

AMOUNT 24635600-10

RECORDING COVER PAGE

PER ORS205.234

PLEASE FILL OUT
COMPLETE AND LEGIBLE

2018-012139

Klamath County, Oregon

10/03/2018 02:29:01 PM

Fee: \$257.00

THIS COVER PAGE HAS BEEN PREPARED BY THE PERSON
PRESENTING THE ATTACHED INSTRUMENT FOR RECORDING.
ANY ERRORS IN THIS COVER PAGE **DO NOT** AFFECT THE
TRANSACTION(S) CONTAINED IN THE INSTRUMENT ITSELF.

AFTER RECORDING RETURN TO:

NAME AND ADDRESS OF THE PERSON AUTHORIZED TO RECEIVE THE
INSTRUMENT AFTER RECORDING AS REQUIRED BY ORS 205.180(4)
AND ORS 205.238.

Newtek Small Business Finance, Inc.

1981 Marcus Avenue, Suite 130

Lake Success, NY 11042

Attn: Closing Department

1. NAME OF THE TRANSACTION (S), DESCRIBED IN THE ATTACHED INSTRUMENT(S) AND REQUIRED BY ORS 205.234(A).

NOTE: Transaction as defined by ORS 205.010 "means any action required or permitted by state law or rule federal law or regulation to be recorded including, but not limited to, any transfer encumbrance or release affecting title to or an interest in real property".

Deed of Trust

2. Grantor/Direct (s) as described in ORS 205.160.

Throop Family Holdings, Inc.

3. Grantee/Indirect (s) as described in ORS 205.160.

Newtek Small Business Finance, LLC

4. TRUE AND ACTUAL CONSIDERATION PAID for instruments conveying or contracting to convey fee title to any real estate and all memoranda of such instruments, reference ORS 93.030.

N/A

5. UNTIL A CHANGE IS REQUESTED, All Tax Statements shall be sent to the following name and address: for instruments conveying or contracting to convey fee title to any real estate reference ORS 93.260

N/A

6. SATISFACTION OF ORDER OR WARRANT ORS 205.234 (1) (f).

FULL PARTIAL

7. LIEN DOCUMENTS: ORS 205.234 (1) (f). Amount of Lien \$ 2,575,000.00

Effective 09/07/2012

Amending 246356am-TO

RECORDING COVER PAGE

PER ORS205.234

PLEASE FILL OUT
COMPLETE AND LEGAL

Jackson County Official Records **2018-030872**
R-TD
Stn=10 SHINGLJS 10/03/2018 01:43:05 PM
\$175.00 \$10.00 \$5.00 \$8.00 \$11.00 \$273.00
\$60.00 \$4.00
I, Christine Walker, County Clerk for Jackson County, Oregon, certify
that the instrument identified herein was recorded in the Clerk
records.
Christine Walker - County Clerk

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AND ORS 205.238.

Newtek Small Business Finance, Inc.
1981 Marcus Avenue, Suite 130
Lake Success, NY 11042
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FULL _____ PARTIAL _____

7. LIEN DOCUMENTS: ORS 205.234 (1) (f). Amount of Lien \$ 2,575,000.00

NSBF / RID No.: 135679 / 756509
SBA Loan No.: PLP 29431570-09

NSBF#: 135679

RID#: 756509

SBA LOAN #: PLP 29431570-09

TRUSTOR: Throop Family Holdings, Inc.

LENDER: NEWTEK SMALL BUSINESS FINANCE, LLC

STATE OF: Oregon

COUNTY OF: Jackson (Parcel 1)
Klamath (Parcel 2)

STREET ADDRESS: 7072 Highway 62, Eagle Point, OR 97524 (Parcel 1)
2825 Broadmore Street, Klamath Falls, OR 97603 (Parcel 2)

DEED OF TRUST

After Recording Return To:
Newtek Small Business Finance, Inc.
1981 Marcus Avenue, Suite 130
Lake Success, NY 11042
Attn: Closing Department

Property encumbered: 7072 Highway 62, Eagle Point, OR 97524 (Parcel 1) and 2825 Broadmore Street, Klamath Falls, OR 97603 (Parcel 2) [as more fully described in Schedule "A," hereto]

This instrument was prepared by: Tania Parker, attorney-at-law, for Newtek Small Business Finance, LLC, 1981 Marcus Avenue, Suite 130, Lake Success, NY 11042

The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

(a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

(b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan.

Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

NSBF / RID LOAN # 135679 / 756509

SBA LOAN # PLP 29431570-09

DEED OF TRUST

THIS DEED OF TRUST made and entered into this 28th day of September, 2018, by and between **Throop Family Holdings, Inc.**, an Oregon corporation maintaining principal places of business at 7072 Highway 62, Eagle Point, OR 97524 and 2825 Broadmore Street, Klamath Falls, OR 97603 ("Trustor"), **AmeriTitle, Inc.**, with an address at 1501 E. McAndrews Road, Medford, OR 97504 ("Trustee"), and **Newtek Small Business Finance, LLC**, a New York limited liability company maintaining an address at 1981 Marcus Avenue, Suite 130, Lake Success, NY 11042 (the "Lender").

WHEREAS, the Trustor is the fee owner of the real property described on Schedule A attached hereto and made a part hereof known as 7072 Highway 62, Eagle Point, OR 97524 (Parcel 1) and 2825 Broadmore Street, Klamath Falls, OR 97603 (Parcel 2) (the "Premises"); and

WHEREAS, the Trustor is the recipient of a loan made this date in the principal sum of **TWO MILLION FIVE HUNDRED SEVENTY-FIVE THOUSAND AND 00/100 (\$2,575,000.00) DOLLARS** with

interest thereon, computed from the date hereof, as evidenced by that certain promissory note of even date herewith (the "Note") made by the Trustor to the Lender; and

WHEREAS, as security for the Note, the Trustor hereby grants to the Lender a lien covering the Premises.

DEFINITIONS

(A) "Security Instrument" means this document, which is dated September 28, 2018, together with all Riders to this document.

(B) "Borrower" is Throop Family Holdings, Inc., an Oregon corporation maintaining principal places of business at 7072 Highway 62, Eagle Point, OR 97524 and 2825 Broadmore Street, Klamath Falls, OR 97603.

(C) "Trustor" is Throop Family Holdings, Inc., an Oregon corporation maintaining principal places of business at 7072 Highway 62, Eagle Point, OR 97524 and 2825 Broadmore Street, Klamath Falls, OR 97603.

(D) "Lender" is Newtek Small Business Finance, LLC. Lender is a limited liability company organized and existing under the laws of New York. Lender's address is 1981 Marcus Avenue, Suite 130, Lake Success, NY 11042. Lender is the beneficiary under this Security Instrument.

(E) "Trustee" is AmeriTitle, Inc., with an address at 1501 E. McAndrews Road, Medford, OR 97504

(F) "Note" means the promissory note signed by Borrower and dated September 28, 2018. The Note states that Borrower owes Lender Two Million Five Hundred Seventy-Five Thousand and 00/100 (\$2,575,000.00) Dollars plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than twenty-five (25) years. Trustor acknowledges that it is deriving a direct benefit from the loan to Borrower from Lender and that Lender would not make the loan to Borrower without Trustor pledging the Property pursuant to this Deed of Trust.

(G) "Premises" means the real property that is described in Schedule A.

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

NOW THEREFORE, to secure the payment in full of the indebtedness evidenced by the Note, including without limitation, principal, interest, late charges, prepayment premiums and all other fees, charges and sums which may or shall become due under the Note and this and the performance of all the provisions hereof and of the Note and any renewals, extensions, modifications or replacements thereof, (collectively, all such obligations are hereinafter referred to as the "Debt"), Trustor has mortgaged, given, granted, bargained, sold, aliened, conveyed, confirmed and assigned, and by these presents does mortgage, give, grant, bargain, sell, alien, convey, confirm and assign unto Lender forever all right, title and interest of Trustor now owned, or hereafter acquired, in and to the following property, rights and interests (such property, rights and interests being hereinafter collectively referred to as the "Encumbered Property"):

- (a) the Premises;
- (b) all buildings and other structures and improvements now or hereafter located on the Premises (the "Improvements");
- (c) all of the estate, right, title, claim or demand of any nature whatsoever of Trustor, either in law or in equity, in possession or expectancy, in and to the Premises and Improvements or any part thereof;
- (d) all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, and appurtenances, revision or revisions, remainder or remainders of any nature whatsoever, in any way belonging, relating or pertaining to the Premises (including, without limitation, any and all development rights, air rights or similar or comparable rights of any nature whatsoever now or hereafter appurtenant to the Premises or now or hereafter transferred to the Premises) and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises to the center line thereof;
- (e) all machinery, equipment, fittings, furniture, fixtures and other property of every kind and nature whatsoever and all additions thereto and renewals and replacements thereof, and all substitutions therefor now owned or hereafter acquired by Trustor, or in which Trustor has or shall have an interest, now or hereafter located upon or in, or attached to, any portion of the Premises and Improvements, or appurtenances thereto, and used or usable in connection with the present or future operation and occupancy of the Premises and Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Trustor, or in which Trustor has or shall have an interest, now or hereafter located upon the Premises and Improvements (collectively, the "Equipment") (other than fixtures, equipment, machinery or other property of tenants under any lease of or rental agreement for space in the Premises and Improvements), including the interest of Trustor in all of the aforesaid which are subject to lease

agreements or other service contracts (but excluding the interest of the lessor or owner of such items), and including all extensions, additions, improvements, betterments, after-acquired property, renewals, replacements and substitutions, or proceeds from a sale of any of the foregoing, and the right, title and interest of Trustor in and to any of the Equipment which may be subject to any security agreements (as defined in the Uniform Commercial Code of the State in which the Premises and Improvements is located; the "Uniform Commercial Code"), superior in lien to the lien of this Deed of Trust and all proceeds and products of any of the above, and all inventory, accounts, chattel paper, documents, equipment, fixtures, farm products, consumer goods and general intangibles constituting proceeds acquired with cash proceeds of any of the property described hereinabove, all of which are hereby declared and shall be deemed to be fixtures and accessions to, and a part of, the Premises and Improvements as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Deed of Trust;

(f) all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Premises, Improvements and Equipment, whether from the exercise of the right of eminent domain (including any transfer made in lieu of the exercise of said right), for a change in grade or for any other injury to or decrease in the value of the Premises and Improvements and the reasonable attorneys' fees, costs and disbursements incurred by Lender in connection with the collection of such award or payment;

(g) the interest of the owner of the Encumbered Property in and to all leases and other agreements affecting the use or occupancy of the Premises and Improvements or any part thereof now or hereafter entered into (including any such agreements entered into after filing by or against Trustor of a petition for relief under 11 U.S.C §101 et seq. (the "Bankruptcy Code", as the same may be amended from time to time) (the "Leases") and absolutely and presently the right to receive and apply the income, rents, issues, cash collateral, revenues, royalties, benefits and profits of the Premises and Improvements from time to time accruing, including, without limitation, all payments under Leases or tenancies, proceeds of insurance, additional rents, lease termination fees, tenant security deposits and escrow funds paid or accruing before or after the filing by or against Trustor of a petition for relief under the Bankruptcy Code (the "Rents") to the payment of the Debt; reserving only the right, power and authority given to Trustor as a licensor to collect and apply the same prior to the occurrence of an Event of Default hereunder and so long as the same are not subjected to garnishment, levy, attachment or lien;

(h) all proceeds of and any unearned premiums on any insurance policies covering the Premises and Improvements (whether or not such policies are specifically required hereunder and/or the requirement for such policies had been theretofore waived or deferred by Lender), including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Premises and Improvements;

(i) the right, in the name and on behalf of Trustor, to appear in and defend any action or proceeding brought with respect to the Premises and Improvements and to commence any action or proceeding to protect the interest of Lender in the Premises and Improvements; and

(j) all refunds, rebates or credits in connection with the reduction of Taxes (hereinafter defined) as a result of tax certiorari or any applications or proceedings for deduction;

(k) all trade names, trademarks, service marks, logos, copyrights, goodwill, books and records and other general intangible specifics to or used in connection with the operation of the Encumbered Property; and

(l) all rights and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Premises and Improvements hereinabove mentioned or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor.

TO HAVE AND TO HOLD the above granted and described Premises and Improvements unto and to the proper use and benefit of Lender, and the successors and assigns of Lender, forever.

PROVIDED, HOWEVER, these presents are upon the express condition that, if Trustor shall well and truly pay the Debt to Lender at the time and in the manner provided in the Note and this Deed of Trust and shall well and truly perform all other obligations as set forth herein and each term and condition hereof and in the Note, these presents and the estate hereby granted shall cease, terminate and be void.

AND Trustor covenants and agrees with and represents and warrants to Lender as follows:

ARTICLE I GENERAL PROVISIONS

1.1. Payment of Debt. Trustor shall pay all sums due under the Note and Loan Documents.

1.2. Warranty of Title; Other Representations and Warranties. Trustor represents and warrants to, and covenants with, Lender that:

(a) Trustor is the owner of all right, title and interest in and to the Premises, the Improvements, and the entire Encumbered Property, free and clear of all liens, deeds of trusts and other encumbrances, except for the title exceptions shown in the title insurance policy insuring the lien of this Deed of Trust.

(b) This Deed of Trust is, and shall remain and constitute at all times hereafter, a valid deed of trust lien against the Premises, given by the Trustor herein to Newtek Small Business Finance, LLC.

(c) (i) Trustor is now, and after giving effect to this Deed of Trust, will be in a solvent condition, (ii) there has been no material adverse change in the financial condition of Trustor or any obligor of the Debt since the date of Trustor's application for the loan secured hereby, (iii) Trustor is not in default under any note, loan or security agreement to which it is a party, (iv) the execution and delivery of this Deed of Trust by Trustor does not constitute a "fraudulent conveyance" within the meaning of the Bankruptcy Code as now constituted or under any other applicable statute, (v) no bankruptcy or insolvency proceedings are pending or contemplated by or against Trustor, and (vi) there are no existing, threatened or pending actions or proceedings affecting any portion of the Encumbered Property except for possible negligence actions or proceedings which are fully covered by insurance.

(d) Trustor (and the undersigned representative of Trustor, if any) (i) has full power, authority and legal right to execute this Deed of Trust, and to mortgage, give, grant, bargain, sell, alien, convey, confirm and assign the Encumbered Property pursuant to the terms hereof and to keep and observe all of the terms of this Deed of Trust on Trustor's part to be performed.

(e) In the event that Trustor is not a natural person, then the undersigned representative of Trustor, represents, for and on behalf of Trustor, that (i) Trustor is duly organized, validly existing and in good standing under the laws of its state of organization, (ii) Trustor is duly qualified to transact business and in good standing in the State where the Encumbered Property is located, and (iv) Trustor has all necessary approvals, government and otherwise, and full power and authority to own the Encumbered Property and carry on its business as now conducted or proposed to be conducted.

1.3. Insurance.

(a) Trustor will keep the Improvements and the Equipment insured with (i) "all risks" extended coverage against loss or damage by fire, vandalism, malicious mischief and such other hazards as Lender shall from time to time require, in amounts approved by Lender, which amounts shall in no event be less than 100% of the full replacement cost of the Improvements and the Equipment (without deduction for physical depreciation and exclusive of excavations, footings and foundations, landscaping and paving), with an agreed amount endorsement and replacement cost endorsement and shall be sufficient to meet all applicable co insurance requirements, (ii) boiler, machinery and sprinkler leakage insurance covering physical damage to the Improvements and Equipment and any other major components of any central HVAC system and such other equipment as Lender may require (without exclusion for explosion), (iii) business income insurance sufficient to cover one (1) year's gross receipts from the Encumbered Property from the date of such calamity and loss, (iv) comprehensive public liability insurance, including broad form property damage, blanket contractual and personal injury coverage; (iv) ordinance or law coverage to compensate for the cost of development and increased cost of construction if any portion of the Improvements are non-conforming under applicable law, including broad form property damage, blanket contractual and personal injury coverage; and (v) such other forms of insurance coverage with respect to the Premises and Improvements as Lender shall from time to time require in amounts approved by Lender. During any period of construction, renovation or restoration of the Improvements, Trustor shall maintain "all builder's risk" insurance, in a form acceptable to Lender. If the Premises are improved, and any portion thereof is located in the then applicable 100 year flood plain or in a Federally designated "special flood hazard area", in addition to the other policies of insurance required under this paragraph and/or any other policies of insurance obtained by Trustor, whether or not required hereunder, including, without limitation, any insurance Trustor elects to obtain notwithstanding a prior waiver or deferral of such requirement by Lender (the "Policies"), a flood insurance policy acceptable in all respects to Lender shall be delivered by Trustor to Lender. If no portion of the Premises is located in the then applicable 100 year flood plain or in a Federally designated "special flood hazard area" such fact shall be substantiated by a certificate in form satisfactory to Lender from a licensed surveyor, appraiser or professional engineer or other qualified person satisfactory to Lender in accordance with applicable regulations.

(b) Trustor shall at all times comply with and shall cause the Improvements and Equipment and the use, occupancy, operation, maintenance, alteration, repair and restoration thereof to comply with the terms, conditions, stipulations and requirements of the Policies. All Policies shall be issued by insurers having a minimum policy holders rating of "A" and a financial class of VII or better per the latest rating publication of Property and Casualty Insurers by A.M. Best Company, Inc. and who are lawfully doing business in the State in which the Premises and Improvements are located and are otherwise acceptable in all respects to Lender. All Policies shall, with respect to the Premises and the Improvements, contain the standard Lender non contribution clause endorsement or its equivalent and, with respect to the Equipment, contain a lender's loss payable clause endorsement or an equivalent endorsement. All Policies shall name Lender as the person to which all payments made by the insurer thereunder shall be paid, naming Lender as an additional insured on required liability policies and otherwise in form and substance satisfactory in all respects to Lender. Trustor hereby assigns the proceeds of the Policies to Lender and directs and hereby authorizes each insurance company to make

payment for loss directly to Lender, as its interest may appear. All Policies shall provide that the coverages evidenced thereby shall not be terminated or materially modified without thirty (30) days prior written notice Lender. Blanket insurance policies shall not be acceptable for the purposes of this paragraph unless otherwise approved to the contrary by Lender, and if moved, shall contain a statement of values. Trustor shall pay the premiums for the Policies as the same become due and payable. At the request of Lender, Trustor will deliver the Policies to Lender. Not later than ten (10) days prior to the expiration date of each of the Policies, Trustor will deliver to Lender a renewal policy or certificates of renewal marked "premium paid" or accompanied by other evidence of payment of premium satisfactory to Lender. If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Trustor, to take such action as Lender deems necessary to protect its interest in the Premises and Improvements, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate, and all expenses incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Trustor to Lender upon demand and until paid shall be secured by this Deed of Trust in accordance with Article 2.7 hereof.

(c) (i) If the Premises and Improvements shall be damaged or destroyed, in whole or in part, by fire, or other casualty Trustor shall give prompt notice thereof to Lender. Lender shall make any or all of the insurance proceeds received by Lender pursuant to the provisions of this Deed of Trust as a result of such damage or destruction after deduction of its reasonable costs and expenses, if any, in collecting the same (the "Net Proceeds") available for the repair and restoration of the Improvements, provided that (aa) no Event of Default shall exist under the Note or this Deed of Trust at the time of the casualty or any requested disbursement hereunder, (bb) Trustor shall proceed with the repair and restoration of the Improvements as nearly as possible to the condition the Improvements were in immediately prior to such fire or other casualty promptly after the insurance claims are settled, (cc) no lease demising more than twenty five percent (25%) of the net rentable area of the Improvements (a "Key Lease") has been terminated by reason of such casualty; (dd) the loan to value ratio of the restored Improvements as estimated in Lender's sole discretion does not exceed the loan to value ratio as of the date hereof; (ee) the Net Proceeds, together with additional funds provided by Trustor if necessary, are sufficient to reconstruct or restore the Improvements according to plans and specifications approved by Lender or its Inspecting Engineer (as hereinafter defined), which approval shall not be unreasonably withheld or delayed if such plans and specifications substantially conform to the plans for the existing Improvements and which plans and specifications shall comply with local building codes and all other applicable laws, ordinances, rules and regulations, (ff) not more than fifty (50%) percent of the Improvements have been damaged or destroyed as determined by the Lender in its sole discretion and (gg) Lender has determined that all approved restoration work can be completed not later than one hundred eighty (180) days prior to the maturity of the Note or by such earlier date as may be required under the Leases or pursuant to applicable law.

(ii) Upon satisfaction of each of the provisions of subsection 1.3(c), the Net Proceeds may be disbursed if determined by Lender to Trustor to pay for the costs of repair and restoration of the Improvements in the manner hereinafter set forth. The Net Proceeds shall be held by Lender in escrow until expended in connection with the repair and restoration of the Improvements, it being agreed that any Net Proceeds so held by Lender may be commingled with the general funds of Lender, shall not bear interest, and shall constitute additional security for the payment of the Debt. The Net Proceeds shall be paid by Lender to, or as directed by, Trustor from time to time during the course of the repair and restoration, upon receipt of evidence satisfactory to Lender that (aa) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested payment) in connection with the repair and restoration have been paid for in full, (bb) there exists no notice of intention, mechanics or other liens and encumbrances on the Premises and Improvements arising out of the repair and restoration, and (cc) the balance of the Net Proceeds plus the balance of any deficiency

deposits made by Trustor pursuant to the provisions of this paragraph hereinafter set forth shall be sufficient to pay in full the balance of the cost of the repair and restoration. The repair and restoration shall be done and completed by Trustor in an expeditious and diligent fashion and in compliance with all applicable laws, rules and regulations, and all plans and specifications required in connection with the repair and restoration shall be subject to review and approval in all respects by an independent inspecting engineer selected by Lender (the "Inspecting Engineer"). The Trustor shall, prior to any repair and restoration, furnish to Lender for its approval: (1) complete plans and specifications for the repair and restoration, with satisfactory evidence of the approval thereof (i) by all governmental authorities whose approval is required and (ii) by an architect satisfactory to the Lender (hereinafter the "Architect") and which shall be accompanied by the Architect's signed estimate, bearing the Architect's seal, of the entire cost of completing the repair and restoration; (2) copies of all permits and approvals required by law in connection with the commencement and conduct of the repair and restoration; and (3) a surety bond or guaranty shall be in form satisfactory to the Lender and shall be signed by surety or sureties, or guarantor or guarantors, as the case may be, who are acceptable to the Lender, and in an amount not less than the Architect's estimate of the entire cost of completing the repair and restoration, less the amount of insurance proceeds and Lender deposits, if any, then held by the Lender for application toward the cost of the repair and restoration. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for the repair and restoration, including, without limitation, an administrative fee of \$100 for each advance, counsel fees, travel fees and the Inspecting Engineer's fees incurred by Lender, shall be paid by Trustor. In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred for work in place as part of the repair and restoration, as certified by the Inspecting Engineer, minus 10% of such costs (the "Retainage"). Lender shall not be obligated to make disbursements of the Net Proceeds more than once every thirty (30) days. The Retainage shall not be released until the Inspecting Engineer certifies that the repair and restoration have been completed in accordance with the provisions of Article 1.3, and Lender receives evidence satisfactory to Lender that the costs of the repair and restoration have been paid in full or will be paid in full out of the Retainage. If at any time the Net Proceeds, or the undisbursed balance thereof, shall not, in the opinion of Lender, be sufficient to pay in full the balance of the costs which will be incurred in connection with the completion of the repair and restoration, Trustor shall deposit the deficiency with Lender before any further disbursement of the Net Proceeds shall be made, which deficiency deposit may be commingled with the general funds of Lender, shall not bear interest and shall be disbursed for costs actually incurred in connection with the repair and restoration on the same conditions applicable to the Net Proceeds. Any such deficiency deposit until disbursed pursuant to this paragraph shall constitute additional security for the payment of the Debt.

(d) All insurance proceeds received by Lender and not disbursed for the repair and restoration pursuant to the provisions of this Article 1.3 shall be retained and applied by Lender toward the payment of the Debt whether or not then due and payable in such priority and proportions as Lender in its discretion shall deem proper or, at the discretion of Lender, the same may be paid, either in whole or in part, to Trustor for such purposes as Lender shall designate. If Lender shall receive and retain such insurance proceeds, the lien of this Deed of Trust shall be reduced only by the amount thereof received and retained by Lender and actually applied by Lender in reduction of the Debt.

(e) The provisions of subsection 4 of Section 254 of the Real Property Law of New York covering the insurance of buildings against loss by fire shall not apply to this Deed of Trust.

1.4. Payment of Taxes, etc. (a) Trustor shall pay all real and personal property taxes, assessments, water rates, sewer rents and other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied, imposed or assessed against the Premises and Improvements (collectively, the "Taxes") prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by law for the nonpayment thereof,

and, in the absence of such timely payment, Lender in its sole discretion, may, but shall not be obligated to, pay same (all such payments to be secured hereby in accordance with Article 2.7 hereof), and Trustor shall reimburse Lender upon demand for such expenditures. Trustor shall deliver to Lender, within thirty (30) days of payment, receipts bills, canceled checks and other evidence satisfactory to Lender evidencing the payment of the Taxes prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by law for the nonpayment thereof.

(b) After prior notice to Lender, in the case of any material item, Trustor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application whole or in part of any of the Taxes, provided that (i) no Event of Default then exists under the Note or this Deed of Trust, (ii) Trustor is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to the Deed of Trust and under the provisions of the any ground lease encumbered hereby, if any, (iii) such proceeding shall suspend the collection of the Taxes from Trustor and from the Encumbered Property, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Trustor or the Encumbered Property is subject and shall not constitute a default thereunder, (v) neither the Encumbered Property nor any part thereof or interest therein will in the opinion of Lender be in danger of being sold, forfeited, terminated, canceled or lost, (vi) Trustor shall have set aside adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, and (vii) Trustor shall have furnished such security as may be required in the proceeding, or as may be requested by Lender to insure the timely payment of any such Taxes, together with all interest and penalties thereon.

1.5. Escrow Fund. (a) Unless otherwise waived by the Lender, Trustor will pay to Lender, together with each monthly installment due under the Note, one twelfth of an amount (the "Escrow Fund") which would be sufficient to pay, on the first (1st) day of the month preceding the month in which they become due, the Taxes payable, or estimated by Lender to be payable, during the ensuing twelve (12) months. Lender will apply the Escrow Fund to the payment of Taxes which are required to be paid by Trustor pursuant to the provisions of this Deed of Trust. If the amount of the Escrow Fund shall exceed the amount of the Taxes payable by Trustor pursuant to the provisions of this Deed of Trust, Lender shall, in its discretion, (i) return any excess to Trustor, or (ii) credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Premises and Improvements. If the Escrow Fund is not sufficient to pay the Taxes, as the same become payable, Trustor shall pay to Lender, upon request, an amount which Lender shall estimate as sufficient to make up the deficiency. Until expended or applied as above provided, any amounts in the Escrow Fund may not be commingled with the general funds of Lender and shall bear interest. The collection of such deposits by Lender shall not relieve Trustor of any of the obligations of Trustor under any provision of this Deed of Trust. Provided there are sufficient amounts in the Escrow Fund, Lender shall pay the Taxes as they become due by their respective due dates.

(b) To the extent permitted by applicable law, if a Default occurs under any of the provisions of this Deed of Trust, Lender shall have the right to apply the balance of any funds deposited with it, or its designee, accumulated to pay Taxes, either as a credit against the Debt or to the payment of any other charges payable hereunder.

1.6. Condemnation. Trustor shall promptly provide notice to Lender of the actual or threatened commencement of any condemnation or eminent domain proceedings and shall deliver to Lender copies of any and all pleadings and papers served in connection with such proceedings. Lender may at its option participate in such proceedings. Notwithstanding any taking by any public or *quasi* public authority through eminent domain or otherwise, Trustor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and this Deed of Trust and the Debt shall not be

reduced until any award or payment therefor shall have been actually received and applied by Lender to the discharge of the Debt. Lender may apply the entire amount of any such award or payment to the discharge of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its discretion shall deem proper. If Lender receives and retains such award or payment and applies it to the Debt, the lien of this Deed of Trust shall be affected only by a reduction of the amount of said lien by the amount of such award or payment so received and retained by Lender. Trustor shall at its expense file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to Lender. Trustor hereby irrevocably authorizes and empowers Lender, in the name of Trustor or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claim or claims. Although it is hereby expressly agreed that the same shall not be necessary in any event, Trustor shall, upon demand of Lender, at the sole cost and expense of the Trustor, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to Lender, free and clear of any encumbrances of any kind or nature whatsoever. If the Encumbered Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of such award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive such award or payment, or a portion thereof sufficient to pay the Debt, whichever is less, and Trustor shall pay over to Lender said award or payment as, if and when Trustor receives same, to the extent of any deficiency found to be due upon such sale, with interest thereon, whether or not a deficiency judgment on this Deed of Trust shall have been sought or recovered or denied, and of the attorneys' fees, costs and disbursements incurred by Lender in connection with the collection of such award or payment. Lender shall not be limited to the interest paid on the award by the condemning authority and shall be entitled to reserve interest on the amount at the Interest Rate (as defined in the Note).

1.7. Leases and Rents. (a) Trustor absolutely and irrevocably assigns to Lender the Rents, and Trustor grants to Lender the right to enter upon and to take possession of the Premises and Improvements for the purpose of collecting the same and to let the Premises and Improvements, or any part thereof, and to apply the Rents after payment of all necessary charges and expenses on account to the Debt, reserving only to Trustor the conditional right, as a licensee, to collect, use and enjoy the Rents until an Event of Default shall occur hereunder. In exercising such conditional right, Trustor shall be entitled to collect and receive such Rent and agrees to use such Rents in payment of principal and interest becoming due under the Note and in payment of Taxes and Premiums becoming due hereunder, but such right of Trustor may be revoked by Lender upon the occurrence of Event of Default under the terms of the Note or this Deed of Trust remaining uncured for 30 days and thereafter Lender may let the Premises and Improvements or any part thereof and may retain and apply the Rents toward payment of the Debt in such order, priority and proportions as Lender, in its discretion, shall deem proper, or toward the operation, maintenance and repair of the Premises and Improvements, and irrespective of whether Lender shall have commenced a foreclosure of this Deed of Trust or shall have applied or arranged for the appointment of a receiver. Lender shall not be obligated to give to Trustor prior notice of such revocation of the right to let and collect the Rents.

(b) In addition to the rights which Lender may have herein, if an Event of any Default exists under this Deed of Trust, Lender, at its option, may require Trustor to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Premises and Improvements as may be in actual possession of Trustor. Upon default in any such payment, Trustor will vacate and surrender possession of the Premises and Improvements to Lender, or to such receiver, and, in default thereof, Trustor may be evicted by summary proceedings or otherwise. Nothing contained in this paragraph shall be construed as imposing on Lender any of the obligations of the lessor under the Leases, any duty to produce rents from the Premises and Improvements and shall not cause Lender to be a "mortgage-in-possession" for any purpose. Lender further agrees that it shall, upon request, execute, acknowledge and deliver to Lender such further and

additional assignments and other instruments as shall be reasonably required for the purpose of assigning the Rents.

(c) During the term of the Note, the Trustor shall provide annual certified rent rolls and lease information relating to the Encumbered Property to the Lender within ten (10) days of Lender's request.

1.8. Books, Records, Reports and Financial Statements.

(a) If not a natural person, Trustor will keep and maintain or will cause to be kept and maintained in methods acceptable to Lender in its sole discretion, consistently applied, proper and accurate books, records and accounts reflecting all of the financial affairs of Trustor and all items of income and expense in connection with the operation of the Encumbered Property. Lender shall have the right from time to time at all times during normal business hours to examine such books, records and accounts at the office of Trustor or such other person maintaining such books, records and accounts and to make copies or extracts thereof as Lender shall desire.

(b) During the term of the Note, the Trustor and any obligor under the Loan Documents agree to provide to the Lender:

- i) Within ninety (90) days of filing and otherwise upon Lender's request, copies of the current annual federal tax returns of Borrower and any guarantor of the Note, with all schedules attached.
- ii) Within ninety (90) days after fiscal year end and as otherwise upon Lender's request, the Corporate Guarantor shall provide the Lender with accountant-prepared financial statements.
- iii) No later than April 30th of each year, and otherwise upon Lender's request, an updated personal financial statement from any individual guarantor in a form acceptable to Lender.
- iv) Promptly after a written request from Lender, such other financial data or information as the Lender may reasonably request from time to time.

(c) Trustor and any guarantor shall promptly notify the Lender of any proceedings, sanctions, or warnings instituted against them, or issued to them, by any regulatory agency or governmental authority.

(d) Trustor and any guarantor shall promptly notify the Lender of any lawsuits initiated against them involving claims in excess of \$50,000.00.

1.9. Transfer or Encumbrance of the Encumbered Property.

(a) No part of the Encumbered Property nor any interest of any nature whatsoever therein nor any interest of any nature whatsoever in Trustor (whether partnership, stock, equity, beneficial, profit, loss or otherwise) shall in any manner be further encumbered, sold, transferred, assigned or conveyed, or permitted to be further encumbered, sold, transferred, assigned or conveyed (a "Transfer"), nor shall the Encumbered Property or any portion thereof be converted to or operated as a condominium or cooperative form of ownership without the prior written consent of Lender in each instance, and which consent in any and all circumstances may be withheld in the sole and absolute discretion of Lender. The provisions of the foregoing sentence of this paragraph shall apply to each and

every such further encumbrance, sale, transfer, assignment or conveyance, regardless of whether or not Lender has consented to, or waived by its action or inaction its rights hereunder with respect to, any such previous further encumbrance, sale, transfer, assignment or conveyance, and irrespective of whether such further encumbrance, sale, transfer, assignment or conveyance is voluntary, by reason of operation of law or is otherwise made. For illustration purposes only, a Transfer shall be deemed to include: an installment sales contract or agreement whereby Trustor agrees to sell the Encumbered Property or any part thereof in installments and/or an agreement by Trustor for leasing of all or a substantial part of the Encumbered Property for other than actual occupancy by a space tenant.

(b) The Trustor represents, warrants and covenants that it will not lease, transfer, assign, or otherwise dispose of any portion of its property and assets, real and personal, tangible and intangible, now owned or hereafter acquired, which are collateral for the loan evidenced by the Note, whether in one or more transactions, except in the ordinary course of business, without the prior written consent of Lender in each instance.

1.10. Maintenance of the Premises and Improvements; Compliance with Laws, Regulations, Covenants and Easements.

(a) Trustor shall cause the Encumbered Property to be maintained in good condition and repair and, to the extent of any renovations made by Trustor, the same shall be made in compliance with the requirements of all governmental authorities having jurisdiction over the Premises. Trustor will not commit or suffer to be committed any waste of the Encumbered Property. The Improvements and the Equipment shall not be removed, demolished or materially altered (prior written except for normal replacement of the Equipment), without the consent of Lender, including, but not limited to, any alteration changing the configuration or number of parking spaces comprising a part of the Encumbered Property. Trustor shall promptly repair, replace or rebuild any part of the Encumbered Property which may be damaged or destroyed by fire or other property hazard or casualty (including any fire or other property hazard or casualty for which insurance was not obtained or obtainable) or which may be affected by any taking by any public or quasi public authority through eminent domain or otherwise, and shall complete and pay for, within a reasonable time, any structure at any time in the process of construction or repair on the Premises.

(b) Trustor represents and warrants to Lender that the Encumbered Property is currently in compliance with, and Trustor shall in the future promptly comply with, all existing and future governmental laws, orders, ordinances, rules and regulations affecting the Encumbered Property, or any portion thereof or the use thereof, including specifically, but not limited to, provisions of the Americans with Disabilities Act. Trustor shall comply with the requirements of all, and shall not modify, amend or terminate any, easements and restrictive covenants which from time to time affect the whole or any portion of the Encumbered Property or the use thereof. Trustor shall also comply with the requirements of, and to the extent reasonably within Trustor's control, maintain, preserve, enforce and renew, all rights of way, easements, grants, privileges, licenses, franchises and restrictive covenants which from time to time benefit or pertain to the whole or any portion of the Encumbered Property, and Trustor shall not modify, amend or terminate, or surrender any of its rights under, any of such rights of way, easements, grants, privileges, licenses, franchises or restrictive covenants. Trustor will not, without obtaining the prior written consent of Lender, initiate, join in or consent to any new private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or affecting the uses which may be made of the Encumbered Property or any part thereof.

1.11. Environmental Provisions.

(a) For the purposes of this paragraph the following terms shall have the following meanings: (i) the term "Hazardous Material" shall mean any material or substance that, whether by its nature or use, is now or hereafter defined as a hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Requirement, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is now or hereafter regulated under any Environmental Requirement, or which is or contains petroleum, gasoline, diesel fuel or another petroleum hydrocarbon product, (ii) the term "Environmental Requirements" shall collectively mean all present and future laws, statutes, ordinances, rules, regulations, orders, codes, licenses, permits, decrees, judgments, directives or the equivalent of or by any Governmental Authority and relating to or addressing the protection of the environment or human health, and (iii) the term "Governmental Authority" shall mean the Federal government, or any state or other political subdivision thereof, or any agency, court or body of the Federal government, any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions.

(b) Trustor hereby represents and warrants to Lender that to the best of Trustor's knowledge after diligent inquiry (i) no Hazardous Material is currently located at, on, in, under or about the Encumbered Property in a manner which violates any Environmental Requirement, or which requires cleanup or corrective action of any kind under any Environmental Requirement, (ii) no releasing, emitting, discharging, leaching, dumping or disposing of any Hazardous Material from the Encumbered Property onto or into any other property or from any other property onto or into the Encumbered Property has occurred or is occurring in violation of any Environmental Requirement, (iii) no written or oral notice of violation, lien, complaint, suit, order or other notice with respect to the Encumbered Property is presently outstanding under any Environmental Requirement, and (iv) the Encumbered Property and the operation thereof are in full compliance with all Environmental Requirements.

(c) Trustor shall comply, and shall cause all tenants or other occupants of the Encumbered Property to comply, in all respects with all Environmental Requirements, and will not generate, store, handle, process, dispose of or otherwise use, and will not permit any tenant or other occupant of the Encumbered Property to generate, store, handle, process, dispose of or otherwise use, Hazardous Materials at, in, on, under or about the Encumbered Property in a manner that could lead or potentially lead to the imposition on Trustor, Lender or the Encumbered Property of any liability or lien of any nature whatsoever under any Environmental Requirement. Trustor shall notify Lender promptly in the event of any spill or other release of any Hazardous Material at, in, on, under or about the Encumbered Property which is required to be reported to a Governmental Authority under any Environmental Requirement, will promptly forward to Lender copies of any notices received by Trustor relating to alleged violations of any Environmental Requirement and will promptly pay when due any fine or assessment against Lender, Trustor or the Encumbered Property relating to any Environmental Requirement. If at any time it is determined that the operation or use of the Encumbered Property violates any applicable Environmental Requirement or that there are Hazardous Materials located at, in, on, under or about the Encumbered Property which, under any Environmental Requirement, require special handling in collection, storage, treatment or disposal, or any other form of cleanup or corrective action, Trustor shall, within thirty (30) days after receipt of notice thereof from any Governmental Authority or from Lender, take, at Trustor's sole cost and expense, such actions as may be necessary to fully comply in all respects with all Environmental Requirements, provided, however, that if such compliance cannot reasonably be completed within such thirty (30) day period, Trustor shall commence such necessary action within such thirty (30) day period and shall thereafter diligently and expeditiously proceed to fully comply in all respects and in a timely fashion with all Environmental Requirements.

(d) If Trustor fails to timely take, or to diligently and expeditiously proceed to complete in a timely fashion, any such action described in Article 1.11 (c) above, Lender may, in its sole and absolute discretion, make advances or payments toward the performance or satisfaction of the same,

but shall in no event be under any obligation to do so. All sums so advanced or paid by Lender (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, and fines or other penalty payments) and all sums advanced or paid in connection with any judicial or administrative investigation or proceeding relating thereto, will immediately, upon demand, become due and payable from Trustor and shall bear interest at the Default Rate (as hereinafter defined) from the date any such sums are so advanced or paid by Lender until the date any such sums are repaid by Trustor to Lender. Trustor will execute and deliver, promptly upon request, such instruments as Lender may deem useful or necessary to permit Lender to take any such action, and such additional notes and mortgages, as Lender may require to secure all sums so advanced or paid by Lender. If a lien is filed against the Encumbered Property by any Governmental Authority resulting from the need to expend or the actual expending of monies arising from an action or omission, whether intentional or unintentional, of Trustor or for which Trustor is responsible, resulting in the releasing, spilling, leaking, leaching, pumping, emitting, pouring, emptying or dumping of any Hazardous Material into the waters or onto land located within or without the State where the Encumbered Property is located, then Trustor will, within thirty (30) days from the date that Trustor is first given notice that such lien has been placed against the Encumbered Property (or within such shorter period of time as may be specified by Lender if such Governmental Authority has commenced steps to cause the Encumbered Property to be sold pursuant to such lien), either (a) pay the claim and remove the lien, or (b) furnish a cash deposit, bond, or such other security with respect thereto as is satisfactory in all respects to Lender and is sufficient to effect a complete discharge of such lien on the Encumbered Property.

(e) Lender may, at its option, at intervals of not less than one year, or more frequently if Lender reasonably believes that a Hazardous Material or other environmental condition violates or threatens to violate any Environmental Requirement, cause an environmental audit of the Encumbered Property or portions thereof to be conducted to confirm Trustor's compliance with the provisions of this paragraph, and Trustor shall cooperate in all reasonable ways with Lender in connection with any such audit including without limitation, pay all costs and expenses incurred in connection with such audit.

(f) If this Deed of Trust is foreclosed, or if the Encumbered Property is sold pursuant to the provisions of this Deed of Trust, or if Trustor tenders a deed or assignment in lieu of foreclosure or sale, Trustor shall deliver the Encumbered Property to the purchaser at foreclosure or sale or to Lender, its nominee, or wholly owned subsidiary, as the case may be, in a condition that complies in all respects with all Environmental Requirements. Trustor will defend, indemnify, and hold harmless Lender, its employees, agents, officers, and directors, from and against any and all claims, demands, penalties, causes of action, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses) arising out of, or in any way related to, (i) any breach by Trustor of any of the provisions of this Article 1.11, (ii) the presence, disposal, spillage, discharge, emission, leakage, release, or threatened release of any Hazardous Material which is at, in, on, under, about, from or affecting the Encumbered Property, including, without limitation, any damage or injury resulting from any such Hazardous Material to or affecting the Encumbered Property or the soil, water, air, vegetation, buildings, personal property, persons or animals located on the Encumbered Property or on any other property or otherwise, (iii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to any such Hazardous Material, (iv) any lawsuit brought or threatened, settlement reached, or order or directive of or by any Governmental Authority relating to such Hazardous Material, or (v) any violation of any Environmental Requirement or any policy or requirement of Lender hereunder. The aforesaid indemnification shall, notwithstanding any exculpatory or other provision of any nature whatsoever to the contrary set forth in the Note, this Deed of Trust or any other document or instrument now or hereafter

executed and delivered in connection with the loan evidenced by the Note and secured by this Deed of Trust, constitute the personal recourse undertakings, obligations and liabilities of Trustor.

(g) The aforesaid indemnification shall not be applicable to any claim, demand, penalty, cause of action, fine, liability, settlement, damage, cost or other expense of any type whatsoever occasioned, arising and caused solely and directly as the result of the gross negligence or willful misconduct of Lender, its nominee or wholly owned subsidiary or their respective employees or agents.

(h) Provided no claims concerning the indemnification set forth herein are then pending, all obligations and liabilities of Trustor under this Article 1.11 shall cease and terminate on the fifth (5th) anniversary of the date of payment to Lender in cash of the entire Debt, and provided that Trustor shall continue to be obligated to indemnify Lender and to hold Lender harmless from and against any penalty, fine, liability, damage, cost or other expense incurred by Lender and to which the aforesaid indemnification pertains to the extent the same arises out of any claim, penalty, fine liability or damage which is asserted or cause of action suit which is commenced prior to, or which otherwise relates back to the period before the fifth (5th) anniversary of the date of payment to Lender in cash of the entire Debt. Except as hereinabove specifically provided to the contrary in this Article 1.11, the obligations and liabilities of Trustor under this Article 1.11 shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the Debt has been paid in full and irrespective of any foreclosure of this Deed of Trust, sale of the Encumbered Property pursuant to the provisions of this Deed of Trust or acceptance by Lender, its nominee or wholly owned subsidiary of a deed or assignment in lieu of foreclosure or sale and irrespective of any other fact or circumstance of any nature whatsoever.

1.12. Performance of Other Agreements. Trustor shall observe and perform each and every term to be observed or performed by Trustor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Encumbered Property.

1.13. Other Security for the Debt. Trustor shall observe and perform all of the terms, covenants and provisions contained in the Note and in all other mortgages and other instruments or documents evidencing, securing or guaranteeing payment of the Debt, in whole or in part, or otherwise executed and delivered in connection with the Note, this Deed of Trust or the loan evidenced and secured thereby or hereby, including, but not limited to, that certain Assignment of Leases and Rents dated of even date herewith from Trustor to Lender (the "Loan Documents").

1.14. Right of Entry. Lender and its agents shall have the right to enter and inspect the Encumbered Property at all reasonable times.

1.15. Lease Subordination. In the event the Trustor shall lease to a tenant all or any portion of the Premises, it shall include in such lease or leases a provision subordinating such lease or leases to the lien of this Deed of Trust or any renewals, amendments, changes, modifications, consolidations, extensions, or replacements thereof, or any new or additional Deed of Trust.

1.16. Partial Payments. In the event the Lender shall receive from the Trustor any sums in respect of the payment of an installment of interest, principal or Taxes and Premiums due hereunder or under the Note less than full amount then due and payable, the Lender may, but shall not be obligated to, accept such sum regardless of any endorsement or condition expressed by the Trustor with respect to such partial payment, and if the Lender elects to accept such payment, it may hold the same or any part thereof without liability or interest in its general account, and it may, from time to time, apply the same or any part thereof to the indebtedness under the Note, to the payment of Taxes, Premiums or to any other expense, including reasonable attorney's fees and disbursements incurred by the Lender in

attempting to collect the amount due and owing hereunder the Note and in bringing any foreclosure proceedings with respect to this Deed of Trust.

1.17. Security Agreement. This Deed of Trust constitutes both a real property deed of trust and a "security agreement," within the meaning of the Uniform Commercial Code, and the Encumbered Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Encumbered Property. Trustor by executing and delivering this Deed of Trust has granted to Lender, as security for the Debt, a security interest in the Equipment and hereby pledges to Lender any and all monies now or hereafter held by Lender as additional security for the Debt until expended or applied as provided in this Deed of Trust. If a Default occurs under the Note, this Deed of Trust or the Loan Documents, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Equipment or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Equipment. Upon request or demand of Lender, Trustor shall at its expense assemble the Equipment and make it available to Lender at a convenient place acceptable to Lender. Trustor shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the Equipment and in enforcing its rights hereunder with respect to the Equipment. Any notice of sale, disposition or other intended action by Lender with respect to the Equipment sent to Trustor in accordance with the provisions of this Deed of Trust at least seven (7) days prior to the date of any such sale, disposition or other action, shall constitute reasonable notice to Trustor, and the method of sale or disposition or other intended action set forth or specified in such notice shall conclusively be deemed to be commercially reasonable within the meaning of the Uniform Commercial Code unless objected to in writing by Trustor within five (5) days after receipt by Trustor of such notice. The proceeds of any sale or disposition of the Equipment, or any part thereof, may be applied by Lender to the payment of the Debt in such order, priority and proportions as Lender in its discretion shall deem proper.

[End of Article I]

ARTICLE II DEFAULTS AND REMEDIES

2.1. Events of Default. The term "Event of Default", wherever used in this Deed of Trust, shall mean any one or more of the following events, without regard to any grace period or notice and cure period provided or referenced below with respect to any such events, and the term "Default", wherever used in this Deed of Trust, shall mean any one or more of the following events, after expiration of any applicable grace period or notice and cure period provided or referenced below with respect to any such events. The Debt shall become immediately due and payable at the option of Lender upon the occurrence of any one or more of the following events, whether such occurrence shall be voluntary, involuntary, by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any rule or regulation of any administrative or governmental body:

(a) if any portion of the Debt is not paid within five (5) days of the due date or if the Debt is not paid in full on maturity;

(b) if Trustor shall fail to pay any installment of Taxes, Premiums or any other charges or payments due in accordance with the terms of the Note or this Deed of Trust, and such default shall continue for a period of ten (10) days after the due date;

(c) if Trustor shall fail in the due and punctual observance and performance of any of the covenants, conditions or agreements of the Trustor contained in this Deed of Trust and any other documents executed in connection herewith, except payments due under the Note, and such default shall not be completely cured or remedied within the period of ten (10) days after written notice to, or actual knowledge by, the Trustor of the same, or if such default shall be of such a nature that the same cannot be completely cured or remedied within said ten (10) day period, and the Trustor shall not have diligently commenced curing such default and undertaken all steps necessary to adequately protect the Premises and its occupants, tenants and invitees against all violations of law, hazards, perils, damage and injury within said ten (10) day period, and shall not thereafter with due diligence and in good faith proceed to completely remedy and cure such default within ninety (90) days of Trustor's receipt of written notice or actual knowledge of such default;

(d) if Trustor shall fail to pay when due any installment of any assessment against the Premises and Improvements for local improvements heretofore or hereafter laid, which assessment is or may become payable in annual or periodic installments and is or may become a lien on the Encumbered Property;

(e) if any Federal tax lien is filed against any Trustor, guarantor or other obligor of the Note, or the Encumbered Property and the same is not discharged of record within thirty (30) days after the same is filed;

(f) except as expressly permitted under the Loan Documents, if without the consent of Lender (which consent in any and all circumstances may be withheld in the sole and absolute discretion of Lender), any part of the Encumbered Property or any interest of any nature whatsoever therein or any interest of any nature whatsoever in Trustor (whether partnership, stock, equity, beneficial, profit, loss or otherwise) is in any manner, by operation of law or otherwise, whether directly or indirectly, further encumbered, sold, transferred, assigned or conveyed, and irrespective of whether any such further encumbrance, sale, transfer, assignment or conveyance is voluntary, by reason or operation of law or is otherwise made, or if any portion of the Encumbered Property is operated as or converted to a condominium or cooperative ownership regime without the prior written consent of Lender;

(g) if Trustor shall fail to comply with any requirement or order or notice of violation of law or ordinance issued by any Governmental Authority within three (3) months from the issuance thereof, or the time period set forth therein, whichever is less;

(h) if the Policies are not assigned to Lender or kept in full force and effect, or if the Policies are not delivered to Lender upon request;

(i) if any representation or warranty of any Trustor or any obligor of the Note made herein or in any certificate, report, financial statement or other instrument furnished in connection with the making of the Note, this Deed of Trust or any guaranty of the Note, shall prove false or misleading in any material respect or shall have omitted any substantial contingent or unliquidated liability or claim;

(j) if Trustor, corporate guarantor or any general partner, member or shareholder of Trustor or corporate guarantor, (each of whom is hereinafter in this subparagraph referred to as an "Obligor") shall commence any case, proceeding or other action relating to it in bankruptcy or seeking reorganization, liquidation, dissolution, winding up, arrangement, composition or readjustment of its debts, or for any other relief, under bankruptcy, insolvency, reorganization, liquidation, dissolution, winding up, arrangement, composition, readjustment of debt or other similar act or law of any jurisdiction, domestic or foreign, now or hereafter existing; or if an Obligor shall apply for a receiver, custodian or trustee of it or for all or a substantial part of its property; or if an Obligor shall make an

assignment for the benefit of creditors; or if an Obligor shall be unable to, or shall admit in writing the inability to pay its debts generally as they become due; or if an Obligor shall take any action indicating its consent to, approval of, acquiescence in, or in furtherance of, any of the foregoing; or if any case, proceeding or other action against an Obligor shall be commenced in bankruptcy or seeking reorganization, liquidation, dissolution, winding up, arrangement, composition or readjustment of its debts, or any other relief, under any bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement, composition, readjustment of debt or other similar act or law of any jurisdiction, domestic or foreign, now or hereafter existing, and such condition shall continue for a period of sixty (60) days undismissed, undischarged or unbonded; or if a receiver, custodian or trustee of an Obligor or for all or a substantial part of its property shall be appointed and such condition shall continue for a period of sixty (60) days undismissed, undischarged or unbonded; or if a warrant of attachment, execution or distraint, or similar process, shall be issued against any substantial part of the property of an Obligor and such condition shall continue for a period of sixty (60) days undismissed, undischarged or unbonded;

(k) death of any individual Obligor;

(l) if Trustor or any other person or entity shall be in Default under the Note, or under any other mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt, in whole or in part, or otherwise executed and delivered in connection with the Note, this Deed of Trust or the loan evidenced and secured thereby or hereby;

(m) if Trustor or any other person or entity shall be in Default under any mortgage or deed of trust covering any part of the Premises and Improvements whether superior or inferior in lien to this Deed of Trust, and including, without limitation, any such mortgage or deed of trust now or hereafter held by Lender;

(n) if the Encumbered Property shall become subject (i) to any tax lien, other than a lien for local real estate taxes and assessments not due and payable, or (ii) to any *lis pendens*, notice of pendency, stop order, notice of intention to file mechanic's or materialman's lien, mechanic's or materialman's lien or other lien of any nature whatsoever and the same shall not either be discharged of record or in the alternative insured over to the satisfaction of Lender by the title company insuring the lien of this Deed of Trust within a period of thirty (30) days after the same is filed or recorded, and irrespective of whether the same is superior or subordinate in lien or other priority to the lien of this Deed of Trust and irrespective of whether the same constitutes a perfected or inchoate lien or encumbrance on the Premises and Improvements or is only a matter of record or notice;

(o) if Trustor shall fail to maintain its business in good standing under the applicable regulations of the agencies or governmental authorities having jurisdiction thereof, or its failure to receive and maintain whatever licenses are required, or shall be required, for the ownership, maintenance and operation of the Premises and Improvements;

(p) except for specific defaults set forth in this Article 2.1, if Trustor shall continue to be in default under any of the other terms, covenants or conditions of this Deed of Trust for ten (10) days after notice from Lender in the case of any default which can be cured by the payment of a sum of money or for thirty (30) days after notice from Lender in the case of any other default, provided that if such default cannot reasonably be cured within such thirty (30) day period and Trustor shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Trustor in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days;

(q) if the Trustor or any Obligor, or any affiliate of the aforesaid entities, shall default in the payment of any indebtedness, including, without limitation, any and all other indebtedness now or hereafter owed to the Lender or a default in the performance of any term, covenant, condition or agreement of any such indebtedness, if the effect of such default is to permit the holder of such indebtedness to accelerate the maturity thereof; and

(r) The transfer of title to the Encumbered Property, or any portion thereof, to any party not the Trustor hereunder without the prior written consent of Lender.

2.2. Rights and Remedies of Lender. At any time after the occurrence of a Default hereunder remaining uncured for 30 days, Lender shall have all of the rights and remedies available under applicable law, including, by way of illustration and not of limitation, the right:

- (i) to declare the Debt immediately due and payable;
- (ii) to commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Deed of Trust and the security interest granted herein, or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy, and that for the purposes of any action brought hereunder, Trustor waives the defenses of laches and any statute of limitations;
- (iii) to enter upon, possess, manage and operate the Encumbered Property or any part thereof, to make, terminate, enforce or modify the Leases upon such terms and conditions as Lender deems proper, and to make repairs, alternations and improvements to the Encumbered Property necessary in Lender's judgment to protect or enhance the security hereof;
- (iv) to enforce and realize upon, or waive, the security hereunder and any other security now or hereafter held by Lender in such order and manner as Lender may in its sole discretion determine, whether concurrently or successively and in one or several consolidated independent judicial actions or lawfully taken non judicial proceedings, or both;
- (v) foreclose this Deed of Trust, and in any such action qualify for the appointment of a receiver of the Encumbered Property either before or after a foreclosure sale, without notice and without regard to the solvency or insolvency of Trustor at the time of the application for such receiver, and without regard to the then value of the Encumbered Property, and Lender or any holder of the Note may be appointed as such receiver or as Lender in possession. The receiver or Lender in possession shall have the power to collect the Rents during the pendency of such foreclosure action, and in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during all other times, when Trustor, except for the intervention of the receiver or Lender in possession, would be entitled to collect such Rents, together with all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Encumbered Property during the whole of said period.

(vi) to sell the Premises in the manner prescribed by law for a non-judicial proceeding for foreclosure by power of sale.

(vii) in any action to foreclose this Deed of Trust, or a deficiency judgment, the Trustor waives any benefit of the credit for the fair market value of the Premises.

2.3. Appointment of Receiver. The holder of this Deed of Trust, in any action to foreclose it, shall be entitled to the appointment of a receiver, without notice. In addition, upon the actual or threatened waste to any part of the Encumbered Property or upon the occurrence of any Default hereunder, the holder of this Deed of Trust shall be at liberty, without notice, to apply for the appointment of a receiver to enter upon and take possession of the Encumbered Property to collect all Rents and other benefits thereof, and shall be entitled to the appointment of such receiver as a matter of right, without regard to the value of the Encumbered Property as security for the Debt, or the solvency or insolvency of any person then liable for the payment of the Debt. All fees and expenses of the receiver, including attorneys fees and compensation for managing agent of receiver, shall be paid by Trustor and secured by this Deed of Trust.

2.4. Sale of Encumbered Property. If this Deed of Trust is foreclosed, the Encumbered Property, or any interest therein, may, at the discretion of Lender, be sold in one or more parcels or in several interests or portions and in any order or manner.

2.5. Recovery of Sums Required To Be Paid. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Trustor existing at the time such earlier action was commenced.

2.6. Actions and Proceedings. Lender shall have the right to appear in and defend any action or proceeding brought with respect to the Encumbered Property and to bring any action or proceeding, in the name and on behalf of Trustor, which Lender, in its discretion, feels should be brought to protect Lender's interest in the Encumbered Property.

2.7. Right to Cure Defaults. Upon the occurrence of any Default hereunder remaining uncured for 30 days, Lender may, at its discretion, remedy the same and for such purpose shall have the right to enter upon the Encumbered Property or any portion thereof without thereby becoming liable to Trustor or any person in possession thereof holding under or claiming under or through Trustor, it being understood and agreed that nothing contained in this Deed of Trust shall in any manner obligate Lender to remedy any default hereunder. If Lender shall remedy such Default or appear in, defend, or bring any action or proceeding to protect Lender's interest in the Encumbered Property or to foreclose this Deed of Trust or collect the Debt, the costs and expenses thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this paragraph, shall be paid by Trustor to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Default or in appearing in, defending, or bringing any such action or proceeding shall be paid by Trustor to Lender upon demand, with interest at the Default Rate as defined in the Note, provided, however, that the Default Rate shall in no event exceed the maximum interest rate which Trustor may by law pay, for the period after notice from Lender that such costs or expenses were incurred to the date of payment to Lender. To the extent any of the aforementioned costs or expenses paid by Lender after default by Trustor shall constitute payment of (i) Taxes, charges or assessments which may be imposed by law upon the Encumbered Property, (ii) Premiums on insurance policies covering the Encumbered Property, (iii) expenses incurred in preserving and protecting the lien of this Deed of Trust, including, but not limited to, the costs and expenses, including, without limitation, attorneys' fees and expenses, of any litigation to

collect the indebtedness secured by this Deed of Trust or to prosecute, defend, protect or preserve the rights and the lien created by this Deed of Trust, or (iv) any amount, cost or charge to which Lender becomes subrogated, upon payment, whether under recognized principles of law or equity, or under express statutory authority; then, and in each such event, such costs, expenses and amounts, together with interest thereon at the Default Rate, shall be added to the indebtedness secured by this Deed of Trust and shall be secured by this Deed of Trust.

2.8. Late Payment Charge. If any installment of principal, interest or other sum payable under this Deed of Trust is not paid within ten (10) days after the date on which it is due, Trustor shall pay to Lender upon demand an amount equal to five percent (5%) of such unpaid installment as a late payment charge in order to defray part of the increased cost of collection occasioned by any late payments, as liquidated damages and not as a penalty, since actual damages are impossible to determine at this time. This charge shall be in addition to, and not in lieu of, any other remedy Lender may have and is in addition to any reasonable fees and charges of any agents or attorneys which Lender is entitled to employ on any defaults hereunder, whether authorized herein or by law.

2.9. Non-Waiver. The failure of Lender to insist upon strict performance of any term of this Deed of Trust shall not be deemed to be a waiver of any term of this Deed of Trust. No delay or omission by Lender to exercise any right, power or remedy accruing under this Deed of Trust shall be construed to be a waiver of any default or acquiescence therein. A waiver in one or more instances to exercise any right, power or remedy accruing hereunder shall apply only to the particular instance or instances, and at the particular time or times only, and no such waiver shall be deemed a continuing waiver, but every term, covenant, provision or condition establishing such right, power or remedy shall survive and continue to remain in full force and effect. Trustor shall not be relieved of Trustor's obligation to pay the Debt at the time and in the manner provided for its payment in the Note and this Deed of Trust by reason of: (i) failure of Lender to comply with any request of Trustor to take any action to foreclose this Deed of Trust or otherwise enforce any of the provisions hereof or of the Note or any other mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt or any portion thereof, (ii) the release, regardless of consideration, of the whole or any part of the Encumbered Property or any other security for the Debt, or (iii) any agreement or stipulation between Lender and any subsequent owner or owners of the Encumbered Property or other person extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Deed of Trust or any other mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt or any portion thereof, without first having obtained the consent of Trustor, and in the latter event, Trustor shall continue to be obligated to pay the Debt at the time and in the manner provided in the Note and this Deed of Trust, as so extended, modified and supplemented, unless expressly released and discharged from such obligation by Lender in writing. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Encumbered Property, Lender may release any person at any time liable for the payment of the Debt or any portion thereof or any part of the security held for the Debt and may extend the time of payment or otherwise modify the terms of the Note or this Deed of Trust, including, without limitation, a modification of the interest rate payable on the principal balance of the Note, without in any manner impairing or affecting this Deed of Trust or the lien hereof or the priority of this Deed of Trust, as so extended and modified, as security for the Debt over any such subordinate lien, encumbrance, right, title or interest. Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Deed of Trust. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by law or equity. The rights of Lender under this Deed of Trust shall be separate, distinct and cumulative and none shall be given effect to the

exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

2.10. Absolute and Unconditional Obligation. Trustor acknowledges that Trustor's obligation to pay the Debt in accordance with the provisions of the Note and this Deed of Trust is and shall at all times continue to be absolute and unconditional in all respects, and shall at all times be valid and enforceable irrespective of any other agreements or circumstances of any nature whatsoever which might otherwise constitute a defense to the Note or this Deed of Trust or the obligation of Trustor thereunder to pay the Debt or the obligations of any other person relating to the Note or this Deed of Trust or the obligations of Trustor under the Note or this Deed of Trust or otherwise with respect to the loan secured hereby, and Trustor absolutely, unconditionally and irrevocably waive any and all right to assert any setoff, counterclaim or crossclaim of any nature whatsoever with respect to the obligations of Trustor to pay the Debt in accordance with the provisions of the Note and this Deed of Trust or the obligations of any other person relating to the Note or this Deed of Trust or obligations of Trustor under the Note or this Deed of Trust or otherwise with respect to the loan secured hereby in any action or proceeding brought by Lender to collect the Debt, or any portion thereof, or to enforce, foreclose and realize upon the lien and security interest created by this Deed of Trust or any other document or instrument securing repayment of the Debt.

2.11. Waiver of Statutory Rights. Trustor shall not and will not apply for or avail itself of any appraisement, valuation, stay, extension or exemption laws, or any so called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but hereby waives the benefit of such laws to the full extent that Trustor may do so under applicable law. Trustor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Encumbered Property marshaled upon any foreclosure of the lien of this Deed of Trust and agrees that any court having jurisdiction to foreclose such lien may order the Encumbered Property sold as an entirety. Trustor hereby waives for itself and all who may claim through or under it, and to the full extent Trustor may do so under applicable law, any and all rights of redemption from sale under any order or decree of foreclosure of this Deed of Trust or granted under any statute now existing or hereafter enacted.

2.12. Remedies Cumulative. All of the rights and remedies conferred upon the Lender by this Deed of Trust, the Note and all other documents evidencing and securing the payment of the Note and conferred by law and equity shall be cumulative and in addition to every other right, power and remedy, express or implied, now or hereafter existing at law and in equity, including, without limitation, all rights conferred under the Sections 254 and 273 of the Real Property Law of New York, and each and every right, power and remedy herein or therein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Lender.

2.13. Trial by Jury Waiver. The Trustor and the Lender (by acceptance of this mortgage) mutually hereby knowingly, voluntarily and intentionally waive the right to a trial by jury in respect of any claim based hereon, arising out of, under or in connection with the note or any other loan documents contemplated to be executed in connection herewith or any course of conduct, course of dealings, statements (whether verbal or written) or actions of any party, including, without limitation, any course of conduct, course of dealings, statements or actions of the Lender relating to the administration of the loan or enforcement of the loan documents, and agree that neither party will seek to consolidate any such action with any other action in which a jury trial cannot be or has not been waived. Except as prohibited by law, Trustor hereby waives any right it may have to claim or recover in any litigation any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. Trustor certifies that no representative, agent or attorney of the Lender has represented, expressly or otherwise, that the Lender would not, in the event of litigation, seek to enforce the foregoing

waiver. This waiver constitutes a material inducement for the Lender to accept this mortgage and make the Loan.

2.14. Reappraisal of Encumbered Property. At reasonable intervals, the Lender may order a reappraisal of the Encumbered Property by an independent appraiser of its selection, or by an employee of the Lender, and Trustor agrees to allow access to the Encumbered Property to such independent appraiser or employee of the Lender, and in the case of an independent appraiser, the Trustor shall pay such appraiser's reasonable fee and expenses if Trustor is in default at the time of such appraisal.

[End of Article II]

ARTICLE III MISCELLANEOUS

3.1. Notice. Any notice, request, demand, statement, authorization, approval or consent made hereunder shall be in writing and shall be sent by regular mail or Federal Express, or other reputable nationally recognized courier service, or by postage pre-paid registered or certified mail, return receipt requested, and shall be deemed given when received or refused (as indicated on the receipt) and addressed to the parties at their respective addresses first stated above.

Each party may designate a change of address by notice given, as herein provided, to the other party, at least fifteen (15) days prior to the date such change of address is to become effective.

3.2. Waiver of Notice. Trustor shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Deed of Trust specifically and expressly provides for the giving of notice by Lender to Trustor and Trustor hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Deed of Trust does not specifically and expressly provide for the giving of notice by Lender to Trustor.

3.3. Corporate, Partnership or Other Authorization. Trustor (if a corporation, partnership or other entity) represents and warrants that it is a corporation, partnership, or other entity, as the case may be, duly organized, validly existing and in good standing under the laws of the state of its formation, and is duly qualified to do business in the state in which the Premises are located; that the Trustor is duly authorized and empowered to execute, acknowledge and deliver this Deed of Trust and all documents required hereunder; that all corporate or partnership action on its part required for the issuance and delivery of this Deed of Trust and the other documents referred to herein have been duly and effectively taken; and that this Deed of Trust and all documents executed in connection herewith constitute valid and enforceable obligations of Trustor.

3.4. Entire Agreement. This Deed of Trust, the Note and all other documents referred to and incorporated herein contain the entire agreement between the parties hereto and cannot be changed, amended, modified or revised in any manner whatsoever, except by another instrument in writing duly executed by the parties hereto.

3.5. Trust Fund. Trustor shall receive the advances secured by this Deed of Trust and shall hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of any improvement and shall apply such advances first to the payment of the cost of any such improvement on the Premises before using any part of the total of the same for any other purpose.

3.6. Binding Effect. This Deed of Trust shall run with the land and shall bind the Trustor, its heirs, personal representatives, successors and assigns, and all subsequent owners, lienholders,

tenants and sub-tenants of the Premises, and shall inure to the benefit of the Lender, the personal representatives, successors and assigns of the Lender and all subsequent holders of this Deed of Trust. In the event the Trustor shall comprise more than one person, firm or corporation, their obligations hereunder shall be considered joint and several.

3.7. Ambiguity and Construction of Certain Terms. Neither this Deed of Trust, the Note, nor any other document executed in connection herewith, nor any uncertainty or ambiguity contained therein shall be construed or resolved against Lender by virtue of the fact that such documents have originated with Lender as drafter. The Trustor acknowledges that it has reviewed and has had the opportunity to consult with counsel on same. The loan documents, therefore, shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the parties hereto. All personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall be deemed to include all other genders; the singular shall include the plural and vice-versa. Titles of articles and paragraphs are for convenience only. "Herein," "hereof," "herewith" and "hereunder" and other words of similar import refer to this Deed of Trust or the loan transaction as a whole and not to any particular section, paragraph or other subdivision; "Paragraph" refers to the entire paragraph and not to any particular subparagraph, section or other subdivision. Reference to days for performance shall mean calendar days unless business days are expressly indicated.

3.8. Estoppel Certificates. Trustor shall within ten (10) days after request by Lender furnish Lender or any proposed assignee with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the terms of payment and maturity date of the Note, (v) the date installments of interest and/or principal were last paid, (vi) that, except as provided in such statement, there are no defaults or events which with the passage of time or the giving of notice or both, would constitute an event of default under the Note or this Deed of Trust, (vii) that the Note and this Deed of Trust are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification, (viii) whether any offsets or defenses exist against the obligations and have not been modified or if modified, giving particulars of such modification, (viii) whether any offsets or defenses exists against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (ix) that all Leases are in full force and effect and (provided the Encumbered Property is not a residential multifamily property) have not been modified (or if modified, setting forth all modifications), (x) the date to which the rents thereunder have been paid pursuant to the Leases, (xi) whether or not, to the best knowledge of Trustor, any of the lessees under the Leases are in default under the Leases, and if any of the lessees are in default, setting forth the specific nature of all such defaults, (xii) the amount of security deposits held by Trustor under each Lease and that such amounts are consistent with the amounts required under each Lease, and (xiii) as to any other matters reasonably requested by Lender and reasonably related to the Leases, the obligations secured hereby, the Encumbered Property or this Deed of Trust.

3.9. Changes in Laws Regarding Taxation. In the event of the passage after the date of this Deed of Trust of any law of the State in which the Encumbered Property is located deducting from the value of real property for the purpose of taxation any lien or encumbrance thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on this Deed of Trust, the Note or the Debt, Trustor shall, if permitted by law, pay any tax imposed as a result of any such law within the statutory period or within fifteen (15) days after demand by Lender, whichever is less.

3.10 No Credits on Account of the Debt. Trustor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes assessed against the

Encumbered Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Encumbered Property, or any part thereof, by reason of this Deed of Trust or the Debt.

3.11. Documentary Stamps. If at any time the United States of America, any state thereof, or any governmental subdivision of any such state, shall require revenue or other stamps to be affixed to the Note or this Deed of Trust, Trustor will, upon demand, pay for the same, with interest and penalties thereon, if any.

3.12. Filing of Deed of Trust, etc. Trustor will pay all title insurance fees and charges, all filing, registration and recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Deed of Trust, any mortgage supplemental hereto, any security instrument with respect to the Encumbered Property, and any instrument of further assurance, and all Federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Deed of Trust, any mortgage supplemental hereto, any security instrument with respect to the Encumbered Property or any instrument of further assurance. Trustor shall hold harmless and indemnify Lender, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Deed of Trust.

3.13. Further Acts, etc. Trustor will at its cost, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto Lender the property and rights hereby mortgaged or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust or for filing, registering or recording this Deed of Trust and, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Trustor to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Encumbered Property.

3.14. Usury Savings Clause. It is the express intent hereof that Trustor not pay and Lender not receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be legally paid by Trustor under applicable law, and the Note is subject to the express condition that at no time shall Trustor be obligated or required to pay, nor shall Lender be permitted to collect, interest on the principal balance of the Note at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the maximum rate which Trustor is permitted by law to agree to pay. If any such excess amount of interest is contracted for, charged, paid, received or applied under the Loan Documents or the Note, or in the event the maturity of the indebtedness secured hereby is accelerated in whole or in part or all or part of the principal of or interest on the Note shall be prepaid, so that under any of such circumstances the amount of interest contracted for, charged, paid, received or applied under the Loan Documents or the Note on the amount of principal actually outstanding from time to time under the Note shall exceed the maximum amount of interest permitted by applicable law, then in any such event (a) neither Trustor, nor any other person liable for payment of the indebtedness secured hereby shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest permitted by applicable law, (b) any such excess which may have been collected shall, at Lender's option, either be applied as a credit against the then unpaid principal amount of the Note or refunded to Trustor and (c) the effective rate of interest shall be automatically reduced to the maximum lawful rate of interest allowed under applicable law, as now or hereafter construed by the courts having jurisdiction thereof. Without limiting the generality of the foregoing, all calculations of the rate of interest contracted for, charged or received under the Loan Documents or the Note which are made for the

purposes of determining whether such rate exceeds the maximum amount of interest permitted by applicable law shall be made, to the extent permitted by applicable law, by amortizing, prorating, allocating and spreading in equal parts during the period of the full stated term of the Note, all interest at any time contracted for, charged or received in connection with the indebtedness evidenced by the Note.

3.15. Expenses and Indemnity. (a) Trustor shall pay on demand all expenses of the Lender in connection with the preparation, administration, default, collection, waiver or amendment of loan terms, or in connection with the Lender's exercise, preservation or enforcement of any rights, remedies or options hereunder, including, without limitation, reasonable fees of outside legal counsel or the allocated costs of in-house legal counsel, accounting, consulting, brokerage or other similar professional fees or expenses, any fees or expenses associated with recording, title, escrow, inspection, travel or other costs relating to any appraisals or examinations conducted in connection with the loan or any collateral therefor, and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by Lender in connection with the loan, and the amount of all such expenses shall, until paid, bear interest at the rate applicable to principal hereunder (including any default rate) and be an obligation secured by any collateral; and (b) Anything in this Deed of Trust or the other Loan Documents to the contrary notwithstanding, Trustor shall indemnify and hold Lender harmless and defend Lender at Trustor's sole cost and expense against any loss or liability, cost or expense (including, without limitation, reasonable attorneys' fees and disbursements of Lender's counsel, whether in house staff, retained firms or otherwise), and all claims, actions, procedures and suits arising out of or in connection with (i) any ongoing matters arising out of the transaction contemplated hereby, the Debt, this Deed of Trust, the Note or any Loan Documents, (ii) any amendment to, or restructuring of, the Debt and this Deed of Trust, the Note or any of the other Loan Documents, and (iii) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Deed of Trust or the Note or any of the other Loan Documents, whether or not suit is filed in connection with the same, or in connection with Trustor, any Guarantor or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding. All sums expended by Lender shall be payable on demand and, until reimbursed by Trustor pursuant hereto, shall be deemed additional principal of the Debt and secured hereby and shall bear interest at the Default Rate.

3.16 Right of Setoff. Trustor hereby grant to the Lender a continuing lien, security interest and right of setoff as security for the liabilities and obligations to the Lender, whether now existing or hereafter arising, upon and against all deposits, escrows, reserves, credits, collateral and property, now or hereafter in possession, custody, safekeeping or control of the Lender or any entity under the control of Lender and its successors and assigns or in transit to any of them. At any time, without demand or notice (any such notice being expressly waived by Trustor) the Lender may setoff the same or any part thereof and apply the same to the Debt. Any and all rights to require the Lender to exercise its rights or remedies with respect to any other collateral which secures the loan, prior to exercising its right of setoff with respect to such deposits, credits or other property of the Trustor or any Guarantor, are hereby knowingly, voluntarily and irrevocably waived.

3.17. No Oral Change. This Deed of Trust may only be modified, amended or changed by an agreement in writing signed by Trustor and Lender, and may only be released, discharged or satisfied of record by an agreement in writing signed by Lender. No waiver of any term, covenant or provision of this Mortgage shall be effective unless given in writing by Lender and if so given by Lender shall only be effective in the specific instance in which given. Trustor acknowledge that the Note, this Deed of Trust and the other documents and instruments executed and delivered in connection therewith or otherwise in connection with the loan secured hereby set forth the entire agreement and understanding of Trustor and Lender with respect to the loan secured hereby and that no oral or other agreement,

understanding, representation or warranty exists with respect to the loan secured hereby other than those set forth in the Note, this Deed of Trust and the other Loan Documents.

3.18. Enforceability. This Deed of Trust and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State in which the Encumbered Property is located and any applicable laws of the United State of America. Whenever possible, each provision of this Deed of Trust shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Deed of Trust shall be unenforceable or prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such unenforceability, prohibition or invalidity, without invalidating the remaining provisions of this Deed of Trust.

3.19. Relationship. The relationship of Lender to Trustor hereunder is strictly and solely that of lender and borrower and Trustor and Lender and nothing contained in the Note, this Deed of Trust or any other document or instrument now or hereafter executed and delivered in connection therewith or otherwise in connection with the loan secured hereby is intended to create, or shall in any event or under any circumstance be construed as creating, a partnership, joint venture, tenancy in common, joint tenancy or other relationship of any nature whatsoever between Lender and Trustor other than as lender and borrower and Trustor and Lender.

3.20. Liability. If Trustor consists of more than one person or entity, the obligations and liabilities of each such person or entity hereunder shall be joint and several.

3.21. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Deed of Trust shall be used interchangeably in singular or plural form and the word "Borrower" shall mean each Borrower and the word "Trustor" shall mean each Trustor, and any subsequent owner or owners of the Encumbered Property or any part thereof or interest therein; the word "Lender" shall mean Lender or any subsequent holder of the Note; the word "Note" shall mean the Note, any amendment, extension, modification, restatement or replacement thereof or any other evidence of indebtedness secured by this Deed of Trust; the word "Guarantor" shall mean each person guaranteeing payment of the Debt or any portion thereof or performance by Trustor of any of the terms of this Deed of Trust and their respective heirs, executors, administrators, legal representatives, successors and assigns; the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, or other entity; the words "Encumbered Property" shall include any portion of the Encumbered Property or interest therein. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

3.22. Headings, etc. The headings and captions of various paragraphs of this Deed of Trust are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

3.23. Duplicate Originals. This Deed of Trust may be executed in any number of duplicate originals, and each such duplicate original shall be deemed to constitute but one and the same instrument.

3.24. Sole Discretion of Lender. Except as may otherwise be expressly provided herein the contrary or as required by applicable law, wherever pursuant to the Note, this Deed of Trust or any other document or instrument now or hereafter executed and delivered in connection therewith or otherwise with respect to the loan secured hereby, Lender exercises any right given to it to consent or not consent, or to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the

decision of Lender to consent or not consent, or to approve or disapprove, or to decide that arrangements or terms are satisfactory or not satisfactory, shall be in the sole and absolute discretion of Lender and shall be final and conclusive.

3.25. Reasonableness. If at any time Trustor believes that Lender has not acted reasonably in granting or withholding any approval or consent under the Note, this Deed of Trust or any other document or instrument now or hereafter executed and delivered in connection therewith or otherwise with respect to the loan secured hereby, as to which approval or consent either Lender has expressly agreed to act reasonably, or absent such agreement, a court of law having jurisdiction over the subject matter would require Lender to act reasonably, then Trustor's sole remedy shall be to seek injunctive relief or specific performance and no action for monetary damages or punitive damages shall in any event or under any circumstance be maintained by Trustor against Lender.

3.26. Brokerage. Trustor shall pay in full all brokerage commissions due any party upon the execution and delivery hereof. Trustor covenants and agrees that no brokerage commission or other fee, commission or compensation is to be paid by Lender and Trustor agrees to indemnify Lender against any claims for any of the same.

3.27. Sale/Assignment. Trustor acknowledges that Lender shall have the right in its sole and absolute discretion during the term of the Note to (i) to sell and assign the Note or participation interests in the Note and/or (ii) to effect a so called securitization of the loan evidenced by the Note, in each instance in such manner and on such terms and conditions as Lender shall deem to be appropriate. Trustor shall cooperate, and shall cause each indemnitor and other person or party associated or connected with the Note or the collateral therefor to cooperate, in all respects with Lender in connection with such sale, assignment, participation and/or securitization, and shall, in connection therewith, execute and deliver such estoppels, certificates, instruments and documents as may be requested by Lender. Trustor grants to Lender, and shall cause each indemnitor and other person or party associated or connected with the Note or the collateral therefor to grant to Lender, the right to distribute on a confidential basis financial and other information concerning Trustor, each such indemnitor and other person or party and the property encumbered by this Deed of Trust and other pertinent information with respect to the Note to any party who has indicated to Lender an interest in entering into such sale, assignment and/or securitization of the loan evidenced by the Note. If Trustor shall default in the performance of its obligations as set forth in this paragraph, and if such default shall not be remedied by Trustor within ten (10) days after notice by Lender, Lender shall have the right in its discretion to declare the Debt immediately due and payable.

3.28. Pledge to Federal Reserve. Lender may at any time pledge or assign all or any portion of its rights under the Loan Documents (including any portion of the Note) to any of the twelve (12) Federal Reserve Banks organized under Section 4 of the Federal Reserve Act, 12 U.S.C. Section 341. No such pledge or assignment or enforcement thereof shall release the Lender from its obligations under any of the Loan Documents.

3.29. Governing Law. This Note shall be governed by, and construed in accordance with the laws of the state in which the Encumbered Property is located.

3.30. Regulation U Exclusion. No portion of the proceeds of the loan shall be used, in whole or in part, for the purpose of purchasing or carrying any "margin stock" as such term is defined in Regulation U of the Board of Governors of the Federal Reserve System.

[End of Article III]

ARTICLE IV NON-UNIFORM COVENANTS

4.1. Protection of Lender's Interest in the Property and Rights Under this Security

Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 4.1, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 4.1.

Any amounts disbursed by Lender under this Section 4.1 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

4.2. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

4.3. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 4.3, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 4.2 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

4.4. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 4.3 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 4.4, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall give notice of sale in the manner prescribed by Applicable Law to Borrower and to other persons prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

4.5. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

4.6. Substitute Trustee. Lender may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor

trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

4.7. Attorneys' Fees. As used in this Security Instrument and in the Note, attorneys' fees shall include those awarded by an appellate court.

4.8. Protective Advances. This Security Instrument secures any advances Lender, at its discretion, may make under Section 9 of this Security Instrument to protect Lender's interest in the Property and rights under this Security Instrument.

4.9. Required Evidence of Property Insurance.

WARNING

Unless you provide us with evidence of the insurance coverage as required by our contract or loan agreement, we may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the collateral becomes damaged, the coverage we purchase may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere.

You are responsible for the cost of any insurance purchased by us. The cost of this insurance may be added to your contract or loan balance. If the cost is added to your contract or loan balance, the interest rate on the underlying contract or loan will apply to this added amount. The effective date of coverage may be the date your prior coverage lapsed or the date you failed to provide proof of coverage.

The coverage we purchase may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by Applicable Law.

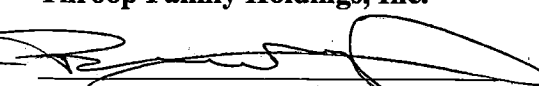
[End of Article IV]

IN WITNESS WHEREOF, Trustor has duly executed this Deed of Trust the day and year first above written.

WITNESS:

TRUSTOR:

Throop Family Holdings, Inc.

By: 
Witness Print Name: _____ Patrick John Throop, President

_____[Space Below This Line for Acknowledgment]_____

STATE OF OREGON }

COUNTY OF Jackson }

ss.:

This instrument was acknowledged before me on September 28, 2018 by Patrick John Throop as President of Throop Family Holdings, Inc.


Notary Public



EXHIBIT "A"
Legal Description
(See Attached)

EXHIBIT "A"

246356AM

PARCEL 1:

Lot 10, Block 4 Agate Subdivision Extension No. 1, in Jackson County, Oregon.

PARCEL 2:

Parcel 2 of Land Partition 43-97, being a portion of Lot 2 in Block 4 of Tract 1080-Washburn Park Situated in SW1/4 SW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.