



**2018-006697**

**Klamath County, Oregon**

06/01/2018 12:05:01 PM

Fee: \$307.00

**WHEN RECORDED RETURN TO:**

Nancy Shirar  
Chicago Title of Texas, LLC  
3100 Monticello Ave., Ste 800  
Dallas, TX 75205

**UNTIL A CHANGE IS REQUESTED, SEND TAX STATEMENTS TO:**

CD DG Klamath Falls, LLC  
4336 Marsh Ridge Rd.  
Carrollton, TX 75015

[SPACE ABOVE LINE FOR RECORDER'S USE ONLY]

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

**NOTICE TO RECORDER: THIS DOCUMENT CONSTITUTES A FIXTURE FILING IN  
ACCORDANCE WITH THE UNIFORM COMMERCIAL CODE.**

**By CD DG Klamath Falls South, LLC,**  
4336 Marsh Ridge Road, Carrollton, TX 75010

Grantor,

to the following Grantees:

**Ticor Title Company of Oregon,**  
2534 Sykes Road, Suite C, St. Helens, OR 97051

Trustee,

for the benefit of

**PSL Austin Lending LLC,**  
100 Congress Avenue, Suite 1550, Austin, TX 78701

Beneficiary/Lender

May 24, 2018

Other property or value was either part or the whole consideration.

**Legal Description:**

Parcel 1 of Land Partition 35-17, being a partition of the lands shown on Survey No. 1939 and as described in Bargain and Sale Deed M05-6717 Recorded in the Klamath County Clerk's Office situated in the Southeast Quarter of Section 7, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon and Recorded April 19, 2018 as document No. 2018-004755, official Records of Klamath County, Oregon.

**Tax Identification No.:**

Account No. R535184 Map No. R-3909-00700-01800-000

322 AMT

**LINE OF CREDIT DEED OF TRUST**  
**ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING**  
**(CONSTRUCTION)**

This Line of Credit Deed of Trust, Assignment Of Rents, Security Agreement, and Fixture Filing (herein referred to as the "**Deed of Trust**"), is executed as of March 19, 2018, but effective as of **May 24, 2018**, by **CD DG KLAMATH FALLS SOUTH, LLC**, a Texas limited liability company, as Grantor, whose mailing address for notice hereunder is 4336 Marsh Ridge Road, Carrollton, TX 75010 to **TICOR TITLE COMPANY OF OREGON**, Trustee, whose mailing address for notice hereunder is 2534 Sykes Road, Suite C, St. Helens, OR 97051 for the benefit of **PSL AUSTIN LENDING LLC**, the hereinafter described Beneficiary.

This Line of Credit Deed of Trust secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land. The maximum principal amount to be advanced pursuant to the Note and Construction Loan Agreement secured by this Line of Credit Deed of Trust is \$1,792,000.00, which amount may be exceeded by advances to complete construction pursuant to Oregon Revised Statute ("**ORS**") 86.155(2)(c). The maturity date of this Line of Credit Deed of Trust is May 24, 2020.

**ARTICLE ONE:**  
**DEFINITIONS**

Section 1.01. **Definitions.** As used herein, the following terms shall have the following meanings:

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

**Architect:** Such architect engaged by Grantor who is reasonably approved by Beneficiary, in connection with the Improvements.

**Architectural Barrier Laws:** Any and all architectural barrier laws including, without limitation, the Fair Housing Act, the Americans with Disabilities Act of 1990, P.L. 101-336, and the Texas Architectural Barrier Act, Texas Government Code, Chapter 469, or the applicable state law where the Mortgaged Property is located, as amended, or any successor thereto.

**Assignment of Construction Documents:** Has the meaning set forth in the Loan Agreement.

Assignment of Leases and Rents: The Assignment of Leases and Rents dated of even date herewith pursuant to which Grantor grants to Beneficiary as security an assignment and security interest in of leases and rents from the Mortgaged Property (as that term is defined in this Deed of Trust) to secure the loan represented by the Note, as the same may be extended, amended and/or modified from time to time, and as more specifically set forth in that assignment.

Beneficiary: As defined in Exhibit "C".

Charges: shall mean all fees, charges and/or other things of value, if any, contracted for, charged, received, taken or reserved by Beneficiary in connection with the transactions relating to the Note and the Loan Documents, which are treated as interest under applicable law.

Code: The Uniform Commercial Code, as amended from time to time, in effect in the State of Texas or any other state in which the Mortgaged Property is located or having jurisdiction with respect to any of the rights of Beneficiary under the Loan Documents.

Constituent Party: 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.

Construction Contracts: The General Contract together with any and all contracts, subcontracts, and agreements, written or oral, between Grantor and any other party, and between parties other than Grantor, in any way relating to the construction of the Improvements on the Land or the supplying of material (specially fabricated or otherwise), labor, supplies, or other services therefor, all of which shall be approved in writing by Beneficiary in its reasonable discretion, provided that upon an Event of Default any such approval shall be in the sole discretion of Beneficiary.

Contracts: All of the right, title, and interest of Grantor, including equitable rights, in, to, and under any and all (i) contracts for the purchase of all or any portion of the Mortgaged Property, whether such contracts are now or at any time hereafter existing, including but without limitation, any and 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 and supplements to and renewals and extensions of the contracts at any time made, and together with all payments, earnings, income, and profits arising from the sale of all or any portion of the Mortgaged Property or from the contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any of the contracts; (ii) 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, or connected with, the development, ownership, maintenance or operation of the Mortgaged Property, whether such contracts, licenses, and permits are now or at any time thereafter existing, including without limitation, any and 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: (a) 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 (b) to develop and/or operate the Mortgaged Property as a commercial and/or residential project, as the case may be; (iii) any and all right, title, and interest Grantor may have in any financing arrangements relating to the financing of or the purchase of all or any portion of the Mortgaged Property by future purchasers; and (iv) all 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 any and all Leases), including but not limited to maintenance and service contracts and management agreements.

Default Rate: The rate of interest specified in the Note to be paid by the maker of the Note from and after the occurrence of a default in payment under the provisions of the Note and Loan Documents but not in excess of the Maximum Lawful Rate.

Design Professional: Each Engineer, interior designer, space planner, landscape designer or other person or entity with whom Grantor contracts for the providing of planning, design, engineering or other similar services relating to the Improvements.

Disposition: Any sale, lease (except as permitted under this Deed of Trust), exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Mortgaged Property (or any interest therein) or all or any part of the beneficial ownership interest in Grantor (if Grantor is a corporation, limited liability company, general partnership, limited partnership, joint venture, trust, or other type of business organization or legal entity).

Effective Date: As defined in Exhibit "C".

Engineer: Such engineer engaged by Grantor who is reasonably approved by Beneficiary, in connection with the Improvements, all of which shall be approved in writing by Lender in its reasonable discretion, provided that upon an Event of Default any such approval shall be in the sole discretion of Beneficiary.

Environmental Law: Any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Project, including without limitation, the following, as now or hereafter amended: Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*; Resource, Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 1101 *et seq.*; Clean Air Act, 42 U.S.C. § 7401 *et seq.*; Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*; and any corresponding state laws or ordinances including but not limited to the Texas Water Code § 26.001 *et seq.*; Texas Health & Safety Code § 361.001 *et seq.*; and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes and regulations, as such statutes, regulations, rules, guidelines, and standards are amended from time to time.

Event of Default: Any happening or occurrence described in Article IV hereof.

Fixtures: 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, which are now owned or hereafter acquired by Grantor and are now or hereafter attached to the Land or the Improvements, and including but not limited to any and all partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, refrigeration, plumbing, laundry, lighting, generating, cleaning, waste disposal, transportation (of people or things, including but not limited to, stairways, elevators, escalators, and conveyors), incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and lighting, traffic control, waste disposal, 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.

General Contract: The general contract(s) between Grantor and General Contractor pertaining to the construction of all onsite and offsite Improvements, all of which shall be approved in writing by Beneficiary in its reasonable discretion, provided that upon an Event of Default any such approval shall be in the sole discretion of Beneficiary.

General Contractor: The general contractor, reasonably approved by Beneficiary, named in the Construction Contract, who is licensed to conduct business in the state where the Land is located, or such substitute, replacement or additional contractor, provided that upon an Event of Default any such approval shall be in the sole discretion of Beneficiary.

Governmental Authority: The United States, each state, each county, each city, and each other political subdivision in which all or any portion of the Mortgaged Property is located, and each other political subdivision, agency, or instrumentality exercising jurisdiction over Grantor, Beneficiary, Trustee, Guarantor, any Constituent Party or the Mortgaged Property, domestic or foreign.

Grantor: The entity described as Grantor in the initial paragraph of this Deed of Trust and any and all subsequent owners of the Mortgaged Property or any part thereof (without hereby implying Beneficiary's consent to any Disposition of all or any part of the Mortgaged Property).

Guarantor: Guarantor: As defined in Exhibit "C".

Guaranty: That or those continuing Guaranty Agreement(s) now or hereafter in effect from Guarantors to Beneficiary guaranteeing the completion of the Improvements and payment of the Indebtedness, as the same may be amended, modified, restated, ratified, supplemented or replaced from time to time.

Impositions: 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 prior to or after the execution hereof may be assessed, levied, or imposed upon the Project or the ownership, use, occupancy, or enjoyment thereof, or any portion thereof, or the sidewalks, streets, or alleyways adjacent thereto; (ii) any charges, fees, license payments, or other sums payable for or under any easement, license, or agreement maintained for the benefit of the Project; (iii) water, gas, sewer, electricity, and other utility charges and fees relating to the Project; and (iv) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Project.

Improvements: Any and all improvements of any kind or nature all as more particularly described in the Plans and located on the Land, any items, related to the construction, installation, equipping or decoration of the Improvements, required by any Lease but not covered by the Plans, and any and all additions, alterations, betterments or appurtenances to any of the foregoing, now or at any time hereafter situated, placed, or constructed upon the Land or any part thereof.

Indebtedness: (i) The principal of, interest on, or other sums evidenced by the Note or the Loan Documents including, without limitation, interest at the Default Rate defined herein; (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, or 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 (v) any and all renewals, modifications, amendments, restatements, rearrangements, consolidations, substitutions, replacements, enlargements, and extensions thereof, it being contemplated by Grantor and Beneficiary that Grantor may hereafter become indebted to Beneficiary in further sum or sums. Notwithstanding the foregoing provisions of this definition, this Deed of Trust shall not secure any such 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, in any way, of any debt or obligation of any other person to the extent that the same would violate or exceed the limit provided in any applicable usury or other law.

Land: All that certain real property or interest therein situated in the Location (as defined in Exhibit "C"), more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, together with all right, title, interest, and privileges of Grantor in and to (i) 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; (ii) any strips or gores of real property between such real property and abutting or adjacent properties; (iii) all water and water rights, timber and crops pertaining to such real estate; and (iv) all appurtenances and all reversions and remainders in or to such real property.

Leases: As defined in Exhibit "C".

Legal Requirements: (i) any and all present and future judicial decisions, statutes (including Architectural Barrier Laws and Environmental Laws), rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to Grantor, any Guarantors, or the Project, including, without limiting the generality of the foregoing, the ownership, use, occupancy, possession, construction, operation, maintenance, alteration, repair, or reconstruction of the Project, (ii) any and 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 Project or the ownership, use, or occupancy thereof, (iii) 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, (iv) any and all Leases, (v) any and all contracts, and (vi) any and all leases, other than those described in (iv) above, and other contracts (written or oral), other than those described in (v) above, of any nature that relate in any way to the Project and to which Grantor or any Guarantors may be bound, including, without limiting the generality of the foregoing, any lease or other contract pursuant to which Grantor is granted a possessory interest in and to either or both of the Land or the Improvements.

Lessee: As defined in Exhibit "C".

Lien: Any valid and enforceable interest in any property, whether real, personal or mixed, securing an indebtedness, obligation or liability owed to or claimed by any Person other than the owner of such property, whether such indebtedness is based on the common law or any statute or contract and including, but not limited to liens created by or pursuant to, a security interest, pledge, mortgage, assignment, conditional sale, trust receipt, lease, consignment or bailment for security purposes.

Loan Agreement: The Construction Loan Agreement of even date herewith by and between Grantor, as borrower, and Beneficiary, as lender, governing advances under the loan evidenced by the Note and secured, inter alia, by the liens created by this Deed of Trust.

Loan Documents: The Loan Agreement, the Note, this Deed of Trust, the Assignment of Leases and Rents, the Environmental Indemnity Agreement, the Guaranty and any and all other documents, instruments and agreements, now or hereafter executed by Grantor, 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, together with any and all renewals, amendments, modifications, rearrangements, consolidations, reinstatements, enlargements, or extensions of such loan documents.

Maximum Lawful Rate: The maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Beneficiary in accordance with the applicable laws of the State of Oregon (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 Oregon 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 Chapter 303 of the Texas Finance Code applies to determine the Maximum Lawful Rate payable on the Note and/or the Related Indebtedness, Beneficiary will 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 will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful 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 Lawful Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Grantor as provided by applicable law now or hereafter in effect.

Minerals: 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: The Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Construction Contracts, Plans, Rents, Leases, and any interest of Grantor now owned and hereafter acquired in and to the Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Construction Contracts, Plans, Rents and Leases, together with any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations. As used in this Deed of Trust, the term "**Mortgaged Property**" shall be expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

Note: That certain Promissory Note of even date herewith, incorporated herein by this reference, executed by Grantor and payable to the order of Beneficiary in the Note Amount (as defined in Exhibit "C"), bearing interest as therein specified, containing an attorneys' fee clause, interest and principal being payable as therein specified, and finally maturing on the Maturity Date (as defined therein), and secured by, among other things, this Deed of Trust; and any and all renewals, modifications, amendments, rearrangements, consolidations, reinstatements, enlargements, or extensions of such promissory note or of any promissory note or notes given in renewal, substitution or replacement of such promissory note.

Obligations: Any and all of the covenants, conditions, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Grantor, 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 Land.

Operating Expenses: All costs and expenses related to the ownership, operation, management, repair and leasing of the Mortgaged Property, including, without limitation, ground lease payments, costs and expenses associated with the operation of any parking facility associated with and constituting a part of the Mortgaged Property, insurance charges and premiums for coverages related to the Mortgaged Property, Impositions, the costs of prevention of waste, ordinary repairs, maintenance, environmental audits, property management, security, normal fees paid to accountants, reasonable marketing and promotional expenses, reasonable legal expenses, the cost and expense of all obligations under the Leases and all costs related to compliance with Legal Requirements.

Permitted Exceptions: The liens, easements, restrictions, security interests, and other matters (if any) as reflected on Exhibit "B" attached hereto and incorporated herein by reference and the liens and security interests created by the Loan Documents.

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

Personalty: All of the right, title, and interest of Grantor in and to (i) furniture, furnishings, equipment, machinery, goods (including, but not limited to, crops, farm products, timber and timber to be cut, and as-extracted collateral); (ii) 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; (iii) 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 specifically, but without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees and 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, Construction Contracts, or 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; and (iv) all other personal property of any kind or character as defined in and subject to the provisions of the Code (Article 9 - Secured Transactions); 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: The final plans, working drawings, and specifications for the development of the Land and construction of the Improvements, prepared by Grantor, the Architect or the Design

Professional and approved by Beneficiary as required in the Loan Agreement, by all applicable Governmental Authorities, by any party to a purchase or Construction Contract with a right of approval, all amendments and modifications thereof approved in writing by the same, and all other design, engineering or architectural work, test reports, surveys, shop drawings, and related items.

Project: The collective reference to (i) the Land, together with all buildings, structures and improvements located or to be located thereon, including the Improvements, (ii) all rights, privileges, easements and hereditaments relating or appertaining thereto, and (iii) all personal property, fixtures and equipment required or beneficial for the operation thereof.

Related Indebtedness: Any and all debt paid or payable by Grantor to Beneficiary pursuant to the Loan Documents or any other communication or writing by or between Grantor and Beneficiary related to the transaction or transactions that are the subject matter of the Loan Documents, except such debt which has been paid or is payable by Grantor to Beneficiary under the Note.

Rents: All of the "**rents**," arising under all leases at or applicable to all or any portion of the Mortgaged Property, including without limitation, any royalties, issues, bonus monies, revenues, income, proceeds, profits, security and other types of deposits, and other benefits paid or payable by parties to the Leases for using, leasing, licensing, possessing, operating from, residing in, selling, or otherwise enjoying all or any portion of the Mortgaged Property.

Subordinate Mortgage: As defined in Section 6.09 of this Deed of Trust.

Trustee: The individual described as Trustee in the initial paragraph of this Deed of Trust and any successor trustee.

Section 1.02. Additional Definitions. As used herein, the following terms shall have the following meanings:

(a) "Hereof," "hereby," "hereto," "hereunder," "herewith," and similar terms mean of, by, to, under and with respect to, this Deed of Trust or to the other documents or matters being referenced.

(b) "Heretofore" means before, "hereafter" means after, and "herewith" means concurrently with, the date of this Deed of Trust.

(c) All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require.

(d) "Including" means including, without limitation.

(e) All terms used herein, whether or not defined in Section 1.01 hereof, 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.

## **ARTICLE TWO: GRANT**

Section 2.01. Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Grantor has GRANTED, BARGAINED, SOLD, TRANSFERRED, ASSIGNED and CONVEYED, and by these presents does GRANT, BARGAIN, SELL, TRANSFER, ASSIGN and CONVEY, unto Trustee, its successors and assigns in trust, with power of sale, for the benefit and security of Beneficiary, all of Grantor's right, title, interest, estates, powers and privileges in or to the Mortgaged Property, subject, however, to the Permitted Exceptions, TO HAVE AND TO HOLD the Mortgaged Property unto Trustee, forever, and Grantor does hereby bind 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 Grantor 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.

## **ARTICLE THREE: REPRESENTATIONS AND COVENANTS**

Section 3.01. Representations and Warranties. Grantor represents and warrants that:

(a) Grantor has good and indefeasible title to the Land in fee simple free from any encumbrance superior to the indebtedness hereby secured, subject only to the Permitted Exceptions. This Deed of Trust constitutes a valid, subsisting first lien on the Land, the Improvements, and the Fixtures; a valid, subsisting first priority security interest in and to the Personalty, and Contracts; and all subject to the Permitted Exceptions;

(b) Grantor has or will have good title to all of the Mortgaged Property;

(c) Grantor has the power, right and authority to execute and deliver this Deed of Trust, to encumber the Mortgaged Property, and to assign the Rents;

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

(e) The loan secured hereby is made, and all proceeds thereof will be used solely for commercial, investment, or business purposes and not for personal, household, or family

purposes. This Deed of Trust is not a residential trust deed, the Property is not residential real property, and the loan secured hereby is not a residential mortgage transaction, each as defined in ORS Chapters 86 and 86A. The grantor is not a resident of the Property. So long as any of the debt secured hereby is unpaid, Borrower covenants and agrees that the property shall remain non-residential property; and

(f) No part of the Property is Grantor's homestead of any type or character.

Section 3.02. Covenants. Unless Beneficiary otherwise consents in writing, Grantor hereby covenants and agrees as follows:

(a) If any action or proceeding shall be instituted to evict Grantor or to recover possession of the Land or for any other purpose affecting this Deed of Trust, Grantor will, immediately upon service thereof on or to Grantor, deliver to Beneficiary a true copy of each petition, summons, complaint, notice of motion, order to show cause and of all other provisions, pleadings, and papers, however designated, served in any such action or proceeding.

(b) If any action, proceeding, motion or notice shall be commenced or filed in respect of the Land in connection with any case under the Bankruptcy Code, Beneficiary shall have the option, exercisable upon notice from Beneficiary to Grantor, to conduct and control any such litigation with counsel of Beneficiary's choice. Beneficiary may proceed in its own name or in the name of Grantor in connection with any such litigation, and Grantor agrees to execute any and all powers, authorizations, consents or other documents reasonably required by Beneficiary in connection therewith. Grantor shall, upon demand, pay to Beneficiary all costs and expenses (including attorneys' fees) paid or incurred by Beneficiary in connection with the prosecution or conduct of any such proceedings. Any such costs or expenses not paid by Grantor as aforesaid shall be secured by the lien of this Deed of Trust and shall be added to the principal amount of the indebtedness secured hereby.

(c) Grantor will pay all Impositions of every kind upon the Mortgaged Property before the same become delinquent, provided, however, that Grantor shall have the right to pay such Imposition under protest or to otherwise contest any such Imposition, but only if (a) such contest has the effect of preventing the collection of such Imposition so contested and also of preventing the sale or forfeiture of the Mortgaged Property or any part thereof or any interest therein, (b) Grantor has notified Beneficiary of Grantor's intent to contest such Imposition, and (c) Grantor has deposited security in form and amount satisfactory to Beneficiary, in its reasonable discretion, and has increased the amount of such security so deposited promptly after Beneficiary's request therefor. Notwithstanding the foregoing, Grantor shall immediately upon request of Beneficiary pay any such Imposition notwithstanding such contest if in the reasonable opinion of Beneficiary the Mortgaged Property or Beneficiary's rights with respect thereto shall be in jeopardy or in danger of being forfeited or foreclosed. If Grantor fails to commence such contest or, having commenced to contest the same, and having deposited such security required by Beneficiary for its full amount, shall thereafter fail to prosecute such contest in good faith or with due diligence, or, upon adverse conclusion of any such contest, shall fail to pay such Imposition, Beneficiary may, at its election (but shall not be required to), pay and discharge any such Imposition, and any interest or penalty thereon, and any amounts so expended by Beneficiary shall be deemed to constitute advances of the loan under the Loan Agreement (even

if the total amount of the advances would exceed the face amount of the Note). Grantor shall furnish to Beneficiary evidence that Impositions are paid at least five (5) days prior to the last date for payment of such Imposition and before imposition of any penalty or accrual of interest.

(d) Grantor will purchase and maintain policies of insurance with respect to the Property with such insurers, in such amounts and covering such risks as shall be satisfactory to Beneficiary, in accordance with the Loan Agreement.

(e) Grantor will preserve and maintain in full force and effect its legal existence and preserve and maintain such of its rights, licenses, and privileges as are material to the business and operations conducted by it; qualify and remain qualified and in good standing to do business in each jurisdiction in which the Land is located and where such qualification is material to its business and operations or ownership of its properties; continue to conduct and operate its business substantially as conducted and operated during the present and preceding calendar year; at all times maintain, preserve and protect all of its franchises and trade names and preserve all the remainder of its property and keep the same in good repair, working order and condition; and from time to time make, or cause to be made, all needed and proper repairs, renewals, replacements, betterments and improvements thereto.

(f) Grantor will keep the Mortgaged Property in first-class order and condition and will make all repairs, replacements, renewals, additions, betterments, improvements, and alterations thereof and thereto in and to the Mortgaged Property, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep same the Mortgaged Property in such first-class order and condition. Grantor will prevent any act, occurrence, or neglect which might impair the value or usefulness of the Mortgaged Property for its intended usage as set forth in the Plans or elsewhere in the Loan Documents, excluding acts or occurrences of ordinary wear and tear.

(g) Grantor will maintain its status as a Single Purpose Entity (as that term is defined in the Loan Agreement).

(h) Grantor will correct: (a) any structural defect in the Improvements; (b) any material departure from the Plans not approved in writing by the Beneficiary; (c) any encroachment by any part of the Improvements or any other structures or improvements over or on any set back line, easement, adjoining property or other restricted area; and (d) any encroachment of any adjoining structure upon the Land which any survey or inspection reflects.

(i) Grantor will not use, maintain, operate, or occupy, or allow the use, maintenance, operation, or occupancy of, the Mortgaged Property in any manner which (a) violates any Legal Requirement, (b) may be dangerous, unless appropriately safeguarded as required by law and/or appropriate insurance, (c) constitutes a public or private nuisance, or (d) makes void, voidable, or cancellable, or increases the premium of, any insurance then in force with respect thereto the Mortgaged Property.

(j) Grantor will not initiate or permit any zoning reclassification of the Mortgaged Property or seek any variance under existing zoning ordinances applicable to the Mortgaged Property or use or permit the use of the Mortgaged Property in such a manner which would result

in such use becoming a nonconforming use under applicable zoning ordinances or other applicable laws. Grantor shall not cause or permit any drilling or exploration for, or extraction, removal or projection of, minerals from the surface or subsurface of the Mortgaged Property. Grantor shall not operate the Mortgaged Property, or permit the Mortgaged Property to be operated, as a cooperative or condominium building or buildings in which the tenants or occupants participate in the ownership, control or management of the Mortgaged Property or any part thereof, as tenant stockholders or otherwise.

(k) Grantor will not create, incur, assume or suffer to exist any Lien upon, or create, suffer or permit to exist any Lien upon the Mortgaged Property, or any part thereof, except for Permitted Exceptions.

(l) Unless otherwise prohibited by applicable law, should any tax (other than a tax based upon the net income of Beneficiary) or recording or filing fee become payable upon this Deed of Trust, any rights, titles, liens or security interests created hereby any of the Mortgaged Property, any of the Indebtedness or any amendment, modification or supplement hereof or thereof, Grantor agrees to pay such taxes (or reimburse Beneficiary therefor upon demand for reimbursement), together with any interest or penalties thereon, and agrees to hold Beneficiary harmless with respect to all such taxes, interest or penalties.

(m) Subject to the provisions of this Deed of Trust, Grantor will pay Beneficiary, on demand, all costs and expenses, including, without limitation, reasonable attorneys' fees and legal expenses (whether inside or outside counsel is used), incurred by Beneficiary or Trustee to third parties incident to this Deed of Trust or any other Loan Document (including, but not limited to, reasonable attorneys' fees and expenses in connection with the negotiation, preparation and execution of this Deed of Trust 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 Obligation or the exercise of any right or remedy of Beneficiary under any Loan Document.

(n) Grantor will deliver to Beneficiary, promptly after request therefor, estoppel certificates or written statements, duly acknowledged, stating the amount that has then been advanced to Grantor under the Loan Agreement, the amount due on the Note, and whether any offsets or defenses exist against the Note or any of the other Loan Documents (and the nature of any such offsets or defenses).

(o) Grantor shall not cause or permit the Fixtures or any part thereof, to be removed from the county and state where the Land is located, except items of the Fixtures which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes having a value equal to or greater than the replaced items when new.

#### ARTICLE FOUR: EVENTS OF DEFAULT

Section 4.01. Event of Default. The term "**Event of Default**," as used herein, shall mean the occurrence of any one or more of the following events or conditions:

- (a) Grantor shall fail, refuse or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in this Deed of Trust or the Loan Documents, upon acceleration or otherwise; provided, however, that failure, refusal or neglect by Grantor to pay a regularly scheduled monthly installment due pursuant to the Note (other than at the Maturity Date) shall not constitute an "Event of Default" hereunder unless such failure continues for at least ten (10) days after the due date thereof;
- (b) The failure of Grantor to timely and properly, observe, keep or perform any covenant, agreement, warranty or condition required herein; or
- (c) Any representation, covenant or warranty made by Grantor herein or in any of the other Loan Documents shall be untrue or incorrect in any material respect; or
- (d) if Grantor (i) shall execute an assignment for the benefit of creditors or an admission in writing by Grantor of Grantor's inability to pay, or Grantor's failure to pay, debts generally as the debts become due; or (ii) shall allow the levy against the Mortgaged Property or any part thereof, of any execution, attachment, sequestration or other writ which is not vacated within sixty (60) days after the levy; or (iii) shall allow the appointment of a receiver, trustee or custodian of Grantor or of the Mortgaged Property or any part thereof, which receiver, trustee or custodian is not discharged within sixty (60) days after the appointment; or (iv) 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 in furtherance thereof; or (v) files either a petition, complaint, answer or other instrument which seeks to effect a suspension of, or which has the effect of suspending any of the rights or powers of Beneficiary or Trustee granted in the Note, herein or in any Loan Document; or (vi) allows the filing of a petition, case, proceeding or other action against Grantor as a debtor under Debtor Relief Laws or seeks appointment of a receiver, trustee, custodian or liquidator of Grantor or of the Mortgaged Property, or any part thereof, or of any significant portion of Grantor's other property; and (a) Grantor admits, acquiesces in or fails to contest diligently the material allegations thereof, or (b) the petition, case, proceeding or other action results in the entry of an order for relief or order granting the relief sought against Grantor, or (c) the petition, case, proceeding or other action is not permanently dismissed or discharged on or before the earlier of trial thereon or thirty (30) days next following the date of filing; or
- (e) The abandonment of any portion of the Mortgaged Property or any material portion of any of the other property of Grantor; or
- (f) The occurrence of any event referred to in Subsections (c) and (d) above with respect to any Guarantor or other person or entity obligated in any manner to pay or perform the

Indebtedness or Obligations or any part thereof (as if such Guarantor or other person or entity were "Grantor") in such Subsections; or

- (g) an Event of Default as defined in the Loan Agreement occurs; or
- (h) (Cross-Default) Grantor or any Grantor Affiliate breaches (or an event of default or breach occurs with respect to) any other credit facility with Beneficiary or any Beneficiary Affiliate, including, without limitation, those credit facilities set forth in Exhibit "C" attached hereto.

#### **ARTICLE FIVE: REMEDIES**

Section 5.01. Beneficiary's Remedies upon Default. Upon the occurrence of an Event of Default or any event or circumstance which, with the lapse of time, or the giving of notice, or both, would constitute 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 to the extent permitted by applicable law:

(a) Right to Perform Grantor's Covenants. If Grantor has failed to keep or perform any covenant whatsoever contained in this Deed of Trust or the other Loan Documents, Beneficiary may, but shall not be obligated to any person to do so, 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 be and become a part of the Indebtedness, and Grantor 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 from the date when paid or incurred by Beneficiary at the Default Rate. No such 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 the payment of which Beneficiary may make an advance, or which Beneficiary may pay.

(b) Right of Entry. Beneficiary may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Mortgaged Property, or any part thereof, and take exclusive possession of the Mortgaged Property 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 Mortgaged Property, including without limitation the right to rent the same for the account of Grantor and to apply such Rents as provided in Article VII hereof. All such 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 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, all of which shall constitute a portion of the Indebtedness. 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, trespass to try title, and restitution. In connection with any action taken by Beneficiary pursuant to this subsection, Beneficiary shall not be liable for any loss sustained by Grantor resulting from any failure to let 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, nor shall Beneficiary be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. **GRANTOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY BENEFICIARY (WHICH SHALL INCLUDE THE DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES, REPRESENTATIVES AND AGENTS OF BENEFICIARY AND ANY PERSONS OR ENTITIES OWNED OR CONTROLLED BY, OWNING OR CONTROLLING, OR UNDER COMMON CONTROL OR AFFILIATED WITH BENEFICIARY) FOR, AND TO HOLD BENEFICIARY HARMLESS FROM, ANY AND ALL LIABILITY, LOSS, DAMAGE OR EXPENSE, WHICH MAY OR MIGHT BE INCURRED BY BENEFICIARY UNDER ANY SUCH LEASE OR UNDER OR BY REASON HEREOF OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH 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.** Should Beneficiary incur any such liability, the amount thereof, including without limitation costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the Default Rate, shall be secured hereby, 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, or for the carrying out 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 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 or injury or death to any tenant, licensee, employee, or stranger. Grantor hereby assents to, ratifies, and confirms any and all actions of Beneficiary with respect to the Mortgaged Property taken under this Subsection.

(c) Right to Accelerate. Beneficiary may, 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 whatsoever on the Indebtedness, declare the entire unpaid balance of the Indebtedness immediately due and payable, and 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.

(d) Foreclosure-Power of Sale. Beneficiary may request Trustee to proceed with foreclosure under the power of sale which is hereby conferred, such foreclosure to be accomplished in accordance with the following provisions:

(i) Public Sale. Trustee is hereby authorized and empowered, and it shall be Trustee's special duty, upon such request of Beneficiary, 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 same. Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of Chapter 86 of the ORS or, if and to the extent such statute is not then in force, with the applicable requirements, at the time of the sale, of the successor statute or statutes, if any, governing sales of Oregon real property under powers of sale conferred by deeds of trust.

(ii) Right to Require Proof of Financial Ability and/or Cash Bid. At any time during the bidding, the Trustee may require a bidding party (aa) to disclose its full name, state and city of residence, occupation, and specific business office location, and the name and address of the principal the bidding party is representing (if applicable), and (bb) to demonstrate reasonable evidence of the bidding party's financial ability (or, if applicable, the financial ability of the principal of such bidding party), as a condition to the bidding party submitting bids at the foreclosure sale. If any such bidding party (the "Questioned Bidder") declines to comply with the Trustee's requirement in this regard, or if such Questioned Bidder does respond but the Trustee, in Trustee's sole and absolute discretion, deems the information or the evidence of the financial ability of the Questioned Bidder (or, if applicable, the principal of such bidding party) to be inadequate, then the Trustee may continue the bidding with reservation; and in such event (1) the Trustee shall be authorized to caution the Questioned Bidder concerning the legal obligations to be incurred in submitting bids, and (2) if the Questioned Bidder is not the highest bidder at the sale, or if having been the highest bidder the Questioned Bidder fails to deliver the cash purchase price payment promptly to the Trustee, all bids by the Questioned Bidder shall be null and void. The Trustee may, in Trustee's sole and absolute discretion, determine that a credit bid may be in the best interest of Grantor and Beneficiary, and elect to sell the Mortgaged Property for credit or for a combination of cash and credit; provided, however, that the Trustee shall have no obligation to accept any bid except an all cash bid. In the event the Trustee requires a cash bid and cash is not delivered within a reasonable time after conclusion of the bidding process, as specified by the Trustee, but in no event later than 3:45 p.m. local time on the day of sale, then said contingent sale shall be null and void, the bidding process may be recommenced, and any subsequent bids or sale shall be made as if no prior bids were made or accepted.

(iii) Sale Subject to Unmatured Indebtedness. In addition to the rights and powers of sale granted under the preceding provisions of this subsection, if default is made in the payment of any installment of the Indebtedness, Beneficiary may, at Beneficiary's option, at once or at any time thereafter while any matured

installment remains unpaid, without declaring the entire Indebtedness to be due and payable, orally or in writing direct Trustee to enforce this trust and to sell the Mortgaged Property subject to such unmatured Indebtedness and to the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of such unmatured Indebtedness, in the same manner, all as provided in the preceding provisions of this subsection. Sales made without maturing the Indebtedness may be made hereunder whenever there is a default in the payment of any installment of the Indebtedness, without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this subsection, the unmatured balance of the Indebtedness or the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of the Indebtedness.

(iv) Partial Foreclosure. Sale of a part of the Mortgaged Property shall not exhaust the power of sale, but sales may be made from time to time until the Indebtedness is paid and the Obligations are performed and discharged in full. It is intended by each of the foregoing provisions of this subsection that Trustee may, after any request or direction by Beneficiary, sell not only the Land and the Improvements, but also the Fixtures and Personalty and other interests constituting a part of the Mortgaged Property or any part thereof, along with the Land and the Improvements or any part thereof, as a unit and as a part of a single sale, or may sell at any time or from time to time any part or parts of the Mortgaged Property separately from the remainder of the Mortgaged Property. It shall not be necessary to have present or to exhibit at any sale any of the Mortgaged Property.

(v) Trustee's Deeds. After any sale under this subsection, Trustee shall make good and sufficient deeds, assignments, and other conveyances to the purchaser or purchasers thereunder in the name of Grantor, conveying the Mortgaged Property or any part thereof so sold to the purchaser or purchasers with general warranty of title by Grantor. It is agreed that in any deeds, assignments or other conveyances given by Trustee, any and all statements of fact or other recitals therein made as to the identity of Beneficiary, the occurrence or existence of any Event of Default, the notice of intention to accelerate, or acceleration of, the maturity of the Indebtedness, the request to sell, notice of sale, time, place, terms and manner of sale, and receipt, distribution, and application of the money realized therefrom, the due and proper appointment of a substitute Trustee, and without being limited by the foregoing, any other act or thing having been duly done by or on behalf of Beneficiary or by or on behalf of Trustee, shall be taken by all courts of law and equity as *prima facie* evidence that such statements or recitals state true, correct, and complete facts and are without further question to be so accepted, and Grantor does hereby ratify and confirm any and all acts that Trustee may lawfully do in the premises by virtue hereof.

(e) Beneficiary's Judicial Remedies. Beneficiary, or Trustee, upon written request of Beneficiary, may proceed by suit or suits, at law or in equity, to enforce the payment of the Indebtedness and the performance and discharge of the Obligations in

accordance with the terms hereof, of the Note, and the other Loan Documents, to foreclose the liens and security interests of this Deed of Trust as against all or any part of the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other non-judicial remedies available to Beneficiary with respect to the Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available non-judicial remedy of Beneficiary.

(f) Beneficiary's Right to Appointment of Receiver. Beneficiary, as a matter of right and without regard to the sufficiency of the security for repayment of the Indebtedness and performance and discharge of the Obligations, without notice to Grantor and without any showing of insolvency, fraud, or mismanagement on the part of Grantor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Mortgaged Property or any part thereof, and of the Rents, and Grantor hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(g) Beneficiary's Uniform Commercial 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, Beneficiary may and Grantor agrees as follows:

(i) 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; and

(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; and

(iii) written notice mailed to Grantor as provided herein at least ten (10) days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made shall constitute reasonable notice; and

(iv) any sale made pursuant to the provisions of this subsection 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 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 Section 9.604 of the Code; and

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

(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; and

(vii) prior to application of proceeds of disposition of the Personalty to the Indebtedness, 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; and

(viii) after notification, 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 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 5.04(ii) of this Deed of Trust. 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; and

(ix) Beneficiary may dispose of the Personalty or Fixtures in its then present condition, has no duty to repair or clean the Personalty or Fixtures prior to 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) 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, 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 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

(xi) 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 the sale, but in the name and on behalf of Beneficiary.

(h) Rights Relating to Rents. Grantor has, pursuant to Article VII of this Deed of Trust, granted to Beneficiary a first lien security interest in all Rents under each of the Leases covering all or any portion of the Mortgaged Property. Beneficiary, or Trustee on Beneficiary's behalf, may, at any time, and without notice, either in person, by agent, or by receiver to be appointed by a court, enter and take possession of the Mortgaged Property or any part thereof, and in its own name, sue for or otherwise collect the Rents. All Rents collected by Beneficiary, or Trustee acting on Beneficiary's behalf, shall be applied as provided for in Article VII of this Deed of Trust; provided, however, that if the costs, expenses, and attorneys' fees shall exceed the amount of Rents collected, the excess shall be added to the Indebtedness, shall bear interest at the Default Rate, and shall be immediately due and payable. The entering upon and taking possession of the Mortgaged Property, the collection of Rents, and the application thereof as aforesaid shall not cure or waive any Event of Default or notice of default, if any, hereunder nor invalidate any act done pursuant to such notice, except to the extent any such default is fully cured. Failure or discontinuance by Beneficiary, or Trustee on Beneficiary's behalf, at any time or from time to time, to collect said Rents shall not in any manner impair the subsequent enforcement by Beneficiary, or Trustee on Beneficiary's behalf, of the right, power and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power, or authority herein granted to Beneficiary, or Trustee on Beneficiary's behalf, shall be, or shall be construed to be, an affirmation by it of any tenancy, lease, or option, nor an assumption of liability under, nor the subordination of, the lien or charge of this Deed of Trust, to any such tenancy, lease, or option, nor an election of judicial relief, if any such relief is requested or obtained as to Leases or Rents, with respect to the Mortgaged Property or any collateral given by Grantor to Beneficiary. In addition, from time to time Beneficiary may elect, and notice hereby is given to each Lessee under any Lease, to subordinate the lien of this Deed of Trust to any Lease by unilaterally executing and recording an instrument of subordination, and upon such election the lien of this Deed of Trust shall be subordinate to the Lease identified in such instrument of subordination; provided, however, in each instance such subordination will not affect or be applicable to, and expressly excludes any lien, charge, encumbrance, security interest, claim, easement, restriction, option, covenant and other rights, titles, interests or estates of any nature whatsoever with respect to all or any portion of the Mortgaged Property to the extent that the same may have arisen or intervened during the period between the recordation of this Deed of Trust and the execution of the Lease identified in such instrument of subordination.

(i) Other Rights. Beneficiary (i) may surrender the insurance policies maintained pursuant to Section 4.7 of the Loan Agreement or any part thereof, and upon receipt shall apply the unearned premiums as a credit on the Indebtedness, in accordance with the provisions of Section 5.04 hereof, 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; and (ii) apply the reserve for Impositions and insurance premiums, if any, required by the provisions of this Deed of Trust, toward payment of the Indebtedness; and (iii) shall have and may exercise any and 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.

(j) Beneficiary as Purchaser. Beneficiary may be the purchaser of the Mortgaged Property or any part thereof, at any sale thereof, whether such sale be under the power of sale herein vested in Trustee or upon any other foreclosure of the liens and security interests hereof, or otherwise, and Beneficiary shall, upon any such purchase, acquire good title to the Mortgaged Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Indebtedness. Beneficiary, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of Beneficiary's purchase shall be applied in accordance with Section 5.04 of this Deed of Trust.

Section 5.02. 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 such repairs, alterations, additions, and improvements thereto and taking such other action as 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 appropriate jurisdiction or in accordance with any other rights held by Beneficiary in respect of 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 thereon from the date incurred by Beneficiary at the Default Rate; and all such expenses, costs, taxes, interest, and other charges shall be and become a part of the Indebtedness. It is agreed, however, that the risk of loss or damage to the Mortgaged Property is on Grantor, and Beneficiary shall have no liability whatsoever for decline in value of the Mortgaged Property, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured. Possession by Beneficiary shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Mortgaged Property or collateral not in Beneficiary's possession.

Section 5.03. Possession after Foreclosure. If the liens or security interests hereof shall be foreclosed by power of sale granted herein, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, 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 forcible 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.

Section 5.04. Application of Proceeds. The proceeds from any sale, lease, or other disposition made pursuant to this Article V, or the proceeds from the surrender of any insurance

policies pursuant hereto, or any Rents collected by Beneficiary from the Mortgaged Property (following any application of such Rents in accordance with Section 7.03 hereof), or the reserve for Impositions and insurance premiums, if any, required by the provisions of this Deed of Trust or sums received pursuant to Section 5.01 hereof, or proceeds from insurance which Beneficiary elects to apply to the Indebtedness pursuant to Section 5.02 hereof, shall be applied by Trustee, or by Beneficiary, as the case may be, to the Indebtedness in the following order and priority: (i) to the payment of all expenses of advertising, selling, and conveying the Mortgaged Property or part thereof, and/or prosecuting or otherwise collecting Rents, proceeds, premiums, or other sums including reasonable attorneys' fees and a reasonable fee or commission to Trustee, not to exceed 5% of the proceeds thereof or sums so received; (ii) to the remainder of the Indebtedness as follows: first, to the remaining accrued but unpaid interest, second, to the matured portion of principal of the Indebtedness, and third, to prepayment of the unmatured portion, if any, of principal of the Indebtedness applied to installments of principal in inverse order of maturity; (iii) the balance, if any and to the extent applicable, remaining after the full and final payment of the Indebtedness and full performance and discharge of the Obligations to the holder or Beneficiary of any inferior liens covering the Mortgaged Property, if any, in order of the priority of such inferior liens (Trustee and Beneficiary shall hereby be entitled to rely exclusively upon a commitment for title insurance issued to determine such priority); and (iv) the cash balance, if any, to Grantor. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Indebtedness like any other payment. The balance of the Indebtedness remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note or the other Loan Documents.

Section 5.05. Abandonment of Sale. If a foreclosure hereunder is commenced by Trustee in accordance with Subsection 5.01(d) hereof, at any time before the sale, Trustee may abandon the sale, and Beneficiary may then institute suit for the collection of the Indebtedness and for the foreclosure of the liens and security interests hereof and of the Loan Documents. If Beneficiary should institute a suit for the collection of the Indebtedness and for a foreclosure of the liens and security interests, Beneficiary may, at any time before the entry of a final judgment in said suit, dismiss the same and require Trustee to sell the Mortgaged Property or any part thereof in accordance with the provisions of this Deed of Trust.

Section 5.06. Payment of Fees. If the Note or any other part of the Indebtedness shall be collected or if any of the Obligations shall be enforced by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be 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 where this Deed of Trust or the Mortgaged Property or any part thereof is involved, Grantor agrees to pay Beneficiary's attorneys' fees and/or expenses incurred, and such fees shall be and become a part of the Indebtedness and shall bear interest from the date such costs are incurred at the Default Rate. "Attorneys' fees and/or expenses" include, but are not limited to, those fees and costs, whether or not incurred in connection with collection, mediation, arbitration, and litigation, and if incurred in connection with litigation, include such fees, expenses, and costs as are incurred in connection with trial court proceedings and/or appellate court proceedings.



Section 5.07. Miscellaneous.

(a) Discontinuance of Remedies. In case Beneficiary shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Beneficiary shall have the unqualified right so to do and, in such event, Grantor and Beneficiary shall be restored to their former positions with respect to the Indebtedness, the Loan Documents, the Mortgaged Property or otherwise, and the rights, remedies, recourses and powers of Beneficiary shall continue as if same had never been invoked.

(b) Other Remedies. In addition to the remedies set forth in this Article, upon the occurrence of an Event of Default, Beneficiary and Trustee shall, in addition, have all other remedies available to them 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: (i) shall be 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, it being agreed by Grantor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Beneficiary exercising or pursuing any remedy in relation to the Mortgaged Property prior to Beneficiary bringing suit to recover the Indebtedness or suit on the Obligations; and (vi) in the event Beneficiary elects to bring suit on the Indebtedness and/or the Obligations and obtains a judgment against Grantor prior to exercising any remedies in relation to the Mortgaged Property, 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.

(d) Partial Release; Etc. Beneficiary may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the lien or security interests evidenced by this Deed of Trust or the other Loan Documents or affecting the obligations of Grantor or any other party to pay the Indebtedness or perform and discharge the Obligations. For payment of the Indebtedness, Beneficiary may resort to any of the collateral therefor in such order and manner as Beneficiary may elect. No collateral heretofore, herewith, or hereafter taken by Beneficiary shall in any manner impair or affect the collateral given pursuant to the Loan Documents, and all collateral shall be taken, considered, and held as cumulative.

(e) Waiver and Release by Grantor. Grantor hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to Grantor by virtue of any present or future law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, 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. Grantor and Beneficiary mutually agree that 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. The remedies in this Article V shall be available under and governed by the real property laws of Oregon and shall not be governed by the personal property laws of Oregon, provided Beneficiary elects to proceed as to the Fixtures and Personalty together with the other Mortgaged Property under and pursuant to the real property remedies of this Article V.

Section 5.08. Waiver of Deficiency Statute.

(a) Waiver. In the event an interest in any of the Mortgaged Property is foreclosed upon pursuant to a judicial or non-judicial foreclosure sale, Grantor agrees as follows: notwithstanding the provisions of Sections 51.003, 51.004, and 51.005 of the Property Code (as the same may be amended from time to time), and to the extent permitted by law, Grantor agrees that Beneficiary shall be entitled to seek a deficiency judgment from Grantor and any other party obligated on the Note equal to the difference between the amount owing on the Note and the amount for which the Mortgaged Property was sold pursuant to judicial or non-judicial foreclosure sale. Grantor expressly recognizes that this section constitutes a waiver of the above-cited provisions of the Property Code which would otherwise permit Grantor and other persons against whom recovery of deficiencies is sought or Guarantor independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Mortgaged Property as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Grantor further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Mortgaged Property for purposes of calculating deficiencies owed by Grantor, Guarantor, and others against whom recovery of a deficiency is sought.

(b) Alternative to Waiver. Alternatively, in the event the waiver provided for in subsection (a) above is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Mortgaged Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Property Code (as amended from time to time): (i) the Mortgaged Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Mortgaged Property will be repaired or improved in any manner before a resale of the Mortgaged Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Mortgaged Property for cash promptly (but no later than 12 months) following the foreclosure sale; (iii) all reasonable closing costs

customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Mortgaged Property, including, without limitation, brokerage commissions, title insurance, a survey of the Mortgaged Property, tax prorations, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Mortgaged Property shall be further discounted to account for any estimated holding costs associated with maintaining the Mortgaged Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Mortgaged Property must be given by persons having at least five (5) years of experience in appraising property similar to the Mortgaged Property and who have conducted and prepared a complete written appraisal of the Mortgaged Property taking into consideration the factors set forth above.

Section 5.09. Bankruptcy Acknowledgment. In the event the Mortgaged Property or any portion thereof or any interest therein becomes property of any bankruptcy estate or subject to any state or federal insolvency proceeding, then Beneficiary shall immediately become entitled, in addition to all other relief to which Beneficiary may be entitled under this Deed of Trust, to obtain (a) an order from the Bankruptcy Court or other appropriate court granting immediate relief from the automatic stay pursuant to § 362 of 11 U.S.C. § 101 *et seq.*, as the same be amended from time to time (the "Bankruptcy Code") so to permit Beneficiary to pursue its rights and remedies against Grantor as provided under this Deed of Trust and all other rights and remedies of Beneficiary at law and in equity under applicable state law, and (b) an order from the Bankruptcy Court prohibiting Grantor's use of all "cash collateral" as defined under § 362 of the Bankruptcy Code. In connection with such Bankruptcy Court orders, Grantor shall not contend or allege in any pleading or petition filed in any court proceedings that Beneficiary does not have sufficient grounds for relief from the automatic stay. Any bankruptcy petition or other action taken by the Grantor to stay, condition, or inhibit Beneficiary from exercising its remedies are hereby admitted by Grantor to be in bad faith and Grantor further admits that Beneficiary would have just cause for relief from the automatic stay in order to take such actions authorized under state law.

## **ARTICLE SIX: SPECIAL PROVISIONS**

Section 6.01. Condemnation Proceeds. Beneficiary shall be entitled to receive any and all sums which may be awarded and become payable to Grantor for condemnation of the Mortgaged Property or any part thereof, 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 as may be necessary from time to time to enable Beneficiary to collect and receipt for any such sums. Beneficiary shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums. Any sums received by Beneficiary as a result of condemnation shall be applied to the Indebtedness in accordance with the provisions of Section 5.04 hereof.

Section 6.02. Insurance Proceeds. (a) Grantor will give Beneficiary prompt notice of any damage to or destruction of the Mortgaged Property, and:

(i) In case of loss covered by policies of insurance, Beneficiary (or, after foreclosure, the purchaser at the foreclosure sale) is hereby authorized, at Beneficiary's option, either (i) to settle and adjust any claim under such policies without the consent of Grantor, or (ii) allow Grantor to agree with the insurance company or companies on the amount to be paid upon the loss; provided, that Grantor may adjust losses aggregating not in excess of \$100,000.00 if such adjustment is carried out in a competent and timely manner, and provided that in any case Beneficiary shall and is hereby authorized to collect and receive any such insurance proceeds; and the expenses incurred by Beneficiary in the adjustment and collection of insurance proceeds shall be additional indebtedness hereby secured and shall be reimbursed to Beneficiary upon demand.

(ii) In the event of any insured damage to or destruction of the Mortgaged Property or any part thereof (herein called an "Insured Casualty") which, in the reasonable judgment of Beneficiary, the Mortgaged Property can be restored on or before the Maturity Date to an economic unit not less valuable than the same was prior to the Insured Casualty, and adequately securing the outstanding balance of the Indebtedness hereby secured, then, if no other Event of Default shall have occurred and be then continuing, and there are sufficient funds, in Beneficiary's judgment, from such insurance proceeds and in the Borrower's Deposit (as defined in the Loan Agreement), to so restore the Mortgaged Property and to continue to pay the Note in accordance with its terms, then such casualty, in and of itself, will not constitute an Event of Default, and the proceeds of insurance shall be applied to reimburse Grantor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to Insured Casualty, as provided for below; and Grantor hereby covenants and agrees forthwith to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided always, that Grantor shall pay all costs (and if required by Beneficiary, Grantor shall deposit the total thereof with Beneficiary in advance) of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof.

(iii) Except as provided above, the proceeds of insurance from any Insured Casualty shall be applied to the payment of the Indebtedness hereby secured.

(iv) In the event that proceeds of insurance, if any, shall be made available to Grantor for the restoring, repairing, replacing or rebuilding of the Mortgaged Property, Grantor hereby covenants to restore, repair, replace or rebuild the same to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable law and plans and specifications approved in advance by Beneficiary.

(b) In the event Grantor is entitled to reimbursement out of insurance proceeds held by Beneficiary, such proceeds shall be disbursed from time to time upon Beneficiary being furnished with (i) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (ii) funds, or, at Beneficiary's option, assurances

satisfactory to Beneficiary that such funds are available, sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and performance as Beneficiary may reasonably require and approve; and Beneficiary may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Beneficiary prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent of the value of the work performed from time to time; funds other than proceeds of insurance shall be disbursed prior to disbursement of such insurance proceeds; and at all times, the undisbursed balance of such proceeds remaining in the hands of Beneficiary, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Beneficiary by or on behalf of Grantor for that purpose, shall be at least sufficient in the reasonable judgment of Beneficiary to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by Beneficiary after payment of such costs of restoration, repair, replacement or rebuilding shall be applied as provided in Section 6.02(iii) above.

Section 6.03. Reserve for Impositions and Insurance Premiums. At Beneficiary's request, Grantor shall create a fund or 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, a sum equal to the 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 Impositions next due on the Mortgaged Property or any part thereof as estimated by Beneficiary, less all sums paid previously to Beneficiary therefor, divided by the number of months to elapse before one (1) month prior to the date when each of such premiums and Impositions will become due, such sums to be held by Beneficiary without interest to Grantor, unless interest is required by applicable law, for the purposes of paying such premiums and Impositions. Any excess reserve shall, at the discretion of Beneficiary, be credited by Beneficiary on subsequent reserve payments or subsequent payments to be made on the Note by the maker thereof, and any deficiency shall be paid by Grantor 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 shall become delinquent. If there exists a deficiency in such fund or reserve at any time when Impositions or insurance premiums are due and payable, Beneficiary may, but shall not be obligated to, advance the amount of such deficiency on behalf of Grantor and such amounts so advanced shall become a part of the Indebtedness, shall be immediately due and payable, and shall bear interest at the Default Rate from the date of such advance through and including the date of repayment. Transfer of legal title to the Mortgaged Property shall automatically transfer the interest of Grantor in all sums deposited with Beneficiary under the provisions hereof or otherwise.

Section 6.04. GRANTOR'S INDEMNITY. GRANTOR SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS BENEFICIARY, BENEFICIARY'S PARENTS, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS AND THE TRUSTEE UNDER THE DEED OF TRUST (THE "INDEMNIFIED PARTIES") FROM AND

AGAINST ANY AND ALL LIABILITIES, DAMAGES, LOSSES, COSTS, OR EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES), ACTIONS, PROCEEDINGS, CLAIMS OR DISPUTES (THE "INDEMNIFIED LOSSES") INCURRED OR SUFFERED BY THE INDEMNIFIED PARTIES, SAVE AND EXCEPT WITH RESPECT TO INDEMNIFIED LOSSES PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OF ANY INDEMNIFIED PARTY, WHETHER VOLUNTARILY OR INVOLUNTARILY INCURRED OR SUFFERED, IN CONNECTION WITH 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 OF THE MORTGAGED PROPERTY 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 GRANTOR, GUARANTORS 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 PARTNERSHIP, 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 WHICH IS ALLOWED OR PERMITTED UNDER THIS DEED OF TRUST OR ANY OF THE OTHER LOAN DOCUMENTS RELATING TO GRANTOR, THE MORTGAGED PROPERTY, GUARANTORS 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;

(d) ANY ACTION BROUGHT BY BENEFICIARY 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; AND

(e) GRANTOR'S FAILURE TO PURCHASE AND/OR MAINTAIN THE INSURANCE COVERAGES REQUIRED BY THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS.

BENEFICIARY MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTECT OR ENFORCE BENEFICIARY'S RIGHTS, REMEDIES AND RECOURSES UNDER THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS, AND TO ADVISE AND

DEFEND BENEFICIARY WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. GRANTOR SHALL REIMBURSE BENEFICIARY FOR BENEFICIARY'S REASONABLE ATTORNEYS' FEES AND EXPENSES (INCLUDING EXPENSES AND COSTS FOR EXPERTS) IMMEDIATELY UPON RECEIPT OF A WRITTEN DEMAND FOR REIMBURSEMENT, 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. ANY PAYMENTS NOT MADE WITHIN FIFTEEN (15) DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS SECTION 6.04 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 OR ALL OF ITS RIGHT, TITLE AND INTEREST IN OR TO THE MORTGAGED PROPERTY, AND THE EXERCISE BY BENEFICIARY OF ANY AND ALL REMEDIES SET FORTH IN THIS DEED OF TRUST OR IN ANY OTHER LOAN DOCUMENT. **GRANTOR HEREBY ACKNOWLEDGES AND AGREES THAT THIS SECTION 6.04 OF THIS DEED OF TRUST INCLUDES AN INDEMNIFICATION BY GRANTOR OF BENEFICIARY FROM CLAIMS OR LOSSES ARISING AS A RESULT OF BENEFICIARY'S OWN NEGLIGENCE.**

Section 6.05. Waiver of Subrogation. Grantor hereby waives any and all right to claim, recover, or subrogation that arises or may arise in its favor and against Beneficiary or its officers, directors, employees, agents, attorneys, or representatives hereto for any and all loss of, 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 provisions of the Loan Documents. Said waiver shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Deed of Trust with respect to any loss or damage to property of the parties hereto. Inasmuch as the above waivers preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), Grantor hereby agrees to immediately give to each insurance company which has issued to it any such insurance policy whether or not it is required to be insured against by the provisions of the Loan Documents written notice of the terms of said waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver.

Section 6.06. Waiver of Setoff. The Indebtedness, or any part thereof, shall be paid by Grantor without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction by reason of: (i) any damage to, destruction of, or any condemnation or similar taking of the Mortgaged Property; (ii) any restriction or prevention of or interference with any use of the Mortgaged Property; (iii) any title defect or encumbrance or any eviction from the Mortgaged Property by superior title or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Trustee, Beneficiary, or Grantor, or any action taken with respect to this Deed of Trust by any Trustee or receiver of Beneficiary or Grantor, or by any court, in any such proceeding; (v) any claim which Grantor has or might have against

Trustee or Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Grantor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Grantor shall have 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.

Section 6.07. 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.

Section 6.08. Consent to Disposition. In the event of a Disposition, Beneficiary may, at Beneficiary's option, without demand, presentment, protest, notice of protest, notice of intent to accelerate, notice of acceleration or 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, declare the Indebtedness to be immediately due and payable, which option may be exercised at any time following such sale, conveyance, assignment or transfer, and upon such declaration the entire unpaid balance of the Indebtedness shall be immediately due and payable. Beneficiary may, in Beneficiary's sole discretion and at Grantor's request, decide not to exercise said option to accelerate the Indebtedness, in which event Beneficiary's forbearance and Beneficiary's decision to grant or withhold consent to a Disposition may be predicated on such terms and conditions as Beneficiary may, in Beneficiary's sole discretion, require, including, without limitation, (i) consideration of the creditworthiness of the party to whom such Disposition will be made and its management ability with respect to the Mortgaged Property, (ii) 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, (iii) a payment of a part of the principal amount of the Indebtedness, (iv) 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, (v) reimbursement of Beneficiary for all costs and expenses incurred by Beneficiary in investigating the creditworthiness and management or consulting ability of the party to whom such Disposition will be made and in determining whether Beneficiary's security will be impaired by the proposed Disposition, (vi) payment to Beneficiary of a transfer fee to cover the cost of documenting the Disposition in its records, (vii) payment of Beneficiary's reasonable attorneys' fees in connection with such Disposition, (viii) the express assumption of payment of the Indebtedness and performance and discharge of the Obligations by the party to whom such Disposition will be made (with or without the release of Grantor from liability for such Indebtedness and Obligations), (ix) the execution of assumption agreements, modification agreements, supplemental loan documents, and financing statements, satisfactory in form and substance to Beneficiary, (x) endorsements (to the extent available under applicable law) to any existing mortgagee title insurance policies insuring Beneficiary's liens and security interests covering the Mortgaged Property, and (xi) requiring additional security for the payment of the Indebtedness and performance and discharge of the Obligations. Should the Mortgaged Property be subject to a Disposition without the prior written consent of Beneficiary and should payment of any portion of the Indebtedness thereafter be accepted by Beneficiary, such acceptance shall not be deemed a waiver of the requirement of Beneficiary's consent in writing to such



Disposition or with respect to any other Disposition. Notwithstanding the foregoing, said option shall not apply in case of sales or transfers of items of Fixtures which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes having a value equal to or greater than the replaced items when new.

Section 6.09. Consent to Subordinate Mortgage. If Grantor, without the prior written consent of Beneficiary, executes or delivers any pledge, security agreement, mortgage or deed of trust covering all or any portion of the Mortgaged Property (hereinafter called "**Subordinate Mortgage**"), Beneficiary may, at Beneficiary's option, which option may be exercised at any time following the grant of such Subordinate Mortgage, without demand, presentment, protest, notice of protest, notice of intent to accelerate, notice of acceleration or 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, declare the Indebtedness to be immediately due and payable. In the event of consent by Beneficiary to the granting of a Subordinate Mortgage, or in the event the above-described right of Beneficiary 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, Grantor will not execute or deliver any Subordinate Mortgage unless (i) it shall contain express covenants to the effect: (a) that 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, including, without limitation, the Assignment of Rents; (b) that if any action or proceeding shall be instituted to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), 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; (c) that 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 (d) that if any action or proceeding shall be brought to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), written notice of the commencement thereof will be given to Beneficiary contemporaneously with the commencement of such action or proceeding; and (ii) a copy thereof shall have been delivered to Beneficiary not less than ten (10) days prior to the date of the execution of such Subordinate Mortgage.

Section 6.10. Payment after Acceleration. If, following the occurrence of an Event of Default, and an acceleration of the Indebtedness or any part thereof but prior to a foreclosure sale of the Mortgaged Property, Grantor shall tender to Beneficiary the payment of an amount sufficient to satisfy the entire Indebtedness or the part thereof which has been accelerated, such tender shall be deemed a voluntary prepayment pursuant to the Indebtedness and, accordingly, Grantor, to the extent permitted by applicable law, shall also pay to Beneficiary the premium, if any, then required under the Indebtedness or the Loan Documents in order to exercise the prepayment privilege contained therein.

Section 6.11. Environmental Matters; Compliance with Laws. Grantor warrants and represents to Beneficiary that (a) the occupancy, operation, and use of the Mortgaged Property

shall not violate any applicable law, statute, ordinance, rule, regulation, order, writs, injunctions, decrees, or determination of any governmental authority or any board of fire underwriters (or other body exercising similar functions), or any restrictive covenant or deed restriction (of record or otherwise) affecting the Mortgaged Property, including, without limitation, applicable zoning ordinances and building codes, the Americans with Disabilities Act of 1990, flood disaster laws and Environmental Laws, as they may be amended from time to time (hereinafter sometimes collectively called the "Applicable Regulations"); (b) Grantor and any Lessee of space from Grantor in the Mortgaged Property shall obtain all permits, licenses, or similar authorizations required by reason of any Applicable Regulations relating to pollution and the protection of health and the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as each is amended from time to time; and (c) the use that Grantor intends to make, or intends to allow, of the Mortgaged Property will not result in the disposal of or release of any hazardous substance or solid waste onto or into the Mortgaged Property, or any part thereof, in violation of any Environmental Laws. The terms (as used in this Deed of Trust) "hazardous substance" and "release" have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") have the meanings specified in RCRA. If either CERCLA or RCRA is amended to broaden the meaning of any term defined thereby, the broader meaning shall apply to this provision after the effective date of the amendment. Moreover, to the extent that Oregon law establishes a meaning for "hazardous substance", "release", "solid waste", or "disposal" that is broader than that specified in either CERCLA or RCRA, the broader meaning shall apply.

Grantor agrees to give prompt written notices to Beneficiary of: (i) any proceeding or inquiry by any governmental or nongovernmental entity or person with respect to the presence of any hazardous substance on, in, under, from or about the Mortgaged Property, the migration thereof from or to other property, the disposal, storage, or treatment of any hazardous substance generated or used on, under or about the Mortgaged Property, (ii) all claims made or threatened by any third party against Grantor or the Mortgaged Property or any other owner or operator of the Mortgaged Property relating to any loss or injury resulting from any hazardous substance, and (iii) Grantor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be subject to any investigation or cleanup of the Mortgaged Property pursuant to any Environmental Law. Grantor shall permit Beneficiary to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Mortgaged Property in connection with any Environmental Law or hazardous substance, and Grantor shall pay all reasonable attorneys' fees incurred by Beneficiary in connection therewith. If any remedial work is required by Environmental Law or is reasonably necessary in the opinion of Beneficiary, Grantor shall commence and thereafter diligently prosecute to completion all such remedial work within thirty (30) days after written demand by Beneficiary for performance thereof (or such shorter period of time as may be required under any Environmental Law). All remedial work shall comply with Environmental Laws after consultation and approval by the governing authority under the Environmental Law. Remedial work shall be performed by contractors approved in advance by Beneficiary, and under the supervision of a consulting engineer approved by Beneficiary. All costs and expenses of such remedial work shall be paid by Grantor

including, without limitation, Beneficiary's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such remedial work. If Grantor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such remedial work, Beneficiary may, but shall not be required to, cause such remedial work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall become part of the Indebtedness.

Beneficiary (through its officers, employees and agents) at any reasonable time and from time to time, either prior to or after an Event of Default in this Deed of Trust or under the Note secured hereby, may employ persons (the "Site Reviewers") to conduct environmental site assessments ("Site Assessments") on the Mortgaged Property to determine whether or not there exists on the Mortgaged Property any environmental condition which might result in any liability, cost or expense to the owner, occupier or operator of the Mortgaged Property arising under the Environmental Laws. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Beneficiary (so as not to unreasonably interfere with the operation of the Property). The Site Reviewers are authorized at their own risk to enter upon the Mortgaged Property and to perform above and below-the-ground testing (including, without limitation, taking of core samples) to determine environmental damage or presence of any hazardous substance or solid waste in, on or under the Mortgaged Property and such other tests as may be necessary or desirable, in the opinion of the Site Reviewers, to conduct Site Assessments. Grantor will supply to the Site Reviewers such historical and operational information available to Grantor regarding the Mortgaged Property as may be requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. The cost of performing such Site Assessments will be paid by Grantor upon demand of Beneficiary, which, if not paid, will be added to the indebtedness secured by this Deed of Trust.

GRANTOR SHALL INDEMNIFY, DEFEND (WITH COUNSEL SELECTED BY BENEFICIARY) AND HOLD BENEFICIARY, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND ATTORNEYS AND ALL PARTIES ACTING ON BEHALF OF BENEFICIARY (THE "INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST, AND REIMBURSE INDEMNIFIED PARTIES WITH RESPECT TO, ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LOSS, DAMAGE, LIABILITIES, COSTS, AND EXPENSES (INCLUDING ATTORNEY'S FEES AND COURT COSTS) OF EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, FIXED OR CONTINGENT, ASSERTED AGAINST OR INCURRED BY INDEMNIFIED PARTY AT ANY TIME AND FROM TIME TO TIME BY REASON OF OR ARISING OUT OF ANY VIOLATION OF AN APPLICABLE ENVIRONMENTAL LAW AND ALL MATTERS ARISING OUT OF ACTS, OMISSIONS, EVENTS, OR CIRCUMSTANCES RELATING TO THE PROPERTY, GRANTOR OR GRANTOR'S BUSINESS (INCLUDING, WITHOUT LIMITATION, THE PRESENCE ON THE PROPERTY OR RELEASE FROM OR TO THE PROPERTY OF HAZARDOUS SUBSTANCES OR SOLID WASTES DISPOSED OF OR OTHERWISE RELEASED AND GRANTOR'S BREACH OF ANY OF ITS COVENANTS, REPRESENTATIONS OR INDEMNITIES UNDER THIS PROVISION), REGARDLESS OF WHETHER THE ACT, OMISSION, EVENT, OR CIRCUMSTANCE CONSTITUTED A VIOLATION OF ANY APPLICABLE ENVIRONMENTAL LAW AT THE TIME OF THE EXISTENCE OR OCCURRENCE. THE REPRESENTATIONS, COVENANTS,

WARRANTIES AND INDEMNIFICATIONS HEREIN CONTAINED SHALL SURVIVE THE RELEASE AND/OR JUDICIAL OR NON-JUDICIAL FORECLOSURE (OR TRANSFER IN LIEU THEREOF) OF THE LIEN OF THIS DEED OF TRUST.

Section 6.12. Maximum Interest. It is expressly stipulated and agreed to be the intent of Grantor and Beneficiary at all times to comply strictly with the applicable Oregon law governing the maximum rate or 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 Oregon law). In no event shall interest contracted for, charged or received on the Note or the Related Indebtedness, plus any other charges in connection therewith which constitute interest, exceed the maximum interest permitted by applicable law. If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to the Note, any of the other Loan Documents or any other communication or writing by or between Grantor and Beneficiary related to the transaction or transactions that are the subject matter of the Loan Documents, (ii) contracted for, charged or received by reason of Beneficiary's exercise of the option to accelerate the maturity of the Note and/or the Related Indebtedness, or (iii) Grantor will have paid or Beneficiary will have received by reason of any voluntary prepayment by Grantor of the Note and/or the Related Indebtedness, then it is Grantor's and Beneficiary's express intent that all amounts charged in excess of the Maximum Lawful Rate shall be automatically canceled, *ab initio*, and all amounts in excess of the Maximum Lawful Rate theretofore 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 Grantor), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if the Note has been paid in full before the end of the stated term of the Note, then Grantor and Beneficiary agree that Beneficiary shall, with reasonable promptness after Beneficiary discovers or is advised by Grantor that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to Grantor and/or credit such excess interest against the Note and/or any Related Indebtedness then owing by Grantor to Beneficiary. Grantor hereby agrees that as a condition precedent to any claim seeking usury penalties against Beneficiary, Grantor will 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 Grantor or crediting such excess interest against the Note and/or the Related Indebtedness then owing by Grantor to Beneficiary. All sums contracted for, charged 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 any and 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 Lawful Rate from time to time in effect and applicable to the Note and/or the Related Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty

accounts) 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.

Section 6.13. Appraisals. Upon written request of Beneficiary, Grantor agrees to reimburse Beneficiary for the full cost of narrative appraisals of the Mortgaged Property, such appraisals being required from time-to-time in Beneficiary's sole discretion to re-evaluate the current value of the Mortgaged Property due to (a) a deterioration of Grantor's revenue from the Mortgaged Property, (b) an increase in Grantor's operating expenses for the Mortgaged Property, or (c) other events which would suggest a deterioration in the value of the Mortgaged Property. Each appraisal shall be ordered directly by Beneficiary from an appraiser satisfactory to Beneficiary and shall be in form and substance necessary to comply with all laws and regulations affecting Beneficiary. Grantor shall reimburse Beneficiary for any requested appraisal expense within thirty (30) days from the date of the written request by Beneficiary. Appraisals may be ordered by Beneficiary at any time in its sole discretion, but Grantor is required to reimburse Beneficiary for only one appraisal in any calendar year. Failure of Grantor to reimburse Beneficiary for any requested appraisal (not to exceed one appraisal in any twelve-month period) shall constitute an Event of Default under this Deed of Trust.

#### **ARTICLE SEVEN: ASSIGNMENT OF RENTS**

Section 7.01. Assignment. For \$10.00 and other good and valuable consideration, including the indebtedness evidenced by the Note, the receipt and sufficiency of which are hereby acknowledged and confessed, Grantor hereby grants unto Beneficiary a first lien security interest in and to the Rents, to provide a source of future payment of the indebtedness evidenced by the Note and the Obligations. However, upon the delivery and recording of a release, satisfaction or discharge of this Deed of Trust duly executed by Beneficiary, this security interest shall terminate. The provisions of this Article shall be in addition to, and not in derogation of, the Assignment of Leases and Rents that is being executed and delivered in connection with the Loan.

Section 7.02. Receipt of Rents. Neither this grant nor the receipt of Rents by Beneficiary (except to the extent, if any, that Beneficiary actually receives Rents pursuant to its foreclosure on the security interest hereby granted therein and applies such Rents to the indebtedness) shall effect a pro tanto payment of the indebtedness. If and upon Beneficiary's foreclosure on the security interest hereby granted therein, Rents actually received by Beneficiary shall be applied by Beneficiary as provided in Section 7.03 below. Beneficiary shall not be deemed to have received Rents or to have applied Rents to the Indebtedness until the money is actually received by Beneficiary at its principal office in Austin, Texas, or at such other place as Beneficiary shall designate in writing. Beneficiary shall not apply Rents to the indebtedness after foreclosure or any other transfer of all or any part of the Mortgaged Property to Beneficiary or any other third party.

Section 7.03. Collection and Application of Rents. Rents received by Beneficiary for any period prior to foreclosure under this Deed of Trust or acceptance of a deed in lieu of

foreclosure shall be applied by Beneficiary to the payment of the following (in the order and priority as Beneficiary determines): (a) all operating expenses; (b) all expenses incident to taking and retaining possession of the Mortgaged Property and/or collecting Rent as it becomes due and payable; and (c) the Indebtedness. The Indebtedness will not be reduced under this Section 7.03 except to the extent, if any, that Beneficiary actually receives and applies any Rents to the Indebtedness in accordance with the preceding sentence. Without impairing its rights hereunder, Beneficiary may, at its option, at any time and from time to time, release to Grantor any Rents so received by Beneficiary. At any time during which Grantor is receiving Rents directly from any of the Lessees under the Leases, Grantor shall, upon receipt of written direction from Beneficiary, make demand and sue for all Rents due and payable under any Leases, as directed by Beneficiary, as it becomes due and payable, including Rents which are past due and unpaid. If Grantor fails to take such action, or at any time during which Grantor is not receiving Rents directly from Lessees under the Leases, Beneficiary shall have the right (but shall be under no duty) to demand, collect and sue for, in its own name or in the name of Grantor, all Rents due and payable under the Leases, as it becomes due and payable, including Rents which are past due and unpaid.

Section 7.04. Beneficiary Not Responsible. Under no circumstances shall Beneficiary have any duty to produce Rents from the Property. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Premises and Improvements, unless Beneficiary agrees in writing to the contrary, Beneficiary is not and shall not be deemed to be.

- (a) A "Beneficiary in possession" for any purpose; or
- (b) Responsible for performing any of the obligations of the lessor under any lease; or
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Mortgaged Property, or any negligence in the management, upkeep, repair or control of the Mortgaged Property; or
- (d) Liable in any manner for the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any part of it.

Section 7.05. This Section 7.05 has been intentionally omitted.

Section 7.06. Warranties Concerning Leases and Rents. Grantor represents and warrants that:

- (a) Grantor has good title to the Leases and Rents and authority to assign them, and no other person or entity has any right, title or interest therein;
- (b) All existing Leases are valid, unmodified and in full force and effect, except as indicated herein, and no default exists thereunder;
- (c) Unless otherwise provided herein, no Rents have been or will be assigned, mortgaged or pledged;

(d) No Rents have been or will be anticipated, waived, released, discounted, set off or compromised;

(e) Except as indicated in the Leases, Grantor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents; and

(f) All Leases shall specify U.S. addresses for notice to Lessees, and prohibit prepayment of Rent more than one month in advance and contain waivers.

Section 7.07. Grantor's Covenants of Performance. Grantor covenants to:

(a) Perform all of its obligations under the Leases and give prompt notice to Beneficiary of any failure to do so;

(b) Give immediate notice to Beneficiary of any notice Grantor receives from any Lessee or subtenant under any Leases, specifying any claimed default by any party under such Leases, excluding, however, notices of default under residential leases;

(c) Enforce the Lessees' obligations under the Leases;

(d) Defend, at Grantor's expense, any proceeding pertaining to the Leases, including, if Beneficiary so requests, any such proceeding to which Beneficiary is a party;

(e) Neither create nor permit any encumbrance upon its interest as lessor of the Leases, except this Deed of Trust and any other encumbrances permitted by this Deed of Trust; and

(f) This subsection (f) has been intentionally omitted.

Section 7.08. Prior Approval for Actions Affecting Leases. Grantor shall not, without the written consent of Beneficiary:

(a) Receive or collect Rents more than one month in advance;

(b) Encumber or assign future Rents;

(c) Waive or release any material obligation of any Lessee under the Leases;

(d) Cancel, terminate or modify any of the Leases; cause or permit any cancellation, termination or surrender of any of the Leases; or commence any proceedings for dispossession of any Lessee under any of the Leases, except upon default by the Lessee thereunder;

(e) Renew or extend any of the Leases, except pursuant to terms in existing Leases;

(f) Permit any assignment of the Leases; or

(g) Enter into any Leases after the date hereof.

## **ARTICLE EIGHT: SECURITY AGREEMENT**

Section 8.01. 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, and shall constitute until the grant of this Deed of Trust shall terminate as provided in Article II hereof, a first and prior security interest under the Code as to property within the scope thereof and in the state where the Mortgaged Property is located with respect to the Personalty, Fixtures, Contracts, Construction Contracts, Leases, Accounts (as defined in the Loan Agreement), Chattel Paper (as defined in the Loan Agreement), Deposit Account (as defined in the Loan Agreement), Documents (as defined in the Loan Agreement), Equipment, General Intangibles (as defined in the Loan Agreement), Goods (as defined in the Loan Agreement), Instruments (as defined in the Loan Agreement), and Inventory (as defined in the Loan Agreement). To this end, Grantor GRANTS to, has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED, and SET OVER, and by these presents does GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET 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, Construction Contracts, Leases, Accounts, Chattel Paper, Deposit Account, Documents, Equipment, General Intangibles, Goods, Instruments, and Inventory 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" which are included within the Code be covered by the security interest granted in this Article VIII; and all items contained in the definition of "Leases" which are excluded from the Code be covered by the provisions of Article III hereof.

Section 8.02. Financing Statements. Grantor hereby agrees with Beneficiary to 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 so create, perfect, and preserve such security interest.

Section 8.03. No Changes. Grantor will 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 in each instance giving prompt notice to Beneficiary regarding such change; provided, however, Grantor must execute and deliver any additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect the Beneficiary's security interest in the Mortgaged Property as a result of such changes.

Section 8.04. Construction Mortgage and Fixture Filing. This Deed of Trust secures future advances to be used for construction of improvements on the Land pursuant to the Loan Agreement. Accordingly, this Deed of Trust constitutes a "construction mortgage" under the Code. This Deed of Trust shall also constitute a "fixture filing" for the purposes of the Code.



All or part of the Mortgaged Property are or are to become fixtures; information concerning the security interest herein granted may be obtained from either party at the address of such party set forth herein. For purposes of the security interest herein granted, the address of debtor (Grantor) is set forth in the first paragraph of this Deed of Trust and the address of the secured party (Beneficiary) is set forth in Article I hereof.

#### **ARTICLE NINE: CONCERNING THE TRUSTEE**

Section 9.01. No Required Action. Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created 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 so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or 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 in respect thereof or in respect of the rights, remedies, and recourses of Beneficiary.

Section 9.02. Certain Rights. With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Mortgaged Property for debts contracted for or liability or damages incurred in the management or operation of the Mortgaged Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Grantor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

Section 9.03. Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

Section 9.04. Successor Trustees. Trustee may resign by the giving of notice of such resignation in writing or verbally to Beneficiary. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary shall prefer to appoint a substitute Trustee or multiple substitute Trustees, or successive substitute Trustees or successive multiple substitute Trustees, to act instead of the aforementioned Trustee, Beneficiary shall have full power to appoint a substitute Trustee (or, if preferred, multiple substitute Trustees) in succession who shall succeed (and if multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall succeed) to all the estates, rights, powers, and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Grantor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or Trustee's successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute Trustees, whenever any action or undertaking of such substitute Trustees is requested or required under or pursuant to this Deed of Trust or applicable law.

Section 9.05. Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.

Section 9.06. Succession Instruments. Any substitute Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute Trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in the Trustee's place.

Section 9.07. 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.

## **ARTICLE TEN: MISCELLANEOUS**

Section 10.01. Release. If the Indebtedness is paid in full in accordance with the terms of this Deed of Trust, the Note, and the other Loan Documents, and if Grantor shall well and truly perform each and every of the Obligations to be performed and discharged in accordance with the terms of this Deed of Trust, the Note and the other Loan Documents, then this conveyance shall become null and void and be released at Grantor's request and expense, and Beneficiary shall have no further obligation to make advances under and pursuant to the provisions hereof or in the other Loan Documents.

Section 10.02. Performance at Grantor's Expense. Grantor shall (i) 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); (ii) reimburse Beneficiary, promptly upon demand, for all amounts expended, advanced, or incurred by Beneficiary to satisfy any obligation of Grantor under the Loan Documents, which amounts shall include (without limitation) all court costs, attorneys' fees (including, without limitation, 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 (iii) reimburse Beneficiary for any and all other costs and expenses of performing or complying with any and all of the Obligations. Except to the extent that costs and expenses are included within the definition of "Indebtedness," the payment of such costs and expenses shall not be credited, in any way and to any extent, against any installment on or portion of the Indebtedness.

Section 10.03. Survival of Obligations. Each and all of 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 shall have been paid in full; provided, however, that nothing contained in this Section shall limit the obligations of Grantor as otherwise set forth herein.

Section 10.04. Recording and Filing. Grantor will cause the Loan Documents requested by Beneficiary and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded, and refiled in such manner and in such places as Trustee or Beneficiary shall reasonably request, and will pay all such recording, filing, re-recording and refiling taxes, documentary stamp taxes, fees, and other charges.

Section 10.05. Notices. All notices or other communications required or permitted to be given pursuant to this Deed of Trust shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall

be effective on the earlier of its receipt by the addressee or the second (2nd) business day after its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon the earlier of its receipt by the addressee or the first (1st) business day after its delivery to such commercial delivery service; and notice given by personal delivery shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be as set forth herein; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth herein.

Section 10.06. 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.

Section 10.07. Successors and Assigns. Subject to the provisions of Sections 6.1(h) and 6.1(i) of the Loan Agreement, 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.

Section 10.08. 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 any and all of such terms, provisions, and conditions. 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.

Section 10.09. 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.

Section 10.10. Governing Law. This Deed of Trust is executed and delivered as an incident to a lending transaction negotiated and consummated in Travis County, Texas, and shall be governed by and construed in accordance with the laws of the State of Oregon. Grantor, for itself and its successors and assigns, hereby irrevocably (i) submits to the nonexclusive jurisdiction of the state and federal courts in Texas, (ii) waives, to the fullest extent permitted by law, any objection that it may now or in the future have to the laying of venue of any litigation arising out of or in connection with any Loan Document brought in the District Court of Travis County, Texas, or in the United States District Court for the Western District of Texas, Austin Division, (iii) waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum, and (iv) agrees that any legal proceeding against any party to any Loan Document arising out of or in connection with any of the Loan Documents may be brought in one of the foregoing courts. Grantor agrees that service of process upon it may be made by certified or registered mail, return receipt requested, at its address specified herein. Nothing herein shall affect the right of Beneficiary to serve process in any other manner permitted by law or shall limit the right of Beneficiary to bring any action or proceeding against Grantor or with respect to any of Grantor's property in courts in other jurisdictions. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Grantor acknowledges that these waivers are a material inducement to Beneficiary's agreement to enter into agreements and obligations evidenced by the Loan Documents, that Beneficiary has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in this section are irrevocable, meaning that they may not be modified either orally or in writing, and these waivers apply to any future renewals, extensions, amendments, modifications, or replacements in respect of the applicable Loan Document. In connection with any litigation, this Deed of Trust may be filed as a written consent to a trial by the court.

Section 10.11. Loan Agreement. Reference is hereby made for all purposes to the Loan Agreement of even date herewith between Beneficiary and Grantor pertaining to the construction of Improvements on the Land, and the funding of the principal amount of the Note. In the event of a conflict between the terms and provisions of this Deed of Trust and the Loan Agreement, the Loan Agreement shall govern. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same.

Section 10.12. Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property, then, to the extent of such funds so used, Beneficiary shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Mortgaged Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Beneficiary and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and the performance and discharge of the Obligations.

Section 10.13. Rights Cumulative. Beneficiary shall have all rights, remedies, and recourses granted in the Loan Documents and available at law or in equity (including, without limitation, those granted by the Code and applicable to the Mortgaged Property or any portion thereof), and the same (i) shall be cumulative and concurrent, (ii) may be pursued separately, successively, or concurrently against Grantor or others obligated for the Indebtedness or any part thereof, or against any one or more of them, or against the Mortgaged Property, at the sole discretion of Beneficiary, (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Grantor that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (iv) are intended to be, and shall be, nonexclusive. All rights and remedies of Beneficiary hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise, with respect to the Mortgaged Property.

Section 10.14. Payments. Remittances in payment of any part of the Indebtedness other than in the required amount in funds immediately available 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 funds immediately available at the place where the Note is payable (or such other place as Beneficiary, in Beneficiary's sole discretion, may have 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.

Section 10.15. Exceptions to Covenants. Grantor shall not be deemed to be permitted to take any action or to fail to take any action with respect 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.

Section 10.16. Reliance. Grantor recognizes and acknowledges that in entering into the loan transaction evidenced by the Loan Documents and accepting this Deed of Trust, Beneficiary is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in in this Deed of Trust without any obligation to investigate the Mortgaged Property and notwithstanding any investigation of the Mortgaged Property by Beneficiary; that such reliance exists on the part of Beneficiary prior hereto; that such warranties and representations are a material inducement to Beneficiary in making the loan evidenced by the Loan Documents and the acceptance of this Deed of Trust; and 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.

Section 10.17. Change of Security. Any part of the Mortgaged Property may be released, regardless of consideration, by Beneficiary from time to time without impairing, subordinating, or affecting in any way the lien, security interest, and other rights hereof against the remainder. The lien, security interest, and other rights granted hereby shall not be affected by any other security taken for the Indebtedness or Obligations, or any part thereof. 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 hereby, or affect the liability of any endorser or guarantor or improve the right of any junior lienholder; and 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 fully paid and the Obligations are fully performed and discharged.

Section 10.18. Headings. The Article, Section, and Subsection entitlements hereof 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 Articles, Sections, or Subsections.

Section 10.19. Entire Agreement; Amendment. THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO. The provisions hereof and the other Loan Documents may be amended or waived only by an instrument in writing signed by Grantor and Beneficiary. **UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY LENDER CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF LENDER TO BE ENFORCEABLE.**

Section 10.20. **WAIVER OF RIGHT TO TRIAL BY JURY**. GRANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY BENEFICIARY IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS.

Section 10.21. Counting of Days. The term "days" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Land is located (whether legal or religious in nature), 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 Austin, Texas are authorized by law to be closed.

Section 10.22. 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.

Section 10.23. Waiver of Automatic or Supplemental Stay. In the event of the filing of any voluntary or involuntary petition under the Bankruptcy Code by or against Grantor (other than an involuntary petition filed by or joined in by Beneficiary), the Grantor shall not assert, or request any other party to assert, that the automatic stay under § 362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Beneficiary to enforce any rights it has by virtue of this Deed of Trust, or any other rights that Beneficiary has, whether now or hereafter acquired, against any guarantor of the Indebtedness. Further, Grantor shall not seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to § 105 of the Bankruptcy Code or any other provision therein to stay, interdict, condition, reduce or inhibit the ability of Beneficiary to enforce any rights it has by virtue of this Deed of Trust against any guarantor of the Indebtedness. The waivers contained in this Section are a material inducement to Beneficiary's willingness to enter into the Loan Documents and Grantor acknowledges and agrees that no grounds exist for equitable relief which would bar, delay or impede the exercise by Beneficiary of Beneficiary's rights and remedies against Grantor or any guarantor of the Indebtedness.

This Section 10.24 has been intentionally omitted.

Section 10.24. Cross-Collateralization. This Deed of Trust shall also secure the indebtedness evidenced by those certain Promissory Notes as more particularly described on Exhibit "C" hereto in the amounts listed therein (each an "Additional Note"; together, the "Additional Notes"), which Additional Notes are secured by, among other things, those particular mortgages, deeds of trust and other security instruments more particularly described on Exhibit "C" hereto (each an "Additional Mortgage"; together, the "Additional Mortgages"), covering certain real property described therein (each an "Additional Mortgaged Property"; together, the "Additional Mortgaged Properties"), provided that upon payment in full of all indebtedness evidenced by an Additional Note that Additional Note and the associated Additional Mortgaged Property shall be released from the provisions of this Section 10.25. Grantor acknowledges that its agreement that the Mortgaged Property shall serve as collateral for the Additional Notes is in partial consideration for, and as a condition to, Beneficiary making the Loan and that Grantor would not have received the Loan without the provisions of this Section 10.25.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2



TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

*[Remainder of this Page Intentionally Left Blank]*

EXECUTED as of the date first above written.

**NOTICE OF INDEMNIFICATION:**  
**GRANTOR HEREBY**  
**ACKNOWLEDGES AND AGREES**  
**THAT THIS DEED OF TRUST**  
**CONTAINS CERTAIN**  
**INDEMNIFICATION**  
**PROVISIONS (INCLUDING,**  
**WITHOUT LIMITATION, THOSE**  
**CONTAINED IN**  
**SECTIONS 5.01(b), 6.04 and 6.11**  
**HEREOF) THAT, IN CERTAIN**  
**CIRCUMSTANCES, INCLUDE AN**  
**INDEMNIFICATION BY**  
**GRANTOR OF BENEFICIARY**  
**FROM CLAIMS OR LOSSES**  
**ARISING AS A RESULT OF**  
**BENEFICIARY'S OWN**  
**NEGLIGENCE.**

**GRANTOR:**  
**CD DG KLAMATH FALLS SOUTH, LLC,**  
a Texas limited liability company

By:   
Steve Rumsey, President

STATE OF TEXAS §  
COUNTY OF Denton §

The foregoing instrument was ACKNOWLEDGED before me this 19th day of March, 2018, by Steve Rumsey, the President of CD DG KLAMATH FALLS SOUTH, LLC, a Texas limited liability company, on behalf of said limited liability company.

[S E A L]

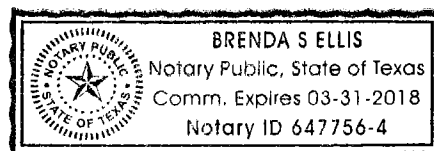
My Commission Expires:

3/31/2018

List of Attachments:  
Exhibit "A" - Land Description  
Exhibit "B" - Permitted Exceptions  
Exhibit "C" - Key Terms

Brenda S. Ellis  
Notary Public, State of Texas

Brenda S. Ellis  
Printed Name of Notary Public



## **EXHIBIT "A"**

### **Land Description**

Parcel I of Land Partition 35-17, being a partition of the lands shown on Survey No. 1939 and as described in Bargain and Sale Deed M05-6717 Recorded in the Klamath County Clerk's Office situated in the Southeast Quarter of Section 7, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon and Recorded April 19, 2018 as document No. 2018-004755, official Records of Klamath County, Oregon.

**EXHIBIT "B"**

Permitted Exceptions

[ATTACHED]

### **PERMITTED EXCEPTIONS**

1. An easement to The California Oregon Power Company, a California corporation recorded March 20, 1926 in Volume 69, Page 385.
2. Limited access provisions contained in Deed to the State of Oregon recorded February 21, 1968 as M68 Page 1861, as modified by instrument recorded December 30, 1968 as M68 Page 21192.

## EXHIBIT "C"

### Key Terms

1. Beneficiary: **PSL AUSTIN LENDING LLC**, a Texas limited liability company, whose address for notice hereunder is 100 Congress Avenue, Suite 1550, Austin, Texas 78701, Attention: Brian Barrow, and the subsequent holder or holders, from time to time, of the Note.
2. Effective Date: May 24, 2018.
3. Existing Credit Facilities: Not applicable to this Loan.
4. Guarantor: As the context dictates, any Person(s) (other than Borrower), jointly and severally, who shall, at any time, guarantee, or otherwise be or become obligated to complete the Improvements pursuant to any guarantee, including without limitation, Cross Development, LLC, a Texas limited liability company, Jordan Amyx, an individual, and Casey B. Shires, an individual.
5. Leases: Any and all leases, including without limitation that certain Lease Agreement dated April 21, 2017, by and between Grantor, as landlord, and DG Retail, LLC, as tenant, as guaranteed by that certain Guaranty executed on April 21, 2017 by Dollar General Corporation, as guarantor, master leases, subleases, licenses, concessions, or other agreements (whether written or oral, or now or hereafter in effect) which grant to third parties a possessory interest in and to, or the right to use or occupy, all or any part of the Mortgaged Property, together with all security and other deposits or payments made in connection therewith.
6. Lessee: Any and all tenants to the Leases, including without limitation DG Retail, LLC, master leases, subleases, licenses, concessions, or other agreements (whether written or oral, or now or hereafter in effect) which grant to tenants a possessory interest in and to, or the right to use or occupy, all or any part of the Mortgaged Property, together with all security and other deposits or payments made in connection therewith.
7. Note Amount: \$1,792,000.00.