

LINE OF CREDIT INSTRUMENT DEED OF TRUST  
(And Assignment of Leases and Rents, Security Agreement and Fixture Filing)

made by

NITE CRESCENT LLC, a California limited liability company ("Borrower")

to

AMERITITLE  
("Trustee")

for the Benefit of

BANK OZK, 625 Court Street, Clearwater, Florida 33756 ("Lender")

relating to Premises at  
136620 Highway 97 N, Crescent, OR 97733 (Klamath County)  
Tax Account No. 153461 Map No. 2409-030CA-01400

Dated: December 23, 2019

**Prepared by and after recording return to:**

Bank OZK  
c/o Thomas C. Nash, II, Esq.  
Macfarlane Ferguson & McMullen  
P. O. Box 1669  
Clearwater, Florida 33757

NOTICES:

1. NOTICE TO RECORDER: THIS DOCUMENT CONTAINS A FIXTURE FILING IN ACCORDANCE WITH ORS 79.0502.

2. THIS DEED OF TRUST SECURES FUTURE ADVANCES. THE MAXIMUM PRINCIPAL AMOUNT TO BE ADVANCED PURSUANT TO THE NOTE: \$1,340,000.00. THE MATURITY DATE OF THIS LINE OF CREDIT DEED OF TRUST IS January 1, 2030, or such earlier date as stated herein.

3. TYPE OF TRANSACTION: CREATION OF DEED OF TRUST LIEN AND SECURITY INTERESTS ENCUMBERING THE PROPERTY DESCRIBED HEREIN.

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LINE OF CREDIT INSTRUMENT  
DEED OF TRUST  
(And Assignment of Leases and  
Rents and Security Agreement)

THIS LINE OF CREDIT INSTRUMENT DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, AND SECURITY AGREEMENT (the "Deed of Trust"), made the 23 day of December \_\_\_\_\_, 2019, by **NITE CRESCENT LLC**, a California limited liability company, having an address at 22000 McClellan Road, Cupertino, CA 95014 ("Borrower") to **AMERITITLE**, having an address at 300 Klamath Avenue, Klamath Falls, OR 97601 ("Trustee") for the benefit of **BANK OZK**, an Arkansas state banking corporation, having an address at 625 Court Street, Clearwater, Florida 33756 ("Lender").

WITNESSETH, that to secure the payment of an indebtedness in the principal sum of **SIX HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$670,000.00)**, lawful money of the United States, to be paid with interest thereon to be computed from the date hereof according to a certain Note bearing even date herewith, and to secure the payment of all other amounts which may be or become due under this Deed of Trust or the Note and the compliance with all of the terms of this Deed of Trust and the Note, the Borrower hereby irrevocably grants, bargains, sells, mortgages, warrants, pledges, assigns, transfers, and conveys to Trustee and trustees, successors and assigns, in trust, with full power of sale of the following Mortgaged Property located in Crescent, Klamath County, Oregon, to have and to hold unto the Trustee and its successors and assigns forever (collectively the "Mortgaged Property"):

- (a) the land described in Exhibit "A" annexed hereto and made a part hereof;
- (b) all additional lands or estates or interests therein hereafter acquired by Borrower for use in connection with the land described in (a) above, and all lands or estates or interests therein that may, from time to time, by supplemental Deed of Trust or additional agreement, be made subject to the lien of this Deed of Trust (the land described in (a) above and the lands or estates or interests therein described in this paragraph (b) are collectively referred to as the "Land");
- (c) all improvements, structures and buildings, and any alterations thereto or replacements thereof, now or hereafter erected upon the Land, all fixtures, fittings, appliances, apparatus, machinery, materials and replacements thereof (other than those articles of personal Mortgaged Property owned by tenants under "Leases," as defined in paragraph (d) below), now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Land or such improvements, structures or buildings, including without limitation furnaces, boilers, oil burners, radiators and piping, coal stokers, plumbing and bathroom fixtures, refrigeration, air conditioning and sprinkler systems, washtubs, sinks, gas and electric fixtures, stoves, ranges, ovens, disposals, dishwashers, hood and fan combinations, awnings, screens, window shades, elevators, motors, dynamos, refrigerators,

other furniture, furnishings, equipment and machinery, appliances, fittings and fixtures of every nature whatsoever now or hereafter owned or acquired by the Borrower and located in or on, or attached to, and used or intended to be used in connection with or with the operation of, the Land, buildings, structures or other improvements, or in connection with any construction being conducted or which may be conducted thereon, and owned by Borrower, and all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing (collectively, the "Improvements") (the Land and the Improvements are hereinafter referred to collectively as the "Premises");

(d) any and all leases, subleases and all other occupancy agreements (written or oral), including the Lease set forth in Section 1(u) below, by concession, license or otherwise, for the Premises or any part thereof, now existing or hereafter entered into between Borrower and tenants and occupants of the Premises (the "Leases"), and all right, title and interest of the Borrower therein and thereunder, including cash or securities deposited thereunder to secure performance by the tenants and occupants under the Leases of their obligations thereunder, and any advanced rentals paid thereunder;

(e) any and all furniture, furnishings, equipment and other articles of personal Mortgaged Property, together with all replacements and renewals thereof, other than those articles of trade fixtures and other personal Mortgaged Property owned by tenants under the Leases, now or at any time hereafter placed upon, located in or used in any way in connection with the use, enjoyment, occupancy and operation of the Premises (hereinafter collectively referred to as the "Equipment");

(f) Borrower's interest in any and all agreements, contracts, certificates, licenses, permits, approvals, instruments and other documents, now or hereafter entered into pertaining to the construction, reconstruction, operation or management of the Improvements or any part thereof, and all right, title and interest of the Borrower therein and thereunder, including the right upon the happening of any event of default hereunder to receive and collect any sums payable to Borrower thereunder;

(g) Borrower's interest in the franchises, permits, licenses and rights therein and thereto respecting the use, occupation and operation of the Mortgaged Property and respecting any business or activity conducted on the Premises, including, to the extent permitted by law, the name or names, if any, now or hereafter used for the Improvements, and the good will associated therewith;

(h) Borrower's interest in and to the land lying in the bed of any street, road, avenue or right-of-way in front of or adjoining the Land, and any and all easements, rights-of-way, gores of land, estates, interests, hereditaments (corporeal and incorporeal), streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and all other rights, benefits, privileges and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Mortgaged Property described in the preceding paragraphs (a) through (g), or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the

Borrower;

(i) any and all unearned premiums, accrued or to accrue under insurance policies now or hereafter obtained by Borrower, all proceeds of such insurance (including title insurance) policies, and all awards, including interest thereon, heretofore and hereafter made to Borrower for taking by eminent domain of the whole or any part of the Mortgaged Property described in the preceding paragraphs (a) through (h), including any awards for change of grade of streets, which said premiums, proceeds and awards are hereby assigned to Lender, which is hereby authorized to collect and receive the proceeds of such insurance policies and awards and to give proper receipts and acquittances therefor; and

(j) any and all rents, income and other benefits to which Borrower may now or hereafter be entitled to from, and all proceeds of, the Mortgaged Property described in the preceding paragraphs (a) through (i).

AND, without limiting any of the other provisions of this Deed of Trust, Borrower expressly grants to Lender, as secured party, a security interest in all of those portions of the Mortgaged Property which are or may be subject to the provisions of the Uniform Commercial Code of the State in which the Premises is located and of the State in which Borrower was organized, applicable to secured transactions, and this Deed of Trust shall constitute a security agreement and financing statement for purposes of the Uniform Commercial Code.

TO HAVE AND TO HOLD the Mortgaged Property, together with all privileges, hereditaments, easements, rights of way and appurtenances thereunto belonging and the rents, issues, royalties and profits thereof to said Trustee and its successors and assigns forever, upon the trusts, terms and conditions, and for the uses, hereinafter set forth, Borrower hereby binds itself and its successors and assigns to warrant and forever defend title to the Mortgaged Property, unto Trustee and its successors and assigns against any and every person whomsoever claiming the same or any part thereof.

AND, Borrower covenants to the Trustee for the benefit of the Lender as follows:

1. Certain Definitions

For purposes of this Deed of Trust, the following terms shall have the following meanings:

(a) "Additional Payment" shall mean all sums, other than Debt Service and Deposits, which may become payable by Borrower to Lender under this Deed of Trust for any reason (whether or not specifically designated in this Deed of Trust as an Additional Payment), including but not limited to (i) any late payment charge, liquidated damages or interest charge which may be assessed under this Deed of Trust, (ii) any fees due to Lender, or expenses of Lender required to be paid by Borrower, under this Deed of Trust, (iii) any funds advanced by Lender, a receiver, or any other person on Lender's behalf to satisfy any obligation of Borrower under this Deed of Trust, (iv) any amount of damages, costs or expenses, including reasonable attorneys' fees and

disbursements, which Lender may incur as a result of Borrower's failure to perform any of its obligations or pay any amount which it is required to pay under this Deed of Trust, and (v) any amount for which Lender is entitled to receive indemnity from Borrower under this Deed of Trust. All Additional Payments shall be secured by this Deed of Trust.

(b) "Banking Day" shall mean a day on which both state and federally chartered banks are open for business in the State of Arkansas.

(c) "Debt Service" shall mean all payments of interest or principal which may at any time be due under the Note or this Deed of Trust, including the principal balance at such time as it may be or become payable in full and the Fee Payment at such time or times as it may become payable.

(d) "Default Rate" shall mean a rate of interest equal to 24% per annum or, if less, the maximum legal rate at the time any such interest is to be calculated.

(e) "Deposits" shall mean all sums which Borrower may be required to deposit with Lender for any reason under Paragraph 4.

(f) "Fee Payment" shall mean an amount determined as of any Fee Payment Date, as follows:

(i) if the Fee Payment Date is prior to January 1, 2021, three percent (3%) of the original principal amount of the loan (\$670,000.00);

(ii) if the Fee Payment Date is on or after January 1, 2021, and prior to January 1, 2022, two percent (2%) of the original principal amount of the loan (\$670,000.00);

(iii) if the Fee Payment Date is on or after January 1, 2022, and prior to January 1, 2025, one percent (1%) of the original principal amount of the loan (\$670,000.00);

(iv) if the Fee Payment Date is on or after January 1, 2025, and prior to January 1, 2026, two percent (2%) of the original principal amount of the loan (\$670,000.00); and

(iii) if the Fee Payment Date is any time after January 1, 2026 (including on or after January 1, 2030, one percent (1%) of the original principal amount of the loan (\$670,000.00).

(g) "Fee Payment Date" shall mean any of the following: (i) the date on which the entire outstanding principal balance is, or is required to be, paid in full, whether at or after the scheduled maturity date, or on any earlier date by reason of a prepayment permitted under Paragraph 23 of this Deed of Trust; (ii) the date of any agreement to modify or extend this Deed of Trust which may be executed between Borrower and Lender (provided that this shall not imply any right to such a modification or extension); and (iii) in the case of a payment of the principal



balance of this Deed of Trust which results from Borrower's default and a subsequent acceleration of the maturity of this Deed of Trust (whether or not followed by foreclosure), the earlier of the date of payment or the accelerated maturity date.

(h) "Impositions" shall mean all taxes, assessments, water rates, water meter charges, sewer rents, charges for public utilities, excises, levies, license and permit fees and other governmental charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature whatsoever (including any fines, penalties or interest due as a result of the deferred or late payment of any of the foregoing), which at any time during the term of this Deed of Trust may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on, the Mortgaged Property or any part thereof or any appurtenance thereto, the rent and income received by Borrower from tenants, or for any use or occupation of the Mortgaged Property, and such franchises as may be appurtenant to the use of the Mortgaged Property, this transaction or any document to which Borrower is a party, creating or transferring an interest or estate in the Mortgaged Property or any part thereof.

(i) "Insurance Premiums" shall mean all premiums and any other payments which may be due with respect to all policies of insurance which Borrower may be obligated to maintain under Paragraph 5.

(j) "Junior Deed of Trust" shall mean any Deed of Trust (including a purchase money Deed of Trust) which is a lien on the Mortgaged Property or any part thereof at any time that this Deed of Trust is a lien on the Mortgaged Property or any part thereof, and which is junior in priority of lien to the lien of this Deed of Trust.

(k) "Lender" shall mean the Persons who at any time are the record owners of the beneficial interests in and to this Deed of Trust. The term "Lender" shall not include any former owner of this Deed of Trust or an interest therein who is no longer a record owner of a beneficial interest in the Deed of Trust.

(l) "Borrower" shall mean the Persons executing this Deed of Trust as Borrower, and in the event of any Transfer, shall mean the Persons who at any time are the record owners of the Premises.

(m) "Note" shall mean the promissory note which this Deed of Trust secures.

(n) "Person" shall mean any individual, corporation, partnership, limited liability company, trust, estate or other form of entity or association.

(o) "Material Adverse Change" shall mean any change, development or effect that individually or in the aggregate (i) is, or is reasonably likely to be, material and adverse to the condition (financial or otherwise), results of operations, liquidity, or business of Borrower, any entity comprising Borrower, any Guarantor and/or the Mortgaged Property, or (ii) which would, or would be reasonably likely to, materially impair the ability of the Borrower, any entity

comprising Borrower, any Guarantor and/or the Mortgaged Property to perform the obligations to which it is bound or obligations which its assets secure.

(p) "Transfer" shall mean any of the following:

(i) any sale, transfer, assignment (including an assignment of rents), lease, ground or master lease, Deed of Trust (including purchase money Deed of Trust), pledge or other encumbrance, in each instance, directly or indirectly, of any interest of Borrower in the Mortgaged Property, or of any interest of any other Person in the Mortgaged Property which is derived from Borrower;

(ii) any sale, transfer, assignment, pledge or other encumbrance, in each instance, directly or indirectly, of any ownership interest (beneficial or otherwise) in the Borrower or any other Person who derives from Borrower an interest in the Mortgaged Property (other than by reason of death);

(iii) the execution of any agreement, however named, or the occurrence of any event, which has the effect, in each instance, directly or indirectly, of transferring dominion and control of the Mortgaged Property or any part thereof to any Person other than Borrower, or which has the effect of transferring control of any ownership interest (beneficial or otherwise) in Borrower or any other person who derives from Borrower an interest in the Mortgaged Property.

The rental of individual apartment units, stores or offices to separate tenants in the ordinary course of operating the Premises as a rental Mortgaged Property shall not be deemed a Transfer. For purposes of this paragraph, "control" shall mean possession of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting equity interests, by contract or otherwise (such definition to have the same meaning as such definition has in Regulation Section 230.405 under the Securities Act of 1933).

(q) "Transfer Closing" shall mean the event on a Transfer Date as a result of which a Transfer occurs.

(r) "Transfer Date" shall mean the effective date of any Transfer. For this purpose, the effective date of a Transfer shall be the earliest of the date of closing, the date of delivery of any document which conveys an interest in the Mortgaged Property or Borrower, or the date on which dominion or control of the Mortgaged Property or part thereof, or control of an interest in Borrower, passes to the transferee.

(s) "Transfer Taxes" shall mean any and all federal, state and local taxes now or hereafter imposed on any Transfer, or which may be imposed on any other transfer of any interest in the Mortgaged Property (other than a transfer by Lender of this Deed of Trust) which may be excluded from the definition of Transfer, or imposed on any gain resulting from any Transfer or such other transfer, or imposed by reason of the making or recording of this Deed of Trust or the Note or any modification, extension or termination of this Deed of Trust, or imposed in connection



with any foreclosure of the Mortgaged Property by Lender, but shall not include any regular federal, state or local income taxes imposed on Lender's income generally. Transfer Taxes shall include, but shall not be limited to, the State of Oregon documentary and intangible taxes.

(t) "Maturity Date" shall mean the earlier of: (i) January 1, 2030, or (ii) the expiration or termination date of the Lease.

(u) "Lease" shall mean that certain Lease between Borrower, as Landlord, as assigned, and DG Retail, LLC, a Tennessee limited liability company, as Tenant, dated November 11, 2016.

2. Payment of Indebtedness

(a) The Borrower covenants and agrees to pay the indebtedness evidenced by and as provided in the Note and this Deed of Trust.

(b) Except as otherwise specifically provided in this Deed of Trust, all payments shall be made by Borrower to Lender by good unendorsed check drawn in U.S. dollars on a banking institution which is a member of the Federal Deposit Insurance Corporation, and received by Lender at its offices at or before 1:00 p.m. on a Banking Day, at the address of Lender specified at the beginning of this Deed of Trust or furnished pursuant to the provisions of Paragraph 27.

3. Payment of Impositions, Insurance Premiums, Transfer Taxes

(a) It shall be the obligation of Borrower to pay all Impositions and Insurance Premiums when due. Notwithstanding that by law any Imposition may at the option of the taxpayer be paid in installments, then except if and to the extent that Borrower is making Deposits under Paragraph 4 specifically allocated for such Imposition, the same shall not be paid in installments, but shall be paid by Borrower in full in one lump sum on the date such Imposition first becomes payable. All such payments of Impositions and Insurance Premiums shall be paid by Borrower by check, and Borrower shall obtain a receipt for payment. Borrower shall furnish to Lender, within 10 days upon request, a copy of the bill for the Imposition or Insurance Premium, the check, and the receipt for payment. Borrower shall be deemed to have made payment of any item of Impositions or Insurance Premiums if Borrower (i) has made a Deposit under Paragraph 4 specifically allocated for such item of Impositions or Insurance Premiums, (ii) has delivered to Lender a copy of the bill for such item of Impositions or Insurance Premiums no less than forty-five (45) days prior to the due date of any such Imposition or Insurance Premiums, as the case may be, (iii) has timely made all Deposits for any purpose which may be required or demanded by Lender under Paragraph 4 and (iv) no event of default under this Deed of Trust has occurred and is continuing beyond any cure period provided in this Deed of Trust for such event of default. It shall be the express obligation of Borrower to obtain bills for all Impositions and Insurance Premiums from the appropriate taxing authorities or insurance broker or company, as the case may be, and forward copies of such bills to Lender no less than forty-five (45) days prior to the due date of any such Imposition or Insurance Premium. In the event Borrower pays directly any item of Imposition or Insurance Premiums, and Lender makes payment of the same item from Deposits,

it shall be Borrower's obligation to apply for any refund which may be due, and Lender shall not have any obligation to apply for such refund or have any liability with respect to the double payment.

(b) It shall be the obligation of Borrower to pay all Transfer Taxes when due. Notwithstanding that by law any Transfer Tax may at the option of the taxpayer be paid in installments, the same shall not be paid in installments, but shall be paid by Borrower in full in one lump sum on the date such Transfer Tax first becomes payable. All such Transfer Taxes shall be paid by Borrower by unendorsed certified check of Borrower or unendorsed bank check or title company, drawn in U.S. dollars on a banking institution which is a member of the Federal Deposit Insurance Corporation, made payable directly to the taxing authority, title company, or Lender, as Lender shall direct. If at any time notice is given by any taxing authority having jurisdiction that any additional Deed of Trust tax is due on this Deed of Trust by reason of any Additional Payments which may become due and be secured by this Deed of Trust, Borrower shall pay such additional Deed of Trust tax by not later than the date specified for payment in the notice from the taxing authority, or if no such date is specified, within 10 days after the date of such notice. If Borrower fails to pay such additional Deed of Trust tax by such date, then Lender at its option may pay any such additional Deed of Trust tax, interest and penalties (even if a foreclosure, bankruptcy or insolvency proceeding shall have been commenced), and the amount so paid by Lender shall become immediately due and payable to Lender as an Additional Payment, shall be secured by this Deed of Trust, and shall be recoverable as part of the indebtedness secured by this Deed of Trust in any foreclosure, bankruptcy or insolvency proceeding.

(c) Borrower shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceeding diligently conducted in good faith, but only after Borrower has either paid such Imposition in full, or made a Deposit under Paragraph 4 specifically allocated for such Imposition, and only if Borrower has timely made all Deposits for any purpose which may be required or demanded by Lender under Paragraph 4. Lender shall be entitled to apply Deposits to the payment of such Imposition when due even though Borrower may be contesting such Imposition.

#### 4. Deposits for Impositions, Insurance Premiums, Etc.

(a) In order to more fully protect the security of this Deed of Trust, to insure the payment of Impositions and Insurance Premiums, and as further security for the indebtedness and other obligations secured hereby, Borrower shall deposit funds with Lender as follows:

(i) Subject to the requirements for deposits at closing hereinafter set forth, Borrower shall deposit with Lender, on the first day of each and every calendar month during the term of this Deed of Trust, an amount, calculated as provided in this paragraph, for the payment of Impositions and Insurance Premiums. The amount of the deposit due on the first day of any calendar month shall be one twelfth of 100% of the amount of the total payments for Impositions and Insurance Premiums which shall be due at any time during the twelve-month period which begins on the first day of the following month (the "Deposit Calculation Period"). For purposes

of computing the deposit, "total payments for Impositions and Insurance Premiums" as used in the preceding sentence, shall mean for each item of Impositions or Insurance Premiums, the amount estimated by Lender to be necessary to pay each such item which becomes due during the Deposit Calculation Period. There shall be included in the amount due in any Deposit Calculation Period any increases in or supplemental payments of Impositions or Insurance Premiums made with respect to any previous year. It is the intention of Borrower and Lender that on the due date of any Imposition or Insurance Premium, Lender shall have on hand Deposits specifically allocated to such item in an amount equal to 100% of the amount of such item due on the due date thereof, plus (i) the amount required to be on hand in order to pay when due the total payments for Impositions and Insurance Premiums and (ii) an amount equal to two (2) months' installment payments of Impositions and Insurance Premiums. At closing, Borrower shall deposit with Lender an amount equal to two (2) monthly installments of Impositions and Insurance Premiums, together with such other sums as may be required to enable Lender to have the required sums on hand on the due date of each item of Impositions and Insurance Premiums, taking into account the monthly installment payments of Impositions and Insurance Premiums.

(ii) If at any time Lender shall not have Deposits on hand equal to the amounts computed in accordance with subparagraph (i) above (based on Lender's latest estimate of the total payments for Impositions and Insurance Premiums due during a Deposit Calculation Period), Borrower shall deposit additional funds, within ten days after demand, in order to bring the Deposits on hand up to the amount as so computed.

(iii) In the event Borrower maintains any insurance required under this Deed of Trust under a blanket policy, then if Borrower submits to Lender proof reasonably satisfactory to Lender that Borrower has paid, under such blanket policy, the Insurance Premiums for the insurance provided by such blanket policy, and if Borrower has made all Deposits for any purpose which may be required or demanded by Lender hereunder and is not overdue (without regard to cure periods) in the payment of any Debt Service or Additional Payments due under this Deed of Trust, then Lender shall refund to Borrower the amount of Deposits made with respect to the Insurance Premiums which Borrower has so paid under such blanket policy.

(iv) Borrower shall pay to Lender a sum equal to \$15 for each check paid from the Deposits held by Lender hereunder and \$50.00 for each bank or certified check paid from the Deposits held by Lender hereunder. Lender shall deduct such amount from the Deposits.

(v) Notwithstanding the foregoing, so long as Borrower remains in full compliance with all covenants, terms and conditions of the Loan Documents and so long as the tenant of the Mortgaged Property pays all real estate taxes and insurance premiums directly to the tax collection office and insurance company, in lieu of Borrower's normal requirement for monthly escrow of real estate taxes and insurance, Borrower shall provide Lender with both a) proof of payment of its annual insurance premium, and b) copy of insurance certificate acceptable to Lender in its sole discretion, not less than 5 days prior to the expiration of the existing policy and Borrower shall provide Lender with proof of payment of real estate taxes within 30 days after the tax due date each year. If Borrower fails to provide proof of payment of insurance and taxes on the

dates listed, Lender may immediately demand the insurance premium and/or real estate taxes then due and reinstate its escrow requirement, which shall include initial escrow deposits and the commencement of regular monthly escrow deposits. Notwithstanding the foregoing provisions of this subparagraph (v), in the event Tenant does not provide rent insurance satisfactory to the Lender, Borrower shall be required to provide rent insurance satisfactory to Lender and shall make deposits under Paragraph 4 to cover such Insurance Premiums as required by Paragraph 4.

(b) Lender, at its option, and without notice to Borrower, may use the Deposits for one item of Impositions or Insurance Premiums for the payment of another, or for the payment of any amount of Debt Service which is not paid within any applicable grace period after the due date, or for the payment of any Additional Payments which are not paid on the date when due (without regard to grace periods), or for the payment of any Transfer Taxes or other amounts which Borrower may be required to pay to any party other than Lender and which is not paid on the date when due. It is the intention of Lender and Borrower that Lender have the broadest possible power in applying Deposits, and the language of this Paragraph 4 should be interpreted as broadly as possible to permit any application of Deposits which Lender may seek to make. Borrower grants to Lender a security interest in Deposits as additional security for the obligations secured by this Deed of Trust, provided that such security interest shall not prevent the application of Deposits by Lender in accordance with this Paragraph 4.

(c) Deposits shall bear no interest. Lender shall be entitled to make payment from Deposits of any Imposition for a fiscal year of the taxing authority in one lump sum, even if such payment would thereby be made prior to the date when due. Lender shall not be liable or accountable for any Deposits paid over to the appropriate taxing authority, insurance company or broker, as the case may be.

(d) Upon an assignment of this Deed of Trust by any Lender, such Lender shall have the right to pay over the balance of Deposits in its possession to the assignee, and in the event Lender does so pay over such balance, such Lender shall thereupon be completely released from all liability with respect to Deposits and Borrower shall look solely to the assignee or transferee in reference thereto. This provision shall apply to each and every transfer of such Deposits to a new assignee.

## 5. Insurance

(a) Borrower shall, for the benefit of Lender, keep the Improvements and Equipment insured under an all-risk policy, and such other hazards as Lender in its reasonable discretion may notify Borrower to provide, and shall also provide such comprehensive general liability insurance, loss of rent insurance, boiler and machinery insurance, workers compensation insurance, disability insurance and other kinds of insurance, as Lender in its reasonable discretion may notify Borrower to provide. All amounts and scope of coverage of all such policies, and the insurers with whom such policies are carried, shall be such as Lender may specify in its reasonable discretion, and shall be increased by Borrower at such times and to such amounts and scope as Lender may specify in its reasonable discretion.

(b) In the event of loss or claim of liability, Borrower will give immediate notice thereof to Lender. Borrower shall obtain the written consent of Lender, which consent shall not be unreasonably withheld or delayed, to the adjustment with insurance carriers of all losses or liability of any kind. The selection of the insurance adjuster shall be made by Borrower subject to the approval of Lender, which shall not be unreasonably withheld or delayed. Notwithstanding anything herein contained to the contrary, Lender may, but shall not be required to, make proof of loss to the insurance carrier. Borrower hereby appoints Lender, irrevocably, as Borrower's attorney-in-fact, to endorse any draft for any payment under any insurance policy which is made payable to Borrower or to Borrower and Lender and Trustee jointly.

(c) The following requirements shall apply to the policies of insurance which Borrower is required to provide pursuant to Paragraph 5(a):

(i) the maximum deductible applicable to Mortgaged Property insured thereunder shall not be in excess of 5% of the Mortgaged Property value for wind and hail, and \$5,000 or 2% of the Mortgaged Property value for all other perils, provided in no circumstances will the deductible exceed \$100,000 even if such high deductible would be permitted by the foregoing 5% and 2% limitation;

(ii) all policies applicable to Mortgaged Property shall provide for 100% replacement cost coverage without offset for depreciation;

(iii) all Mortgaged Property and rental value insurance shall be provided in an amount sufficient to prevent co-insurance;

(iv) except for workers' compensation insurance, all policies shall name Borrower and Lender as insured as their respective interests may appear;

(v) except for workers' compensation and public liability insurance, all policies shall contain a standard Oregon form of non-contributory Lender clause and lender's loss payable endorsement in favor of Lender;

(vi) each policy of insurance shall include effective waivers by the insurer of all claims for insurance premiums against Lender;

(vii) each policy of insurance shall provide that any loss shall be payable to Lender notwithstanding (A) any act, failure to act or negligence of, or violation of any warranty, declaration or condition contained in any such policy by, any named insured, (B) the occupation or use of the Mortgaged Property for purposes more hazardous than permitted by the terms of such policy, (C) any foreclosure or other action or proceeding taken by Lender or any other holder of a Deed of Trust on the Mortgaged Property pursuant to any provision of the Deed of Trust or such other Deed of Trust, or (D) any change in title to or ownership of the Mortgaged Property or any portion thereof;



(viii) each policy of insurance shall provide an endorsement that 30 days advance written notice of any cancellation, expiration, non-renewal or material change affecting the interest of Lender shall be sent to Lender in the manner provided in this Deed of Trust for notices;

(ix) no policy of insurance of any kind shall provide for installment payments more frequently than annually;

(x) each insurance company issuing any such policy of insurance shall (A) be organized and existing under the laws of one of the states of the United States and shall be licensed to do business as an insurance company, and authorized to issue the type of insurance policy it is issuing with respect to the Mortgaged Property, in the State of Oregon, (B) have a Best's rating of at least A-, VIII, and (C) be satisfactory to Lender in its reasonable discretion;

(xi) where any insurance is provided under a blanket policy, the policy shall contain an endorsement specifying the amount of the total coverage of such policy that is allocated to the Mortgaged Property and which will be payable notwithstanding the amount of any losses with respect to any other properties which may be covered under such blanket policy; and

(xii) each policy of insurance shall be satisfactory in all other respects to Lender in its reasonable discretion.

(d) Borrower shall deliver to Lender on the date of execution of this Deed of Trust Evidence of Insurance (Acord Form 28) for the insurance coverage to be provided by all policies of insurance called for pursuant to this Paragraph 5 other than general public liability insurance, and Certificate of Insurance (Acord Form 25) for all general public liability insurance. All of the actual policies (or certified copies where coverage is provided by a blanket insurance policy) shall be delivered to Lender within thirty days following the commencement of the term of this Deed of Trust. Borrower shall furnish to Lender, no less than thirty days prior to the expiration of any insurance policy, Evidence of Insurance (Acord Form 28) and Certificate of Insurance (Acord Form 25), in form satisfactory to Lender, extending such insurance or providing new insurance to replace the same, and shall deliver the new insurance policy (or certified copies where coverage is provided by a blanket insurance policy) to Lender within thirty days after the expiration of the old policy. Borrower shall pay to Lender, immediately upon demand, a service fee of \$100 each time that Lender receives a notice of cancellation or non-renewal of any insurance policy. Lender, at its election, may deduct this charge from the Deposits.

#### **WARNING**

**UNLESS YOU PROVIDE US WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY THIS DEED OF TRUST OF 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 OLLATERAL 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 DEED OF TRUST OR LOAN BALANCE. IF THE COST IS ADDED TO YOUR DEED OF TRUST OR LOAN BALANCE, THE INTEREST RATE ON THE UNDERLYING DEED OF TRUST 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.**

6. Damage or Destruction; Application of Insurance Proceeds

(a) If the Improvements or Equipment on the date of this Deed of Trust or thereafter erected or acquired shall be damaged or destroyed in whole or in part by any cause, Borrower shall give to Lender immediate notice thereof, and upon receipt of insurance proceeds, Borrower shall promptly repair, replace and rebuild the same, as nearly as possible to the character and quality of the Improvements and the Equipment therein existing immediately prior to such occurrence. Lender shall in no event be called upon to repair, replace or rebuild any such Improvements or Equipment, nor to pay any of the costs or expenses thereof. The work of repairing, replacing or rebuilding (which shall be deemed to include the preparation of plans where necessary) such damaged or destroyed Improvements or Equipment shall be commenced as soon as reasonably possible but in any event within 90 days from the date of any such damage or destruction, and after commencement thereof shall be expeditiously proceeded with to completion; provided that if the work of repairing, replacing or rebuilding cannot, in the exercise of diligence, be feasibly commenced within 90 days, then Borrower's time to commence such work shall be extended for such period of time as is reasonable and appropriate and during which Borrower is proceeding diligently and expeditiously. In the event any damage or destruction results in a condition dangerous to persons or Mortgaged Property, or which is causing continued damage to the Premises or Equipment or any part thereof, the work of repairing, replacing or rebuilding shall be commenced promptly so as to remove such dangerous or damaging condition. The quality of the repairs, replacement or rebuilding shall be subject to Lender's review and approval, and Borrower shall be deemed not to have completed the repairs, replacement or rebuilding as required by this paragraph, if Lender shall have reasonably disapproved the quality thereof.

(b) (i) In the event insurance proceeds received under any insurance policy required to be maintained by Borrower are less than 10% of the outstanding principal balance of the Note at the time such proceeds are received from the insurance company, such proceeds shall

be made available by Lender for application to the cost of repair, replacement or rebuilding, in accordance with the provisions of Paragraph 6(c) below. In the event the amount of such insurance proceeds are 10% of the outstanding principal balance of the Note at the time such proceeds are received from the insurance company or greater but less than 75% of the outstanding principal balance of the Note on the date such proceeds are received by Lender, Lender may, at its option and in its absolute discretion, apply all amounts recovered under any insurance policy required to be maintained by Borrower in any one or more of the following ways: (A) in reduction of the outstanding principal balance of the Note, regardless of whether part or all of such balance shall then be matured or not; (B) in payment of any other monetary obligation of Borrower under this Deed of Trust or the Note, or to fulfill any of the covenants of Borrower provided herein; or (C) to be released to Borrower for application to the cost of repair, replacement or rebuilding, in accordance with the provisions of Paragraph 6(c) below. However, in the event Borrower has not commenced the work of repairing, replacing or rebuilding within the time required under Paragraph 6(a), or in the event such work is not prosecuted diligently and expeditiously to completion, as Lender shall determine in its sole discretion, then notwithstanding that Lender otherwise may be required or have elected under the provisions of this Paragraph 6(b)(i) to make insurance proceeds available to Borrower for application to the cost of repair, replacement or rebuilding, Lender at its option may elect to apply insurance proceeds instead in reduction of the outstanding principal balance of the Note, and in payment of any other monetary obligation of Borrower under this Deed of Trust or the Note, and may elect to declare the entire remaining principal balance of the Note and all other amounts due under the Note and Deed of Trust to be immediately due and payable.

(ii) In the event the amount of such insurance proceeds is equal to or greater than 75% of the outstanding principal balance of the Note on the date such proceeds are received by Lender, such proceeds shall be applied in reduction of the outstanding principal balance of the Note, and in payment of any other monetary obligation of Borrower under this Deed of Trust or the Note, and the entire remaining principal balance of the Note and all other amounts due under the Note and Deed of Trust shall be immediately due and payable without notice.

(c) In the event Lender elects or is required pursuant to Paragraph 6(b) to make available insurance proceeds received and held by Lender under insurance policies, for the purpose of paying towards the cost of repairs, replacement or rebuilding which Borrower is required to perform pursuant to Paragraph 6(a), such insurance proceeds shall be made available only in accordance with the following provisions:

(i) Net insurance proceeds (which shall mean net of all "Lender's expenses" (as hereinafter defined)), shall be made available for payment to the parties whom Borrower may employ to perform the necessary repairs, replacement or rebuilding, as such repairs, replacement or rebuilding shall progress, or to Borrower as Borrower shall pay for such repairs, replacement or rebuilding, upon the presentation to Lender of a certificate of the architect in charge of such work (or if an architect is not required, the contractor in charge of such work) certifying to the satisfactory completion of the work. Such certificate shall be accompanied (as a condition to payment) by invoices for the work from the contractor (if payment is to be made directly to the

contractor), or a paid receipted invoice for the work (if payment is to be made to the Borrower), together with copies of paid receipted invoices not previously provided to Lender with respect to any prior work for which Lender shall have advanced payment from net insurance proceeds and lien waivers and, if applicable, releases from each contractor, subcontractor, materialman and supplier and for the final advance, an affidavit from the contractor specifying all contractors, subcontractors, materialmen and suppliers.

(ii) The disbursement of such net insurance proceeds received by Lender shall be made under a schedule of payments to be prepared by Borrower and approved by Lender, subject to the provisions of clause (vi) below in the event insurance proceeds held by Lender at any time are insufficient. However, Lender may withhold from each amount so to be paid by Lender 10% thereof until the work of repairing, replacing or rebuilding shall have been completed, and reasonable proof shall have been furnished to Lender that no lien or liability has attached or may attach to the Mortgaged Property or any part thereof or to Lender in connection with such repairs, replacement or rebuilding.

(iii) Borrower shall furnish to Lender a list of the name, address and telephone number of each contractor and subcontractor who may perform any work, or furnish any materials or services, in connection with the repairs, replacement or rebuilding, and shall update such list promptly after any change in the information contained therein.

(iv) As used herein, "Lender's expenses" shall mean all reasonable costs, expenses (including fees and other charges provided under this Deed of Trust) and reasonable attorneys' fees and disbursements incurred by Lender in the adjustment, collection or disbursement of the insurance proceeds, or in any way arising out of the repairs, replacement or rebuilding. Lender may, at any time and from time to time in its reasonable discretion, have an inspection made of the Premises by its representative as such repair, replacement and rebuilding progresses, and Borrower shall pay to Lender a fee of \$1,250.00 for each such inspection, such fee to be deemed part of "Lender's expenses".

(v) If in the course of such work any mechanic's or other lien or order for the payment of money shall be filed against the Mortgaged Property or any part thereof or against Lender or Borrower, or if there shall be any overdue payment (without regard to cure periods) of any Debt Service, Additional Payment or Deposits due under this Deed of Trust, Lender shall not be obligated to make any payment of such insurance proceeds until and unless such lien or order shall have been fully bonded, satisfied, canceled or discharged of record, and until such overdue payment of Debt Service, Additional Payment or Deposits shall have been paid.

(vi) If the amount of such net insurance proceeds received and held by Lender, shall be insufficient at any time (whether at the commencement of the work or at any time during the work), as Lender shall determine in its sole discretion, for the proper and effective repair, replacement or rebuilding of such damaged or destroyed Improvements or Equipment in accordance with Paragraph 6(a), then Borrower shall pay all additional sums required for such repair, replacement or rebuilding, and no disbursements of net insurance proceeds held by Lender

shall be made until the remaining total undisbursed net insurance proceeds held by Lender is at least equal to the estimated remaining unpaid cost of such repair, replacement or rebuilding. If the amount of such net insurance proceeds held by Lender shall be in excess of the portion of the cost of such repairs, replacement and rebuilding required to be paid from such proceeds as provided in this Paragraph 6(c), the excess shall be paid to and retained by Lender in reduction of the outstanding principal of this Deed of Trust.

(vii) An architect shall be required for all such repairs, replacement or rebuilding, except with respect to damage of less than \$50,000 which does not involve any structural work, and such architect shall certify to the proper completion thereof in compliance with applicable codes and regulations. The selection of such architect shall be subject to the prior written approval of Lender, not to be unreasonably withheld or delayed.

## 7. Condemnation

(a) If any portion of the Premises shall be taken or condemned by any competent authority by the exercise of any right of eminent domain or in condemnation proceedings, or if the grade of any street upon which the Premises abut shall be changed by governmental action, the entire award or the aggregate of any separate awards shall be paid to Lender to the extent of an amount equal to all outstanding principal under this Deed of Trust, all accrued and unpaid interest and all Additional Payments which may be due under this Deed of Trust. Borrower shall have no right, title, interest, claim or demand whatsoever of, in or to any portion of such award which is due to Lender as provided in the preceding sentence. Borrower hereby assigns to Lender, as collateral security and subject to subparagraphs (c) and (d) below, all of its right, title and interest in and to any such award or awards to the extent of such amount due to Lender.

(b) In the case of a taking or condemnation of the whole or materially all of the Premises, Borrower shall continue to pay Debt Service, Additional Payments and Deposits hereunder until title shall vest and thereafter until the award is paid in connection with such taking or condemnation. In the case of a taking or condemnation of only a portion of the Premises, or if there is a change of grade of a street, there shall be no reduction or change of Additional Payments, Deposits, or the rate of Debt Service.

(c) (i) In the event proceeds paid to Lender pursuant to Paragraph 7(a) are less than \$20,000, such proceeds shall be made available by Lender for application to the cost of restoration and repair, in accordance with the provisions of Paragraph 7(d) below. In the event the amount of such proceeds is \$20,000 or greater but less than 75% of the outstanding principal balance of the Note on the date such proceeds are received by Lender, then notwithstanding any provision of applicable law, Lender may, at its option and in its absolute discretion, apply proceeds paid to it pursuant to Paragraph 7(a) in any one or more of the following ways: (A) in reduction of the outstanding principal balance of the Note, regardless of whether part or all of such balance shall then be matured or not; (B) in payment of any other monetary obligation of Borrower under this Deed of Trust or the Note, or to fulfill any of the covenants of Borrower provided herein; or (C)

to be released to Borrower for application to the cost of restoration or repair, in accordance with the provisions of Paragraph 7(d) below. However, in the event Borrower has not commenced the work of restoration and repair within the time required under Paragraph 6(a), or in the event such work is not prosecuted diligently and expeditiously to completion, as Lender shall determine in its sole discretion, then notwithstanding that Lender otherwise may be required or have elected under the provisions of this Paragraph 7(c)(i) to make proceeds available to Borrower for application to the cost of restoration and repair, Lender at its option may elect to apply such proceeds instead in reduction of the outstanding principal balance of the Note, and in payment of any other monetary obligation of Borrower under this Deed of Trust or the Note, and may elect to declare the entire remaining principal balance of the Note and all other amounts due under the Note and Deed of Trust to be immediately due and payable.

(ii) In the event the amount of such proceeds is equal to or greater than 75% of the outstanding principal balance of the Note on the date such proceeds are received by Lender, then notwithstanding any provision of applicable law, such proceeds shall be applied in reduction of the outstanding principal balance of the Note, and in payment of any other monetary obligation of Borrower under this Deed of Trust or the Note, and the entire remaining principal balance of the Note and all other amounts due under the Note and Deed of Trust shall be immediately due and payable without notice.

(d) If a partial taking or condemnation results in damage to any of the Improvements, Borrower shall restore and repair the damage to the Improvements. If the portion of the award payable to Borrower, if any (after Lender has received the portion to which it is entitled pursuant to subparagraph (a)), is insufficient to restore and repair such damage, then such portion of the award which is paid to Lender and which Lender elects or is required pursuant to Paragraph 7 (c) to make available for such restoration or repair, shall be made available in the same manner, and under the same terms and conditions, as insurance proceeds may be made available for repairs, replacement or rebuilding pursuant to the provisions of Paragraph 6(c). All such restoration and repair work shall be done within the time periods, and shall be of the quality subject to Lender's approval, provided for repair, replacement or rebuilding pursuant to Paragraph 6(a).

(e) In case of any governmental action, not resulting in the taking or condemnation of any portion of the Premises but creating a right to compensation therefor, such compensation shall be payable to Lender to the extent of an amount equal to all outstanding principal under this Deed of Trust, all accrued and unpaid interest, and all Additional Payments which may be due under this Deed of Trust, such amounts to be applied by Lender in payment of such principal, interest and Additional Payments.

(f) For purposes of this Paragraph 7, a taking of "materially all" of the Premises, as distinguished from a taking of a "portion" of the Premises, shall mean a taking of such scope that the portion of the Premises not so taken is insufficient to permit Improvements on the Premises not so taken to be restored and repaired so as to constitute a complete tenantable, rentable building.

(g) Lender shall have the right, but not the obligation, to appear in any condemnation



proceeding affecting the Premises, and at its option shall be entitled to conduct the proceeding on behalf of Borrower. Borrower shall not enter into any settlement with the condemning authority, in any condemnation proceeding or otherwise, without the prior written consent of Lender, which consent may be given or withheld in Lender's absolute discretion.

8. Maintenance and Repair

(a) Borrower, at its sole cost and expense, will take good care of the Premises, will keep the same in good order and condition, and make all necessary maintenance and repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and unforeseen and foreseen (including any repairs required as a result of any casualty loss). When used in this Paragraph 8, the terms "repairs" and "maintenance" shall include all necessary replacements, renewals, alterations, additions and betterments, and all such repairs and maintenance shall be completed with first class materials and workmanship, and be of a quality appropriate to the Premises and other comparable buildings in the immediate vicinity, and in all events shall be at least equal in quality and class to the original work. Borrower will do or cause others to do all necessary shoring of foundations and walls of the Improvements and every other act or thing for the safety and preservation thereof which may be necessary by reason of any excavation or other building operations upon any adjoining Mortgaged Property or street, alley or passageway. Borrower shall also make all necessary repairs and restorations, and maintain in good and clean condition, the sidewalks, curbs and vaults on or adjoining the Premises.

(b) Borrower shall promptly do any maintenance or repair to the Premises, reasonably necessary to maintain the Premises in accordance with the standards set forth in subparagraph (a) above, which Lender may request. All maintenance and repair work to be performed by Borrower hereunder shall be commenced by Borrower promptly after notice from Lender, and shall be pursued diligently to completion, but in all cases shall be completed within 3 months after such notice or such longer period to which Lender may consent, such consent not to be unreasonably withheld if the extension is reasonably necessary to complete the maintenance and repair work.

(c) An architect shall be required for all maintenance and repair work which costs \$50,000 or more, or which involves structural work, and such architect shall certify to the proper completion thereof in compliance with applicable codes and regulations. The selection of such architect shall be subject to the prior written approval of Lender, not to be unreasonably withheld or delayed.

9. Compliance with Laws, Ordinances; Environmental Matters

(a) Borrower, at its sole cost and expense, will promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of all governments and federal, state and municipal agencies, all covenants, restrictions, easements and other matters affecting title, and all present or future orders, rules and regulations of the National Board of Fire Underwriters or any other body exercising similar functions, foreseen or unforeseen, ordinary as well as extraordinary, which now or hereafter may be applicable to the Mortgaged Property or any



part thereof and the sidewalks, curbs and vaults, if any, on or adjoining the Premises, or which may be applicable to the use or manner of use of the Mortgaged Property or any part thereof, or to the owners, tenants or occupants thereof, whether or not such law, ordinance, rule, regulation or requirement shall necessitate structural changes or improvements or interfere with the use and enjoyment of the Mortgaged Property. Borrower shall at all times (if required by law) have a proper, current certificate of operation for the heating system, and any garbage disposal, compactor or incinerator, on the Premises, and shall have a proper up to date certificate of occupancy for the Improvements (if required by law). Borrower shall likewise observe and comply with the requirements of all policies of insurance at any time in force with respect to the Mortgaged Property. Borrower shall obtain any and all permits which may be required with respect to any construction, repair or other work on the Premises, prior to the commencement of such work, and copies of all such permits shall be submitted to Lender promptly upon receipt by Borrower.

(b) Lender may at its option, and at Borrower's expense, not more than once each year, procure through a service agency tax information (including real estate, ad valorem and personal Mortgaged Property taxes), water, sewer rental charges, assessment, and/or state, county or municipal departmental searches (including fire, air resources, housing and building maintenance, highway and any and all other departments having jurisdiction) on the Premises. Borrower hereby grants to Lender authority to act in its name, and for this purpose appoints Lender, or any person so authorized by Lender, as its attorney in fact (which power of attorney is coupled with an interest and is irrevocable and shall, to the extent permitted by law, survive any death, dissolution or legal incapacity of Borrower), for the purpose of accessing records of any federal, state or municipal government or agency relating to the Mortgaged Property. Borrower further agrees that, within ten days after request by Lender, Borrower will execute such written authorization as Lender may request for the purpose of permitting Lender to access any such records.

(c) No Improvement shall be altered, removed, or demolished without the prior written consent of the Lender, which consent Lender may withhold in its absolute discretion, or may give upon such conditions as Lender may impose in its absolute discretion. Notwithstanding the foregoing, Borrower may make non-structural alterations to the Premises that would not tend to decrease the value of the Mortgaged Property. All alterations permitted under this subparagraph (c) or under any other provision of this Deed of Trust shall be performed in a first-class workmanlike manner using first class materials, and otherwise of a quality appropriate to the Premises and other comparable buildings in the immediate vicinity, and in all events, at least equal in quality and class to the original work.

(d) All lease securities (if any) of tenants of the Premises shall be treated as trust funds not to be commingled with any other funds of the Borrower and all such lease securities, and interest, if any, earned thereon, shall at all times be maintained, deposited and disposed of strictly in accordance with applicable legal requirements. Borrower shall on demand, but not more than twice in any calendar year, furnish to Lender satisfactory evidence of compliance with this provision together with a verified statement of all lease securities deposited by the tenants and copies of all leases in its possession or control.

(e) Without limiting the generality of any of the foregoing provisions of this Paragraph 9, Borrower, at its sole cost and expense, will prepare and file by the applicable due date all reports or forms which now or at any time in the future may be required to be prepared and/or filed with any federal, state or municipal government or agency, and it shall be an event of default under this Deed of Trust in the event it fails to prepare and file with the appropriate governmental agencies any such reports or forms on or before the date due. Borrower, at its sole cost and expense, shall furnish to Lender a copy of the annual filings promptly upon making such filing, as well as any other reports or forms which Lender may request, such copies to be date stamped or the receipt of which otherwise acknowledged by the agency with which such reports or forms are filed.

(f) (i) As used in this subparagraph (f), "Hazardous Substances" shall mean and include those elements or compounds which are contained in the list of hazardous substances adopted from time to time by the United States Environmental Protection Agency ("EPA") or by the Oregon Department of Environmental Quality ("ODEQ"), or which are on any list of toxic or polluting materials designated by Congress, the EPA or ODEQ, or which are defined as hazardous, toxic, pollutant, infectious or radioactive by any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, polluting, infectious, radioactive or other dangerous waste, substance or material, as now or at any time hereafter in effect (the "Hazardous Substance Laws").

(ii) Borrower covenants and agrees that (A) Borrower shall comply with, and insure compliance by all other parties with, all applicable Hazardous Substance Laws relating to or affecting the Mortgaged Property, and Borrower shall keep the Mortgaged Property free and clear of any liens imposed pursuant to any applicable Hazardous Substance Laws, all at Borrower's sole cost and expense; and (B) Borrower will at all time obtain and/or maintain all licenses, permits and/or other governmental or regulatory authorizations and approvals necessary to comply with applicable Hazardous Substance Laws relating to or affecting the Mortgaged Property or Borrower's use of the Mortgaged Property (the "Permits"), and Borrower will at all times be and remain in full compliance with the terms and provisions of the Permits.

(iii) Borrower hereby agrees to indemnify Lender and hold Lender harmless from and against any and all losses, liabilities (including strict liability), damages, injuries, expenses (including reasonable attorney's fees and disbursements), costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Lender by any person or entity or governmental agency for, with respect to, or as a result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from, the Mortgaged Property of any Hazardous Substance including, without limitation, any losses, liabilities (including strict liability), damages, injuries, expenses (including attorneys' fees and disbursements), costs of any settlement or judgment or claims, asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any so called federal, state or local "Superfund" or "Superlien" laws, and any statute law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning any Hazardous Substance, whether or

not caused by or within the control of Borrower.

(iv) If Borrower receives any notice of (A) the happening of any event involving the use (other than any Hazardous Substances in customary quantities appropriate for a retail building), spill, release, leak, seepage, discharge or cleanup of any Hazardous Substance on the Mortgaged Property or in connection with Borrower's operations thereon or (B) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental, health or safety matter affecting Borrower (an "Environmental Complaint") from any person or entity (including without limitation the EPA or ODEQ), then Borrower shall immediately notify Lender in writing of said notice.

(v) Lender shall have the right but not the obligation, at its sole discretion, and without limitation of Lender's rights under this Deed of Trust, to enter onto the Mortgaged Property or to take such other actions as it deems necessary or advisable, including the appointment of a receiver of the Mortgaged Property, to cleanup, remove, resolve or minimize the impact of, or otherwise deal with any such Hazardous Substance or Environmental Complaint following receipt of any notice from any person or entity (including without limitation the EPA or ODEQ) asserting the existence of any Hazardous Substance or an Environmental Complaint pertaining to the Mortgaged Property or any part thereof which, if true, could result in an order, suit, lien or other action against Borrower and/or which, in the sole opinion of Lender, could impair Lender's security under this Deed of Trust. All costs and expenses incurred by Lender in the exercise of any such rights shall be secured by this Deed of Trust and shall be payable by Borrower upon demand.

(vi) Lender shall have the right to require Borrower to perform at Borrower's expense (but not more frequently than once in any 18-month period), an environmental audit and/or an environmental risk assessment of the Premises. However, if an event of default shall have occurred and be continuing under this Deed of Trust, then Lender shall have the right to require Borrower to perform at Borrower's expense, such environmental audits and/or environmental risk assessments, without limitation on frequency, as Lender may request in its absolute discretion. Promptly upon receipt of the report of any such audit or assessment, Borrower shall perform such remediation and make such changes in its hazardous waste management practice at the Premises as may be recommended in such report. Such audit and/or risk assessment must be performed by an environmental consultant satisfactory to Lender in its absolute discretion. If Borrower fails to perform any such environmental audit or risk assessment within thirty (30) days of Lender's written request, Lender shall have the right but not the obligation to retain an environmental consultant to perform any such environmental audit or risk assessment. All costs and expenses incurred by Lender in the exercise of such rights, together with interest thereon at the Default Rate, shall be secured by this Deed of Trust and shall be payable to Lender upon demand.

(vii) Any breach of any warranty or representation or any breach of any covenant contained in this subparagraph 9(f) shall be an event of default under this Deed of Trust, and shall entitle Lender, without any further notice or grace period, to exercise any and all remedies provided

for default in this Deed of Trust, or otherwise permitted by law.

(viii) The provisions of this subparagraph 9(f) shall survive any foreclosure or the enforcement hereof, and the provisions of clause (iii) of this subparagraph 9(f) shall survive the payment of all amounts due under this Deed of Trust.

(g) Borrower represents and warrants to Lender as follows: (i) no portion of the funds or proceeds which Borrower used to acquire the Mortgaged Property was obtained, directly or indirectly, from an illegal transaction or activity; (ii) Borrower has not used and shall not use or permit the Mortgaged Property or any portion thereof to be used for or in furtherance of any illegal purpose or activity, including, without limitation, any purpose or activity which would subject the Mortgaged Property (or any portion thereof) to the risk of seizure by or forfeiture to any governmental entity pursuant to any federal, state or local law; (iii) to Borrower's best knowledge, the funds or proceeds used by Borrower's immediate and remote predecessors in title to acquire the Mortgaged Property were not obtained, directly or indirectly, in whole or in part, from an illegal transaction or activity, and the Mortgaged Property has never been used by any person in connection with or in furtherance of any illegal purpose, activity or crime; and (iv) neither Borrower nor any disclosed or undisclosed principal of Borrower has been investigated with respect to, indicted for or otherwise formally charged with, or convicted of, any gambling offense, any violation of the federal narcotics laws, RICO or any crime which may subject Borrower's Mortgaged Property (including, without limitation, the Mortgaged Property) to the risk of seizure by or forfeiture to any governmental entity pursuant to any federal, state or local law. Borrower shall deliver to Lender immediately upon receipt, any notice, indictment, order, judgment or other communication relating to any pending or threatened action or proceeding in which Borrower's Mortgaged Property or any part thereof (including, without limitation, the Mortgaged Property) may be subject to the risk of forfeiture to any federal, state or local government entity. Each of the following shall be an event of default, entitling Lender to exercise all of its remedies for default without notice or cure period: (x) if any representation or warranty set forth above shall be untrue when made or shall subsequently become untrue; (y) the institution or threatened institution by a governmental entity (including the receipt of any notice or other communication by Borrower or Lender from a governmental entity) of any action or proceeding seeking the forfeiture of the Mortgaged Property or any part thereof; and (z) the indictment of or the filing of formal charges by a governmental entity against, or the conviction of, Borrower or any disclosed or undisclosed principal of Borrower, or the admission by Borrower or any disclosed or undisclosed principal of Borrower that it has engaged in any crime or activity prohibited by any law which may subject the Mortgaged Property of Borrower or such principal to the risk of forfeiture or seizure, including, without limitation, gambling, narcotics laws and RICO.

#### 10. Lender's Right to Perform

(a) If Borrower shall at any time fail to pay any Imposition or Transfer Taxes in accordance with the provisions hereof, or to take out, pay for, maintain or deliver as and when required under this Deed of Trust any of the insurance policies provided for herein, or shall fail to make any other payment or perform any other act on its part to be made or performed as and when

required under this Deed of Trust, then Lender, upon five days' notice to Borrower (except in the case of an emergency creating a risk of immediate harm to persons or Mortgaged Property, in which case without notice) and without waiving or releasing Borrower from any obligation of Borrower contained in this Deed of Trust, may (but shall be under no obligation to): (i) pay any Imposition or Transfer Taxes payable by Borrower pursuant to the provisions hereof; or (ii) take out, pay for and maintain any of the insurance policies provided for herein; or (iii) make any other payment or perform any other act on Borrower's part to be made or performed. Notwithstanding the foregoing, in the event Lender receives any notice of cancellation of any insurance, or receives notice of amendment or modification of any insurance such that the insurance will not meet the requirements set forth in this Deed of Trust, Lender may immediately without notice to Borrower take out, pay for and maintain policies of insurance which do meet the requirements set forth in this Deed of Trust. Lender may enter upon the Premises for any such purpose and take all such action thereon as may be necessary therefor.

(b) All sums so paid by Lender and all costs and expenses (including attorney's fees and disbursements) incurred by Lender in connection with the performance of any such act, together with interest thereon at the Default Rate from the respective dates of Lender's making of each such payment or incurring each such cost and expense, shall constitute an Additional Payment immediately due and payable by Borrower to Lender.

(c) Lender shall not be limited in the proof of any damages which Lender may claim against Borrower arising out of or by reason of Borrower's failure to provide and keep in force insurance as aforesaid, to the amount of the Insurance Premiums not paid or incurred by Borrower and which would have been payable for such insurance, but Lender shall also be entitled to recover as damages for such breach, the uninsured amount of any loss or liability (including all costs and expenses and attorneys' fees and disbursements), to the extent of any deficiency in the insurance required by the provisions of this Deed of Trust, suffered or incurred by reason of damage to, or destruction of, or liability arising in connection with, the Mortgaged Property, occurring during any period when Borrower shall have failed or neglected to provide insurance as aforesaid.

(d) Lender shall have no liability, and Borrower waives any claim which it might be entitled to assert against Lender, its employees, contractors and agents, with respect to any matter or thing resulting from any act which Lender is entitled to take under this Paragraph 10, or resulting from any failure by Lender to act (whether or not Lender had knowledge of the condition or occurrence which required action to be taken).

#### 11. Liens

If any mechanics' and/or materialmen's lien is filed against the Premises on or after the date of this Deed of Trust, or any other lien or encumbrance is filed against the Mortgaged Property or any part thereof for any reason after the date of this Deed of Trust, Borrower shall cause such lien or encumbrance to be discharged of record by payment, bonding or otherwise, within thirty (30) days after Borrower is given notice thereof. Failure to so discharge of record any such lien or encumbrance within such thirty (30) day period shall be an event of default under this Deed of



Trust, and shall entitle the Lender, at Lender's option and without further notice or cure period, to exercise any and all of the remedies of Lender for default provided under this Deed of Trust or by law. In the event Borrower fails to so discharge of record such lien or encumbrance within such thirty (30) day period, Lender may in addition, but shall not be obligated to, advance funds, bond or otherwise provide security necessary to discharge of record such lien or encumbrance, and all sums so advanced, together with interest thereon from the date of advance to the date of payment thereof at the Default Rate, shall be payable by Borrower to Lender on demand as an Additional Payment. Any expenses incurred by Lender in connection with the examination of title to the Mortgaged Property in order to ascertain the existence of any such lien or encumbrance and/or the discharge of record thereof, shall constitute advances made by Lender under the provisions of this paragraph, which shall be payable by Borrower to Lender on demand, together with interest as aforesaid, as an Additional Payment.

12. Late Charges and Default Interest

(a) In the event the entire outstanding principal balance hereof, together with all accrued interest and any unpaid Additional Payments, are not paid in full and received by Lender at its office at or before 1:00 P.M. on the maturity date (whether such date is the scheduled maturity date hereof, or any earlier date by reason of acceleration or notice of prepayment), the rate of interest due on the outstanding principal balance hereof shall be increased to the Default Rate from and after the date on which payment of the outstanding principal balance was due. Borrower and Lender intend that in the event of a foreclosure proceeding or a bankruptcy, insolvency or similar proceeding following acceleration, notice of prepayment or scheduled maturity, the rate of interest which shall accrue and be payable (and be secured by this Deed of Trust) during the pendency of such proceeding and until this Deed of Trust is paid in full, shall be the Default Rate.

(b) In the event any payment of Debt Service, Deposits or Additional Payments due under this Deed of Trust is not paid and received by Lender at its office at or before 1:00 P.M. on the date which is five days after the due date (with no other grace period), a late charge of 6 cents for each \$1 so overdue shall become immediately due and payable to Lender as liquidated damages for failure to make prompt payment, and such charge shall be due as an Additional Payment. In the event any such payment has not been paid and received by Lender at its office at or before 1:00 P.M. on the 15th day of the month (with no grace period), an additional late charge of 4 cents for each \$1 overdue shall be payable.

(c) In the event any check for any payment due under this Deed of Trust fails due collection, a charge of \$300 shall become immediately due to Lender to compensate Lender for its administrative cost occasioned by such failure of collection.

(d) In the event any document required to be delivered by Borrower to Lender under any provision of this Deed of Trust is delivered more than 30 days later than the date when due, a late charge of \$100 for each day late after such 30 day period, with respect to each document which is late, shall become immediately due to Lender as liquidated damages.



(e) This Paragraph 12 shall not limit Lender's remedy of foreclosure for Borrower's default or any other remedy of Lender hereunder (other than actual damages for which a payment of liquidated damages in lieu thereof is provided in this Paragraph 12), and no other remedy which Lender may have shall limit Borrower's obligation to pay the charges provided in this Paragraph 12.

13. Right of Access and Entry; Inspections

(a) Borrower will permit Lender and its authorized representatives to enter the Premises at all reasonable times for the purpose of (i) inspecting the same, (ii) showing the same to prospective purchasers, tenants, or Lenders, and (iii) making any necessary repairs thereto and performing any work therein that may be necessary by reason of Borrower's failure to make any such repairs or perform any such work which may be required under this Deed of Trust. Nothing herein shall imply any duty upon the part of Lender to do any such work, and performance thereof by Lender shall not constitute a waiver of Borrower's default in failing to perform the same.

(b) Borrower shall pay the cost of an annual inspection of the Premises by Lender or its representative in the amount of \$1,250.00. All inspections of the Premises by Lender or its representatives shall be solely for the benefit of Lender and shall create no obligation or responsibility whatsoever upon Lender or its representatives to Borrower or any other party.

14. Indemnity; Expenses

(a) Borrower will indemnify and save harmless Lender against and from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including architects, attorneys, accountants, engineers and other professional fees and disbursements, which may be imposed upon or incurred by or asserted against Lender by reason of any matter, occurrence or thing relating to Borrower or the Mortgaged Property. In case any action or proceeding is brought against Lender by reason thereof, Borrower upon written notice from Lender will at Borrower's reasonable expense resist or defend such action or proceeding by counsel selected by Lender, and Borrower's failure to so defend shall be an event of default under this Deed of Trust. Lender nonetheless shall be entitled to retain its own counsel and conduct its own defense, and all expenses thereof, including attorneys' fees and disbursements, shall be paid by Borrower as an Additional Payment.

(b) If Lender employs an attorney or collection agent, or otherwise incurs any expense, (i) to collect all or any Debt Service, Additional Payments, or Deposits due to Lender hereunder, or (ii) to enforce any other provision hereof, or (iii) to foreclose this Deed of Trust or enforce other remedies to which Lender may be entitled, or (iv) to represent Lender in any action or proceeding (including but not limited to any bankruptcy or insolvency proceeding or any foreclosure action initiated by any other person or entity) involving Borrower or the Mortgaged Property, in which action or proceeding Lender is named as a party, or issues relating to the priority, enforceability or collectibility of, or amounts secured by, this Deed of Trust are raised, or any seizure or claim of forfeiture is asserted by any federal, state or local government entity, or (v) in connection with any

proposed Transfer or any other matter for which Borrower may request Lender's consent or other action by Lender; then in any of such events the Lender, in addition to all other costs and fees allowed according to law, shall be reimbursed by Borrower immediately for all costs, attorneys fees and disbursements, and collection agent charges incurred by Lender, the same shall be paid as an Additional Payment, shall be secured by this Deed of Trust, and shall be recoverable by Lender in any foreclosure, bankruptcy or insolvency proceeding.

15. Lender Not Responsible for Damage or Injury

Borrower is and shall be in exclusive control and possession of the Mortgaged Property as provided herein, and Lender shall not in any event or for any reason whatsoever be liable for any injury or damage to any Mortgaged Property or to any person happening on or about the Premises, nor for any injury or damage to any Mortgaged Property of Borrower, or of any other Person, contained therein. The provisions hereof permitting Lender to enter and inspect the Premises are made for the purpose of enabling Lender to be informed as to whether Borrower is complying with the agreements, terms, covenants and conditions hereof, and to do such acts as Borrower shall fail to do, and are not intended to create any obligation or impose any responsibility on Lender with respect to the Premises or any condition existing thereon or therein.

16. Defaults

(a) Each of the following shall be an event of default: (i) failure to pay any Debt Service, Additional Payment, Deposit or Transfer Taxes when due; or (ii) failure to pay any Imposition or Insurance Premiums when required to be paid by the terms of this Deed of Trust; or (iii) failure to exhibit to Lender, within ten days after demand, receipts showing payment of all Impositions, Insurance Premiums or Transfer Taxes (except where payment of the specific item of Impositions or Insurance Premiums has been made by Lender on Borrower's behalf from Deposits); or (iv) actual structural alteration, demolition or removal of any Improvement, or non-structural alteration of any Improvement for which Lender's consent is required under Paragraph 9(c), without the prior written consent of Lender; or (v) failure to comply with (and where applicable, obtain a discharge of record of) any requirement or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the Premises within sixty days from notice thereof (or, for violations existing on the date of this Deed of Trust, within six months after the date of this Deed of Trust), to the reasonable satisfaction of Lender, provided that if same cannot be discharged of record within such sixty-day (or six month, as the case may be) period, it shall not be an event of default hereunder if Borrower shall obtain the discharge of such violation within such longer period as is reasonably necessary to obtain the discharge of record (provided that Borrower has completed the work necessary to correct the violation within sixty days from notice thereof, or within six months from the date of this Deed of Trust for violations existing on the date of this Deed of Trust, and is diligently pursuing the discharge of record and the failure to obtain such discharge of record is beyond the reasonable control of Borrower); or (vi) if on application of Borrower or Lender two or more insurance companies lawfully doing business in the State where the Premises are located refuse to issue policies insuring the Improvements on the terms and conditions required by this Deed of Trust; or

(vii) in the event of the removal, demolition or destruction in whole or in part of any of the Equipment, unless the same are promptly replaced by similar Equipment at least equal in quality and condition to those replaced, free from chattel Deed of Trust, security interest or other encumbrances thereon and free from any, reservation of title thereto; or (viii) in the event of the passage of any law deducting from the value of land for the purposes of taxation, any lien thereon, or changing in any way the taxation of the mortgages or debts secured thereby for state or local purposes; or (ix) if Borrower fails to keep, observe and perform any of the other covenants, conditions or agreements contained in this Deed of Trust for which no specific event of default is provided in this Deed of Trust; or (x) if proceedings under any bankruptcy or insolvency law are commenced by or against Borrower, or if a general assignment for the benefit of creditors is made by Borrower or if a trustee or receiver of the Mortgaged Property of Borrower be appointed and not dismissed within ninety days; or (xi) if Borrower requests or consents to any change in zoning affecting the Premises or any waiver of or exemption from enforcement of any applicable zoning requirement affecting the Premises, or materially varies the character or use of the Premises, or amends the certificate of occupancy, without in each such instance first obtaining the prior consent in writing thereto of Lender, which consent may be withheld by Lender for any or no reason; or (xii) if Borrower defaults in the observance and/or performance of the covenants and agreements on the part of Borrower, as Landlord under the Lease to be performed and observed and said default continues beyond any applicable notice and grace period; or (xiii) the occurrence of a Material Adverse Change; or (xiv) Borrower fails to obtain Lender's prior written consent to any subordinate financing (including, without limitation, any PACE financing); or (xv) if any representation or warranty made by Borrower, or any guarantor of the Deed of Trust and the Note, in the commitment letter for the Deed of Trust, or in any other document or information submitted to Lender by Borrower, or any such guarantor in connection with such commitment letter or this Deed of Trust, shall have been untrue or inaccurate in any material respect when made or on the date of this Deed of Trust, or if Borrower, or any such guarantor has failed or fails in any material respect to perform its obligations under such commitment letter.

(b) Upon the occurrence of any event of default described in Paragraph 16(a) or in any other provision of this Deed of Trust, and in the case of events of default for which a notice and/or cure period is expressly set forth, upon the expiration of such notice and/or cure period without the event of default having been cured, a default shall have occurred under this Deed of Trust which shall entitle Lender, without further notice required by Lender and without any further right to cure being allowed to Borrower, to immediately exercise any and all of its rights provided under this Deed of Trust or by law for default. Borrower acknowledges and agrees that except where this Deed of Trust expressly provides that Borrower is entitled to notice and/or an opportunity to cure a specified event of default, each and every event of default provided in this Deed of Trust shall, immediately upon its occurrence, constitute a default entitling Lender to exercise all of such remedies. Borrower further acknowledges that wherever in this Deed of Trust is provided that Borrower is entitled to notice and/or an opportunity to cure with respect to any event of default, then immediately following the satisfaction of any such notice requirement and/or the expiration of the specified cure period, without further notice, the event of default shall become a default entitling Lender to exercise all of such remedies.

17. Remedies Upon Default

(a) Upon any default under this Deed of Trust (after the expiration of any applicable notice and/or cure period provided in this Deed of Trust), all principal due under this Deed of Trust, all accrued interest, the Fee Payment, and all other Additional Payments shall, at the option of Lender, become immediately due and payable. If following an exercise by Lender of its option to declare such sums immediately due and payable, Borrower shall tender payment of an amount which by law otherwise would entitle Borrower to redeem the Mortgaged Property from foreclosure prior to a sale thereof, then Borrower shall not be entitled to so redeem the Mortgaged Property unless Borrower shall include in such tender, in addition to all accrued interest and the principal balance, the Fee Payment, and all other unpaid Additional Payments.

(b) In the event of a foreclosure of this Deed of Trust the Premises or so much thereof as may be affected by this Deed of Trust may be sold in one parcel, any provision of law to the contrary notwithstanding. Failure to join tenants as defendants shall not constitute any defense to the action.

(c) In the event of any foreclosure of this Deed of Trust, Lender shall be entitled to apply any balance of Deposits held by Lender under this Deed of Trust, against its costs, expenses and damages incurred by reason of such foreclosure of this Deed of Trust, and for this purpose shall be entitled to retain all such Deposits until a final determination of such costs, expenses and losses is made. Borrower shall also pay to Lender on demand, as an Additional Payment, all Transfer Taxes for which Borrower is liable under this Deed of Trust, and all tenant security deposits held by Borrower or as may be reflected in leases or by receipts held by tenants, all accrued interest thereon, and any penalties and/or expenses relating thereto, except that Borrower shall not be required to pay to Lender any such security deposits which were lawfully applied by Borrower, as landlord, upon default of and vacating of the Premises by the tenant. All such Transfer Taxes, interest and penalties, if any, and other sums may be paid by a receiver appointed in the foreclosure.

(d) Nothing in this Paragraph 17 shall limit or prejudice the right of Lender to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by any statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount be greater, equal to or less than any amount of damages provided herein.

(e) Upon any default under this Deed of Trust (after the expiration of any applicable notice and/or cure period provided in this Deed of Trust), or upon the occurrence of any threatened alteration or demolition of the Mortgaged Property not permitted hereunder, or any actual or threatened waste to the Mortgaged Property, Lender shall be entitled, as a matter of right and without regard to the adequacy of any security for the indebtedness secured hereby (and without notice in any action to foreclose this Deed of Trust and in such other actions or circumstances as may be permitted by law), to the appointment of a receiver for the Mortgaged Property, whether such receivership is incidental to a proposed sale of the Mortgaged Property or otherwise.

Borrower hereby consents to the appointment of such a receiver and will not oppose any such appointment nor the exercise by such receiver of all rights of Lender and/or Borrower arising from or related to the Mortgaged Property and the enjoyment of all benefits therefrom, whether or not expressly provided herein.

(f) Upon any default of the Borrower (after the expiration of any applicable notice and/or cure period provided in this Deed of Trust) in complying with or performing any warranty or covenant herein, the Lender may, at the Lender's option, comply with or perform the same, and the cost thereof together with interest thereon at the Default Rate shall be paid by the Borrower to the Lender on demand as an Additional Payment. If upon any default (after the expiration of any applicable notice and/or cure period provided in this Deed of Trust), the Lender or a receiver enters upon and takes possession of the Premises, Lender or such receiver shall be entitled to collect the rents therefrom and apply the same to the payment of Debt Service, Additional Payments and Deposits, and to the expenses of operating the Premises, which expenses are deemed to include without limitation, all costs of repairs and capital improvements, reasonable reserves set aside for repairs and capital improvements, management fees, receiver's fees, Impositions, Insurance Premiums and Transfer Taxes, and all other costs or expenses of any kind or nature which Lender or a receiver may deem necessary or advisable to pay, or create reserves for, in connection with the Mortgaged Property. The amount, if any, by which all such expenses of operating the Premises exceed the net revenues collected from the Premises, together with interest thereon at the Default Rate shall be paid by the Borrower to the Lender on demand as an Additional Payment. Lender or such receiver shall be entitled to exercise all the rights and authority of Borrower in the operation of the Premises, including without limitation, leasing vacant space in the Premises, or extending or modifying the term of any lease on such terms as Lender or such receiver may determine in its discretion, and to make or not to make such repairs or capital improvements as Lender or such receiver deems advisable in its discretion. Lender or such receiver shall have no liability to Borrower for any such action taken or not taken. Nothing in this subparagraph (f) shall in any way obligate Lender or a receiver to advance any money to pay any expenses (including repairs or capital improvements) of the Premises, or to take any specific action in the operation of the Premises.

(g) Lender may, at Lender's option, foreclose this Deed of Trust for any portion of the debt or any other sums secured hereby which are then due and payable, subject to the continuing lien of this Deed of Trust for the balance of the debt not then due.

(h) With respect to any portion of the Mortgaged Property in which this Deed of Trust grants to Lender a security interest under the Uniform Commercial Code, in addition to and without limiting any other remedies available to Lender under this Deed of Trust or by law, Lender shall be entitled to exercise all of the remedies of a secured party upon default available under the Uniform Commercial Code.

(i) At any time during the existence of a Default, Lender, at Lender's option, may declare the indebtedness due and payable without further demand, and may invoke the power of sale and any other remedies permitted by applicable law or provided in this Deed of Trust or in



any other loan document. Borrower acknowledges that the power of sale granted in this instrument may be exercised by Lender without prior judicial hearing. Borrower has the right to bring an action to assert the non-existence of a Default or any other defense of Borrower to acceleration and sale. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including reasonable attorneys' fees, costs of documentary evidence, abstracts and title reports.

(j) If Lender invokes the power of sale and it is determined in a hearing held in accordance with applicable law that Trustee can proceed to sale, Trustee shall take such action regarding notice of sale and shall give such additional notices to Borrower and to other persons as the laws of Oregon may require. After the lapse of such time as may be required by applicable law and after the publication of the notice of sale, Trustee shall sell the Mortgaged Property according to the laws of Oregon. Trustee may sell the Mortgaged Property at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any part of the Mortgaged Property by public announcement at the time and place of any previously scheduled sale. Lender may purchase the Mortgaged Property at any sale.

(k) Trustee shall deliver to the purchaser at the sale, within a reasonable time after the sale, a deed conveying the Mortgaged Property so sold without any covenant or warranty, express or implied. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of sale in the following order: (a) to all costs and expenses of the sale, including Trustee's fees not to exceed 5% of the gross sales price, reasonable fees and out-of-pocket expenses of attorneys and costs of title insurance; (b) to the indebtedness in such order as Lender, in Lender's discretion, directs; and (c) the excess, if any, to the person or persons legally entitled thereto.

#### 18. Waivers; Cumulative Remedies

(a) No failure by Lender to insist upon the strict performance of any covenant, agreement, term or condition of this Deed of Trust or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Debt Service during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Deed of Trust to be performed or complied with by Borrower, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Lender. No waiver of any breach shall affect or alter this Deed of Trust, but each and every covenant, agreement, term and condition of this Deed of Trust shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

(b) In the event of any breach or threatened breach by Borrower of any of the covenants, agreements, terms or conditions contained in this Deed of Trust, Lender shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy



allowed at law or in equity or by statute or otherwise, including proving actual damages, as though no other remedies were provided for in this Deed of Trust.

(c) Each right and remedy of Lender provided for in this Deed of Trust shall be cumulative and shall be in addition to every other right or remedy provided for in this Deed of Trust or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lender of any one or more of the rights or remedies provided for in this Deed of Trust or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise, or be deemed a waiver, by Lender of any or all other rights or remedies. Specifically, the enforcement of any provision of this Deed of Trust providing for payment by Borrower of liquidated damages, interest, costs or other charges upon the occurrence of any event of default hereunder shall not preclude Lender from exercising any other remedies, including foreclosure, or proving actual damages, which it may have upon such event of default. It is also expressly agreed that Lender's right to interest upon any sum in arrears owed by Borrower does not deprive Lender of any other remedies respecting the event of default in question.

19. Transfers of the Mortgaged Property

Any Transfer made or permitted by Borrower shall be an event of default under this Deed of Trust, entitling Lender immediately, without notice or cure period, to exercise any or all of its remedies for default provided herein or by law.

20. Tenant Leases

Borrower covenants and agrees to each of the following provisions with respect to tenant leases:

(a) Each tenant lease made after the date of this Deed of Trust shall be in a form previously approved by Lender and shall contain language expressly subordinating the lease to all deeds of trust now or hereafter affecting the Premises and to all modifications, extensions, renewals and consolidations thereof and all sums advanced thereunder. Borrower acknowledges and agrees that each such lease shall be subject and subordinate as provided in the preceding language whether or not the lease explicitly so provides. No such lease shall contain a purchase option, a right of first offer or a right of first refusal.

(b) All such leases shall be made only in accordance with all applicable rent regulations. Borrower shall comply with all applicable orders of rent regulatory authorities, and shall promptly refund all rent or other overcharges found to be due with respect to periods on or subsequent to the date of this Deed of Trust, and if Borrower or an affiliate shall have owned the Mortgaged Property prior to the date of this Deed of Trust, then also with respect to such period prior to the date of this Deed of Trust during which Borrower or such affiliate owned the Mortgaged Property, and pay when due any penalties, fees or damages which may be assessed, with respect to the Premises and the tenants and leases thereof.

(c) Upon any foreclosure of this Deed of Trust, it is expressly agreed that Borrower shall deliver to Lender all leases, contracts, documents, rent rolls and other records used in the operation of the Premises, together with security deposits held by Borrower or as reflected in tenant leases or by receipts held by tenants, and all accrued interest due thereon. Borrower agrees to indemnify and save Lender harmless from and against any claim or lien against Lender or the Mortgaged Property for the return of any security deposits and interest under any leases with tenants.

(d) Borrower shall not with respect to any present or future leases accept prepayment of rent prior to its due date in excess of one month.

(e) Borrower shall furnish to Lender, within 30 days after request but not more than twice in any calendar year, a full copy of each and every residential and commercial lease and lease renewal of the Premises. Original signed counterparts of all leases shall be exhibited to Lender upon request within ten days.

(f) Commercial leases and renewals thereof shall be at a monthly rental of not less than the highest monthly rental of the prior leasing period (or if less, fair market rental). No lease, either residential or commercial, shall contain any right by tenant to renew or extend the same, unless otherwise approved by Lender in writing.

## 21. Assignment of Leases and Rents

(a) Borrower hereby assigns to Lender all of Borrower's right, title and interest as landlord under all existing and future Leases, and the rents, issues and profits of the Mortgaged Property, as further security for the payment of Debt Service, Additional Payments, Deposits and Transfer Taxes, and in the event Lender exercises its rights pursuant to Paragraph 21(b), as further security for the payment of all charges and expenses of operating the Premises, and all fees, disbursements and expenses of receivers, legal counsel, accountants, managing agents and other persons employed in connection with the Mortgaged Property.

(b) In furtherance of the assignment provided in Paragraph 21(a), Borrower hereby grants to Lender the following rights and powers: (i) to enter upon and take possession of the Premises; (ii) to demand payment of and collect the rents and other amounts payable under the Leases, and to demand and enforce performance of the terms, covenants and conditions of the Leases, by legal proceedings or otherwise; (iii) to exercise all of Borrower's rights, interests and remedies in and under the Leases; (iv) to settle, adjust or compromise the rents and other amounts payable under the Leases, and to settle, adjust or compromise any legal proceeding brought to collect the rents and other amounts payable thereunder or to obtain performance thereof; (v) to prepare, file and sign Borrower's name on any proof of claim in bankruptcy, or similar document in a similar proceeding, against obligors of the Leases; (vi) to endorse the name of Borrower upon any payment or proceeds of the rents and other amounts payable under the Leases and to deposit the same to the account of Lender; (vii) to hold, manage, lease and operate the Mortgaged Property

as Lender may deem proper; (viii) to make necessary capital expenditures; (ix) to apply such rents, income and profits to the payment of all charges and expenses of operating the Premises, fees, disbursements and expenses of receivers, legal counsel, accountants, managing agents and other persons employed in connection with the Mortgaged Property, and to the payment of Debt Service, Additional Payments, Deposits, Impositions, Insurance Premiums and Transfer Taxes due under this Deed of Trust; and (x) to do all acts and things necessary, in Lender's sole discretion, to carry out any or all of the foregoing.

(c) In event the Borrower or any Person controlled by, controlling, or under common control with, Borrower, is an occupant of the Premises, then upon any default under this Deed of Trust (after the expiration of any applicable notice and/or cure period provided in this Deed of Trust), Borrower or such Person will pay monthly in advance to the Lender, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of the Premises or of such part thereof as may be in the possession of the Borrower or such Person, and upon failure to make any such payment will vacate and surrender the possession of the Premises to the Lender or to such receiver, and upon failure to vacate and surrender possession may be evicted by summary proceedings.

(d) The Lender hereby waives the right to enter upon and to take possession of the Premises for the purposes above set forth, including the right to take possession of the Premises for the purpose of collecting said rents, issues and profits, and Borrower shall be entitled to collect and receive said rents, issues and profits, until the occurrence of any event of default under this Deed of Trust (prior to the expiration of any applicable notice and/or cure period provided in this Deed of Trust). Borrower agrees to use such rents, issues and profits in payment of Debt Service, Additional Payments and Deposits, and in payment of Impositions, Insurance Premiums, Transfer Taxes and expenses of operating the Premises, and after payment of all such amounts which are then due, Borrower shall be entitled to retain any balance of rents, issues and profits then collected by it. Such right of Borrower to collect and receive the rents, issues and profits, may be revoked by the Lender upon the occurrence of any event of default upon five days' written notice. Such right of revocation by Lender shall become effective whether or not any other required notice has been given or applicable cure period has expired, whether or not foreclosure has been instituted and without applying for a receiver.

## 22. Payments From Deposits; Lender's Liability

(a) Lender shall make all payments of Impositions and Insurance Premiums for which it is holding Deposits by their respective due dates, including grace periods, if and only if each of the following conditions is met: (i) Borrower has timely made all Deposits for any purpose which may be required or demanded by Lender under Paragraph 4; (ii) Borrower is not overdue (without regard to any applicable notice and/or cure period) in the payment of any Debt Service or Additional Payments due under this Deed of Trust, and no other event of default shall have occurred and remain uncured after any applicable notice and/or cure period; (iii) no amount advanced by Lender to satisfy any obligation of Borrower under this Deed of Trust, including interest thereon computed as provided in this Deed of Trust, remains unpaid by Borrower (whether

or not the failure to have paid any such amount does not yet constitute a default because of any applicable notice or cure period or otherwise); and (iv) no action to foreclose this Deed of Trust or to enforce the Note or any other agreement relating thereto shall be pending.

(b) Notwithstanding anything in this Deed of Trust which might otherwise be construed to the contrary, in no event shall Lender at any time be liable to Borrower for any damages, costs or expenses in excess of Lender's equity in this Deed of Trust. All judgments against Lender or any of its principals or agents shall be enforced against said equity and not against any other present or future asset of Lender or any of its principals or agents. Borrower hereby waives any rights Borrower may now or hereafter have to have recourse against such present or future assets. If Lender fails to pay any payments of Impositions or Insurance Premiums for which it is holding adequate Deposits, or any other payment for which Lender is or may become responsible with respect to the Mortgaged Property, Borrower, as its sole and exclusive remedy, may pay any such payment which Lender has so failed to pay to the Person to whom due and may deduct the amount so paid from the next regular installments of Debt Service and/or Deposits, as the case may be, due hereunder.

(c) Whenever in this Deed of Trust or as a matter of law it is provided that Lender's consent or approval shall not be unreasonably withheld or the actions of Lender shall be reasonable, the remedy of Borrower, in the event Borrower shall claim or establish that Lender has unreasonably withheld such consent or approval or has acted unreasonably, shall be limited to injunctive relief or declaratory judgment, and in no such event shall Borrower be entitled to obtain, nor shall Lender be liable for, a money judgment.

23. Prepayment

This Deed of Trust may be prepaid in full, but not in part, at any time upon 30 days written notice, provided, however, that the Fee Payment shall be due upon the Fee Payment Date arising as a result of such prepayment. Upon the giving of notice of prepayment, the Deed of Trust is due and payable in full on the date specified in such notice as if such date were the maturity date specified herein.

24. Procedure for Payment at Maturity or Upon Prepayment

Borrower shall pay to Lender or its designated agent at maturity or upon prepayment permitted under Paragraph 23 the unpaid principal balance hereof, accrued interest thereon, the Fee Payment and all then due and unpaid Additional Payments. Payment at maturity or upon prepayment permitted under Paragraph 23 shall be made as follows: (i) by unendorsed certified check or unendorsed bank cashier's check drawn in U.S. dollars to the order of Lender or such agent on a banking institution which is a member of the Federal Deposit Insurance Corporation, and received by Lender or such agent at its offices at or before 1:00 p.m. on a Banking Day, at the address of Lender specified at the beginning of this Deed of Trust or furnished pursuant to the provisions of Paragraph 27; or (ii) at Lender's sole option, by wire transfer and received in Lender's bank account at or before 1:00 p.m. on a Banking Day. Payment shall include interest

computed to and including the date of delivery of the check in payment or the date of receipt of wire.

Upon the making of such payment by Borrower, Lender shall deliver to Borrower either (i) a satisfaction of this Deed of Trust (which may by its terms provide for discharge of all of Lender's obligations hereunder from and after the date of delivery thereof), or (ii) an assignment of this Deed of Trust without recourse and in such form as Lender shall determine in its sole discretion. All taxes and expenses in connection with the satisfaction or assignment of this Deed of Trust, a processing fee together with the fees and disbursements of Lender's attorney for preparation of necessary documents and attendance at the Deed of Trust payoff closing, shall be paid by Borrower, and shall be deemed an Additional Payment due and payable with the payment being made on this Deed of Trust. Borrower shall advise Lender in writing of the date, time and place scheduled for the payoff closing.

25. Reduction of Principal Balance By Insurance and Condemnation Proceeds

In the event the unpaid principal balance of this Deed of Trust is reduced by the Lender or a receiver applying insurance proceeds or condemnation awards in reduction thereof, or by prepayments made by Borrower with the prior written consent of Lender, then notwithstanding such reduction, Debt Service shall continue to be payable in accordance with the terms of this Deed of Trust, and the amount of such reduction shall be applied against payments coming due under this Deed of Trust in the inverse order of their maturity.

26. Junior Deed of Trusts

Borrower shall not place any Junior Deed of Trust on the Mortgaged Property or any part thereof, or otherwise create a security interest in or encumber the Mortgaged Property or any part thereof. Borrower shall not permit the Mortgaged Property or any part thereof to be cross-collateralized with any other Mortgaged Property, whether owned by Borrower or by any other Person. Any breach of any provision of this Paragraph 26 shall be an event of default under this Deed of Trust, and shall entitle Lender, without any notice or grace period, to exercise any and all remedies provided for default in this Deed of Trust or otherwise permitted by law.

27. Notices

(a) Whenever it is provided herein that notice, demand, request or other communication shall or may be given to or served upon either of the parties by the other, and whenever either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or the Mortgaged Property, each such notice, demand, request or other communication shall be in writing and, any law or statute to the contrary notwithstanding, shall be effective for any purpose only if given or served as follows:

(i) If by Lender, by mailing the same to Borrower by certified or registered mail postage prepaid, return receipt requested, or by delivery by a nationally recognized reputable



overnight courier service which maintains a tracking system, addressed to Borrower at the address set forth at the beginning of this Deed of Trust, or at such other address as Borrower may from time to time designate by like notice.

(ii) If by Borrower, by mailing the same to Trustee and Lender by registered or certified mail, postage prepaid, return receipt requested, or by delivery by a nationally recognized reputable overnight courier service which maintains a tracking system, addressed to Trustee and Lender at the address set forth at the beginning of this Deed of Trust, or at such other address as Trustee and Lender may from time to time designate by like notice.

(iii) Every notice, demand, request or other communication hereunder shall be deemed to have been given or served 72 hours after the time that the same shall be deposited in the United States mail, postage prepaid, or one business day after deposit with overnight courier, in the manner aforesaid.

(b) Borrower shall pay to Lender immediately upon demand a service fee of \$25 each time that Lender elects to use for any reason, certified or registered mail, by hand delivery or recognized overnight courier. Lender, at its election, may deduct this charge from the Deposits.

28. Borrower's Certificate; Statement of Balances

(a) Borrower shall, without charge, at any time and from time to time, within ten days after request by Lender, certify by written instrument, duly executed, acknowledged and delivered to Lender or any other Person specified by Lender: (i) that this Deed of Trust is unmodified and in full force and effect or, if there have been any modifications or release of security from this Deed of Trust, that the same is in full force and effect as modified, and stating the modifications and describing any security released; (ii) whether or not there are then existing any set-offs or defenses against the Deed of Trust debt or the enforcement of any of the agreements, terms, covenants or conditions of this Deed of Trust upon the part of Borrower to be performed or complied with, and, if so, specifying the same; and (iii) the amount of the debt secured by this Deed of Trust, the outstanding principal balance, the rate of interest, and the date to which interest has been paid. Borrower's failure to provide such certificate within such ten-day period shall be an event of default hereunder, and shall entitle Lender to exercise any or all of its remedies for default provided hereunder or by law if such event of default is not cured within ten days after notice is given by Lender.

(b) Lender shall be entitled, at any time and from time to time, to send to Borrower a statement setting forth the balance of Deposits then held by Lender. If Borrower does not dispute such balances by written notice to Lender given within sixty days after the date Lender sends the statement to Borrower, then Borrower shall be deemed to admit the correctness of such balances and of all disbursements of Deposits by Lender which are reflected on such statement, and Borrower shall thereafter have no right to contest such balances or the correctness of any such disbursements, by legal proceedings or otherwise.

29. Financial Statements and Other Information

(a) (i) Prior to March 31 of each calendar year, Borrower shall furnish to Lender a balance sheet, statement of income and expense, and statement of changes in financial condition and/or stockholders equity of Borrower which shall be sworn to by a principal of the Borrower, stating that such financial statements present fairly the information shown therein in conformity with generally accepted accounting principles.

(ii) At any time and from time to time, but not more than once in any calendar year, upon the later to occur of twenty (20) days after Borrower files its federal income tax returns, or within one hundred twenty (120) days after the end of Borrower's fiscal year, Borrower shall furnish to Lender such other financial statements for the Mortgaged Property as Lender shall specify in such request. At any time and from time to time, within 60 days after a written request therefor has been made, Borrower shall furnish or cause to be furnished to Lender, (A) such other financial statements of the Borrower, any Principals of the Borrower (as defined in the commitment letter for this Deed of Trust) and/or any other guarantors of the Note, this Deed of Trust or of the obligations of Borrower pursuant to paragraph 32 of this Deed of Trust (if applicable); and/or (B) current tax returns for Borrower, and/or such Principals and/or Guarantors and Global Cash Flow Statements from all Guarantors. Such statements shall be for the calendar year set forth in such request. Borrower shall also furnish within 10 days after written request, but not more than twice in any calendar year, a current rent schedule of the Mortgaged Property certified by Borrower or its agent setting forth the name of each tenant, space occupied, monthly rent, arrears, lease security and lease expiration date.

(iii) Failure to timely comply with the reporting requirements contained in this subsection 29(a) shall entitle Lender to a fee of \$50.00 per day for each day Borrower fails to comply with such requirements, as so demanded by Lender.

(b) Intentionally omitted

(c) Borrower shall give prompt notice to Lender of any actions or proceedings instituted by or against Borrower in any federal or state court or by any governmental department, agency or instrumentality, or any such actions or proceedings threatened against Borrower, affecting the Mortgaged Property or which, if adversely determined, would have a material adverse effect upon Borrower's business, assets or condition, financial or other, or upon the lien of this Deed of Trust. Any notice so given shall specify what action Borrower is taking or proposes to take with respect thereto and shall include a copy of any documents relevant thereto.

30. Intentionally Omitted

31. Good Standing of Borrower

If Borrower is a corporation, partnership, limited liability company or trust, it shall keep in effect its existence and rights as a corporation, partnership, limited liability company, or trust under

the laws of the state of its incorporation or formation and its right to own Mortgaged Property and transact business in the state in which the Premises are situated during the entire time that it has any interest in the Mortgaged Property or any part thereof. For all periods during which title or beneficial title to the Mortgaged Property or any part thereof shall be held by a partnership, trust, corporation or association subject to corporate franchise taxes, income taxes, license or other fees or taxes, or any taxes similar to any thereof, Borrower shall file returns for such taxes or license or other fees with the proper authorities, bureaus or departments and it shall pay, when due and payable and before interest or penalties are due thereon, all such taxes or license or other fees owing by Borrower to the United States, to such state of incorporation or formation and to the state in which the Premises are situated and any political subdivision thereof. Upon written request of Lender not more than once a year, Borrower shall within 15 days supply evidence satisfactory to Lender of the good standing of Borrower in the state of its formation (and if different, in the State of Oregon).

32. Intentionally Omitted

33. Instruments of Further Assurance, Etc.

At any time and from time to time, upon Lender's reasonable written request, Borrower shall make, execute and deliver or cause to be made, executed and delivered to Lender and, where appropriate, shall cause to be recorded or filed and from time to time thereafter to be re-recorded or refiled at such time and in such offices and places as shall be deemed desirable by Lender, without charge to Lender (but Lender shall bear the costs of filing or recording), any and all such further deeds of trust, instruments of further assurance, certificates, UCC financing statements, and other documents as Lender may consider necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligations of Borrower under this Deed of Trust, and the lien of this Deed of Trust. Upon any failure by Borrower to do so, Lender may make, execute, record, file, re-record or refile any and all such deeds of trust, instruments, certificates and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower to do so, and the cost of doing the same, including attorneys' fees and disbursements, shall be payable by Borrower.

34. Future Advance

This Deed of Trust also secures the payment of and includes all future or further advances as may be made by the Lender to and for the benefit of the Borrower within twenty (20) years from the date hereof, or within such lesser period of time as may be provided hereafter by law as a prerequisite for the sufficiency of actual notice or record notice of the optional future or additional advances as against the rights of creditors or subsequent purchasers for valuable consideration. Specifically and not by way of limitation of the foregoing, the Borrower authorizes the Lender to, and any future advances under the provisions of this section shall, include any and all payments, whether of principal, interest or otherwise, which may be made by the Lender under any future Deed of Trust or liens to which the Lender subordinates the lien and payment of the Note and Deed of Trust. The total amount of indebtedness secured by this Deed of Trust may decrease or increase

from time to time, but the total unpaid principal balance so secured at any one time shall not exceed the maximum principal sum of \$1,340,00.00 plus interest thereon, and any and all disbursements made by the Lender for the security and preservation of the Mortgaged Property and/or the indebtedness as hereinbefore authorized by this Deed of Trust, with interest on such disbursements at the rates specified in this Deed of Trust. Such further or future advances shall be wholly optional with the Lender and the same shall bear interest at the same rate as specified in the Note referred to herein, unless and until said interest rate shall be modified by subsequent agreement. Any such future or further advances which may be made by the Lender to and for the benefit of the Borrower in accordance with this section shall be secured by this Deed of Trust to the same extent as if such future or further advances were made on the date of the execution hereof, irrespective of whether this Deed of Trust or the other loan documents are in default or whether the indebtedness is past maturity and is due and payable in its entirety.

35. Intentionally Omitted

36. Substitute Trustee.

Lender may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed under this instrument by an instrument recorded in the county to which this Deed of Trust is recorded. Without conveyance of the Mortgaged Property, the successor trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law.

37. Miscellaneous

(a) Any payment of Debt Service, Additional Payments or Deposits due from Borrower to Lender shall not be considered timely made when due unless it shall be actually received by Lender no later than 1:00 p.m. in Clearwater, Florida on the date when due. Any references to a time of day in this Deed of Trust shall be Eastern Standard Time or Eastern Daylight Time, as applicable.

(b) Borrower shall pay to Lender on the date hereof, and on each anniversary of the date hereof, a service charge calculated per tax lot included in the Mortgaged Property, on the original principal amount of this Deed of Trust as follows: (i) Deed of Trust \$1,000,000.00 or less -- \$250.00 for the first tax lot plus \$125.00 for each additional tax lot; (ii) Deed of Trust amount more than \$1,000,000.00 and \$2,500,000.00 or less --- \$350.00 for the first tax lot plus \$175.00 for each additional tax lot; (iii) Deed of Trust amount more than \$2,500,000.00 and \$5,000,000.00 or less --- \$500.00 for the first tax lot plus \$250.00 for each additional tax lot; and (iv) Deed of Trust amount more than \$5,000,000.00 --- \$650.00 for the first tax lot plus \$325.00 for each additional tax lot. Lender shall deduct the service charge from the Deposits being held by Lender. There shall be no proration of this charge on the maturity date or the date of (or by reason of) any prepayment.

(c) In the event the holder at any time of this Deed of Trust shall sell, transfer or assign

this Deed of Trust, such holder shall be and hereby is entirely discharged, released and relieved of all covenants, obligations and liabilities of Lender hereunder as of the date of such sale, transfer or assignment, provided that such holder shall continue to be entitled to the benefit of all indemnities by Borrower in favor of Lender provided in this Deed of Trust.

(d) There shall be no merger of this Deed of Trust with the fee estate in the Mortgaged Property by reason of the fact that this Deed of Trust or any interest therein may be held, directly or indirectly, by or for the account of any Person or Persons who shall own the fee estate in the Mortgaged Property, or any interest therein. No such merger shall occur unless and until Lender and Borrower shall join in a written instrument effecting such merger.

(e) Nothing in this Deed of Trust shall require Borrower to pay any interest, liquidated damages or any other charge which might be construed as interest in an amount which would subject Lender to any penalty or permit any declaration of invalidity of the Note or this Deed of Trust under any applicable usury or other law. In the event any payment of interest or any other amount which might be construed as interest pursuant to this Deed of Trust or the Note would subject Lender to such a penalty or permit any such declaration of invalidity, then such payments of interest, liquidated damages or other charges required to be made by the Borrower shall not be greater than the highest amount which, if construed as interest, would be authorized under applicable law without penalty.

(f) All interest due hereunder shall be calculated on the basis of a 360-day year for the actual number of days elapsed.

(g) All payments received by Lender under this Deed of Trust shall be applied, unless another provision of this Deed of Trust explicitly provides otherwise with respect to a particular payment, first to interest then due and payable, then to Deposits then due and payable, then to Additional Payments then due and payable, and then to principal.

(h) No grant by Borrower to Lender of any power of attorney provided in this Deed of Trust shall be construed as in any way relieving Borrower of the obligation to execute the document or perform the act which Lender is authorized by such power of attorney to execute or perform in Borrower's name.

(i) In any case where Borrower may be required pursuant to the terms of this Deed of Trust to furnish any document, statement, notice or writing of any kind, such document, statement, notice or writing, at the election of Lender, shall be furnished in the form reasonably specified or supplied by Lender.

(j) This Deed of Trust contains the entire agreement between the parties with respect to the matters set forth herein and supersedes any prior understanding or agreement, oral or written, with respect thereto. This Deed of Trust cannot be changed or terminated orally, but only by an instrument in writing executed by Lender and Borrower.



(k) If any term or provision of this Deed of Trust or the application thereof to any person or circumstance shall, to any extent be invalid or unenforceable, the remainder of this Deed of Trust, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Deed of Trust shall be valid and be enforced to the fullest extent permitted by law.

(l) Each and every power of attorney granted in this Deed of Trust (i) shall be deemed to be coupled with an interest, is irrevocable, and shall survive the death, disability, incompetency or bankruptcy (to the maximum extent permitted by law) of Borrower, and (ii) shall be exercisable by each and every Person who at any time may be the Lender, shall constitute a power of attorney granted by each and every Person who at any time may be the Borrower, and shall continue to be binding upon and effective with respect to any Person who was and is no longer the Borrower to the extent that Lender may need to execute documents or take action in such Person's name with respect to the Mortgaged Property.

(m) Borrower waives trial by jury and the right to interpose any set-off or counterclaim whatsoever, in any action or proceeding to enforce any one or more of the provisions of this Deed of Trust and/or the Note, and agrees not to seek consolidation or obtain a joint trial of any action or proceeding in which Borrower shall make a claim against Lender of any nature or description.

(n) Borrower hereby submits to the jurisdiction of the court for Klamath County, Oregon, or any other court with jurisdiction, and agrees to accept service by ordinary, registered or certified mail, whether or not return receipt is requested, sent to Borrower at its address for notices as provided in this Deed of Trust.

(o) If Borrower shall be more than one Person, then all of the covenants and agreements of Borrower in this Deed of Trust shall be the joint and several covenants of each such Person.

(p) Lender shall charge, and Borrower shall pay upon demand, a fee of \$100.00 each time Lender responds to any credit or payment verification, deposit verification or other request for information by or about Borrower, and a fee of \$100.00 each time a request to Lender is made to provide a payoff letter or an amendment to a payoff letter with respect to this Deed of Trust, which fees may, at Lender's option, be deducted from the Deposits.

(q) Lender, at Lender's sole option and without any obligation to do so, may, at any time during the term of this Deed of Trust order an appraisal of the Mortgaged Property. All costs associated with such appraisal are the expense of Borrower, and shall be paid by Borrower on demand, or at Lender's sole option, deducted from the Deposits held hereunder. Borrower will cooperate with the appraiser in promptly providing access to the Mortgaged Property and in promptly supplying such information with respect to the Mortgaged Property as the appraiser may request.

(r) Paragraph captions contained in this Deed of Trust are inserted only as a matter of

convenience and for reference and in no way define, limit, or extend or describe the scope of this Deed of Trust or the intent of any provision hereof.

(s) The masculine gender shall include the feminine and neuter genders, and the singular shall include the plural.

(t) This Deed of Trust may be executed in several counterparts and all so executed shall constitute one Deed of Trust, binding on all the parties hereto, notwithstanding that all the parties are not signatories to the same counterparts.

(u) This Deed of Trust shall be governed by, and construed in accordance with the laws of the State of Oregon.

(v) The agreements, terms, covenants and conditions herein shall run with the land and shall bind and inure to the benefit of Lender and Borrower and their respective heirs, personal representatives, successors and, except as otherwise provided herein, their assigns.

(w) No demolition, excavation or construction is permitted on the Mortgaged Property during the term of this Deed of Trust without the prior written consent of Lender.

(x) No secondary or mezzanine financing is permitted during the term of this Deed of Trust.

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

(z) UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY LENDER CONCERNING LOANS AND OTHER CREDIT

EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY GRANTOR'S/BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF LENDER TO BE ENFORCEABLE.

(aa) PURPOSE OF LOAN: THE LOAN SECURED HEREBY IS MADE, AND ALL PROCEEDS THEREOF WILL BE USED SOLELY FOR COMMERCIAL, INVESTMENT OR BUSINESS PURPOSES AND NOT FOR PERSONAL, HOUSEHOLD, OR FAMILY PURPOSES. THIS DEED OF TRUST IS NOT A RESIDENTIAL TRUST DEED, THE MORTGAGED PROPERTY IS NOT RESIDENTIAL REAL PROPERTY, AND THE LOAN SECURED HEREBY IS NOT A RESIDENTIAL MORTGAGE TRANSACTION, EACH AS DEFINED IN ORS CHAPTERS 86 AND 86A. THE GRANTOR IS NOT A RESIDENT OF THE PROPERTY. SO LONG AS ANY OF THE DEBT SECURED HEREBY IS UNPAID, BORROWER COVENANTS AND AGREES THAT THE PROPERTY SHALL REMAIN NON-RESIDENTIAL PROPERTY.

(bb) Borrower shall comply with and perform the provisions set forth in Schedule B and Schedule C annexed hereto and made a part hereof.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, this instrument has been duly executed by the Borrower.

WITNESS:

*[Signature]*  
Print Name: Torja Smith

*[Signature]*  
Print Name: Michelle Williams

BORROWER:

NITE CRESCENT LLC, a California limited liability company

By: *[Signature]*  
Arnolfo M. Nite, Manager

[CALIFORNIA ACKNOWLEDGMENT ATTACHED]

Acknowledged by Lender:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Authorized Representative of Lender

## ACKNOWLEDGMENT

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

State of California

County of Santa Clara

On Dec. 19, 2019 before me, Sue Ruiz Notary Public  
(insert name and title of the officer)

personally appeared Arnolfo N. Nite  
who proved to me on the basis of satisfactory evidence to be the person<sup>(s)</sup> whose name<sup>(s)</sup> is/~~are~~  
subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in  
his/~~her/their~~ authorized capacity<sup>(ies)</sup>, and that by his/~~her/their~~ signature<sup>(s)</sup> on the instrument the  
person<sup>(s)</sup>, or the entity upon behalf of which the person<sup>(s)</sup> acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

Sue Ruiz

(Seal)

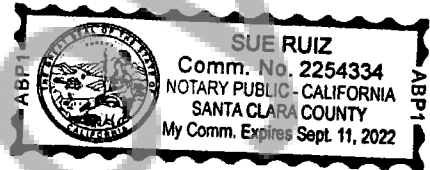




EXHIBIT A

Description of Land

That certain property legally described as follows:

PARCEL 1 OF LAND PARTITION 41-17, A PARTITION OF LANDS SHOWN IN SURVEY NO. 2570 AS DESCRIBED IN DOCUMENT NO. 2017-010196 SITUATED IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 24 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON. BEING RECORDED ON APRIL 4, 2018 AS DOCUMENT 2018-004085 RECORDS OF THE KLAMATH COUNTY CLERK.

## SCHEDULE B

### Entity Covenants

Section 1.1. **Single Purpose Entity/Separateness.** Until the indebtedness evidenced by the Note and this Deed of Trust ("Mortgage") (collectively, the "Loan"), including all outstanding principal and interest, other additional payments, and any other obligations under the Mortgage have been paid and satisfied in full, Trustor represents, warrants, covenants and agrees that Trustor and each of the separate entities comprising Trustor has not and shall not, except as referenced in Section 1.2 below:

- (i) engage in any business or activity other than the ownership, leasing and sale of the Property and any activities incidental thereto;
- (ii) acquire or own any assets other than (a) the Property, and (B) such incidental personal property as may be necessary for the ownership of the Property;
- (iii) merge into or consolidate with any Person, or dissolve, terminate, liquidated in whole or in part, transfer of otherwise dispose of all or substantially all of its assets or change its legal structure;
- (iv) fail to observe all organizational formalities or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the applicable Legal Requirements of the jurisdiction of its organization or formation, or amend, modify, terminate or fail to comply with the provisions of its Organizational Documents;
- (v) form or own any Subsidiary or make any investment in any Person;
- (vi) commingle its assets with the assets of any other Person;
- (vii) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligations) other than (A) the Loan and/or (B) trade and operational indebtedness incurred in the ordinary course of business with trade creditors, provided such indebtedness is (1) unsecured, (2) not evidenced by a note, (3) on commercially reasonable terms and conditions, and (4) due not more than sixty days past the date incurred and paid on or prior to such date;
- (viii) fail to maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person;
- (ix) enter into any contract or agreement with any general partner, member, shareholder, principal, guarantor of the obligations of Trustor or any Affiliate of the foregoing, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties;

(x) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xi) assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets for the benefit of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;

(xii) fail to file its own tax returns or file a consolidated federal income tax return with any Person (unless prohibited or required, as the case may be, by applicable Legal Requirements);

(xiii) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name or fail to correct any known misunderstanding regarding its separate identity;

(xiv) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(xv) fail to remain solvent or pay its own liabilities (including, without limitations, salaries of its own employees) only from its own funds;

(xvi) fail to remain in good standing under the laws of the State in which the Trustor is organized and under the laws of the State in which the Mortgaged Property is located; and

(xvii) acquire obligations or securities of its partners, members, shareholders or other affiliates, as applicable.

## SCHEDULE C

### Debt Service Coverage Ratio Requirements

The debt service coverage ratio (“**DSCR**”) shall be a minimum of 1.50. DSCR is defined as the annual net operating income (as determined by Lender in its sole discretion, divided by the total of twelve (12) consecutive monthly payments of interest and amortization. The term “net operating income” shall mean rents (not including prepayments of rents) and any other income from the Mortgaged Property, less reasonable and customary operating expenses, inclusive of management fees and reserves for replacements.

If the DSCR determination is made during the term of this Mortgage, the monthly payments of interest and amortization shall be twelve (12) such consecutive monthly payments of interest and amortization promptly following Lender’s determination of the annual net operating income of the Mortgaged Property.

The DSCR may be tested by Lender from time to time throughout the term of this Mortgage to determine that the minimum DSCR of 1.50 continues to be maintained. If additional funds are required to maintain a DSCR of 1.50, Borrower shall be required as determined by Lender in Lender’s sole discretion to either (i) make a payment in reduction of Principal sufficient to reduce the Principal amount of this Mortgage to an amount for which the debt service when reduced approximately pro rata would result in the DSCR being equal to 1.50, or (ii) deposit into a blocked account in Borrower’s name, from which Borrower shall have no right of withdrawal but which bears interest (“Reserve Deposit” and “Reserve Deposit Account”), an amount which when added to the actual gross income less operating expenses, results in a net operating income which is 1.50 times the required annual debt service. The Reserve Deposit and Reserve Deposit Account shall constitute additional collateral security for the loan (“Additional Collateral”) and Borrower hereby grants a first priority security interest in the Reserve Deposit Account and Reserve Deposit. The Reserve Deposit Account and the Reserve Deposit will be released to Borrower, subject to reinstatement, upon satisfaction of all of the following conditions, as determined by Lender in Lender’s sole discretion:

- (i) The actual DSCR of the Property shall be a minimum of 1.50 not taking into account any sums in the Reserve Deposit Account;
- (ii) Three (3) consecutive monthly rental payments have been made by all tenants in occupancy, as evidenced by copies of the three (3) monthly rent checks and Borrower’s operating account bank statements reflecting the same in deposits;
- (iii) There shall be no outstanding tenant rent concessions;
- (iv) The loan is current with no default having occurred or be continuing.

In the event Borrower is in default under the Mortgage, Lender, at its option, and without notice to Borrower, may apply the Reserve Deposit (or any unapplied balance thereof) to the payment of principal due under the Mortgage, or Lender may use the Reserve Deposit (or any unapplied balance thereof), for the payment of any amount of Debt Service, Insurance Premiums or Impositions which is not paid within any applicable grace period after the due date, or for the payment of any additional payments which are not paid on the date when due (without regard to grace periods), or for the payment of any transfer taxes or other amounts which Borrower may be required to pay to any party other than Lender and which is not paid on the date when due. In the event of the foregoing, Borrower shall be required to immediately advance additional funds to replenish the Reserve Deposit Account.