the Mortgaged Property as a homestead.

3.6 Taxes. Grantor, each Constituent Party, and Guarantor (a) have filed on or before their respective due dates all federal, state, county, municipal, city income, and other tax returns required to have been filed by them, including, without limitation, those required under the Tax Code, (or have obtained extensions for filing those tax returns), (b) are not delinquent in filing those returns or extensions, if any, and (c) have paid all taxes and related liabilities that are due pursuant to those returns or pursuant to any assessments received by that party to the extent those taxes have become due. Neither Grantor, any Constituent Party, nor Guarantor knows of any basis for any additional assessment regarding any such taxes and related liabilities. Grantor, each Constituent Party, and Guarantor believe that their respective tax returns properly reflect the income and taxes of Grantor, each Constituent Party, and Guarantor for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit.

3.7 Mailing Address. Grantor's mailing address, as set forth in the opening paragraph hereof or as changed pursuant to the provisions hereof, is true and correct.

3.8 Relationship of Grantor and Beneficiary. Notwithstanding any prior business or personal relationship between Grantor and Beneficiary or any officer, director, or employee of Beneficiary, the relationship between Grantor and Beneficiary is solely that of debtor and creditor. Beneficiary has no fiduciary or other special relationship with Grantor. Grantor and

Beneficiary are not partners or joint venturers and nothing contained in the Loan Documents shall be construed to suggest that the relationship between Grantor and Beneficiary is other than that of debtor and creditor.

3.9 Control Persons. Grantor is not, and no Person having "control" (as that term is defined in 12 U.S.C. §375b or in regulations promulgated pursuant thereto) of Grantor is, an "executive officer," "director," or "person who directly or indirectly or in concert with one or more persons, owns, controls, or has the power to vote more than 10% of any class of voting securities" (as those terms are defined in 12 U.S.C. §375b or in regulations promulgated pursuant thereto) of Beneficiary, of a holding company of which Beneficiary is a subsidiary, or of any other subsidiary of a holding company of which Beneficiary is a subsidiary, of any bank at which Beneficiary maintains a correspondent account, or of any bank which maintains a correspondent account with Beneficiary.

3.10 Experience; No Reliance on Beneficiary. Grantor is experienced in the ownership and operation of properties similar to the Mortgaged Property. Grantor and Beneficiary are relying upon Grantor's expertise and business plan in connection with the ownership and operation of the Mortgaged Property. Grantor is not relying on Beneficiary's expertise or business acumen regarding the Mortgaged Property. In its transactions with Beneficiary, Grantor and its principals have been represented by (or have had the opportunity to be represented by) legal counsel independent of Beneficiary and independent of counsel for Beneficiary.

3.11 No Litigation. Except as disclosed in writing to Beneficiary, there are no (a) judicial, administrative, mediation, or arbitration actions, suits, or proceedings, at law or in equity, before any Governmental Authority or arbitrator pending or threatened against or affecting Grantor or the Mortgaged Property; (b) outstanding or unpaid judgments against Grantor or the Mortgaged Property; or (c) defaults by Grantor with respect to any order, writ, injunction, decree, or demand of any Governmental Authority or arbitrator.

3.12 ERISA. Grantor (a) does not maintain or contribute to any employee benefit plan subject to Title IV of ERISA, (b) has not incurred any accumulated funding deficiency within the meaning of ERISA, and (c) has not incurred any liability to the PBGC in connection with any employee benefit plan established or maintained by Grantor. Grantor is not and shall not be (i) an "employee benefit plan," as defined in Section 3(3) of ERISA, (ii) a "governmental plan" within the meaning of Section 3(32) of ERISA, or (iii) a "plan" within the meaning of Section 4975(e) of the Tax Code. The assets of Grantor do not and shall not constitute "plan assets" within the meaning of the United States Department of Labor Regulations set forth in Section 2510.3-101 of Title 29 of the Code of Federal Regulations. Transactions by or with Grantor are not and shall not be subject to state statutes applicable to Grantor regulating investments of fiduciaries with respect to governmental plans. Grantor shall not engage in any transaction that would cause any Obligation or any action taken or to be taken hereunder (or the exercise by Beneficiary of any of its rights under this Deed of Trust or any of the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Tax Code. Grantor agrees to deliver to Beneficiary such certifications or other evidence of compliance with the provisions of this **Section 3.12** as Beneficiary may from time to time request.

3.13 OSHA. Each of Grantor, each Guarantor, and any Constituent Party have duly complied with and their respective facilities, business assets, property, leaseholds and equipment are in compliance, in all material respects, with the provisions of the Federal Occupational Safety and Health Act and all rules and regulations thereunder and all similar state and local laws, rules and regulations, to the extent required thereby. There are no outstanding citations, notices or orders of non-compliance issued to Grantor, any Guarantor, or any Constituent Party or relating to their respective businesses, assets, property, leaseholds or equipment under any such laws, rules or regulations, or with respect to the Mortgaged Property.

3.14 Labor Relations. Grantor is not a party to any collective bargaining agreement.

3.15 No Bankruptcy. No bankruptcy or insolvency proceedings are pending or contemplated by Grantor or, to the best knowledge, information, and belief of Grantor, against Grantor or by or against any endorser, cosigner, or guarantor of the Note.

3.16 Compliance with Legal Requirements. The Land and the Improvements and the intended use thereof by Grantor comply with all applicable Legal Requirements, including, without limitation, all applicable restrictive covenants, zoning ordinances, subdivision and building codes, handicap or disability legislation, flood disaster laws, applicable health and environmental laws and regulations, and all other ordinances, orders or requirements issued by any state, federal, or municipal authorities having or claiming jurisdiction over the Mortgaged Property. Grantor and any Constituent Party have complied with all Legal Requirements applicable to Grantor, any Constituent Party, or the Mortgaged Property, including, without limitation, Environmental Laws.

3.17 Separate Tax Parcel; Legal Lot. The Mortgaged Property is taxed separately without regard to any other real estate and the Land constitutes a legally subdivided lot under all applicable Legal Requirements (or, if not subdivided, no subdivision or platting of the Land is required under applicable Legal Requirements), and for all purposes may be mortgaged, conveyed, or otherwise dealt with as an independent parcel.

3.18 Utilities; Access. All utility services necessary and sufficient for the full use, occupancy, operation and disposition of the Land and the Improvements for their intended purposes are available to the Mortgaged Property, including water, storm sewer, sanitary sewer, gas, electric, cable and telephone facilities, through public rights-of-way or duly recorded perpetual private easements; all streets, roads, highways, bridges and waterways necessary for access to and full use, occupancy, operation and disposition of the Land and the Improvements have been completed, have been dedicated to and accepted by the appropriate municipal authority and are open and available to the Land and the Improvements without further condition or cost to Grantor; all curb cuts, driveways and traffic signals shown on the survey delivered to Beneficiary prior to the execution and delivery of this Deed of Trust are existing and have been fully approved by the appropriate Governmental Authority.

3.19 Money Laundering; Anti-Terrorism Laws.

(a) No funds for the purchase or operation of the Mortgaged Property have been or will be derived from sources that are described in 18 U.S.C.A. §§ 1956 and 1957 as funds or property derived from "specified unlawful activity."

(b) None of Grantor, any Constituent Party nor Guarantor (nor any person or entity owning an interest in Grantor, any Constituent Party or Guarantor) (i) is a Prohibited Person, or (ii) has violated any Anti-Terrorism Laws. No Prohibited Person holds or owns any interest of any nature whatsoever in Grantor, any Constituent Party or Guarantor, as applicable, and none of the funds of Grantor, any Constituent Party or Guarantor have been derived from any activity in violation of Anti-Terrorism Laws.

3.20 No Foreign Person. Neither Grantor, any Constituent Party, nor Guarantor is a "foreign person" within the meaning of § 1445(f)(3) of the Tax Code.

3.21 No-Defaults. There exists no default (or event that, with the giving of notice or passage of time, or both, would result in a default) under the provisions of any instrument or agreement evidencing, governing, securing, or otherwise relating to any Debt of Grantor or pertaining to any of the Permitted Exceptions.

3.22 Non-contravention. The execution, delivery, and performance by each Grantor, any Constituent Party, and any Guarantor of the Loan Documents to which that Person is a party or otherwise bound are not in contravention of the terms of any indenture, agreement, or undertaking to which that Person is a party or bound, unless those terms have been waived or the failure to comply with those terms would not result in a Material Adverse Event.

3.23 Consents, Approvals and Filings, Etc. Except as previously obtained or expressly provided in this Deed of Trust, no authorization, consent, approval, license, qualification, or formal exemption from, nor any filing, declaration, or registration with, any Governmental Authority and no material authorization, consent, or approval from any other Person, is required in connection with the execution, delivery, and performance by Grantor, any Constituent Party, and any Guarantor of any Loan Document to which it is a party. All authorizations, consents, approvals, licenses, qualifications, exemptions, filings, declarations, and registrations that have previously been obtained or made are in full force and effect and are not the subject of any attack, or, to the best knowledge of Grantor, any threatened attack, in any material respect, by appeal, direct proceeding, or otherwise.

3.24 Contracts and Agreements. Neither Grantor, any Constituent Party, or any Guarantor is in default (beyond any applicable period of grace or cure) under any material contract, agreement, indenture, or instrument to which it is a party or by which it or any of its properties or assets are bound, where that default would result in a Material Adverse Event.

3.25 Leases Effective. All Leases (if any) are in full force and effect. There are no defaults under any Leases (other than immaterial defaults in the ordinary course of business), and all conditions to the effectiveness or continuing effectiveness of all Leases have been satisfied.

3.26 No Investment Company. Neither Grantor, any Constituent Party, or any Guarantor are an "investment company" within the meaning of the Investment Company Act of 1940, as amended, nor are any of them "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

3.27 No Margin Stock. Neither Grantor, any Constituent Party, or any Guarantor are engaged principally, or as one of their important activities, directly or indirectly, in the business of extending credit for the purpose of purchasing or carrying margin stock, and none of the proceeds of the Note shall be used, directly or indirectly, to purchase or carry any margin stock or made available by Grantor, any Constituent Party, or any Guarantor in any manner to any other Person to enable or assist that Person in purchasing or carrying margin stock, or shall be otherwise used or made available for any other purpose that might violate the provisions of Regulations G, T, U, or X of the Board of Governors of the Federal Reserve System.

3.28 Financial Statements. The Financial Statements previously furnished to Beneficiary have been prepared in accordance with accounting practices permitted for federal income tax purposes. The Financial Statements fairly present the financial condition of Grantor and, as applicable, the consolidated financial condition of Grantor and those other Person(s) that the Financial Statements purport to present, and the results of their respective operations as of the dates and for the periods covered by those Financial Statements. Since the date(s) of the Financial Statements, there has been no material adverse change in the financial condition of Grantor or any other Person covered by the Financial Statements. Neither Grantor nor any Constituent Party, any Guarantor, or other Person has any material contingent obligations, liabilities for taxes, long-term leases, or long-term commitments not disclosed by, or reserved against in, those Financial Statements. Each Grantor, any Constituent Party, and any Guarantor is solvent, able to pay its respective debts as they mature, has capital sufficient to carry on its business, and has assets whose fair market value exceed its liabilities. Neither Grantor nor any Constituent Party, or any Guarantor shall be rendered insolvent, under-capitalized, or unable to pay debts generally as they become due by the execution or performance of any Loan Document to which it is a party or by which it is otherwise bound.

3.29 Single Purpose Entities; Nature of Grantor. Grantor shall comply with the single purpose entity provisions in *Section 3.19* of the Loan Agreement.

3.30 No Commencement. As of the date of this Deed of Trust, no construction has been commenced on the Land, including, without limitation, steps to clear or otherwise prepare the Land for construction or the delivery of material for use in construction; and no contract or other agreement for construction on the Land has been entered into, for furnishing materials for that construction or for any other purpose, the performance of which by the other party to it would give rise to a Lien.

SECTION 4 AFFIRMATIVE COVENANTS

Grantor hereby unconditionally covenants and agrees with Beneficiary, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged, as follows:

4.1 Payment and Performance. Grantor shall pay the Indebtedness as and when specified in the Loan Documents, and shall perform and discharge all of the Obligations, in full and on or before the dates same are to be performed.

4.2 Existence. Grantor shall and shall cause each Constituent Party to (a) preserve and maintain its existence and preserve and maintain those rights, licenses, and privileges as are material to the business and operations conducted by it, (b) qualify and remain qualified to do business in each jurisdiction in which the Land is located and where that qualification is material to its business and operations or ownership of its properties, (c) continue to conduct and operate its business substantially as conducted and operated during the present and preceding calendar year, and (d) at all times maintain, preserve, and protect all of its franchises and trade names and preserve all the remainder of its property and keep it in good repair, working order, and condition.

4.3 Compliance with Legal Requirements. Grantor shall promptly and faithfully comply with, conform to, and obey all Legal Requirements, whether the same shall necessitate structural changes in, improvements to, or interfere with the use or enjoyment of, the Mortgaged Property. Grantor shall apply for, obtain, and maintain in effect all authorizations, consents, approvals, licenses, qualifications, exemptions, filings, declarations, and registrations (whether with any Governmental Authority, securities exchange, or otherwise) that are necessary in connection with the execution, delivery, or performance by Grantor, any Constituent Party, or Guarantor under the Loan Documents.

4.4 First Lien Status. Grantor shall protect and preserve the first lien and security interest status of this Deed of Trust and the other Loan Documents and shall not permit to be created or to exist concerning the Mortgaged Property or any part thereof any lien or security interest on a parity with, superior to, or inferior to any of the liens or security interests hereof, except for the Permitted Exceptions.

4.5 Payment of Impositions. Grantor shall duly pay and discharge, or cause to be paid and discharged when due all Impositions not later than the earlier to occur of (a) the due date thereof, (b) the date any fine, penalty, interest, or cost may be added thereto or imposed thereon or (c) the date before any lien may be filed for the nonpayment thereof (if such date is used to determine the due date of the respective item), and Grantor shall promptly deliver to Beneficiary a written receipt evidencing the payment of the each Imposition.

4.6 Maintenance and Repair. Grantor shall keep the Mortgaged Property in first-class order and condition and shall make all repairs, replacements, renewals, additions, betterments, improvements, and alterations thereof and thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, that are necessary or

reasonably appropriate to keep same in such order and condition. Grantor shall prevent any act, occurrence, or neglect which might impair the value or usefulness of the Mortgaged Property for its intended use. If repairs, replacements, renewals, additions, betterments, improvements, or alterations are required in and to the Mortgaged Property on an emergency basis to prevent loss, damage, waste, or destruction thereof, then Grantor shall proceed to repair, replace, add to, better, improve, or alter same, or cause same to be repaired, replaced, added to, bettered, improved, or altered, notwithstanding anything to the contrary contained in **Section 5.2** hereof; *provided, however*, that if such emergency measures are required, then Grantor shall notify Beneficiary in writing of the commencement of same and the measures to be taken, and, when same are completed, the completion date and the measures actually taken.

4.7 Insurance. Grantor shall, at Grantor's own expense, obtain and maintain and keep in full force and effect insurance upon and relating to the Mortgaged Property with such insurers, in such amounts and covering such risks as shall be requested by and as are satisfactory to Beneficiary, from time to time, including but not limited to the insurance set forth on **Exhibit C**. Each insurance policy issued pursuant to this **Section 4.7** shall be issued by good and solvent insurance companies satisfactory to Beneficiary, and having a "General Policyholders Rating" of at least "A, IX" or better by Best's Insurance Guide and/or "A- or better" by Standard & Poor Insurance Solvency Review, or such better rating as may be required by Beneficiary, and all such policies shall provide, by way of endorsements, riders, or as otherwise applicable, that: (a) with respect to the CGL and all other liability insurance, if the policy contains a general aggregate limit, such policy shall include an "Aggregate Limits of Insurance Per Location" endorsement (using the applicable ISO form or an equivalent form acceptable to Beneficiary); (b) with respect to the CGL and all other liability insurance, such insurance shall name Beneficiary as an "Additional Insured" (using the applicable ISO form, or an equivalent form reasonably acceptable to Beneficiary, without modification and under the commercial umbrella, if any, and which policy shall contain standard CGL "other insurance" wording, unmodified in any way that would make it excess over or contributory with the additional insured's own commercial general liability coverage), and with respect to the property and other applicable insurance, such insurance shall contain a standard "Mortgagee clause" and shall be payable to Beneficiary as a mortgagee and not as a co-insured, and with respect to all policies and insurance carried by Grantor for the benefit of Beneficiary, such insurance shall be payable to Beneficiary as Beneficiary's interest may appear; (c) the coverage of Beneficiary under such insurance policies shall not be terminated, reduced, or affected in any manner regardless of any breach or violation by Grantor of any warranties, declarations or conditions in any such policy; (d) no such insurance policies shall be canceled, endorsed, altered or reissued to effect a change in coverage for any reason and to any extent whatsoever unless the insurer with respect to such policy shall have first given Beneficiary no less than thirty (30) days' prior written notice thereof; and (e) Beneficiary shall be permitted, but shall not be obligated, to make premium payments to prevent any cancellation, endorsement, alteration or reissuance of any such insurance policies, and such payments shall be accepted by the applicable insurer to prevent same. Grantor shall deliver to Beneficiary the original of each initial policy coincident with the execution of this Deed of Trust and the original of each renewal policy not less than fifteen (15) days prior to the expiration of the initial, or each immediately preceding renewal, policy, and Beneficiary shall additionally be thereupon concurrently furnished with receipts or other evidence that the premiums on each and all such insurance policies have been paid for at least one (1) year. Grantor shall furnish to Beneficiary, on or before thirty (30) days after the close of each of

Grantor's fiscal years while this Deed of Trust is in force and effect, a statement certified by Grantor or a duly authorized officer of Grantor of the amounts of insurance maintained in compliance with this **Section 4.7**, of the risks covered by such insurance and of the insurance company or companies which carry such insurance. For purposes of this **Section 4.7**, the term "**ISO**" (herein so called) shall mean Insurance Services Office. It is expressly understood and agreed that the insurance coverages required in this **Section 4.7** represent Beneficiary's minimum requirements and it is further understood and agreed that in any event the insurance coverages required in this **Section 4.7** are not to be construed to void or limit Grantor's indemnity obligations contained in this Deed of Trust. Neither (A) the insolvency, bankruptcy or failure of any insurance company covering Grantor or the Mortgaged Property, (B) the failure of any insurance company to pay claims occurring, nor (C) any exclusion from or insufficiency of coverage be held in any such events, to affect, negate or waive any of Grantor's indemnity obligations under this Deed of Trust or any other provision of this Deed of Trust.

Upon any foreclosure under this Deed of Trust or transfer of title to the Mortgaged Property in extinguishment of all or any part of the Indebtedness, all of Grantor's right, title, and interest in the insurance policies referred to in this Paragraph (including unearned premiums) and all proceeds payable under them shall vest in the purchaser at foreclosure or other transfer, to the extent permissible under those policies. Beneficiary may make proof of loss for, settle and adjust any claim under, and receive the proceeds of, all insurance for loss of or damage to the Mortgaged Property. The expenses incurred by Beneficiary in the adjustment and collection of insurance proceeds shall be a part of the Indebtedness, shall be due and payable to Beneficiary on demand, and shall bear interest from the date paid by Beneficiary until reimbursed at the highest rate of interest applicable to any of the Indebtedness. Beneficiary and Beneficiary's employees are each irrevocably appointed attorney-in-fact for Grantor and are authorized to adjust and compromise each loss without the consent of Grantor, to collect, receive, and receipt for all insurance proceeds in the name of Beneficiary or Grantor. Beneficiary and Beneficiary's employees are authorized to endorse Grantor's name on any check in payment of a loss. Beneficiary is not liable or responsible for failure to collect or to exercise diligence in the collection of any proceeds or for the obtaining, maintaining, or adequacy of any insurance or for failure to see to the proper application of any amount paid over to Grantor, under any circumstances.

WARNING

Unless Grantor provides Beneficiary with evidence of the insurance coverage as required by this Deed of Trust or the Loan Agreement, Beneficiary may purchase insurance at Grantor's expense to protect Beneficiary's interest. This insurance may, but need not, also protect Grantor's interest. If the collateral becomes damaged, the coverage Beneficiary 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 cost of any insurance purchased by Beneficiary. The cost of this insurance may be added to Grantor's contract or loan balance. If the cost is added to Grantor's contract or loan balance, the interest rate on the underlying contract or loan will apply to this added amount. The effective date of

coverage may be the date Grantor's prior coverage lapsed or the date Grantor failed to provide proof of coverage.

The coverage Beneficiary purchases may be considerably more expensive than insurance Grantor can obtain on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

4.8 Inspection. Grantor shall permit Trustee and Beneficiary, and their respective agents, representatives, and employees, to inspect the Mortgaged Property at all reasonable times, with or without prior notice to Grantor.

4.9 Property Reports. Grantor shall maintain full and accurate books of account and other records reflecting the results of the operations of the Mortgaged Property and shall furnish, or cause to be furnished, to Beneficiary: (a) on or before thirty (30) days after the end of each calendar month and on or before one hundred twenty (120) days after the end of each fiscal year of Grantor, an operating statement for the Mortgaged Property, such reports to be in the form and in reasonable detail as Beneficiary may request, setting forth the financial condition and the income and expenses for the Mortgaged Property for the immediately preceding calendar month or fiscal year, as applicable, and a certificate executed by Grantor certifying that the report has been prepared in accordance with accounting practices permitted for federal income tax purposes, applied on a consistent basis that fairly presents the results of the Mortgaged Property's operations for the covered period; (b) within thirty (30) days after the end of each calendar month or more often upon request of Beneficiary, a written statement (rent roll) certified as true, correct, and complete by Grantor, containing the information specified below as to each of the Leases; (c) on or before one hundred twenty (120) days after the end of each fiscal year of Grantor, a certificate by Grantor certifying that, as of the date of the certificate, there does or does not (as the case may be) exist an event that constitutes, or that upon due notice, the lapse of time, or both would constitute an Event of Default or, if an Event of Default exists, specifying the nature thereof; (d) immediate notice of any material adverse change in the Mortgaged Property's financial condition or business prospects; (e) on or before sixty (60) days before the start of each fiscal year an annual operating budget for the Mortgaged Property for the next fiscal year, in form and substance acceptable to Beneficiary; and (f) upon Beneficiary's request, and at Grantor's expense, such other operating, financial, and credit information that Beneficiary may reasonably request regarding the Mortgaged Property. The rent roll specified in clause (b) above shall contain the following: tenant name, suite or unit number, square feet of leased space, apartment type (if applicable), commencement and expiration date, lease renewal options, the date rental payments began, number of months of free rent (if applicable) or other concessions, base rent, escalation provisions (if applicable), vacancies and recent rental activities, furnished or unfurnished status (if applicable), expense stop (if applicable), and other pertinent information. Grantor shall deliver to Beneficiary at any time and from time to time such other financial data that Beneficiary shall reasonably request regarding the ownership, maintenance, use, and operation of the Mortgaged Property, and Beneficiary shall have the right, at reasonable times and upon reasonable notice, to audit, examine, and make copies or extracts of Grantor's books of account and records relating to the Mortgaged Property, all of which shall be maintained and made available to Beneficiary and Beneficiary's representatives for such purpose at the address specified herein for Grantor or at any other location that Beneficiary may approve. Upon

Beneficiary's request, Grantor, at its own expense, shall also furnish Beneficiary with convenient facilities and all books and records necessary for an audit of such statements.

4.10 Financial Reporting Requirements.

(a) Borrower. Borrower shall maintain full and accurate books of accounts and other records reflecting Borrower's financial condition and transactions, and shall furnish, or cause to be furnished, to Beneficiary: (i) within sixty (60) days after the end of each fiscal year of Borrower, financial statements of Borrower (including a balance sheet, statement of cash flow, and income statement for Borrower in the form and in reasonable detail that Beneficiary may request, setting forth the financial condition (including all contingent liabilities), cash flow and the income and expenses for Borrower for the immediately preceding fiscal year), prepared in accordance with accounting practices permitted for federal income tax purposes, applied on a consistent basis that fairly present the results of the Mortgaged Property's operations for the covered period and the financial condition and transactions of Borrower as of the date of the statements or for the covered period, and certified by an independent certified public accountant; (ii) within sixty (60) days after the end of each fiscal quarter of Borrower, (A) financial statements of Borrower (including a balance sheet, statement of cash flow, and income statement for Borrower in the form and in reasonable detail that Beneficiary may request), such financial statements need not be audited by an independent certified public accountant but must be certified to by Borrower; (iii) a tax return for each fiscal year of Borrower from and after the date of this Deed of Trust, within thirty (30) days after it has been filed with the Internal Revenue Service, but in no event later than one hundred twenty (120) days after the end of each fiscal year (*provided, however, if Borrower has duly filed for an extension of the filing deadline for such tax return, and promptly furnishes evidence thereof to Beneficiary, then such tax return shall be delivered to Beneficiary on or before two hundred ninety-four (294) days after the end of such fiscal year*); (iv) on or before ninety (90) days after the end of each fiscal year of Borrower, a certificate by Borrower certifying that, as of the date of that certificate, there does or does not (as the case may be) exist an event that constitutes, or that upon due notice, the lapse of time, or both would constitute an Event of Default or, if an Event of Default exists, specifying the nature thereof; and (v) immediate notice of any material adverse change in the financial condition or business prospects of Borrower. The fiscal year of Borrower ends on December 31.

(b) Guarantor. Grantor shall cause Guarantor (or if Guarantor is more than one party, then each party constituting Guarantor) to promptly furnish or cause to be furnished to Beneficiary: (i) within ninety (90) days after the end of each six month period, financial statements of Guarantor (including an income statement for Guarantor in such form and in reasonable detail that Beneficiary may request, setting forth the financial condition (including all contingent liabilities), the income and expenses for Guarantor for the immediately preceding six month period), prepared in accordance with accounting practices permitted for federal income tax purposes, applied on a consistent basis that fairly present the financial condition and transactions of Guarantor as of the date of the statements or for the covered period, and, if Guarantor is an individual, certified to be true, correct and complete by Guarantor, or if Guarantor is an entity,

certified by an independent certified public accountant; (ii) a tax return for each year of Guarantor from and after the date of this Deed of Trust, as soon as available, but in no event later than one hundred twenty (120) days after the end of each year (*provided, however*, if Guarantor has duly filed for an extension of the deadline for such tax return, and promptly furnishes evidence thereof to Beneficiary, then such tax return shall be delivered to Beneficiary on or before two hundred ninety four (294) days after the end of such year); (iii) on or before ninety (90) days after the end of each six month period, a certificate by Guarantor certifying that, as of the date of that certificate, there does or does not (as the case may be) exist an event that constitutes, or that upon due notice, the lapse of time, or both would constitute an event of default under the Guaranty or, if such event of default exists, specifying the nature thereof; and (iv) immediate notice of any material adverse change in the financial condition of Guarantor.

(c) Additional Matters. Grantor shall, and shall cause Guarantor to, allow Beneficiary from time to time to inspect all books and records relating to the Indebtedness and to Grantor's and Guarantor's financial condition, and to make and take away copies of such books and records. If Grantor or Guarantor is a corporation, limited liability company, partnership, joint venture, trust or other entity, Grantor or Guarantor shall (i) provide Beneficiary with all financial statements and other documents, and (ii) make all disclosures to Beneficiary regarding the Constituent Parties that Grantor or Guarantor is required to provide and make pursuant to this *Section*.

4.11 Leases.

(a) Grantor shall obtain the prior written consent of Beneficiary as to the tenant lease to be utilized in leasing the Land or Improvements, or any part thereof prior to entering into any Lease.

(b) Grantor shall (i) submit any and all proposed Leases to Beneficiary for approval prior to the execution thereof, (ii) duly and punctually perform and comply with any and all representations, warranties, covenants, and agreements expressed as binding upon the lessor under any Lease, (iii) maintain each of the Leases in full force and effect during the term thereof, (iv) appear in and defend any action or proceeding in any manner connected with any of the Leases, (v) deliver to Beneficiary true, correct, and complete copies of all Leases, and (vi) deliver to Beneficiary such further information, and execute and deliver to Beneficiary such further assurances and assignments, with respect to the Leases as Beneficiary may from time to time request.

(c) Without Beneficiary's prior written consent, Grantor shall not (i) do or knowingly permit to be done anything to impair the value of any of the Leases, (ii) except for security or similar deposits, collect any of the Rents more than one (1) month in advance of the time when the same becomes due under the terms of any Lease, (iii) discount any future accruing Rents, or (iv) amend, modify, rescind, conceal, surrender, assign, or terminate any of the Leases.

(d) All Leases must contain a written provision acceptable to Beneficiary in which all rights of the Lessee in the Lease and the Mortgaged Property are subordinated

to the liens and security interests granted in the Loan Documents. If requested by Beneficiary, Grantor shall cause to be executed and delivered to Beneficiary a subordination, non-disturbance, and attornment agreement, in form and substance acceptable to Beneficiary, relating to each Lease, fully executed by Beneficiary, Grantor, and the applicable Lessee.

4.12 Payment for Labor and Materials. Subject to certain contest rights contained in *Section 8.11*, Grantor shall promptly pay all bills for labor, materials, and specifically fabricated materials incurred in connection with the Mortgaged Property and shall not permit to exist in respect of the Mortgaged Property or any part thereof any lien or security interest, even though inferior to the liens and security interests hereof, for any such bill, and in any event never permit to be created or exist in respect of the Mortgaged Property or any part thereof any other or additional lien or security interest on a parity with, superior, or inferior to any of the liens or security interests hereof, except for the Permitted Exceptions.

4.13 Further Assurances and Corrections. From time to time, at the request of Beneficiary, Grantor shall (a) promptly correct any defect, error, or omission which may be discovered in the contents of this Deed of Trust or in any other Loan Document or in the execution or acknowledgment thereof, (b) execute, acknowledge, deliver, record, and/or file such further instruments (including, without limitation, further deeds of trust, pledges, mortgages, lien instruments, security agreements, consents, acknowledgments, subordinations, financing statements, continuation statements, and assignments of rents) and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in Beneficiary's opinion, to carry out more effectively the purposes of this Deed of Trust and the Loan Documents and to subject to the absolute assignments, liens, and security interests hereof and thereof any property intended by the terms hereof or thereof to be covered hereby or thereby, including, without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Mortgaged Property, (c) execute, acknowledge, deliver, procure, file, and/or record any document or instrument (including, without limitation, any financing statement) deemed advisable by Beneficiary in Beneficiary's sole discretion to protect the liens and the security interests herein granted against the rights or interests of third persons, (d) promptly deliver to Beneficiary any certification or other evidence requested by Beneficiary confirming compliance by Grantor, each Constituent Party and Guarantor with all Anti-Terrorism Laws, and confirming that neither Grantor, any Constituent Party or Guarantor (nor any person or party owning any interest of any nature whatsoever in Grantor, any Constituent Party or Guarantor) is a Prohibited Person, and (e) pay all costs connected with any of the foregoing.

4.14 Tax on Deed of Trust. If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Indebtedness or any part thereof (whether pursuant to the Tax Code or otherwise), Grantor shall immediately pay all such taxes, *provided that*, if such law as enacted makes it unlawful for Grantor to pay such tax, Grantor shall not pay nor be obligated to pay such tax. Nevertheless, if a law is enacted making it unlawful for Grantor to pay such taxes, then Grantor shall prepay the Indebtedness in full within sixty (60) days after Beneficiary demands such prepayment.

4.15 Statement of Unpaid Balance. At any time and from time to time, Grantor shall furnish promptly, upon the request of Beneficiary, a written statement or affidavit, in form satisfactory to Beneficiary, stating the unpaid balance of the Indebtedness and that there are no offsets or defenses against full payment of the Indebtedness and the terms hereof, or if there are any such offsets or defenses, specifying them.

4.16 Expenses. Subject to the provisions of *Section 8.12* hereof, Grantor shall pay on demand all reasonable and bona fide out of pocket costs, fees, expenses, and other expenditures, including, without limitation, title insurance fees, examination charges, survey costs, insurance premiums, filing and recording fees, loan broker fees, out-of-pocket expenses incurred by Beneficiary for reasonable visits by Beneficiaries' employees and agents to inspect the Mortgaged Property, and reasonable attorneys' fees and expenses (whether inside or outside counsel is used), paid or incurred by Beneficiary or Trustee to third parties incident to this Deed of Trust or any other Loan Document (including, without limitation, reasonable attorneys' fees and expenses in connection with the negotiation, preparation, and execution hereof and of any other Loan Document and any amendment hereto or thereto, any release hereof, any consent, approval, or waiver hereunder or under any other Loan Document, the making of any advance under the Note, and any suit to which Beneficiary or Trustee is a party involving this Deed of Trust or the Mortgaged Property) or incident to the enforcement of the Indebtedness or the Obligations or the exercise of any right or remedy of Beneficiary under any Loan Document.

4.17 Address. Grantor shall give written notice to Beneficiary and Trustee of any change of address of Grantor at least five (5) business days prior to the effective date of such change of address. Absent such official written notice of a change in address for Grantor, Beneficiary and Trustee shall be entitled for all purposes under the Loan Documents to rely upon Grantor's address as set forth in the initial paragraph of this Deed of Trust, as same may have been theretofore changed in accordance with the provisions hereof.

4.18 Disclosures. If at any time Grantor shall become aware of the existence or occurrence of any financial or economic conditions or natural disasters which might have a Material Adverse Event, Grantor shall promptly notify Beneficiary of the existence or occurrence thereof and of Grantor's opinion as to what effect such event may have on the Mortgaged Property or Grantor. Grantor shall also give prompt notice to Beneficiary of (a) the serious illness or death of any principal or key employee of Grantor, (b) any litigation or dispute, threatened or pending against or affecting Grantor, the Mortgaged Property or any Guarantor which could have a Material Adverse Event, (c) any Event of Default, (d) any default by Grantor or any acceleration of any indebtedness owed by Grantor under any contract to which Grantor is a party; (e) any default by Guarantor or any acceleration of any indebtedness owed by any Guarantor under any contract to which Guarantor is a party, and any change in the character of Grantor's business as it existed on the date hereof. If at any time Grantor obtains knowledge that Grantor, any Constituent Party, or Guarantor is, or becomes, a Prohibited Person or are indicted, arraigned or custodially detained on charges or allegations involving or relating to any Anti-Terrorism Laws, Grantor shall immediately notify Beneficiary in writing of same.

4.19 ERISA. If and to the extent that Grantor is obligated under any plan governed by or subject to ERISA, Grantor shall (a) fully discharge and satisfy all of its obligations and funding requirements under such plan, ERISA, and the Tax Code, (b) comply in all material

respects with any and all applicable provisions of ERISA and the Tax Code and shall not incur or permit to exist any unfunded liabilities to the PBGC or to such plan under ERISA or the Tax Code, (c) as soon as possible but in any event not later than thirty (30) days after Grantor knows of an occurrence of a "reportable event" or "prohibited transaction" within the meaning of ERISA, or that the PBGC has instituted or shall institute proceedings under ERISA to terminate that plan, Grantor shall deliver to Beneficiary a certificate of a responsible officer of Grantor setting forth details as to such reportable event and the action which Grantor or an affiliate of Grantor (as defined under ERISA), as the case may be, proposes to take with respect to same, together with a copy of any notice of such reportable event that may be required to be filed with the PBGC, or any notice delivered by the PBGC evidencing its intent to institute those proceedings or any notice to the PBGC that the plan is to be terminated, as the case may be, and (d) furnish to Beneficiary (or cause the plan administrator to furnish to Beneficiary) a copy of the annual return (including all schedules and attachments) for each pension plan covered by ERISA and filed with the Internal Revenue Service, not later than thirty (30) days after the report has been filed. For all purposes of this **Section 4.19**, Grantor is deemed to have all knowledge of all facts attributable to the plan administrator under ERISA.

4.20 Delivery of Contracts. Grantor shall deliver to Beneficiary a true, correct, and complete copy of each Contract promptly after the execution of same by all parties thereto. Within twenty (20) days after a request by Beneficiary, Grantor shall prepare and deliver to Beneficiary a complete listing of all Contracts, showing date, term, parties, subject matter, concessions, whether any defaults exist, and any other information specified by Beneficiary, regarding each of those Contracts.

4.21 Sources and Uses of Funds. Grantor has taken, and shall continue to take until the Obligations are satisfied in full, such measures that are required by any and all Anti-Terrorism Laws to assure that the funds invested in Grantor and/or used to make payments on the Indebtedness or the Obligations are derived from (a) transactions and sources that do not violate any Anti-Terrorism Laws or, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction from which they originated, and (b) permissible sources under Anti-Terrorism Laws or, to the extent such funds originate outside the United States, under the laws of the jurisdiction from which they originated. If Beneficiary reasonably believes that Grantor, Guarantor, any Constituent Party, or any Affiliate of any such party may have breached any of the representations, warranties, or covenants set forth in this Deed of Trust or the other Loan Documents relating to any Anti-Terrorism Laws or the identity of any Person as a Prohibited Person, then, Beneficiary shall have the right, with or without notice to Grantor, to (i) notify the appropriate Governmental Authority and to take such action as such governmental authority or applicable Anti-Terrorism Laws may direct; (ii) withhold Loan advances and segregate the assets constituting the Loan or any of Borrower's funds or assets deposited with or otherwise controlled by Beneficiary pursuant to the Loan Documents; (iii) decline any payment (or deposit such payment with an appropriate United States Governmental Authority) or decline any prepayment or consent request; and/or (iv) declare an Event of Default and immediately accelerate the Indebtedness in connection therewith. Grantor agrees that none of Grantor, Guarantor, or any Constituent Party shall assert any claim (and hereby waives, for itself and on behalf of such other Persons, any claim that they may now or hereafter have) against Beneficiary or any of its affiliates, successors, assigns, representatives, or agents for any form of damages as

a result of any of the foregoing actions, regardless of whether or not Beneficiary's reasonable belief is ultimately demonstrated to be accurate.

4.22 Surveys. Grantor shall furnish to Beneficiary, at any time and from time to time, upon Beneficiary's request and at Grantor's expense, a survey of the Land and Improvements. All surveys must be in form and substance acceptable to Beneficiary.

4.23 Estoppel Certificates. Grantor shall promptly deliver to Beneficiary, upon Beneficiary's request, estoppel certificates or written statements, duly acknowledged, stating the amount advanced to Borrower under the Loan Documents, the amount due on the Note, and whether Borrower claims that any offsets or defenses exist against payment of the Indebtedness or performance of the Obligations.

4.24 Personalty and Fixtures. Grantor shall deliver to Beneficiary, on demand, any contracts, bills of sale, statements, receipted vouchers, or agreements under which Grantor claims title to any Equipment, Fixtures, or other items of personal property incorporated into the Improvements or subject to the lien of this Deed of Trust or other security agreement that secures the Obligations.

4.25 Management Agreement. Grantor shall manage the Mortgaged Property directly or shall enter into a management agreement in form and substance, and with a manager, acceptable to Beneficiary, in Beneficiary's sole discretion, and, if the latter, shall execute and cause that manager to execute a subordination agreement in form and substance acceptable to Beneficiary, subordinating the management agreement and any fees payable under such management agreement to the Loan Documents and to the rights of Beneficiary under the Loan Documents.

SECTION 5 NEGATIVE COVENANTS

Grantor hereby unconditionally covenants and agrees with Beneficiary that, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged:

5.1 Use Violations. Grantor shall not use, maintain, operate, or occupy, or allow the use, maintenance, operation, or occupancy of, the Mortgaged Property in any manner that (a) violates any Legal Requirement, (b) may be dangerous, unless safeguarded as required by law and/or appropriate insurance, (c) constitutes a public or private nuisance, or (d) makes void, voidable, or cancelable, or increases the premium of, any insurance then in force regarding the Mortgaged Property.

5.2 Waste; Alterations. Grantor shall not commit or permit any waste or impairment of the Mortgaged Property and shall not (subject to the provisions of *Sections 4.3* and *4.6* hereof), without the prior written consent of Beneficiary, make or permit to be made any alterations or additions to the Mortgaged Property of a material nature.

5.3 Replacement of Fixtures and Personalty. Grantor shall not, without the prior written consent of Beneficiary, permit any of the Fixtures or Personalty to be removed at any

time from the Land or Improvements unless (a) such item is removed temporarily for maintenance and repair or (b) if removed permanently, such item is replaced by an article of equal suitability and value, owned by Grantor, free of any lien or security interest except as may be approved in writing by Beneficiary.

5.4 Change in Zoning. Without Beneficiary's prior written consent, Grantor shall not (a) seek or acquiesce in a zoning reclassification, zoning variance, or special exception to zoning of all or any portion of the Mortgaged Property, (b) grant or consent to any easement, dedication, plat, or restriction (or allow any easement to become enforceable by prescription), or (c) seek or acquiesce to any imposition of any addition of a Legal Requirement or any amendment or modification thereof, covering all or any portion of the Mortgaged Property.

5.5 No Drilling. Grantor shall not, without the prior written consent of Beneficiary, permit any drilling or exploration for any Minerals or any extraction, removal, or production of any Minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof.

5.6 No Subordinate Mortgages. Grantor shall not create, place, or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain any Subordinate Mortgage regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents with respect to the Mortgaged Property, other than the Permitted Exceptions and Subordinate Mortgages in favor of Beneficiary or an Affiliate of Beneficiary.

5.7 Additional Debt.

(a) **Guaranties.** Grantor shall not guarantee, endorse, or otherwise become contingently liable in connection with any obligation of any other Person, except guaranties in favor of and satisfactory to Beneficiary and endorsements for deposit or collection in the ordinary course of business.

(b) **Debt.** Grantor shall not create or incur any additional liability, whether contingent or non-contingent, with respect to either Grantor or the Mortgaged Property, except (a) the Indebtedness and other debt from time to time outstanding and owing to Beneficiary, (b) current unsecured trade, utility, or non-extraordinary accounts payable arising in the ordinary course of business, (c) Debt subordinated to the prior payment in full of the Indebtedness on terms and conditions approved in writing by Beneficiary, (d) Debt outstanding as of the date of this Deed of Trust that is shown on the Financial Statements previously delivered to Beneficiary, and (e) any other Debt that is specifically allowed or contemplated under the Loan Documents. Other provisions of the Deed of Trust are not intended to permit Grantor to incur Debt prohibited under this **Section 5.7**.

5.8 Encumbrances. Grantor shall not create, incur, assume, or (subject to certain contest rights under **Section 8.11**) suffer to exist any Lien on the all or any part of the Mortgaged Property, except for the Permitted Exceptions.

5.9 New Construction. Unless the Indebtedness is incurred under a loan agreement between Borrower and Beneficiary that specifically contemplates construction of Improvements

on the Mortgaged Property (and then only to the extent so contemplated), Grantor shall not undertake to construct any building or other significant Improvement on the Land without the prior written consent of Beneficiary.

5.10 Mergers or Dispositions. Grantor shall not and no Constituent Party or Guarantor shall (a) enter into any merger or consolidation, whether or not that Person shall be the surviving entity, or (b) make a Disposition of all, substantially all, or any material part of its assets (whether in a single transaction or in a series of transactions).

5.11 Acquisitions. Grantor shall not (a) purchase, acquire, or become obligated for the purchase of all or substantially all of the assets or business interests of any Person or any ownership interests of any Person, or (b) in any other manner effectuate or attempt to effectuate an expansion of its present business by acquisition.

5.12 Dividends. Grantor shall not declare or pay dividends on, or make any other distribution (whether by reduction of capital or otherwise) regarding any shares of its capital stock or other ownership interests, except (a) dividends payable by an Affiliate of Grantor to Borrower or by the Affiliate of a Constituent Party to another Constituent Party, (b) dividends payable solely in stock, and (c) the redemption, repurchase, or acquisition of any shares of its capital stock payable on an employee's termination pursuant to its employee stock option, repurchase, or similar plan; *provided, however,* that after giving effect to that redemption, repurchase, or acquisition, Grantor, the Constituent Party, or both (as applicable) shall be in full compliance with the terms of the Loan Documents.

5.13 Investments. Grantor shall not make or allow to remain outstanding any investment in (whether that investment is of the character of investment in shares of stock, evidences of indebtedness, other securities, or otherwise) any loans, advances, or extensions of credit to any Person other than any investment in direct obligations of the United States of America, any agency of the United States of America, or in certificates of deposit issued by Beneficiary, all of which shall be maintained consistent with Grantor's business practices prior to the date of this Deed of Trust; *provided, however,* that no investment shall mature more than ninety (90) days after the date when made or issued.

5.14 Transactions with Affiliates. Borrower shall not enter into any transaction with any of its stockholders, officers, employees, partners, members or any of its Affiliates, except under transactions in the ordinary course of business and on terms not less favorable than would be usual and customary in similar transactions between Persons dealing at arm's length.

5.15 Defaults on Other Obligations. Borrower shall not fail to duly perform, observe, or comply with any covenant, agreement, or other obligation to be performed, observed, or complied with by Borrower, any Constituent Party, or any Guarantor, subject to any applicable grace periods, which failure could result in a Material Adverse Event.

5.16 Prepayment of Debt. Grantor shall not prepay any Debt (or take any actions that impose an obligation to prepay any Debt), except for prepayment of the Indebtedness subject to the terms of the Loan Documents.

5.17 Pension Plans. Except in compliance with the Loan Documents, Borrower shall not enter into, maintain, or make any contribution to, directly or indirectly, any pension plan that is subject to ERISA.

5.18 Subordinate Debt. Borrower shall not subordinate any Debt due to Grantor from any Person to Debt of other creditors of that Person.

5.19 No Further Negative Pledges. Grantor shall not enter into or become subject to any agreement (other than the Loan Documents) that (a) prohibits Borrower, any Constituent Party, or any Guarantor from guaranteeing any obligations, (b) prohibits the creation or assumption of any Lien on the properties or assets of Borrower, any Constituent Party, or any Guarantor, whether now owned or later acquired; or (c) requires an obligation to become secured (or further secured) if another obligation is secured or further secured.

5.20 Accounts Receivable. Borrower shall not sell or assign any account (as defined in the Code), account receivable, note or trade acceptance, except to Beneficiary.

5.21 No License Restrictions. Borrower shall not permit any restriction in any license or other agreement that restricts Borrower, any Constituent Party, or any Guarantor from granting a Lien to Beneficiary on any such parties' rights under that license or agreement.

SECTION 6 EVENTS OF DEFAULT

The term "*Event of Default*," as used in this Deed of Trust and in the other Loan Documents, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

6.1 Payment of Indebtedness. Borrower fails, refuses, or neglects to pay, in full, any installment or portion of the Indebtedness when it is due and payable, whether on the due date stipulated in the Loan Documents, on acceleration, or otherwise, and such failure continues for a period of five (5) days following written notice to Borrower from Beneficiary.

6.2 Performance of Obligations. Borrower, Guarantor or any Constituent Party fails, refuses, or neglects or causes the failure, refusal, or neglect to comply with, perform, and discharge fully and timely, as and when required, any of the Obligations.

6.3 False Representation. Any representation, warranty, or statement made by Grantor, Guarantor, or others under or in connection with the Loan Documents or any affidavit or other instrument executed or delivered regarding the Loan Documents or the Obligations is determined by Beneficiary to be false or misleading in any material respect as of the date hereof or when made.

6.4 Default Under Other Lien Document. Grantor shall default or commit an event of default under and pursuant to any other mortgage or security agreement which covers or affects any part of the Mortgaged Property.

6.5 Insolvency; Bankruptcy. Borrower or any Guarantor does any of the following:

- (a) voluntarily suspends transaction of business;
- (b) becomes insolvent or unable to pay its or his debts as they mature;
- (c) executes an assignment for the benefit of creditors or an admission in writing by such Person of its inability to pay, or its failure to pay, debts generally as the debts become due;
- (d) allows a levy against all or any part of the Mortgaged Property (or, in the case of Guarantor, any material portion of Guarantor's assets), and any execution, attachment, sequestration, or other writ is not vacated within sixty (60) days after the levy;
- (e) allows the appointment of a receiver, trustee, or custodian of such Person or of all or part of the Mortgaged Property (or, in the case of Guarantor, any material portion of Guarantor's assets), and such receiver, trustee, or custodian is not discharged within sixty (60) days after the appointment;
- (f) files as a debtor a petition, case, proceeding, or other action pursuant to, or voluntarily seeks the benefit or benefits of Debtor Relief Laws, or takes any action under Debtor Relief Laws;
- (g) files a petition, complaint, answer, or other instrument that seeks to effect a suspension of, or that has the effect of suspending, any of the rights or powers of Beneficiary or Trustee granted in any of the Loan Documents; or
- (h) allows the filing of a petition, case, proceeding, or other action against it as a debtor under Debtor Relief Laws or seeks appointment of a receiver, trustee, custodian, or liquidator of such Person or of all or any part of the Mortgaged Property, or of any significant portion of Grantor's other property (or, in the case of Guarantor, any material portion of Guarantor's assets), and:
 - (i) admits, acquiesces in, or fails to contest diligently the material allegations of that petition, case, proceeding, or other action;
 - (ii) the petition, case, proceeding, or other action results in the entry of an order for relief or order granting the relief sought; or
 - (iii) the petition, case, proceeding, or other action is not permanently dismissed or discharged on or before the earlier of trial on that matter or thirty (30) days following the date of filing.

6.6 Dissolution; Disability. Borrower, any Constituent Party, or any Guarantor, (a) who is an individual dies or becomes mentally incompetent, or (b) which is an entity, dissolves, terminates, liquidates, merges with or is consolidated into any other entity. Notwithstanding the foregoing, the death or mental incompetence of an individual Guarantor will

not be an Event of Default so long as within sixty (60) days after the date of death or determination of mental incompetence, a substitute Guarantor acceptable to Beneficiary, within Beneficiary's reasonable discretion, executes and delivers an identical guaranty to Beneficiary.

6.7 No Further Encumbrances. Grantor creates, places, or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any Lien or Subordinate Mortgage against the Mortgaged Property (other than the Permitted Exceptions), regardless of whether such Lien or Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents.

6.8 Disposition of Mortgaged Property or Beneficial Interest in Borrower. Borrower makes a Disposition, without the prior written consent of Beneficiary.

6.9 Condemnation. Any condemnation proceeding is instituted or threatened that would, in Beneficiary's sole judgment, materially impair the use and enjoyment of the Mortgaged Property for its intended purposes.

6.10 Destruction of Improvements. Any part of the Mortgaged Property is demolished, destroyed, or substantially damaged so that, in Beneficiary's sole judgment, it cannot be restored or rebuilt with available funds to the condition existing immediately prior to such demolition, destruction, or damage within a reasonable period of time.

6.11 Material Adverse Event. Beneficiary reasonably determines that any Material Adverse Event has occurred.

6.12 Abandonment. Grantor abandons or removes all or any portion of the Improvements, Personalty, or Fixtures.

6.13 Discontinuance of Operations. Grantor vacates, or discontinues operations of or from, any portion of the Mortgaged Property.

6.14 Other Debt. Borrower shall fail to pay when due any principal of or interest on any borrowed money obligation or the holder of such other obligation declares — or has the right to declare — such obligation due before its stated maturity because of default (other than the Indebtedness, which is the subject of *Section 6.1*), or a default by any Borrower in the observance or performance of any related obligations and, in each case, continuation of such default beyond any applicable grace or cure period, provided, however, for the purposes of clarity, this Subsection *6.14* does not apply to Guarantor.

6.15 Judgments. The rendering of one or more judgments or decrees for the payment of money against Borrower, any Constituent Party, or any Guarantor, and such judgment or decree has not been vacated, bonded, or stayed by appeal or otherwise within sixty (60) days after the date of entry.

6.16 ERISA. The failure by Borrower, any Constituent Party, or any Guarantor, to meet the minimum funding requirements under ERISA with respect to any Pension Plan established or maintained by it; the occurrence of any "reportable event", as defined in ERISA, that could constitute grounds for termination by the PBGC of any Pension Plan or for the

appointment of a trustee by the appropriate United States District Court to administer that Pension Plan, and the reportable event is not corrected and the determination is not revoked within thirty (30) days after notice has been given to the plan administrator or Borrower, any Constituent Party, or any Guarantor; or the institution of any proceedings by the PBGC to terminate that Pension Plan or to appoint a trustee by the appropriate United States District Court to administer that Pension Plan.

6.17 Loan Documents. Any Loan Document is terminated, revoked, or otherwise rendered void or unenforceable without Beneficiary's prior written consent.

6.18 Event of Default under Loan Agreement. The occurrence of any Event of Default as defined under *Section 6.1* of the Loan Agreement.

6.19 Validity of Loan Documents – Third Parties. Any Person other than a Loan Party (as defined in the Loan Agreement) shall commence any action, suit or proceeding against or affecting Beneficiary, any of the Loan Parties or the Mortgaged Property, or involving the validity or enforceability of the Loan Documents or the priority of the liens created thereby, at law or in equity, or before any Governmental Authority, which in the judgment of the Beneficiary, impairs or would impair its interest in the Mortgaged Property, the enforceability of the Loan Documents or the Beneficiary's ability to collect the Debt when due.

6.20 Validity of Loan Documents. Any Loan Party shall commence any action, suit or proceeding against or affecting Beneficiary, any of the Loan Parties (as defined in the Loan Agreement) or the Mortgaged Property, or involving the validity or enforceability of the Loan Documents or the priority of the liens created thereby, at law or in equity, or before any Governmental Authority, which in the judgment of the Beneficiary, impairs or would impair its interest in the Mortgaged Property, the enforceability of the Loan Documents or the Beneficiary's ability to collect the Debt when due or any Loan Document is terminated, revoked, or otherwise rendered void or unenforceable without Beneficiary's prior written consent.

6.21 Change in Ownership. Except as specifically provided for in the Loan Documents, if any of the Loan Parties does any of the following, then (without limiting any other provision of this Deed of Trust) such event shall constitute an Event of Default under this Deed of Trust unless the Beneficiary shall have given its prior written consent:

(i) convey, transfer, assign or pledge or permit a conveyance, transfer, assignment or pledge of, an interest in any Borrower or any Constituent Party constituting a transfer of the power to direct the management or policies of any Borrower or any Constituent Party in a single transaction or a series of transactions; or

(ii) modify or amend its Organizational Agreement.

Notwithstanding anything to the contrary contained in this *Section 6* with regard to non-monetary Potential Defaults only (i.e., Potential Defaults which cannot be cured by payment of a liquidated sum of money to the Beneficiary) where no other cure period has been specified herein, if any Borrower shall fail to cure any such non-monetary Potential Default to the Beneficiary's satisfaction within thirty (30) days after written notice of such non-monetary Potential Default from the Beneficiary or its agent to any Borrower, then such non-monetary

Potential Default shall constitute an Event of Default; provided, however, if (x) the Potential Default is, by its nature, not readily susceptible to cure within thirty (30) days, and (y) such Borrower commences that cure process within the initial thirty (30) day period and diligently pursues it to completion within sixty (60) days of the Potential Default, then that Potential Default shall not constitute an Event of Default under this Deed of Trust; and further provided, however, that no such notice or opportunity to cure shall be required to be given with regard to *Sections 6.1, 6.5, 6.6, 6.11, 6.15, 6.17, and 6.20.*

SECTION 7 REMEDIES

7.1 Beneficiary's Remedies Upon Default. Upon the occurrence of an Event of Default, Beneficiary may, at Beneficiary's option, and by or through Trustee, by Beneficiary itself, or otherwise, do any one or more of the following:

(a) Right to Perform Grantor's Covenants. If Grantor has failed to keep or perform any covenant contained in this Deed of Trust or the other Loan Documents, Beneficiary may, but shall have no obligation to, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall constitute part of the Indebtedness, and Borrower promises, upon demand, to pay to Beneficiary, at the place where the Note is payable, all sums so advanced or paid by Beneficiary, with interest at the Default Interest Rate from the date when paid or incurred by Beneficiary. No performance or payment by Beneficiary shall constitute a waiver of any Event of Default. In addition to the liens and security interests hereof, Beneficiary shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for which Beneficiary makes any payment or advance.

(b) Right of Entry. Beneficiary may, before or after the institution of any foreclosure proceedings, enter upon the Mortgaged Property and take exclusive possession of the Mortgaged Property and all related books, records, and accounts and may exercise, without interference from Grantor, all rights of Grantor regarding the management, possession, operation, protection, or preservation of the Mortgaged Property, including, without limitation, the rights to lease the same for the account of Grantor and to apply the Rents. All costs, expenses, and liabilities incurred by Beneficiary in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property, if not paid out of Rents, shall be added to the Indebtedness and shall bear interest at the Default Interest Rate from the date of expenditure until paid. If necessary to obtain the possession provided for above, Beneficiary may invoke all legal remedies to dispossess Grantor, including, without limitation, one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by Beneficiary pursuant to this subsection, (i) Beneficiary shall not be liable for any loss sustained by Grantor resulting from any failure to lease the Mortgaged Property, or any part thereof, or from any other act or omission of Beneficiary in managing the Mortgaged Property unless such loss is caused by the willful misconduct of Beneficiary, and (ii) Beneficiary shall not be obligated to perform or discharge any obligation, duty, or liability under any Lease or this

Deed of Trust, or to exercise any rights or remedies hereunder. GRANTOR SHALL INDEMNIFY BENEFICIARY FOR, AND DEFEND AND HOLD BENEFICIARY HARMLESS FROM, ALL LIABILITY, LOSS, OR DAMAGE, THAT BENEFICIARY MAY INCUR UNDER ANY SUCH LEASE, FROM THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, AND FROM ALL CLAIMS AND DEMANDS THAT MAY BE ASSERTED AGAINST BENEFICIARY BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY SUCH LEASE EVEN IF RESULTING FROM BENEFICIARY'S OWN NEGLIGENCE OR ARISING IN STRICT LIABILITY. Should Beneficiary incur any such liability, the amount thereof, including, without limitation, all costs, expenses, and reasonable attorneys' fees, together with interest at the Default Interest Rate from the date of expenditure until paid, shall be added to the Indebtedness, and Grantor shall reimburse Beneficiary therefor immediately upon demand. Nothing in this subsection shall impose any duty, obligation, or responsibility upon Beneficiary for the control, care, management, leasing, or repair of the Mortgaged Property, nor for the performance of any of the terms and conditions of any such Lease; nor shall it operate to make Beneficiary responsible or liable for any waste committed on the Mortgaged Property by the tenants or by any other parties, or for any Hazardous Substance in, on or under the Mortgaged Property, or for any dangerous or defective condition of the Mortgaged Property or for any negligence in the management, leasing, upkeep, repair, or control of the Mortgaged Property resulting in loss, injury, or death to any tenant, licensee, employee, or stranger. Grantor hereby ratifies, confirms, and agrees with all actions that Beneficiary takes under this subsection with respect to the Mortgaged Property.

The remedies in this subsection are in addition to other remedies available to Beneficiary and the exercise of the remedies in this subsection shall not be deemed to be an election of non-judicial or judicial remedies otherwise available to Beneficiary. The remedies in this **Section 7** are available under and governed by the real property laws of Oregon and are not governed by the personal property laws of Oregon, including, without limitation, the power to dispose of personal property in a commercially reasonable manner under the Code. No action by Beneficiary, taken pursuant to this subsection, shall be deemed to be an election to retain personal property under the Code. Any receipt of consideration received by Beneficiary pursuant to this subsection shall be immediately credited against the Indebtedness (in the inverse order of maturity) and the value of said consideration shall be treated like any other payment against the Indebtedness.

(c) Right to Accelerate. Beneficiary may declare the entire unpaid balance of the Indebtedness immediately due and payable, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Grantor and all other parties obligated in any manner on the Indebtedness. Upon such declaration, the entire unpaid balance of the Indebtedness shall be immediately due and payable. The failure to exercise any remedy available to Beneficiary shall not be deemed to be a waiver of any rights or remedies of Beneficiary under the Loan Documents, at law, or in equity. Notwithstanding the foregoing, in the

case of an Event of Default under **Section 6.5**, and notwithstanding the lack of any notice, demand or declaration by Beneficiary, the entire Indebtedness remaining unpaid and outstanding shall automatically become due and payable in full, and any commitment by Beneficiary to make any further advances under the Loan Agreement shall be automatically and immediately terminated without any requirement of notice or demand by Beneficiary upon Grantor or any other Person, all of which are expressly waived by Grantor.

(d) Legal Proceedings. Grantor and Beneficiary shall have the right and power to proceed by suit or suits in equity or at law, whether for the specific performance of any covenant or agreement of Grantor contained herein or in aid of the execution of the powers herein granted, or for foreclosure or the sale of the Mortgaged Property or any part thereof under the judgment or decree of any court of competent jurisdiction, or for the enforcement of any other appropriate legal or equitable remedy.

(e) Trustee's Sale. It shall be the duty of the Trustee and of his successors and substitutes in the Trust, on Beneficiary's request (which request is hereby presumed) to enforce the Trust by selling the Mortgaged Property as is provided in this Deed of Trust.

(f) Foreclosure—Power of Sale. Beneficiary may request Trustee to proceed with foreclosure under the power of sale as set forth below:

(i) Public Sale. Upon request of Beneficiary, Trustee is authorized and empowered, and it shall be Trustee's special duty, to sell the Mortgaged Property, or any part thereof, at public auction to the highest bidder for cash, with or without having taken possession of the Mortgaged Property in accordance with the requirements of Oregon law.

(ii) Reserved.

(iii) Application of Foreclosure Sale Proceeds. The proceeds of any sale of the Mortgaged Property, and any rents and other amounts collected by Beneficiary from Beneficiary's holding, leasing, operating or making any other use of the Mortgaged Property, shall be applied by Beneficiary (or by the receiver, if one is appointed) to the extent that funds are available therefrom in the following order of priority:

(A) To Expenses and Senior Obligation Payments. First, to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, maintaining, using, leasing, repairing, equipping, manning, improving, marketing and selling it, including (i) trustees' and receivers' fees, (ii) court costs, (iii) attorneys' and accountants' fees, (iv) costs of advertisement and brokers' commissions and (v) payment of any and all Impositions, liens, security interests or other rights, titles or interests superior to the lien and security interest of this Deed of Trust, whether or not then due and including any prepayment penalties or fees and any accrued or required interest (except, in the case of foreclosure proceeds, those senior liens and security interests, if any, subject to which the Mortgaged Property was sold at such

trustee's sale, and without in any way implying Beneficiary's consent to the creation or existence of any such prior liens);

(B) To Other Obligations Owed to Beneficiary. Second, to the payment of all amounts, other than the principal balance and accrued but unpaid interest, which may be due to Beneficiary under the Note or any other Loan Document, together with interest thereon as provided therein;

(C) To Accrued Interest on the Debt. Third, to the payment of all accrued but unpaid interest due on the Debt;

(D) To Debt Principal. Fourth, to the payment of the principal balance on the Debt and the principal owing under this Deed of Trust and any other Loan Document, irrespective of whether then matured, and if it is payable in installments and not matured, then to the installments in such order as Beneficiary shall elect;

(E) To Junior Lienholders. Fifth, to the extent funds are available therefor out of the sale proceeds or any rents and, to the extent known by Beneficiary, to the payment of any debt or obligation secured by a subordinate deed of trust on or security interest in the Mortgaged Property; and

(F) To Grantor. Sixth, to Grantor, its successors and assigns, or to whomsoever may be lawfully entitled to receive such proceeds.

(iv) Beneficiary May Require Abandonment and Recommencement of Sale. If the Trustee or his substitute or successor should commence the sale, Beneficiary may at any time before the sale is completed direct the Trustee to abandon the sale, and may at any time or times thereafter direct the Trustee to again commence foreclosure; or, irrespective of whether foreclosure is commenced by the Trustee, Beneficiary may at any time after an Event of Default institute suit for collection of the Debt or foreclosure of this Deed of Trust. If Beneficiary should institute suit for collection of the Debt or foreclosure of this Deed of Trust, Beneficiary may at any time before the entry of final judgment dismiss it and require the Trustee to sell the Mortgaged Property in accordance with the provisions of this Deed of Trust.

(v) Multiple Sales; Deed of Trust Continues in Effect. No single sale or series of sales by the Trustee or by any substitute or successor and no judicial foreclosure shall extinguish the lien or exhaust the power of sale under this Deed of Trust except with respect to the items of property sold, nor shall it extinguish, terminate or impair Grantor's contractual obligations under this Deed of Trust, but such lien and power shall exist for so long as, and may be exercised in any manner by law or in this Deed of Trust provided as often as the circumstances require to give Beneficiary full relief under this Deed of Trust, and such contractual obligations shall continue in full force and effect until final termination of this Deed of Trust.

(vi) Beneficiary May Bid and Purchase. Beneficiary shall have the right to become the purchaser at any sale made under this Deed of Trust, being the

highest bidder, and credit given upon all or any part of the Debt shall be the exact equivalent of cash paid for the purposes of this Deed of Trust.

(vii) Successor or Substitute Trustee. In case of absence, death, inability, refusal or failure of the Trustee in this Deed of Trust named to act, or in case he should resign (and he is hereby authorized to resign without notice to or consent of Grantor), or if Beneficiary shall desire, with or without cause, to replace the Trustee in this Deed of Trust named, or to replace any successor or substitute previously named, Beneficiary or any agent or attorney-in-fact for Beneficiary may name, constitute and appoint a successor and substitute trustee (or another one) without other formality than an appointment and designation in writing, which need not be acknowledged, filed or recorded to be effective, except only in those circumstances — if any — where acknowledgment, filing and/or recording is required by applicable law and such law also precludes Grantor from effectively waiving such requirement. Upon such appointment, this conveyance shall automatically vest in such substitute trustee, as Trustee, the estate in and title to all of the Mortgaged Property, and such substitute Trustee so appointed and designated shall thereupon hold, possess and exercise all the title, rights, powers and duties in this Deed of Trust conferred on the Trustee named and any previous successor or substitute Trustee, and his conveyance to the purchaser at any such sale shall be equally valid and effective as if made by the Trustee named in this Deed of Trust. Such right to appoint a substitute Trustee shall exist and may be exercised as often and whenever from any of said causes, or without cause, as aforesaid, Beneficiary or Beneficiary's agent or attorney-in-fact elects to exercise it.

(viii) Right to Receiver. Upon the occurrence of an Event of Default or at any time after commencement of a Trustee's foreclosure sale or any legal proceedings under this Deed of Trust, Beneficiary may, at Beneficiary's election and by or through the Trustee or otherwise, make application to a court of competent jurisdiction for appointment of a receiver of the Mortgaged Property, as a matter of strict right, without notice to Grantor and without regard to the adequacy of the value of the Mortgaged Property for the repayment of the Debt, and Grantor hereby irrevocably consents to such an appointment. Any receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to possess, rent, maintain, repair and operate the Mortgaged Property upon such terms and conditions as may be approved by the court, and shall apply the rents realized in the same manner and order as foreclosure proceeds in accordance with *Section 7.1(f)(iii)*.

(ix) Tenants at Will. Grantor agrees for itself and its heirs, legal representatives, successors and assigns, that if any of them shall hold possession of the Mortgaged Property or any part thereof subsequent to foreclosure hereunder, Grantor, or the parties so holding possession, shall become and be considered as tenants at will of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchaser or purchasers for rental on said premises, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, all damages which may be sustained by any such tenant as a result thereof being hereby expressly waived.

(g) Beneficiary's Code Remedies. Beneficiary may exercise its rights of enforcement with respect to Fixtures and Personalty under the Code, and in conjunction with, in addition to, or in substitution for the rights and remedies under the Code:

(i) Beneficiary may, without demand or notice to Grantor, enter upon the Mortgaged Property to take possession of, assemble, receive, and collect the Personalty, or any part thereof, or to render it unusable;

(ii) Beneficiary may require Grantor to assemble the Personalty and make it available at a place Beneficiary designates which is mutually convenient to allow Beneficiary to take possession or dispose of the Personalty;

(iii) reasonable written notice shall be delivered to Grantor as provided herein at least ten (10) days before (A) the date of public sale of the Personalty or (B) the date after which a private sale of the Personalty will be made;

(iv) any sale of Personalty made pursuant to this *Section 7.1(g)* shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the other Mortgaged Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Personalty or Fixtures hereunder as is required for such sale of the other Mortgaged Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under the Code;

(v) if a foreclosure sale occurs, whether made by Trustee under the power of sale, or under judgment of a court, the Personalty and the other Mortgaged Property may, at the option of Beneficiary, be sold as a whole;

(vi) it shall not be necessary that Beneficiary take possession of the Personalty, or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Personalty or any part thereof be present at the location of such sale;

(vii) after notice to Grantor, Beneficiary may sell, lease, or otherwise dispose of the Personalty, or any part thereof, in one or more parcels at public or private sale or sales, at Beneficiary's offices or elsewhere, for cash, on credit, or for future delivery. Grantor shall be liable for all expenses of retaking, holding, preparing for sale or lease, selling, leasing, and the like, and all attorneys' fees, legal expenses, and all other costs and expenses incurred by Beneficiary in connection with the collection of the Indebtedness and the enforcement of Beneficiary's rights under the Loan Documents. Beneficiary shall apply the proceeds of the sale of the Personalty against the Indebtedness in accordance with the provisions of *Section 7.1(f)(iii)*. Grantor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Personalty are insufficient to pay the Indebtedness in full. Grantor waives all rights of marshalling in respect of the Personalty;

(viii) all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder regarding the

nonpayment of the Indebtedness, the occurrence of any Event of Default, Beneficiary having declared all or a portion of such Indebtedness to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other action by Beneficiary, shall be taken as *prima facie* evidence of the truth of the facts so stated and recited;

(ix) Beneficiary may dispose of the Personalty or Fixtures "as-is", has no duty to repair or clean the Personalty or Fixtures before sale, and may disclaim warranties of title, possession, quiet enjoyment, and the like with respect to the Personalty or Fixtures, all without affecting the commercial reasonableness of the sale;

(x) Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Beneficiary, including sending notices and conducting the sale, but in the name and on behalf of Beneficiary; and

(xi) Beneficiary shall have the right at any time to enforce Grantor's rights against account debtors and obligors.

(h) Other Rights. Beneficiary (i) may surrender the insurance policies, or any part thereof, maintained pursuant to **Section 4.7**, and upon receipt shall apply the unearned premiums as a credit on the Indebtedness, in accordance with the provisions of **Section 7.1(f)(iii)**, and, in connection therewith, Grantor hereby appoints Beneficiary as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Grantor to collect such premiums; (ii) may apply the reserve for Impositions and insurance premiums, if any, required under this Deed of Trust, toward payment of the Indebtedness; and (iii) shall have and may exercise all other rights and remedies which Beneficiary may have at law or in equity, or by virtue of any Loan Document or under the Code, or otherwise.

7.2 Other Rights of Beneficiary. Should any part of the Mortgaged Property come into the possession of Beneficiary, whether before or after default, Beneficiary may (for itself or by or through other persons, firms, or entities) hold, lease, manage, use, or operate the Mortgaged Property for such time and upon such terms as Beneficiary may deem prudent under the circumstances (making any repairs, alterations, additions, and improvements thereto and taking any other action that Beneficiary may from time to time deem necessary or desirable) for the purpose of preserving the Mortgaged Property or its value, pursuant to the order of a court of competent jurisdiction, or pursuant to any other rights held by Beneficiary regarding the Mortgaged Property. Grantor covenants to promptly reimburse and pay to Beneficiary on demand, at the place where the Note is payable, the amount of all reasonable expenses (including without limitation the cost of any insurance, Impositions, or other charges) incurred by Beneficiary in connection with Beneficiary's custody, preservation, use, or operation of the Mortgaged Property, together with interest at the Default Interest Rate from the date incurred by Beneficiary; and all such expenses, costs, taxes, interest, and other charges shall constitute a part of the Indebtedness. The risk of loss or damage to the Mortgaged Property, however, is on Grantor, and Beneficiary shall have no liability for a decline in value of the Mortgaged Property, for failure to obtain or maintain insurance, or for failure to determine whether the insurance in

force is adequate in amount or for the risks insured. Possession by Beneficiary shall not be deemed an election of judicial relief, if any such possession is requested or obtained, regarding any Mortgaged Property or collateral not in Beneficiary's possession.

7.3 Possession After Foreclosure. If the liens or security interests in this Deed of Trust are foreclosed by Trustee's power of sale, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the purchased property, and if Grantor or Grantor's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Grantor and Grantor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Mortgaged Property so occupied and sold to such purchaser), and anyone occupying such portion of the Mortgaged Property after demand is made for possession thereof shall be guilty of unlawful detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

7.4 Payment of Fees. If the Note or any other part of the Indebtedness is collected by, or if any of the Obligations are enforced by, legal proceedings in a probate or bankruptcy court or otherwise, or is placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by an option given to Beneficiary to mature same, or if Beneficiary becomes a party to any suit in which this Deed of Trust or the Mortgaged Property or any part thereof is involved, then Grantor shall pay Beneficiary's attorneys' fees and expenses incurred, and such fees shall be added to the Indebtedness and shall bear interest at the Default Interest Rate from the date such costs are incurred.

7.5 Miscellaneous.

(a) Discontinuance of Remedies. If Beneficiary invokes any right, remedy, or recourse permitted under the Loan Documents, then Beneficiary may discontinue or abandon same for any reason and Grantor and Beneficiary shall be restored to their former positions regarding the Indebtedness, the Loan Documents, the Mortgaged Property, or otherwise, and the rights, remedies, recourses, and powers of Beneficiary shall continue as if they had never been invoked.

(b) Other Remedies. In addition to the remedies set forth in this *Section 7*, upon the occurrence of an Event of Default, Beneficiary and Trustee shall have all other remedies available at law or in equity.

(c) Remedies Cumulative; Non-Exclusive; Etc. All rights, remedies, and recourses of Beneficiary granted in the Note, this Deed of Trust, the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity (including, without limitation, those granted by the Code and applicable to the Mortgaged Property or any portion thereof): (i) are cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Grantor, the Mortgaged Property, or any one or more of them, at the sole discretion of Beneficiary; (iii) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of same shall

not be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) are nonexclusive; (v) are not conditioned upon Beneficiary exercising or pursuing any remedy in relation to the Mortgaged Property before bringing suit to recover the Indebtedness or suit on the Obligations; and (vi) if Beneficiary elects to bring suit on the Indebtedness and/or the Obligations and obtains a judgment against Grantor before exercising any remedies in relation to the Mortgaged Property, then all liens and security interests, including the lien of this Deed of Trust, shall remain in full force and effect and may be exercised at Beneficiary's option. Grantor unconditionally waives and agrees not to assert or take advantage of any right to require Beneficiary to proceed against Grantor or any other person or any security now or later held by Beneficiary or to pursue any other remedy whatsoever.

(d) Partial Release; Change of Security; Etc. Beneficiary may release from time to time any part of the Mortgaged Property, regardless of consideration, without impairing, subordinating, or affecting in any way the lien, security interest, and other rights hereof against the remainder of the Mortgaged Property, and without affecting the obligations of Borrower or any other party to perform and discharge the Obligations. The taking of additional collateral, or the amendment, extension, renewal, or rearrangement of the Indebtedness or Obligations, or any part thereof, shall not release or impair the lien, security interest, and other rights granted in this Deed of Trust, or affect the liability of any endorser or guarantor, or improve the right of any junior lien holder, and all collateral shall be considered taken and held as cumulative. This Deed of Trust, as well as any instrument given to secure any amendment, extension, renewal, or rearrangement of the Indebtedness or Obligations, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the Indebtedness is indefeasibly paid in full and the Obligations are fully performed and discharged. Beneficiary may resort to any collateral, in such order and manner as Beneficiary may elect, for payment of the Indebtedness.

(e) Waiver and Release by Grantor. Grantor irrevocably and unconditionally waives and releases: (i) all benefits that Grantor might accrue under any present or future law exempting the Mortgaged Property from attachment, levy, or sale on execution or providing for any appraisement, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment; (ii) all notices of any Event of Default or of Trustee's exercise of any right, remedy, or recourse provided for under the Loan Documents; and (iii) any right to a marshaling of assets or a sale in inverse order of alienation.

(f) No Implied Covenants. There are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in this Deed of Trust and the other Loan Documents. All agreed contractual duties are set forth in this Deed of Trust, the Note, and the other Loan Documents.

(g) Real Property Laws Govern. If Beneficiary elects to proceed as to the Fixtures and Personalty together with the other Mortgaged Property, then the remedies in this **Section 7** shall be available under and governed by the real property laws of Oregon and not the personal property laws of Oregon.

7.6 Partnership Waiver. If Grantor or any Constituent Party of Grantor is a partnership, Grantor and each Constituent Party of Grantor agrees that Beneficiary may proceed directly against one or more partners or their property without first seeking satisfaction from partnership property.

SECTION 8 SPECIAL PROVISIONS

8.1 Condemnation Proceeds. Beneficiary shall be entitled to receive all sums that may be awarded or become payable to Grantor for condemnation of all or any part of the Mortgaged Property, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Grantor for damages caused by public works or construction on or near the Mortgaged Property. All such sums are hereby assigned to Beneficiary, and Grantor shall, upon request of Beneficiary, make, execute, acknowledge, and deliver any and all additional assignments and documents that may be necessary from time to time to enable Beneficiary to collect any such sums. Beneficiary shall not be liable or responsible for failing to collect, or to exercise diligence in the collection of, any such sums. Any sums received by Beneficiary as a result of condemnation shall be applied to the Indebtedness pursuant to *Section 7.1(f)(iii)*.

8.2 Insurance Proceeds. The proceeds of any and all insurance upon the Mortgaged Property (other than proceeds of CGL insurance) shall be collected by Beneficiary, and Beneficiary shall have the option, in Beneficiary's sole discretion, to apply any proceeds so collected either to the restoration of the Mortgaged Property, in the amounts, manner, method and pursuant to such requirements and documents as Beneficiary may require, or to the liquidation of the Indebtedness in accordance with the provisions of *Section 7.1(f)(iii)*.

8.3 Reserve for Impositions and Insurance Premiums. At Beneficiary's request, Borrower shall fund a reserve for the payment of all insurance premiums and Impositions against or affecting the Mortgaged Property by paying to Beneficiary, on the first day of each calendar month prior to the maturity of the Note, an amount equal to the sum of (a) (i) premiums that will next become due and payable on the insurance policies covering Grantor, the Mortgaged Property or any part thereof, or such other insurance policies required hereby or by the Loan Documents, plus (ii) Impositions next due on the Mortgaged Property or any part thereof as estimated by Beneficiary, less (iii) all sums paid previously to Beneficiary therefor, divided by (b) the number of months to elapse until one month before the date when each of such premiums and Impositions will become due; such amount to be held by Beneficiary without interest to Borrower, unless interest is required by applicable law, to pay such premiums and Impositions. Beneficiary has the sole discretion to credit any excess reserve against subsequent reserve payments or subsequent payments on the Note, and Borrower shall pay any deficiency in the reserve amounts to Beneficiary on or before the date when Beneficiary demands such payment to be made, but in no event after the date when such premiums and Impositions become delinquent. If there is a deficiency in such reserve at any time when Impositions or insurance premiums are due and payable, then Beneficiary may, but shall not be obligated to, advance the amount of such deficiency on behalf of Grantor and such amounts so advanced shall be added to the Indebtedness, shall be immediately due and payable, and shall bear interest at the Default Interest Rate from the date of such advance through and including the date of repayment. Without

implying Beneficiary's consent to a transfer, any transfer of legal title to the Mortgaged Property shall automatically include a transfer to the holder of legal title to the Mortgaged Property of Grantor's interest in all sums deposited with Beneficiary under the provisions hereof or otherwise.

8.4 INDEMNITY. GRANTOR SHALL INDEMNIFY, DEFEND, PROTECT, AND HOLD HARMLESS BENEFICIARY AND TRUSTEE, THEIR RESPECTIVE PARENTS, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ALL LIABILITY, DAMAGE, LOSS, COST, OR EXPENSE (INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND EXPENSES), ACTION, PROCEEDING, CLAIM, OR DISPUTE INCURRED OR SUFFERED BY THE FOREGOING PARTIES SO INDEMNIFIED WHETHER OR NOT AS THE RESULT OF THE NEGLIGENCE OF ANY PARTY SO INDEMNIFIED AND EVEN IF ARISING IN STRICT LIABILITY, WHETHER VOLUNTARILY OR INVOLUNTARILY INCURRED OR SUFFERED, REGARDING THE FOLLOWING: (A) ANY LITIGATION CONCERNING THIS DEED OF TRUST, THE OTHER LOAN DOCUMENTS, OR THE MORTGAGED PROPERTY, OR ANY INTEREST OF GRANTOR OR BENEFICIARY THEREIN, OR THE RIGHT OF OCCUPANCY THEREOF BY GRANTOR OR BENEFICIARY, WHETHER OR NOT ANY SUCH LITIGATION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT; (B) ANY DISPUTE, INCLUDING DISPUTES AS TO THE DISBURSEMENT OF PROCEEDS OF THE NOTE NOT YET DISBURSED, AMONG OR BETWEEN ANY OF THE CONSTITUENT PARTIES OR OTHER PARTNERS OR VENTURERS OF GRANTOR IF GRANTOR IS A GENERAL OR LIMITED PARTNERSHIP, OR AMONG OR BETWEEN ANY EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, OR MANAGERS OF GRANTOR IF GRANTOR IS A CORPORATION OR LIMITED LIABILITY COMPANY, OR AMONG OR BETWEEN ANY MEMBERS, TRUSTEES, OR OTHER RESPONSIBLE PARTIES IF GRANTOR IS AN ASSOCIATION, TRUST OR OTHER ENTITY; (C) ANY ACTION TAKEN OR NOT TAKEN BY BENEFICIARY OR TRUSTEE THAT IS ALLOWED OR PERMITTED UNDER THIS DEED OF TRUST OR ANY OF THE OTHER LOAN DOCUMENTS RELATING TO GRANTOR, THE MORTGAGED PROPERTY, ANY CONSTITUENT PARTIES, OR OTHERWISE IN CONNECTION WITH THE LOAN DOCUMENTS, INCLUDING WITHOUT LIMITATION, THE PROTECTION OR ENFORCEMENT OF ANY LIEN, SECURITY INTEREST, OR OTHER RIGHT, REMEDY, OR RECOURSE CREATED OR AFFORDED BY THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS; AND (D) ANY ACTION BROUGHT BY BENEFICIARY OR TRUSTEE AGAINST GRANTOR UNDER THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS, WHETHER OR NOT SUCH ACTION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT.

BENEFICIARY AND/OR TRUSTEE MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTECT OR ENFORCE ITS RIGHTS, REMEDIES, AND RECOURSES UNDER THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS, AND TO ADVISE AND DEFEND BENEFICIARY AND/OR TRUSTEE WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. GRANTOR SHALL REIMBURSE BENEFICIARY AND/OR TRUSTEE FOR THEIR RESPECTIVE ATTORNEYS' FEES AND EXPENSES (INCLUDING EXPENSES AND COSTS FOR EXPERTS) IMMEDIATELY UPON RECEIPT OF A WRITTEN DEMAND

THEREFOR, WHETHER ON A MONTHLY OR OTHER TIME INTERVAL, AND WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED OR CONCLUDED. ALL OTHER REIMBURSEMENT AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BECOME DUE AND PAYABLE WHEN ACTUALLY INCURRED BY BENEFICIARY AND/OR TRUSTEE. ANY PAYMENTS NOT MADE WITHIN FIVE (5) DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT INTEREST RATE FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS SECTION 8.4 SHALL SURVIVE REPAYMENT OF THE INDEBTEDNESS AND PERFORMANCE OF THE OBLIGATIONS, THE RELEASE OF THE LIEN OF THIS DEED OF TRUST, ANY FORECLOSURE (OR ACTION IN LIEU OF FORECLOSURE), THE TRANSFER BY GRANTOR OF ANY OF ITS RIGHT, TITLE, AND INTEREST IN OR TO THE MORTGAGED PROPERTY, AND THE EXERCISE BY BENEFICIARY OF ALL REMEDIES SET FORTH HEREIN OR IN THE LOAN DOCUMENTS.

8.5 Grantor's Waiver of Subrogation. Grantor waives all right to claim, recover, or subrogation that arises or may arise in its favor against Beneficiary or its officers, directors, employees, agents, attorneys, or representatives for all loss or damage to Grantor, the Mortgaged Property, Grantor's property, or the property of others under Grantor's control from any cause insured against or required to be insured against by the Loan Documents. This waiver is in addition to, and not in limitation or derogation of, any other waiver or release contained in this Deed of Trust regarding any loss or damage to the parties' property. Because the above waivers preclude the assignment of any claim by way of subrogation (or otherwise) to an insurance company (or any other person), Grantor shall immediately give to each insurance company that has issued Grantor an insurance policy (whether or not such policy is required by the Loan Documents) written notice of the terms of the above waivers, and to have all insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage because of the above waivers.

8.6 Grantor's Waiver of Setoff. Borrower shall pay the Indebtedness, or any part thereof, without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction by reason of: (a) any damage to, destruction of, or any condemnation or similar taking of the Mortgaged Property; (b) any interference with any use of the Mortgaged Property; (c) any title defect or encumbrance or any eviction from the Mortgaged Property by superior title or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Trustee, Beneficiary, or Grantor, or any action taken under this Deed of Trust by any trustee or receiver of Beneficiary or Grantor, or by any court, in any such proceeding; (e) any claim that Grantor has or might have against Trustee or Beneficiary; (f) any default or failure on the part of Beneficiary to perform or comply with this Deed of Trust, the Loan Documents, or any other agreement with Grantor; or (g) any other occurrence, whether similar or dissimilar to the foregoing, whether or not Grantor has notice or knowledge of any of the foregoing. Except as expressly provided herein, Grantor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of the Indebtedness. No portion of the Obligation secured by this Deed of Trust shall be or be deemed to be offset or compensated by all or any part of any claim, cause of action,

counterclaim, or cross-claim, whether liquidated or unliquidated, that Grantor may have or claim to have against Beneficiary.

8.7 Beneficiary's Setoff. Beneficiary shall be entitled to exercise both the rights of setoff and banker's lien, if applicable, against the interest of Grantor in and to each and every account and other property of Grantor that are in the possession of Beneficiary to the full extent of the outstanding balance of the Indebtedness. Grantor hereby grants to Beneficiary a Lien on and security interest in, and assigns to Beneficiary, all deposits (general or special, time or demand, provisional or final) at any time held by Grantor and other indebtedness at any time owing by Beneficiary to or for the credit or for the account of Grantor, and any property of Grantor from time to time in the possession or control of Beneficiary.

8.8 Consent to Disposition. Beneficiary may base its decision to grant or withhold consent to a Disposition on such terms and conditions as Beneficiary may require, in its sole discretion, including, without limitation, (a) consideration of the creditworthiness of the proposed transferee and its management ability with respect to the Mortgaged Property; (b) consideration of whether the security for repayment of the Indebtedness and the performance and discharge of the Obligations, or Beneficiary's ability to enforce its rights, remedies, and recourses with respect to such security, will be impaired in any way by the proposed Disposition; (c) an increase in the rate of interest payable under the Note or any other change in the terms and provisions of the Note and other Loan Documents; (d) reimbursement of Beneficiary for all expenses incurred by Beneficiary in investigating the creditworthiness and management or consulting ability of the proposed transferee and in determining whether Beneficiary's security will be impaired by the proposed Disposition; (e) payment to Beneficiary of a transfer fee to cover the cost of documenting the Disposition in its records; (f) payment of Beneficiary's reasonable attorneys' fees in connection with such Disposition; (g) the express assumption of payment of the Indebtedness and performance and discharge of the Obligations by the transferee (with or without the release of Grantor from liability for such Obligations, such release, if any, to be in Beneficiary's sole discretion); (h) the execution of assumption agreements, modification agreements, supplemental loan documents, and financing statements, satisfactory in form and substance to Beneficiary; (i) endorsements (to the extent available under applicable law) to any existing loan title insurance policies insuring Beneficiary's liens and security interests covering the Mortgaged Property; and (j) requiring additional security for the payment of the Indebtedness and performance and discharge of the Obligations.

8.9 Consent to Subordinate Mortgage. If Beneficiary consents to the granting of a Subordinate Mortgage, or if Beneficiary's right to declare the Indebtedness to be immediately due and payable upon the granting of a Subordinate Mortgage without the prior written consent of Beneficiary is determined by a court of competent jurisdiction to be unenforceable under the provisions of any applicable law, then Grantor shall not execute or deliver any Subordinate Mortgage unless (a) it shall contain express covenants to the effect that: (i) the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien and security interest evidenced by this Deed of Trust and each term and provision hereof; (ii) if any judicial or non-judicial action or proceeding shall be instituted to foreclose the Subordinate Mortgage, then no tenant of any portion of the Mortgaged Property will be named as a party defendant, nor will any action be taken with respect to the Mortgaged Property which would terminate any occupancy or tenancy of the Mortgaged Property without the prior written consent of

Beneficiary; (iii) the rents and profits, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the Indebtedness, next to the payment of the Impositions, and then to the performance and discharge of the Obligations; and (iv) if any judicial or non-judicial action or proceeding shall be brought to foreclose the Subordinate Mortgage, then written notice of the commencement thereof (including, without limitation, contemporaneous delivery of copies of notices thereof) will be given to Beneficiary contemporaneously with the commencement of such action or proceeding; and (b) Grantor shall deliver a copy thereof to Beneficiary not less than ten (10) days prior to the date of the execution of such Subordinate Mortgage.

8.10 Payment After Acceleration. If, after an Event of Default, and after any or all of the Indebtedness is accelerated, but before a foreclosure sale of the Mortgaged Property, and Borrower tenders to Beneficiary the payment of an amount sufficient to satisfy the accelerated Indebtedness, then such tender shall be deemed a voluntary prepayment of the Indebtedness and accordingly, Borrower, to the extent permitted by applicable law, shall also pay to Beneficiary the premium, if any, then required under the Note or other Loan Documents to exercise the prepayment privilege contained therein.

8.11 Contest of Certain Claims. Notwithstanding the provisions of *Sections 4.5 or 4.12*, Grantor shall not be in default for failure to pay or discharge any Imposition or Lien asserted against the Mortgaged Property or the loan fund if, and so long as, (a) Grantor shall have notified Beneficiary of same within five (5) days of obtaining knowledge thereof; (b) Grantor shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Mortgaged Property or any part thereof, to satisfy the same; (c) Grantor shall have furnished to Beneficiary a cash deposit, or an indemnity bond satisfactory to Beneficiary with a surety satisfactory to Beneficiary, in the amount of the Imposition or Lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Mortgaged Property or any part thereof; (d) Grantor shall promptly upon final determination thereof pay the amount of any such Imposition or Lien so determined, together with all costs, interest and penalties which may be payable in connection therewith; (e) the failure to pay the Imposition or Lien claim does not constitute a default under any other deed of trust, mortgage or security interest covering or affecting any part of the Mortgaged Property; and (f) notwithstanding the foregoing, Grantor shall immediately upon request of Beneficiary pay (and if Grantor shall fail so to do, Beneficiary may, but shall not be required to, pay or cause to be discharged or bonded against) any such Imposition or claim notwithstanding such contest, if in the reasonable opinion of Beneficiary the Mortgaged Property or loan fund shall be in jeopardy or in danger of being forfeited or foreclosed. Beneficiary may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Beneficiary, the entitlement of such claimant is established.

8.12 Maximum Interest. It is the intent of Grantor and Beneficiary at all times to comply strictly with the applicable Texas law governing the maximum non-usurious rate or non-usurious amount of interest payable on the Note or the Related Indebtedness (or applicable United States federal law to the extent that it permits Beneficiary to contract for, charge, take, reserve, or receive a greater amount of interest than under Texas law). If the applicable law is

ever judicially interpreted so as to render usurious any amount (a) contracted for, charged, taken, reserved or received pursuant to the Note, any other Loan Documents, or any other communication or writing by or between Borrower and Beneficiary related to the Indebtedness or to the transaction or transactions that are the subject matter of the Loan Documents; (b) contracted for, charged, taken, reserved, or received by reason of Beneficiary's exercise of the option to accelerate the maturity of the Note and/or the Related Indebtedness; or (c) Borrower has paid or Beneficiary has received by reason of any voluntary prepayment by Borrower of the Note and/or the Related Indebtedness, then it is Borrower's and Beneficiary's intent that all amounts charged in excess of the Maximum Rate shall be automatically canceled, *ab initio*, and all amounts in excess of the Maximum Rate that have been collected by Beneficiary shall be credited on the principal balance of the Note and/or the Related Indebtedness (or, if the Note and all Related Indebtedness have been or would thereby be paid in full, refunded to Borrower), and that the provisions of the Note and the other Loan Documents immediately be deemed reformed to reduce the amounts thereafter collectible under the Note and other Loan Documents, without the necessity of the execution of any new document, to comply with the applicable law, but to permit the recovery of the fullest amount otherwise called for; *provided, however*, if the Note has been paid in full before the end of the stated term of the Note, then Beneficiary shall, with reasonable promptness after Beneficiary discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Rate, either refund such excess interest to Borrower and/or credit such excess interest against any Related Indebtedness then owing by Borrower to Beneficiary. As a condition precedent to any claim seeking usury penalties against Beneficiary, Borrower agrees that it shall provide written notice to Beneficiary, advising Beneficiary in reasonable detail of the nature and amount of the violation, and Beneficiary shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against the Note and/or the Related Indebtedness then owing by Borrower to Beneficiary. All sums contracted for, charged, taken, reserved, or received by Beneficiary for the use, forbearance, or detention of any debt evidenced by the Note and/or the Related Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Note and/or the Related Indebtedness (including all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Note and/or the Related Indebtedness does not exceed the Maximum Rate from time to time in effect and applicable to the Note and/or the Related Indebtedness for so long as debt is outstanding. The provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) shall not apply to the Note and/or the Related Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Beneficiary to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

8.13 Intentionally Omitted.

8.14 Lifting of Automatic Stay. In the event that any Grantor is the subject of any insolvency, bankruptcy, receivership, dissolution, reorganization or similar proceeding, federal or state, voluntary or involuntary, under any present or future law or act, Beneficiary is entitled to the automatic, immediate, absolute and irrevocable lifting of any automatic stay as to the enforcement of its remedies under the Loan Documents against the Mortgaged Property,

including specifically, but not limited to the stay imposed by Section 362 of the United States Federal Bankruptcy Code, as amended; and may enforce any and all remedies provided under the Loan Documents against the Mortgaged Property; Grantor hereby agrees and consents to the immediate lifting of any such automatic stay, and will not contest any motion or other effort by Beneficiary to lift and remove any stay; all Loan Parties expressly acknowledge and stipulate that (a) the Mortgaged Property is not now, and will never be necessary to any plan of reorganization of any type, (b) that no reorganization is possible and (c) there is no equity in the Mortgaged Property after consideration of the amounts owed Beneficiary.

8.15 Arbitration. Grantor hereby agrees that all disputes, claims and controversies between the undersigned or between the undersigned and any lender or the holder of this instrument, whether individual, joint, or class in nature, arising from this instrument, or any document executed in connection herewith or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association, upon request of any party. No act to take or dispose of any collateral securing the Note or covered by this instrument shall constitute a waiver of this arbitration provision or be prohibited by the arbitration provision. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to the Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise or any right concerning any collateral securing the Note or covered by this instrument, including any claim to rescind, reform, or otherwise modify any agreement relating to the collateral securing the Note or covered by this instrument, shall also be arbitrated, provided however, that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by an arbitrator may be entered in any court having jurisdiction; provided, however, that nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under the laws of Texas, Oregon or the United States. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision. If the Federal Arbitration Act is inapplicable to any such claim or controversy for any reason, such arbitration shall be conducted pursuant to the Texas General Arbitration Act and in accordance with this arbitration provision and the Commercial Arbitration Rules of the American Arbitration Association.

SECTION 9 ASSIGNMENT OF RENTS

9.1 Assignment. Grantor hereby absolutely and irrevocably assigns and transfers to Beneficiary all of Grantor's right, title and interest in and to: (a) all leases, subleases, occupancy agreements, licenses, rental contracts and other agreements, whether oral or written, now or hereafter existing relating to the use or occupancy of all or any part of the Mortgaged Property, together with all guarantees, modifications, extensions and renewals thereof and all other agreements, such as utility contracts, maintenance agreements, and service contracts, which in

any way relate to the use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property (collectively, the "Leases"); (b) together with any guaranties or security for the obligations of any tenant, lessee, sublessee, licensee, or other person or entity having the right to occupy, use or manage any part of the Mortgaged Property under a Lease; and (c) all rents, revenues, issues, profits, income and proceeds due or to become due from tenants of the Mortgaged Property, including rentals and all other payments of any kind under the Leases, together with all deposits (including security deposits) of tenants thereunder (collectively, the "Rents"). Beneficiary confers upon Grantor a revocable license ("License") to collect and retain the Rents as they become due and payable, until the occurrence of an Event of Default. Upon an Event of Default, the License shall be automatically revoked and Beneficiary may collect and apply the Rents as provided below without notice and without taking possession of the Mortgaged Property.

(a) Such assignment is upon the following terms:

(i) Each time Grantor enters into a Lease, such Lease shall automatically become subject to the assignment of this Deed of Trust without further action.

(ii) Until receipt from Beneficiary of notice to pay Rents directly to Beneficiary, each tenant or lessee under the Leases ("Tenant") may pay Rents directly to Grantor.

(iii) Upon receipt from Beneficiary of notice to pay Rents directly to Beneficiary (Beneficiary being authorized to give such notice regardless of whether an Event of Default then exists), each Tenant is hereby authorized and directed to pay directly to Beneficiary all Rents (regardless of whether an Event of Default then exists), and the receipt of Rents by Beneficiary shall be a release of such Tenant to the extent of all amounts so paid. With respect to such notice, for purposes of complying with applicable law, and for no other purpose, it will be deemed that an Event of Default exists under this Deed of Trust regardless of whether an Event of Default actually exists.

(iv) After the occurrence of an Event of Default, Grantor shall hold all Rents so paid to Grantor in trust for the use and benefit of Beneficiary.

(v) During the existence of an Event of Default, Grantor shall deliver to Beneficiary all Rents received by Grantor, and the Rents so received by Beneficiary (whether paid directly to Beneficiary, delivered by Grantor or otherwise) shall be applied by Beneficiary as provided in **Section 7.1(f)(iii)** of this Deed of Trust.

(vi) Without impairing its rights hereunder, Beneficiary may, at its option, at any time and from time to time, release to Grantor Rents so received by Beneficiary, or any part thereof.

(vii) Beneficiary shall not be liable for its failure to collect, or its failure to exercise due diligence in the collection of, Rents, but shall be accountable only for Rents that it actually receives.

(b) It shall never be necessary for Beneficiary to institute legal proceedings of any kind whatsoever to enforce the provisions of this **Section 9**. Grantor, upon Beneficiary's request, shall execute, acknowledge and deliver and/or file such further instruments and do such further acts as may be reasonably necessary, desirable or proper to effectuate the intent and purposes of this assignment. For example only, if Beneficiary desires to have the Tenant under any particular Lease make payments under such Lease directly to Beneficiary, then, at Beneficiary's request, Grantor shall join with Beneficiary in the execution and delivery of a letter to such Tenant notifying such Tenant of Beneficiary's interest in such Lease and instructing such Tenant to make all future payments under such Lease directly to Beneficiary. Notwithstanding the foregoing, a demand on any Tenant by Beneficiary for the payment of Rents shall be sufficient to warrant said Tenant to make future payments of Rents directly to Beneficiary without the necessity for further consent by Grantor. To the extent permissible under applicable law, in case of conflict between the terms of the assignment of this Deed of Trust and applicable law, the terms of this **Section 9** shall control.

(c) The assignment herein granted shall not be deemed or construed to constitute Beneficiary as a trustee in possession of the Mortgaged Property, to obligate Beneficiary to lease the Mortgaged Property or attempt to do same, or to take any action, incur any expense or perform or discharge any obligation, duty or liability whatsoever under any of the Leases, Rents or otherwise.

9.2 Rights of Beneficiary. Beneficiary shall have the right, power and authority to: (a) notify any person that the Leases have been assigned to Beneficiary and that all Rents are to be paid directly to Beneficiary, whether or not Beneficiary has commenced or completed foreclosure or taken possession of the Mortgaged Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, take possession of and operate the Mortgaged Property; (e) lease all or any part of the Mortgaged Property; and/or (f) perform any and all obligations of Grantor under the Leases and exercise any and all rights of Grantor therein contained to the full extent of Grantor's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Beneficiary's request, Grantor shall deliver a copy of this Deed of Trust to each manager and managing agent or operator of the Mortgaged Property. Grantor irrevocably directs any tenant, manager, managing agent, or operator of the Mortgaged Property, without any requirement for notice to or consent by Grantor, to comply with all demands of Beneficiary under this Deed of Trust and to turn over to Beneficiary on demand all Rents which it receives.

9.3 No Obligation. Notwithstanding Beneficiary's rights hereunder, Beneficiary shall not be obligated to perform, and Beneficiary does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Property on account of this Deed of Trust. Beneficiary shall have no responsibility on account of this Deed of Trust for the control, care, maintenance or repair of the Mortgaged Property, for any waste committed on the Mortgaged Property, for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property.

9.4 Right to Apply Rents. Beneficiary shall have the right, but not the obligation, to use and apply any Rents received hereunder in such order and such manner as Beneficiary may determine for:

(a) Enforcement or Defense. The payment of costs and expenses of enforcing or defending the terms of this Deed of Trust or the rights of Beneficiary hereunder, and collecting any Rents;

(b) Loan Payments. Interest, principal or other amounts payable pursuant to (i) the Loan Agreement; (ii) the Note; (iii) the Swap Agreements, and (iv) the Loan Documents; and

(c) Operating Expenses. Payment of costs and expenses of the operation and maintenance of the Mortgaged Property, including (i) rentals and other charges payable by Grantor under any ground lease or other agreement affecting the Mortgaged Property; (ii) electricity, telephone, water and other utility costs, taxes, assessments, water charges and sewer rents and other utility and governmental charges levied, assessed or imposed against the Mortgaged Property; (iii) insurance premiums; (iv) costs and expenses with respect to any litigation affecting the Mortgaged Property, the Leases or the Rents; (v) wages and salaries of employees, commissions of agents and attorneys' fees and expenses; and (vi) all other carrying costs, fees, charges, reserves, and expenses whatsoever relating to the Mortgaged Property.

9.5 No Waiver. The exercise or non-exercise by Beneficiary of the rights granted in this Deed of Trust or the collection and application of Rents by Beneficiary or its agent shall not be a waiver of any default by Grantor under this Deed of Trust or any other Loan Document. No action or failure to act by Beneficiary with respect to any obligations of Grantor under the Loan Documents, or any security or guaranty given for the payment or performance thereof, shall in any manner affect, impair or prejudice any of Beneficiary's rights and privileges under this Deed of Trust, or discharge, release or modify any of Grantor's duties or obligations hereunder.

9.6 Proceeds of Leases. Grantor shall apply any Rents which it receives to the payment of debt service on the Note and other payments due under the Loan Agreement, taxes, assessments, water charges, sewer rents and other governmental charges levied, assessed or imposed against the Mortgaged Property, insurance premiums, operation and maintenance charges relating to the Mortgaged Property, and other obligations of lessor under the Leases before using such proceeds for any other purpose.

SECTION 10 SECURITY AGREEMENT

10.1 Security Interest. This Deed of Trust (a) shall be construed as a deed of trust on real property, and (b) shall also constitute and serve as a "Security Agreement" on personal property within the meaning of the Code, and (c) until terminated pursuant to **Section 2**, shall constitute a first and prior security interest under the Code as to property within the scope thereof. To this end, Grantor GRANTS, BARGAINS, CONVEYS, ASSIGNS, TRANSFERS, and SETS OVER, unto Trustee and Beneficiary, a first and prior security interest in all of

Grantor's right, title, and interest in, to, under, and with respect to the Personalty, Fixtures, Contracts, and Leases to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. It is the intent of Grantor, Beneficiary, and Trustee that this Deed of Trust encumber all Leases and that all items contained in the definition of "Leases" that are governed by the Code be covered by the security interest granted in this **Section 10**; and all items contained in the definition of "Leases" that are not governed by the Code be covered by the provisions of **Section 2**. Grantor shall cooperate with Beneficiary in obtaining control with respect to portions of the Personalty that are either or both deposit accounts or letter of credit rights.

10.2 Financing Statements. Grantor shall execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such "Financing Statements" and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect, and preserve Beneficiary's security interest herein granted, and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to create, perfect, and preserve such security interest. Grantor authorizes Beneficiary to prepare and file new financing statements, financing statement amendments, and financing statement continuations that describe all or any portion of the Mortgaged Property as collateral thereunder, and Beneficiary may file such statements without any signature of Grantor or of a representative of Grantor appearing thereon, where such filings are permitted by applicable law.

10.3 No Changes. Grantor shall not change its principal place of business or chief executive office, or change the state of its organization or registration, or change its name, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed. Beneficiary's consent will, however, be conditioned upon, among other things, the execution and delivery of additional financing statements, security agreements, and other instruments that may be necessary to effectively evidence or perfect Beneficiary's security interest in the Mortgaged Property as a result of such changes.

10.4 Grantor's Covenants Concerning Personalty Subject to the UCC. Grantor covenants and agrees with Beneficiary that in addition to and cumulative of any other remedies granted in this Deed of Trust to Beneficiary or the Trustee, upon or at any time after the occurrence of an Event of Default:

- (a) Beneficiary is authorized, in any legal manner and without breach of the peace, to take possession of the Collateral (Grantor hereby WAIVING all claims for damages arising from or connected with any such taking) and of all books, records and accounts relating thereto and to exercise without interference from Grantor any and all rights which Grantor has with respect to the management, possession, operation, protection or preservation of the Collateral, including the right to sell or rent the same for the account of Grantor and to deduct from such sale proceeds or such rents all costs, expenses and liabilities of every character incurred by Beneficiary in collecting such sale proceeds or such rents and in managing, operating, maintaining, protecting or preserving the Collateral and to apply the remainder of such sales proceeds or such rents on the Debt in such manner as Beneficiary may elect. Before any sale, Beneficiary may, at its option, complete the processing of any of the Collateral and/or repair or recondition the same to

such extent as Beneficiary may deem advisable and any sums expended therefor by Beneficiary shall be reimbursed by Grantor. Beneficiary may take possession of Grantor's premises to complete such processing, repairing and/or reconditioning, using the facilities and other property of Grantor to do so, to store any Collateral and to conduct any sale as provided for herein, all without compensation to Grantor. All costs, expenses, and liabilities incurred by Beneficiary in collecting such sales proceeds or such rents, or in managing, operating, maintaining, protecting or preserving such properties, or in processing, repairing and/or reconditioning the Collateral if not paid out of such sales proceeds or such rents as hereinabove provided, shall constitute a demand obligation owing by Grantor and shall bear interest from the date of expenditure until paid at the Default Rate (as defined in the Loan Agreement), all of which shall constitute a portion of the Debt. If necessary to obtain the possession provided for above, Beneficiary may invoke any and all legal remedies to dispossess Grantor, including specifically one or more actions for forcible entry and detainer. In connection with any action taken by Beneficiary pursuant to this Section, Beneficiary shall not be liable for any loss sustained by Grantor resulting from any failure to sell or let the Collateral, or any part thereof, or from other act or omission of Beneficiary with respect to the Collateral unless such loss is caused by the willful misconduct and bad faith of Beneficiary, nor shall Beneficiary be obligated to perform or discharge any obligation, duty, or liability under any sale or lease agreement covering the Collateral or any part thereof or under or by reason of this instrument or the exercise of rights or remedies hereunder.

(b) Beneficiary may, without notice except as hereinafter provided, sell the Collateral or any part thereof at public or private sale (with or without appraisal or having the Collateral at the place of sale) for cash, upon credit, or for future delivery, and at such price or prices as Beneficiary may deem best, and Beneficiary may be the purchaser of any and all of the Collateral so sold and may apply upon the purchase price therefor any of the Debt and thereafter hold the same absolutely free from any right or claim of whatsoever kind. Beneficiary is authorized at any such sale, if Beneficiary deems it advisable or is required by applicable law so to do, to disclaim and to refuse to give any warranty, and to impose such other limitations or conditions in connection with any such sale as Beneficiary deems necessary or advisable in order to comply with applicable law. Upon any such sale Beneficiary shall have the right to deliver, assign and transfer to the purchaser thereof the Collateral so sold. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right of whatsoever kind, including any equity or right of redemption, stay or appraisal which Grantor has or may have under any rule of law or statute now existing or hereafter adopted. To the extent notice is required by applicable law, Beneficiary shall give Grantor written notice at the address set forth herein (which shall satisfy any requirement of notice or reasonable notice in any applicable statute) of Beneficiary's intention to make any such public or private sale. Such notice (if any is required by applicable law) shall be personally delivered or mailed, postage prepaid, at least ten (10) calendar days before the date fixed for a public sale, or at least ten (10) calendar days before the date after which the private sale or other disposition is to be made, unless the Collateral is of a type customarily sold on a recognized market, is perishable or threatens to decline speedily in value. Such notice (if any is required by applicable law), in case of public sale, shall state the time and place fixed for such sale or, in case of private sale or other disposition other than a public sale,

the time after which the private sale or other such disposition is to be made. Any public sale shall be held at such time or times, within the ordinary business hours and at such place or places, as Beneficiary may fix in the notice of such sale. At any sale the Collateral may be sold in one lot as an entirety or in separate parcels as Beneficiary may determine. Beneficiary shall not be obligated to make any sale pursuant to any such notice. Beneficiary may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at any time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned. In case of any sale of all or any part of the Collateral on credit or for future delivery, the Collateral so sold may be retained by Beneficiary until the selling price is paid by the purchaser thereof, but Beneficiary shall incur no liability in case of the failure of such purchaser to take up and pay for the Collateral so sold, and in case of any such failure, such Collateral may again be sold upon like notice. Each and every method of disposition described in this Section shall constitute disposition in a commercially reasonable manner. Each Loan Party, to the extent applicable, shall remain liable for any deficiency.

(c) Beneficiary shall have all the rights of a secured party after default under the Code and in conjunction with, in addition to or in substitution for those rights and remedies:

(A) Beneficiary may require Grantor to assemble the Collateral and make it available at a place Beneficiary designates which is mutually convenient to allow Beneficiary to take possession or dispose of the Collateral; and

(B) it shall not be necessary that Beneficiary take possession of the Collateral or any part thereof before the time that any sale pursuant to the provisions of this Article is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; and

(C) before application of proceeds of disposition of the Collateral to the Debt, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Beneficiary, each Loan Party, to the extent applicable, to remain liable for any deficiency; and

(D) the sale by Beneficiary of less than the whole of the Collateral shall not exhaust the rights of Beneficiary hereunder, and Beneficiary is specifically empowered to make successive sale or sales hereunder until the whole of the Collateral shall be sold; and, if the proceeds of such sale of less than the whole of the Collateral shall be less than the aggregate of the indebtedness secured hereby, this Deed of Trust and the security interest created hereby shall remain in full force and effect as to the unsold portion of the Collateral just as though no sale had been made; and

(E) in the event any sale hereunder is not completed or is defective in the opinion of Beneficiary, such sale shall not exhaust the rights of Beneficiary hereunder and Beneficiary shall have the right to cause a subsequent sale or sales to be made hereunder; and

(F) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of any indebtedness or as to the occurrence of any default, or as to Beneficiary having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and the Collateral to be sold having been duly given, as to any other act or thing having been duly done by Beneficiary, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(G) Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of sale, but in the name and on behalf of Beneficiary; and

(H) demand of performance, advertisement and presence of property at sale are hereby WAIVED and Beneficiary is hereby authorized to sell hereunder any evidence of debt it may hold as security for the secured indebtedness. All demands and presentments of any kind or nature are expressly WAIVED by Grantor. Grantor WAIVES the right to require Beneficiary to pursue any other remedy for the benefit of Grantor and agrees that Beneficiary may proceed against any Loan Party for the amount of the Debt owed to Beneficiary without taking any action against any other Loan Party or any other person or entity and without selling or otherwise proceeding against or applying any of the Collateral in Beneficiary's possession.

10.5 UCC Rights are not Exclusive. Should Beneficiary elect to exercise its rights under the Code as to part of the personal property or fixtures described in this Deed of Trust, such election shall not preclude Beneficiary or the Trustee from exercising any or all of the rights and remedies granted by the other Articles of this Deed of Trust as to the remaining personal property or fixtures.

10.6 Deed of Trust is Also Financing Statement. Beneficiary may, at its election, at any time after delivery of this Deed of Trust, file an original of this Deed of Trust as a financing statement or sign one or more copies of this Deed of Trust to use as a UCC financing statement. Beneficiary's signature may be placed between the last sentence of this Deed of Trust and Grantor's acknowledgment or may follow Grantor's acknowledgment. Beneficiary's signature need not be acknowledged and is not necessary to the effectiveness of this Deed of Trust as a deed of trust, mortgage, assignment, pledge, security agreement or (unless otherwise required by applicable law) as a financing statement.

10.7 No Other Financing Statements on the Collateral. So long as any amount remains unpaid on the Debt, Grantor will not execute and there will not be filed in any public

office any financing statements affecting the Collateral other than financing statements in favor of Beneficiary under this Deed of Trust, unless prior written specific consent and approval of Beneficiary shall have been first obtained.

10.8 Fixtures. Certain of the Collateral is or will become "fixtures" (as that term is defined in the Code) on the Land and Improvements, and when this Deed of Trust is filed for record in the real estate records of the county where such fixtures are situated, it shall also automatically operate as a financing statement upon such of the Collateral which is or may become fixtures. This Deed of Trust constitutes a fixture filing under the Code.

10.9 Assignment of Non-UCC Personal Property. To the extent that any of the Collateral is not subject to the Code of the state or states where it is situated, Grantor hereby assigns to Beneficiary all of Grantor's right, title and interest in the Collateral to secure the Debt. Release of the lien of this Deed of Trust shall automatically terminate this assignment.

10.10 Grantor's Warranties Concerning Collateral. Except for the Permitted Exceptions, Grantor warrants and represents to Beneficiary that Grantor is the legal and equitable owner and holder of the Collateral free of any adverse claim and free of any security interest or encumbrance except only for the security interest granted hereby in the Collateral and those other security interests (if any) expressly referred to or described in this Deed of Trust (such warranty to supersede any provision contained in this Deed of Trust limiting the liability of Grantor). Grantor agrees to defend the Collateral and its proceeds against all claims and demands of any person at any time claiming the Collateral, its proceeds or any interest in either. Grantor also warrants and represents that Grantor has not heretofore signed or authorized any financing statement directly or indirectly affecting the Collateral or any part of it which has not been completely terminated of record, and no such financing statement signed or authorized by Grantor is now on file in any public office except only those statements (if any) true and correct copies of which Grantor has actually delivered to Beneficiary.

10.11 Certain Powers of Beneficiary. Grantor hereby authorizes and directs each account debtor and each other person or entity obligated to make payment in respect of any of the Collateral (each a "Collateral Obligor") to pay over to Beneficiary, its officers, agents or assigns, upon demand by Beneficiary, all or any part of the Collateral without making any inquiries as to the status or balance of the secured indebtedness and without any notice to or further consent of Grantor. GRANTOR HEREBY AGREES TO INDEMNIFY EACH COLLATERAL OBLIGOR AND HOLD EACH COLLATERAL OBLIGOR HARMLESS FROM ALL EXPENSES AND LOSSES WHICH IT MAY INCUR OR SUFFER AS A RESULT OF ANY PAYMENT IT MAKES TO BENEFICIARY PURSUANT TO THIS PARAGRAPH. To facilitate the rights of Beneficiary hereunder, Grantor hereby authorizes Beneficiary, its officers, employees, agents or assigns:

(a) to notify Collateral Obligors of Beneficiary's security interest in the Collateral and to collect all or any part of the Collateral without further notice to or further consent by Grantor, and Grantor hereby constitutes and appoints Beneficiary the true and lawful attorney of Grantor (such agency being coupled with an interest), irrevocably, with power of substitution, in the name of Grantor or in its own name or

otherwise, to take any of the actions described in the following clauses (b), (c), (d), (e), (f) and (g);

(b) to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all amounts which may be or become due or payable under the Collateral and to settle and/or adjust all disputes and/or claims directly with any Collateral Obligor and to compromise, extend the time for payment, arrange for payment in installments, otherwise modify the terms of, or release, any of the Collateral, on such terms and conditions as Beneficiary may determine (without thereby incurring responsibility to or discharging or otherwise affecting the liability of Grantor to Beneficiary under this Deed of Trust or otherwise);

(c) to direct delivery of, receive, open and dispose of all mail addressed to Grantor and to execute, sign, endorse, transfer and deliver (in the name of Grantor or in its own name or otherwise) any and all receipts or other orders for the payment of money drawn on the Collateral and all notes, acceptances, commercial paper, drafts, checks, money orders and other instruments given in payment or in part payment thereof and all invoices, freight and express bills and bills of lading, storage receipts, warehouse receipts and other instruments and documents in respect of any of the Collateral and any other documents necessary to evidence, perfect and realize upon the security interests and obligations of this Deed of Trust;

(d) in its discretion to file any claim or take any other action or proceeding which Beneficiary may deem necessary or appropriate to protect and preserve the rights, titles and interests of Beneficiary hereunder;

(e) to sign the name of Grantor to financing statements, drafts against Collateral Obligors, assignments or verifications of any of the Collateral and notices to Collateral Obligors;

(f) to station one or more representatives of Beneficiary on Grantor's premises for the purpose of exercising any rights, benefits or privileges available to Beneficiary hereunder or under any of the Loan Documents or at law or in equity, including receiving collections and taking possession of books and records relating to the Collateral; and

(g) to cause title to any or all of the Collateral to be transferred into the name of Beneficiary or any nominee or nominees of Beneficiary.

The powers conferred on Beneficiary pursuant to this Section are conferred solely to protect Beneficiary's interest in the Collateral and shall not impose any duty or obligation on Beneficiary to perform any of the powers herein conferred. No exercise of any of the rights provided for in this Section shall constitute a retention of collateral in full or partial satisfaction of the indebtedness as provided for in Section 9.505 of the Code.

10.12 Standard of Care. Beneficiary shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral in its possession if it takes such action for that purpose as Grantor requests in writing, but failure of Beneficiary to comply with

such request shall not of itself be deemed a failure to exercise reasonable care, and no failure of Beneficiary to take any action not so requested by Grantor shall be deemed a failure to exercise reasonable care in the custody or preservation of any such Collateral.

10.13 Change Terms, Release Collateral. Beneficiary may extend the time of payment, arrange for payment in installments, otherwise modify the terms of, or release, any of the Collateral, without thereby incurring responsibility to Grantor or discharging or otherwise affecting any liability of Grantor. Beneficiary shall not be required to take steps necessary to preserve any rights against prior parties to any of the Collateral.

SECTION 11 CONCERNING TRUSTEE

11.1 No Required Action. Trustee shall not be required to take any action toward the execution and enforcement of the trust created in this Deed of Trust or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in Trustee's opinion, such action would be likely to involve Trustee in expense or liability, unless requested to do so by a written instrument signed by Beneficiary unless Trustee is tendered security and indemnity satisfactory to Trustee against all cost, expense, and liability arising therefrom. Trustee is not responsible for the execution, acknowledgment, or validity of the Loan Documents, for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation regarding such matters or regarding the rights, remedies, and recourses of Beneficiary.

11.2 Certain Rights. With the approval of Beneficiary, Trustee may take any or all of the following actions: (a) select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and Trustee shall be fully protected in relying on the advice of counsel regarding such legal matters; (b) execute any of the trusts and powers hereof and perform any duty hereunder either directly or through its agents or attorneys; (c) select and employ, regarding the execution of its duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances, except for Trustee's gross negligence or bad faith; and (d) all other lawful action that Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. If Trustee, or anyone under Trustee's powers, enters upon the Mortgaged Property, then Trustee shall not be personally liable for debts contracted for or liability or damages incurred in the management or operation of the Mortgaged Property. Trustee may rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for services rendered by Trustee. Grantor shall, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save

Trustee harmless against, all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

11.3 Retention of Money. Until used or applied as herein provided, all moneys received by Trustee shall be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except as required by applicable law) and Trustee has no liability for interest on any moneys received by Trustee hereunder.

11.4 No Representation by Trustee or Beneficiary. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, including without limitation any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Beneficiary.

SECTION 12 MISCELLANEOUS

12.1 Release. If the Indebtedness is paid in full pursuant to this Deed of Trust, the Note, and the other Loan Documents, and if Grantor shall well and truly perform all of the Obligations to be performed and discharged pursuant to this Deed of Trust, the Note and the other Loan Documents, then this conveyance shall become void and be released at Grantor's request and expense. Upon release of this Deed of Trust, all obligations, if any, of Beneficiary to make advances under this Deed of Trust or the other Loan Documents shall terminate.

12.2 Performance at Grantor's Expense. Subject to the maximum interest provisions of *Section 8.12*, Borrower shall (a) pay all legal fees incurred by Beneficiary in connection with the preparation of the Loan Documents (including any amendments thereto or consents, releases, or waivers granted thereunder); (b) reimburse Beneficiary, promptly upon demand, for all amounts expended, advanced, or incurred by Beneficiary to satisfy any obligation of Borrower under the Loan Documents, including, without limitation, all court costs, attorneys' fees (including, without limitation, fees for trial, appeal, or other proceedings), fees of auditors and accountants and other investigation expenses reasonably incurred by Beneficiary in connection with any such matters; and (c) all other expenses of performing or complying with the Obligations. Except for the expenses that are included within the definition of "Indebtedness," the payment of any expenses, including, without limitation, those set forth above, shall not be credited against any installment on or portion of the Indebtedness.

12.3 Survival of Obligations. The Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Indebtedness has been paid in full; provided, however, that any Obligations that expressly survive the full payment of the Indebtedness shall continue in full force and effect until otherwise terminated.

12.4 Recording and Filing. Grantor shall cause the Loan Documents requested by Beneficiary and any amendments, supplements, and restatements thereof to be recorded, filed, re-recorded, and refiled in such manner and in such places that Trustee or Beneficiary shall reasonably request, and Grantor shall pay or cause to be paid all recording, filing, re-recording and refiling taxes, documentary stamp taxes, fees, and other charges.

12.5 Notices.

(a) Whenever any notice is required or permitted to be given under the terms of this Deed of Trust, the same shall, except as otherwise expressly provided for in this Deed of Trust, be given in writing, and sent by: (a) certified mail, return receipt requested, postage pre-paid; (b) a national overnight delivery service; (c) hand delivery with written receipt acknowledged; or (d) facsimile, followed by a copy sent in accordance with clause (b) or (c) of this **Section 12.5** sent the same day as the facsimile, in each case to the address or facsimile number (together with a contemporaneous copy to each copied addressee), as applicable, set forth in the opening paragraph of this Deed of Trust and, the definition of "Beneficiary" set forth in **Section 1.1**. Beneficiary and Grantor shall not conduct communications contemplated by this Deed of Trust by electronic mail or other electronic means, except by facsimile transmission as expressly provided in this **Section 12.5**, and the use of the phrase "in writing" or the word "written" shall not be construed to include electronic communications except by facsimile transmissions as expressly provided in this **Section 12.5**. Any notice required or given hereunder shall be deemed received the same Business Day if sent by hand delivery or facsimile, the next Business Day if sent by overnight courier, or three (3) Business Days after posting if sent by certified mail, return receipt requested; *provided that* any notice received after 5:00 p.m. local time at the location of delivery on any Business Day or received on any day that is not a Business Day shall be deemed to have been received on the following Business Day. Notwithstanding the foregoing, notices in connection with posting for foreclosure delivered pursuant to **Section 7.1(f)(ii)** shall be effective when given in accordance with the requirements of Oregon law.

(b) Notwithstanding any provision contained in this Deed of Trust or in any of the Loan Documents to the contrary, in the event that Beneficiary shall fail to give any notice to any Person required hereunder, the sole and exclusive remedy for such failure shall be to seek appropriate equitable relief to enforce the requirements of this Deed of Trust to give such notice and to have any action of such Person postponed or revoked and any proceedings in connection therewith delayed or terminated pending the giving of such notice by Beneficiary, and no Person shall have any right to damages (whether actual or consequential) or any other type of relief not herein specifically set out against Beneficiary, all of which damages or other relief are expressly waived. The foregoing is not intended and shall not be deemed under any circumstances to require Beneficiary to give notice of any type or nature to any Person except as expressly required hereby or thereby, or by applicable Legal Requirements.

12.6 Covenants Running with the Land. All Obligations contained in this Deed of Trust and the other Loan Documents are intended by Grantor, Beneficiary, and Trustee to be, and

shall be construed as, covenants running with the Mortgaged Property until the lien of this Deed of Trust has been fully released by Beneficiary.

12.7 Successors and Assigns. Subject to the provisions of *Sections 6.6* and *6.8* hereof, all of the terms of the Loan Documents shall apply to, be binding upon, and inure to the benefit of the parties thereto, their successors, assigns, heirs, and legal representatives, and all other persons claiming by, through, or under them.

12.8 No Waiver; Severability. Any failure by Trustee or Beneficiary to insist, or any election by Trustee or Beneficiary not to insist, upon strict performance by Grantor or others of any of the terms, provisions, or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other terms, provisions, or conditions thereof, and Trustee or Beneficiary shall have the right at any time or times thereafter to insist upon strict performance by Grantor or others of all such terms, provisions, and conditions. No Potential Default or Event of Default shall be waived by Beneficiary except by written instrument specifying the scope and terms of that waiver, signed by an authorized officer of Beneficiary. Any written waiver shall be effective only for the purpose(s) and time(s) given. No waiver shall extend to any other or further event or circumstance. Grantor expressly agrees that this *Section 12.8* may not be waived or modified by Beneficiary by course of performance, estoppel or otherwise. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained, nor the application of such provision to other persons or circumstances, nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

12.9 Counterparts. To facilitate execution, this Deed of Trust may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Deed of Trust to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

12.10 Waiver of Fraudulent Inducement. Neither Beneficiary nor any Affiliate of Beneficiary has made any representation, warranty, or statement to Grantor to induce Grantor to execute this Deed of Trust. Grantor expressly waives any claim of fraudulent inducement to execute this Deed of Trust and further disclaims any reliance on statements or representations of Beneficiary in waiving such claim.

12.11 Governing Law; Venue; Service of Process. (a) THIS DEED OF TRUST SHALL, EXCEPT AS PROVIDED IN (b) BELOW, BE GOVERNED BY AND CONSTRUED

IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS; *PROVIDED THAT* BENEFICIARY SHALL RETAIN ALL RIGHTS UNDER FEDERAL LAW. THIS DEED OF TRUST HAS BEEN ENTERED INTO IN TARRANT COUNTY, TEXAS, AND IS PERFORMABLE FOR ALL PURPOSES IN TARRANT COUNTY, TEXAS. THE PARTIES HEREBY AGREE THAT ANY LAWSUIT, ACTION, OR PROCEEDING THAT IS BROUGHT (WHETHER IN CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS, THE TRANSACTIONS CONTEMPLATED THEREBY, OR THE ACTIONS OF BENEFICIARY IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT OF ANY OF THE LOAN DOCUMENTS SHALL BE BROUGHT IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION LOCATED IN TARRANT COUNTY, TEXAS. GRANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY (A) SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS, (B) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH LAWSUIT, ACTION, OR PROCEEDING BROUGHT IN ANY SUCH COURT, AND (C) FURTHER WAIVES ANY CLAIM THAT IT MAY NOW OR HEREAFTER HAVE THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH OF THE PARTIES HERETO AGREE THAT SERVICE OF PROCESS UPON IT MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED AT THE ADDRESS FOR NOTICES CONTAINED IN THE INTRODUCTION HEREOF, AS PROVIDED IN **SECTION 12.5** ABOVE. THE PARTIES HERETO ACKNOWLEDGE, STIPULATE AND AGREE THAT (I) THE TRANSACTION EVIDENCED, GOVERNED AND/OR SECURED HEREBY BEARS A REASONABLE RELATIONSHIP TO THE STATE OF TEXAS IN THAT, AMONG OTHER THINGS, BORROWER AND CERTAIN OBLIGORS HAVE CONDUCTED A SUBSTANTIAL PART OF THE NEGOTIATIONS FOR THIS TRANSACTION IN THE STATE OF TEXAS, THE LOAN EVIDENCED HEREBY HAS BEEN ORIGINATED FROM THE STATE OF TEXAS, BENEFICIARY AND CERTAIN OBLIGORS WILL PERFORM A SUBSTANTIAL PART OF THEIR RESPECTIVE OBLIGATIONS FOR THE LOAN IN THE STATE OF TEXAS (INCLUDING WITHOUT LIMITATION THE SERVICING OF THE LOAN BY BENEFICIARY), AND (II) BENEFICIARY WOULD NOT HAVE ENTERED INTO THIS TRANSACTION BUT FOR THE FOREGOING STIPULATION AND AGREEMENT AS TO THE CHOICE OF TEXAS LAW TO GOVERN THIS TRANSACTION.

(b) NOTWITHSTANDING (a) ABOVE, THE PROVISIONS OF THE DEED OF TRUST REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED HEREIN SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. EXCEPT AS SET FORTH ABOVE, THIS SECURITY INSTRUMENT SHALL BE GOVERNED IN ACCORDANCE WITH **SECTION 12.11(a)**.

12.12 Waiver of Consequential, Punitive and Speculative Damages. In connection with any action, suit, or proceeding relating to or arising out of this Deed of Trust or any other Loan Documents, Grantor and Beneficiary each mutually waive to the fullest extent permitted by applicable law any claim for consequential, punitive, or speculative damages.

12.13 Controlling Agreement. If the loan evidenced by the Note is made pursuant to a loan agreement regarding the construction of Improvements on the Land and the funding of the principal amount of the Note, the terms of the loan agreement shall control over any conflicting provision of this Deed of Trust. If this Deed of Trust conflicts with any of the other Loan Documents, then this Deed of Trust shall control. The parties acknowledge that they were represented by competent counsel in connection with the negotiation, drafting, and execution of the Loan Documents and that the Loan Documents shall not be subject to the principle of construing their meaning against the drafting party.

12.14 Subrogation. If any of the proceeds of the Note are used to extinguish, extend, or renew any previous indebtedness against the Mortgaged Property, then Beneficiary, to the extent of such funds so used, shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Mortgaged Property previously held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather continue in full force and effect in favor of Beneficiary and shall merge with the lien and security interest created herein as cumulative security for the performance and discharge of the Obligations.

12.15 Payments. Payment of any part of the Indebtedness other than of the required amount in immediately available funds at the place where the Note is payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Beneficiary in immediately available funds at the place where the Note is payable (or such other place that Beneficiary, in Beneficiary's sole discretion, has established by delivery of written notice thereof to Grantor) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Beneficiary of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default.

12.16 Exceptions to Covenants. Grantor shall not be permitted to take any action or to fail to take any action with regard to any particular covenant or condition contained herein or in any of the Loan Documents if the action or omission would result in the breach of any other covenant or condition contained herein or in any of the Loan Documents which has not been specifically waived or consented to by Beneficiary, nor shall Beneficiary be deemed to have consented to any such act or omission if the same would provide cause for acceleration of the Indebtedness as a result of the breach of any other covenant or condition contained herein or in any of the Loan Documents which has not been specifically waived or consented to by Beneficiary.

12.17 Reliance. Grantor acknowledges (a) that Beneficiary, by entering into the loan transaction evidenced by the Loan Documents and by accepting this Deed of Trust, is expressly and primarily relying on the truth and accuracy of the foregoing warranties and representations set forth in **Section 3**, without any obligation to investigate the Mortgaged Property and notwithstanding any investigation of the Mortgaged Property that may have been conducted by Beneficiary; (b) that Beneficiary has relied on such warranties and representations before entering into this Deed of Trust; (c) that such warranties and representations are a material inducement to Beneficiary in making the loan evidenced by the Loan Documents and accepting

this Deed of Trust; and (d) that Beneficiary would not be willing to make the loan evidenced by the Loan Documents and accept this Deed of Trust in the absence of any of such warranties and representations.

12.18 Headings. The Section and Subsection headings in this Deed of Trust are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing the text of such Sections or Subsections.

12.19 Entire Agreement. THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

12.20 Amendment. The provisions hereof and of the other Loan Documents may be amended or waived only by an instrument in writing signed by Grantor and Beneficiary.

12.21 WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, GRANTOR HEREBY IRREVOCABLY AND EXPRESSLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY OR THE ACTIONS OF BENEFICIARY IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT THEREOF. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 12.21**.

12.22 Counting of Days. The term "*days*" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or other day not a business day, the period shall be deemed to end on the next succeeding business day. The term "*business day*" or "*Business Day*" when used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in Dallas, Texas are authorized by law to be closed.

12.23 No Merger of Estates. So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and unperformed or undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge but rather shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Beneficiary, any lessee, or any third party purchaser or otherwise.

12.24 Commercial Trust Deed. This Deed of Trust is a commercial trust deed and is not a residential trust deed, as the phrase "residential trust deed" is defined in ORS 86.705, and the provisions of ORS 86.705 through 86.795 applicable to the foreclosure of commercial trust

deeds shall apply to this Deed of Trust at the option of Beneficiary. Grantor warrants that the loan secured hereby is for commercial purposes and is not for residential, household, personal or consumer purposes.

12.25 Household Goods Not Covered. If Beneficiary is a state or national bank and if any natural person executing this Deed of Trust is a "consumer" as defined in Regulation AA of the Board of Governors of the Federal Reserve System, no lien or security interest created or evidenced by this Deed of Trust shall extend to, cover or affect "household goods" as also defined therein and no waiver of the rights of Grantor contained in this or any other instrument shall extend to, or be effective as to, any right the waiver of which is prohibited by Regulation AA. If Beneficiary is not a state or national bank and if any natural person executing this Deed of Trust is a "consumer" as defined in 16 C.F.R. § 444.1(d), as amended, no lien or security interest created or evidenced by this Deed of Trust shall extend to, cover or affect "household goods" as defined in 16 C.F.R. § 444.1(a), as amended and no waiver of the rights of Grantor contained in this or any other instrument shall extend to, or be effective as to, any right the waiver of which is prohibited by 16 C.F.R. § 444.

12.26 USA Patriot Act Notice. Beneficiary hereby notifies Grantor that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), Beneficiary is required to obtain, verify and record information that identifies Grantor, which information includes the name and address of Grantor and other information that will allow Beneficiary to identify Grantor in accordance with the Act.

NOTICE PURSUANT TO TEX. BUS. & COMM. CODE §26.02

THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS TOGETHER CONSTITUTE A WRITTEN LOAN AGREEMENT AND REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

OREGON NOTICE

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

[SIGNATURE PAGE FOLLOWS]

EXECUTED as of the dates in the acknowledgments below, but to be effective as of the Effective Date.

NOTICE OF INDEMNIFICATION:

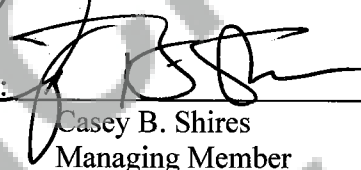
GRANTOR HEREBY ACKNOWLEDGES AND AGREES THAT THIS DEED OF TRUST CONTAINS CERTAIN INDEMNIFICATION PROVISIONS (INCLUDING, WITHOUT LIMITATION, THOSE CONTAINED IN SECTIONS 7.1(b) AND 8.4 HEREOF) WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY GRANTOR OF BENEFICIARY FROM CLAIMS OR LOSSES ARISING IN STRICT LIABILITY OR AS A RESULT OF BENEFICIARY'S OWN NEGLIGENCE.

GRANTOR:

CD DG CRESCENT, LLC,
a Texas limited liability company

By: Cross Development Management, LLC,
a Texas limited liability company
its Manager

By: 
Steven J. Rumsey
Managing Member

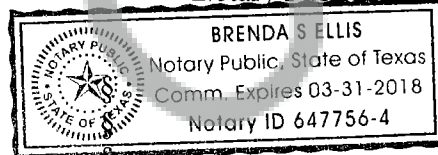
By: 
Casey B. Shires
Managing Member

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on the 31st day of July, 2017, by Steven J. Rumsey as Managing Member of Cross Development Management, LLC, a Texas limited liability company, Manager of CD DG CRESCENT, LLC, a Texas limited liability company, on behalf of each limited liability company.


Brenda S. Ellis
Notary Public in and for the State of Texas

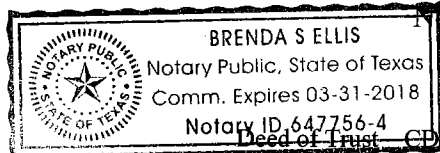


STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on the 31st day of July, 2017, by Casey B. Shires as Managing Member of Cross Development Management, LLC, a Texas limited liability company, Manager of CD DG CRESCENT, LLC, a Texas limited liability company, on behalf of each limited liability company.


Brenda S. Ellis
Notary Public in and for the State of Texas



Deed of Trust - CD DG CRESCENT, LLC

Signature Page

EXHIBIT A

LAND DESCRIPTION

A portion of the NE1/4 SW1/4 of Section 30, Township 24 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a point of intersection of the Northerly line of Ward Street with the Westerly right of way line of the Dalles – California Highway as established by deed to the State of Oregon in Deed Volume 154, page 556, Deed Records of Klamath County, Oregon; thence Northeasterly along the Westerly right of way line of said Dalles – California Highway 300 feet to a point; thence Northwesterly at right angles to the Westerly line of said Dalles – California Highway, a distance of 255.0 feet to a point; thence Southwesterly on a line parallel to the Dalles – California Highway 100 feet to the intersection of the Easterly line of the right of way of the Klamath Northern Railway; thence Southeasterly along the Easterly line of said right of way to the intersection with the Northerly line of Ward Street; thence Southeasterly along the Northerly line of Ward Street 171.24 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to State of Oregon, by and through its Department of Transportation by Deed Recorded August 20, 2010 in 2010-009964, Records of Klamath County, Oregon.

EXHIBIT B

PERMITTED EXCEPTIONS

The following items are Permitted Exceptions to the extent they are valid and subsisting and affect the Mortgaged Property:

1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2017.
2. The provisions contained in Patent recorded May 28, 1906 at Volume 20, Page 186, Deed Records.
3. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument granted to Crescent Water Association, recorded May 16, 2000 Book M00, Page 17704.
4. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument granted to BC Koch, LLC, recorded June 21, 2001 Book M01, Page 29876.
5. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument granted to Pacific Northeast Bell Telephone Company, a Washington corporation, recorded February 7, 1990 Book M90, Page 2567.

Said easement was assigned to Telephone Utilities of Eastern Oregon, Inc., dba PTI Communications, an Oregon corporation, by instrument dated October 20, 1995, recorded November 17, 1995, in Volume M95, Page 31559, Microfilm Records of Klamath County, Oregon.

EXHIBIT C

INSURANCE

(i) CGL providing coverage against (among others) bodily injury and disease, including death resulting therefrom, personal injury and property damage, written on an "occurrence" basis with respect to the business and any other activities carried on, in or from the Mortgaged Property and with respect to Grantor's use and occupancy thereof (including a provision for contractual liability coverage insuring Grantor for the performance of its indemnity obligations set forth in this Deed of Trust), having limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate per location (or with such increased limits as may be required from time to time by Beneficiary by giving notice to Grantor), with no deductible or self-insured retention in excess of \$10,000 to apply to any coverage provided by the CGL policy without the prior written approval of Beneficiary; (ii) the broadest available form of "all risks" or "special form" property insurance (utilizing the then prevailing "ISO Special Form" property insurance form or an equivalent form acceptable to Beneficiary), including but not limited to, coverage for the Mortgaged Property, and all improvements, betterments, alterations and additions to the Mortgaged Property and all furniture, fixtures, equipment, merchandise and all other items of Grantor's personal property in, on, at, or about the Mortgaged Property, with no exclusions permitted thereunder with respect to vandalism, malicious mischief, or sprinkler leakage, including earthquake and flood as covered causes of losses and including an agreed amount endorsement for not less than one hundred percent (100%) of the full replacement cost (new, without deduction for depreciation) of the covered items and property and an ordinance or law coverage endorsement, with no deductible or self-insured retention in excess of \$10,000 to apply to any loss covered by such property insurance, and it being the parties' intent that Grantor structure its property insurance program so that no coinsurance penalty is imposed and there are no valuation disputes with any insurer or with Beneficiary; (iii) business income and extra expense coverage for no less than six (6) months of income and expenses; and (iv) such other insurance with other coverages or increased coverages, if any, as Beneficiary may require from time to time.