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SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**DEED OF TRUST WITH FIXTURE FILING,  
ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT<sup>1</sup>**

**INSTRUCTIONS TO COUNTY RECORDER: THIS INSTRUMENT COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE DEEDS OF TRUST ON REAL PROPERTY ARE RECORDED. ADDITIONALLY, THIS INSTRUMENT SHOULD BE APPROPRIATELY INDEXED AS: (i) A DEED OF TRUST, (ii) AN ASSIGNMENT OF LEASES AND RENTS AND (iii) A FIXTURE FILING. THE MAILING ADDRESSES OF TRUSTOR (DEBTOR) AND BENEFICIARY (SECURED PARTY) ARE SET FORTH IN THIS INSTRUMENT.**

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<sup>1</sup> Form of deed of trust to be used for loan to a California non-profit corporation, secured by Deed of Trust (real property collateral), with optional Environmental Indemnity.

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**EXHIBITS**

Exhibit “A” Description of Real Estate .....A-1  
Attachment A Collateral

This **DEED OF TRUST WITH FIXTURE FILING, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT** (the “**Deed of Trust**”) is made as of [DATE OF AGREEMENT], by [COMPLETE LEGAL NAME OF BORROWER], a California nonprofit [public benefit] corporation (“**Trustor**”), to [NAME OF TITLE COMPANY] (“**Trustee**”), for the benefit of [COMPLETE LEGAL NAME OF LENDER], a California nonprofit [public benefit] corporation (“**Beneficiary**”), with reference to the following facts.

## RECITALS

- A. [Trustor has executed a Promissory Note in connection herewith and made payable to the order of Beneficiary in the original principal amount of [AMOUNT (\$ \_\_\_\_\_)], plus interest at the rate provided therein (the “**Note**”).]
- B. Trustor desires to secure the prompt payment of the indebtedness and interest (the “**Loan**”) evidenced by the Note, the repayment of any advances made pursuant to this Deed of Trust, with interest thereon, and the due, prompt and complete observance, performance and discharge of each and every obligation, covenant and agreement set forth in the Note, in this Deed of Trust, the Loan Agreement by and between Trustee and Beneficiary effective as of [DATE] (the “**Loan Agreement**”) and in any other Loan Documents (as hereinafter defined). For purposes of this Deed of Trust, the Note, the Loan Agreement and any documents executed or delivered in connection with the Note are referred to collectively herein as the “**Loan Documents**;” provided, however, any environmental indemnity or environmental indemnity agreement, executed by Trustor or any other persons in connection with Note, shall in no event constitute a Loan Document for purposes of this Deed of Trust.]<sup>2</sup>
- A. [Trustor desires to secure the prompt payment of the indebtedness and interest (the “**Loan**”) evidenced by the Line of Credit Agreement by and between Trustee and Beneficiary effective as of [DATE] (the “**Line of Credit Agreement**”), the repayment of any advances made pursuant to this Deed of Trust, with interest thereon, and the due, prompt and complete observance, performance and discharge of each and every obligation, covenant and agreement set forth in the Line of Credit Agreement, in this Deed of Trust, and in any other Loan Documents (as hereinafter defined). For purposes of this Deed of Trust, the Line of Credit Agreement and any documents executed or delivered in connection with the Line of Credit Agreement are referred to collectively herein as the “**Loan Documents**;” provided, however, any environmental indemnity or environmental indemnity agreement, executed by Trustor or any other persons in connection with Line of Credit, shall in no event constitute a Loan

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<sup>2</sup> Use the following Recital A and B if using a Loan Agreement.

## AGREEMENT

### 1. CONVEYANCE AND PROPERTY DESCRIPTION.

For good and valuable consideration, and to secure Trustor's obligations in connection with the Loan, this Deed of Trust and the other Loan Documents, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, its successors and assigns, in trust, **WITH POWER OF SALE**, for the benefit and security of Beneficiary, all of Trustor's estate, right, title and interest (whether legal or equitable) in, to and under any and all of the following described property, whether presently owned or subsequently acquired (collectively, the "**Property**");

1.1 Real Estate. That certain real property located at [*COMPLETE ADDRESS OF PROPERTY*], [*NAME OF COUNTY*] County, in the State of California, more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference, together with: all of the easements, servitudes, tenements, hereditaments, appurtenances, licenses and rights-of-way related thereto; all development rights and credits; all air rights; all water and water rights and shares of stock pertaining to such water rights; and all oil, gas or mineral rights which pertain to such real property (the "**Real Estate**");

1.2 Improvements. All structures, buildings, additions, enlargements, extensions, modifications, repairs, replacements and improvements of every kind and description presently or subsequently located or placed on the Real Estate (collectively, the "**Improvements**");

1.3 Leases and Rents. All leases, franchises, occupancy agreements and other agreements and affecting the use, enjoyment, occupancy or maintenance of all or any portion of the Real Estate and/or the Improvements and/or tangible personal property, whether those leases, franchises, licenses, occupancy agreements and other agreements are in effect as of the date of execution hereof, or become effective subsequent to such execution (collectively, the "**Leases**"), including, without limitation, the following:

1.3.1 All of the rents, royalties, income, profits, issues, benefits, revenues, tenant payments for property taxes, insurance and common area maintenance, accounts receivable and other revenues from the Leases (collectively, the "**Rents**");

1.3.2 All security deposits and any other deposits made by any tenant with respect to any Lease (collectively, "**Lease Deposits**"); and

1.3.3 All of Trustor's rights under any guaranties of the obligations of any tenant under any Lease (collectively, the "**Guaranties**"); and

1.4 Intangible Personal Property. All intangible property rights which relate to the operation of the Real Estate and Improvements (collectively, the "**Intangible Personal Property**") including, without limitation, all of the following:

1.4.1 All permits, licenses, approvals and names by which the Property is known

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<sup>3</sup> Use the following Recital A if using a Line of Credit Agreement.

1.4.2 All plans, specifications, architectural drawings, permits, licenses and approvals, engineering, consulting and management contracts and purchase agreements and deposits;

1.4.3 All goodwill associated with the Property;

1.4.4 All presently existing and hereinafter acquired accounts, contract rights, instruments, documents, chattel paper and general intangibles, rights to tax refunds, notes receivables, and all other forms of obligations owing to Trustor and rights for the payment of money or the performance of services arising in any way from the acquisition, construction, operation, lease, disposition or sale of the Property, or any part thereof, including, without limitation, all proceeds from the sale or disposition of any of the foregoing items of Property or any portion thereof into cash or liquidated claims, including receivables therefrom, whether such disposition is voluntary or involuntary, and includes, without limitation, all rights to payment, including return premiums, with respect to any insurance or condemnation awards; and

1.4.5 All claims and causes of action for any damage to the Property or any portion thereof.

By this conveyance with power of sale, Trustor has granted Beneficiary the right, without limiting any of Beneficiary's other rights or remedies, upon the occurrence of an Event of Default (as such term is below defined in Paragraph 21 of this Deed of Trust), to instruct Trustee to conduct a sale or sales of the Property or any portion thereof without any judicial action.

## **2. PURPOSE OF TRUSTOR'S TRANSFER OF THE PROPERTY TO TRUSTEE.**

Trustor has transferred the Property in trust to Trustee, for the benefit and security of Beneficiary, to secure Trustor's performance of all of Trustor's obligations in connection with the Loan including as set forth in this Deed of Trust or in any other Loan Documents, including, without limitation, the following:

2.1 Debt. Prompt payment of: (i) the principal of and interest on, and all other amounts, payments and premiums due under any of the Loan Documents, and all modifications, extensions or renewals of the foregoing; (ii) any additional sums which Trustor borrows from Beneficiary, which borrowings are evidenced by a promissory note which recites that Trustor's obligations are secured by this Deed of Trust; and (iii) all other indebtedness, debts, obligations and liabilities of Trustor or others arising from this Deed of Trust, or any other Loan Documents, or any of them, whether now existing or hereinafter arising, voluntary or involuntary, absolute or contingent, liquidated or unliquidated, determined or undetermined, including, without limitation, all amounts, sums and expenses paid or incurred under this Deed of Trust by Trustee or Beneficiary according to the terms hereof, or in defending, preserving or protecting the lien or priority of this Deed of Trust, or the Property, all charges and expenses of collection incurred by Trustee or Beneficiary, including court costs and attorneys' fees, and all other sums which may become due and payable to Trustee or Beneficiary under this Deed of Trust or which may be secured by this Deed of Trust or by the other Loan Documents (collectively, the "**Debt**"); and

2.2 Obligations. Prompt and complete observance, performance and discharge of each and every obligation (other than the Debt), representation, covenant and agreement of Trustor

under this Deed of Trust or any other Loan Documents, and all modifications, extensions or renewals of any of the foregoing (collectively, the “**Obligations**”).

2.3 Future Advances. This Deed of Trust is given to secure the obligations of Trustor under the Loan Documents and shall secure not only Debt and Obligations with respect to presently existing indebtedness but also any and all other obligations that may hereafter be owing to Beneficiary under the Loan Documents, however incurred, whether interest, discount or otherwise, and whether the same shall be deferred, accrued or capitalized, including future advances, re-advances, and protective advances (collectively, “**Future Advances**”), in each case pursuant to the Loan Documents, whether such Future Advances are obligatory or to be made at the option of Beneficiary, to the same extent as if such Future Advances were made on the date of the execution of this Deed of Trust. The lien of this Deed of Trust shall be valid as to all Debt and Obligations secured by this Deed of Trust, including Future Advances, from the time of delivery hereof by Trustor to Beneficiary. This Deed of Trust is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the land and the improvements thereon.

### **3. ASSIGNMENT OF LEASES AND RENTS; TRUSTOR’S CONDITIONAL LICENSE TO COLLECT RENTS.**

3.1 Absolute Assignment of Rents. Trustor assigns and transfers to Beneficiary all the Leases and Rents of the Property. The assignment and transfer of the Leases and Rents described in this Deed of Trust is an absolute, unconditional and irrevocable assignment and transfer to Beneficiary of all of Trustor’s right, title and interest in and to the Leases and the Rents, and is not merely additional collateral security to secure payment of the Debt and the observance, performance and discharge of the Obligations. Trustor hereby grants to Beneficiary the right to enter the Property for the purpose of enforcing its interest in the Leases and the Rents and for the purpose of collecting the Rents.

3.2 Certain Representations of Trustor. Trustor represents and warrants that: (i) Trustor is the sole owner of the entire lessor’s interest in the Leases, except for Permitted Encumbrances as defined in Paragraph 5.1.4 hereof; (ii) the Leases are valid and enforceable and have not been altered, modified or amended in any manner whatsoever; (iii) none of the Rents reserved in the Leases has been assigned or anticipated; (iv) no Rent has been collected more than one (1) month in advance; and (v) to Trustor’s best knowledge, there is no present material default by Trustor or any tenant under any Lease now in existence.

3.3 License to Collect Rents. Provided no Event of Default has occurred under this Deed of Trust, Trustor shall have the right, under a reserved and retained license, to collect all of the Rents.

3.4 Termination of License. Upon the occurrence of an Event of Default, the license granted to Trustor shall be terminable at the sole option of Beneficiary, without regard to the adequacy of its security under this Deed of Trust and without notice or demand upon Trustor.

3.5 No Possession. Beneficiary or Trustee shall **not** be required to take possession of the Real Estate, request the appointment of a receiver, or take any other affirmative action to perfect this assignment of Leases and Rents.



3.6 Payment of Rents. This assignment of Leases and Rents shall constitute instructions to each tenant to pay Rents to Beneficiary or Trustee upon Beneficiary's or Trustee's demand and without the need for consent by Trustor. The affidavit of an authorized agent of Trustee or Beneficiary that the Debt and Obligations have not been completely satisfied shall be conclusive evidence that this assignment of Leases and Rents remains effective.

3.7 Retention of Leases. Trustor may retain the original, executed Leases provided that:

3.7.1 No Event of Default has occurred under this Deed of Trust;

3.7.2 Trustor makes and signs this endorsement to each original Lease:

“LESSOR’S INTEREST UNDER THIS LEASE HAS BEEN ASSIGNED TO BENEFICIARY BY A DEED OF TRUST WITH FIXTURE FILING, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT DATED AS OF [DATE OF DEED OF TRUST]”; and

3.7.3 Trustee or Beneficiary have not demanded possession of the Leases.

3.8 Leases. Trustor shall submit to Beneficiary, for Beneficiary's prior approval, a copy of the form of Lease which Trustor plans to use in leasing space in the Property. Trustor shall furnish to Beneficiary, within ten (10) Business Days after Beneficiary's request, a written statement of the names of all tenants, lessees, sublessees, licensees and occupants of the Property, the terms (including rental rates) of their respective Leases, an identification of the portions of the Property which they occupy, and a copy of each such Lease. Upon request of Beneficiary, each existing Lease and all new leases shall provide, among other things, that: (i) the lessee's rights are subordinate to Beneficiary's rights under this Deed of Trust and that Beneficiary shall have the right to subordinate this Deed of Trust to the Lease; (ii) the lessee shall attorn to any purchaser, including Beneficiary, that acquires title to the Property through foreclosure, exercise of a power of sale or deed in lieu of foreclosure; (iii) the lessee shall not have the right or option to terminate the Lease in the event title to the Property is acquired by a purchaser, including Beneficiary, through foreclosure, exercise of a power of sale or deed in lieu of foreclosure; (iv) such purchaser, including Beneficiary, at such purchaser's sole option, may accept the Lease on all of its terms and conditions or terminate such Lease and exercise the rights of foreclosure which are accorded the purchaser or foreclosing Beneficiary pursuant to California law; and (v) the lessee shall, upon request of the purchaser, including Beneficiary, execute a new Lease with such purchaser, upon materially identical terms as the existing Lease.

3.9 Trustor's Duties. Trustor shall continue to perform all of Trustor's duties under the Leases. Trustor shall not release, waive or discharge the rental or any other obligation of any tenant without Trustee's or Beneficiary's prior written consent. Trustor shall not amend, renew or extend the terms of any of the Leases or permit the assignment of any tenant's interest in any of the Leases without Beneficiary's prior written consent. Trustor shall promptly send copies to Beneficiary of all notices of default which Trustor shall send or receive thereunder, and enforce all of the terms, covenants and conditions contained in the Leases upon the lessee's part to be performed, short of termination thereof. Trustor shall not collect any of the Rents more than one (1) month in advance. In addition to the rights which Beneficiary may have herein, upon the

occurrence and during the continuance of any Event of Default, Beneficiary, at its option, may require Trustor to pay monthly in advance to Beneficiary, or to any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Trustor, and may require Trustor to vacate and surrender possession of the Property to Beneficiary or to such receiver and, in default thereof, Trustor may be evicted by summary proceedings or otherwise.

3.10 Assignment of Awards. Trustor hereby assigns to Beneficiary any award hereafter made in any bankruptcy, insolvency or reorganization proceeding in any state or federal court involving any of the parties to the Leases, and any and all payments made by such parties in lieu of Rent or other sums due under the Leases. Trustor hereby irrevocably appoints Beneficiary as its true and lawful attorney-in-fact, at any time from and after the occurrence of an Event of Default under this Deed of Trust, to appear in any action and/or to collect any such award or payment in the name of Trustor or Beneficiary.

3.11 Right of Entry and Collection. In furtherance of the foregoing assignment, Trustor hereby authorizes Beneficiary, by its employees or agents, at its option, after the occurrence of an Event of Default and the expiration of any right to cure the Event of Default provided under the terms of the Loan Documents, to enter upon the Property and to collect in the name of Trustor or in its own name as Beneficiary, the Rents accrued but unpaid and in arrears at the date of such Event of Default, as well as the Rents thereafter accruing and becoming payable during the period of the continuance of said or any other Event of Default; and to this end, Trustor further agrees that it will facilitate in all reasonable ways Beneficiary's collection of said Rents and will, upon request by Beneficiary, execute a written notice to each party to the Leases to pay the Rents to Beneficiary.

3.12 Management and Maintenance. Trustor also hereby authorizes Beneficiary upon such entry, at its option, to take over and assume the management, operation and maintenance of the Property and to perform all acts Beneficiary in its sole discretion deems necessary and proper and to expend such sums out of the Rents received by Beneficiary as may be needed in connection therewith, in the same manner and to the same extent as Trustor theretofore might do, including the right to effect new Leases, to cancel, surrender, alter or amend the terms of and/or renew then-existing Leases, and/or to make concessions to tenants. Trustor hereby releases all claims of any kind or nature against Beneficiary arising out of such management, operation and maintenance, excepting the liability of Beneficiary to account as hereinafter set forth except for Beneficiary's gross negligence or willful misconduct.

3.13 Application of Rents. Upon such entry, Beneficiary shall, after payment of all proper charges and expenses, including reasonable compensation to such real estate broker, managing agent or both as it may select and employ, and after the accumulation of a reserve to meet requisite amounts, credit the net amount of the Rents received by it by virtue of this assignment of Rents to any amounts due and owing to it by Trustor under the terms of the Loan Documents, but the manner of the application of such net income and which items shall be credited shall be determined in the sole discretion of Beneficiary. Beneficiary shall not be accountable for more monies than it actually receives from the Property; nor shall it be liable for failure to collect Rents. Beneficiary shall have the right to determine the method of collection and the extent to which enforcement of collection of Rents shall be prosecuted, and Beneficiary's judgment shall be deemed conclusive and reasonable.

3.14 Reinstatement. In the event, however, that Trustor shall reinstate the Debt completely in good standing, having complied with the terms, covenants and conditions of the Loan Documents, then Beneficiary, promptly after demand in writing, shall redeliver possession of the Property unless and until another Event of Default occurs, at which time Beneficiary may at its option again take possession of the Property under the authority of this Deed of Trust.

3.15 Certain Covenants of Trustor. Trustor hereby covenants and warrants to Beneficiary that, other than as disclosed to Beneficiary in writing, as set forth in the Loan Documents, neither it nor any previous owner has executed any prior assignment or pledge of its or their interest in any Lease of the whole or any part of the Property or of any contract, nor has it made a conditional or unconditional assignment of rents, profits and income; and Trustor also hereby covenants and agrees not to accept or collect Rents on the Property in advance, other than as required to be paid in advance by the terms of any Lease, and further agrees not to do any act which would destroy or impair the benefits to Beneficiary of this assignment of Rents, including, without limitation, the cancellation, surrender, termination or modification of any Lease which might impact Beneficiary, or consent to the release of any party liable under any such Lease or the assignment of any such party's interest or duties under any such Lease.

3.16 Party in Possession. It is not the intention of the parties hereto that an entry by Beneficiary upon the Property under the terms of this Deed of Trust shall make Beneficiary a party in possession in contemplation of the law, except at the option of Beneficiary.

3.17 Indemnification. Trustor hereby agrees to indemnify, defend and hold harmless Beneficiary and Beneficiary's agents and employees from and against any and all losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs and expenses, including legal fees and expenses, howsoever and whomsoever asserted, arising out of or in any way connected with this assignment of Rents; and all such losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs and expenses shall be deemed added to the Debt; provided, however, that Trustor shall not be obligated to indemnify, defend and hold harmless Beneficiary from and against any claims, suits, proceedings, costs or expenses which arise out of Beneficiary's gross negligence or willful misconduct. This agreement to indemnify, defend and hold harmless Beneficiary shall survive the reconveyance of this Deed of Trust.

3.18 Limitation on Beneficiary's Obligations. Nothing contained herein shall operate or be construed to obligate Beneficiary, prior to actual entry into and taking possession of the Property, to perform any of the terms, covenants and conditions contained in any of the Leases or otherwise to impose any obligation upon Beneficiary with respect to any Lease, including, but not limited to, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under any Lease shall have been joined as a party defendant in any action to foreclose and the estate of such lessee shall have been thereby terminated. Prior to actual entry into and taking possession of the Property by Beneficiary, this assignment of Rents shall not operate to place upon Beneficiary any responsibility for the operation, control, care, management or repair of the Property or any portion thereof, and the execution of this Deed of Trust by Trustor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Trustor, prior to such actual entry and taking of possession.

#### **4. GRANT OF SECURITY INTEREST.**

4.1 Grant of Security Interest. This Deed of Trust shall also constitute a “Security Agreement” within the meaning of Division 9 of the California Commercial Code. The Property includes both real and personal property and all other rights and interest, whether tangible or intangible in nature, of Trustor in the Property and in the additional collateral described in **Attachment A** attached to this Deed of Trust and incorporated in this Deed of Trust by this reference (collectively, the “**Collateral**”). Trustor, by executing and delivering this Deed of Trust, has granted and hereby grants to Trustee and Beneficiary, as security for the Debt and Obligations, a security interest in the Collateral. If an Event of Default shall occur, Beneficiary, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand any and all rights and remedies granted to a secured party upon default under the California Commercial Code, including the right to take possession of the Collateral or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Beneficiary, Trustor shall at its expense assemble the Collateral and make it available to Beneficiary at a convenient place acceptable to Beneficiary. Trustor shall pay to Beneficiary on demand any and all expenses, including legal expenses and attorneys’ fees and disbursements, incurred or paid by Beneficiary in protecting its interest in the Collateral and in enforcing its rights under this Deed of Trust with respect to the Collateral. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Collateral sent to Trustor in accordance with the provisions hereof at least ten (10) days prior to such action shall constitute reasonable notice to Trustor.

4.2 Fixture Filing. This Deed of Trust shall also constitute a fixture filing pursuant to the California Commercial Code for all items of the Collateral that may now be or hereafter become fixtures.

4.3 Financing Statement. Trustor acknowledges and agrees that Beneficiary may file and/or record Financing Statements (both with the California Secretary of State and any county) which will evidence the security interest granted pursuant to this Paragraph 4 of this Deed of Trust, and Continuation Statements which may be necessary to continue, extend, renew or amend any Financing Statements, or release or terminate any Financing Statements, and Trustor shall procure, execute and deliver any other endorsements, assignments and other affidavits, reports, schedules, letters of authority and other writings or documents which Beneficiary may reasonably require to evidence or perfect or maintain or protect its security interest in the Collateral, all at Trustor’s cost.

#### **5. TRUSTOR’S REPRESENTATIONS, WARRANTIES AND COVENANTS.**

5.1 Trustor’s Representations and Warranties. Trustor, for itself and its successors and assigns, represents and warrants that:

5.1.1 Trustor has the lawful right and authority to grant, assign, transfer, hypothecate and/or mortgage its interest in the Property and each portion thereof as contemplated by this Deed of Trust;

5.1.2 Neither Trustor’s execution and delivery of this Deed of Trust or any other Loan Documents, nor the taking of any action in compliance with this Deed of Trust or any other Loan Documents, or any of them, will: (i) contravene, cause a breach of, or constitute a default

under any contract or agreement to which Trustor is a party; (ii) violate or contravene any law, order, decree, rule or regulation to which Trustor is subject; or (iii) result in the creation of a lien against the Property or any portion thereof except as created or otherwise expressly permitted by this Deed of Trust;

5.1.3 Trustor holds good and marketable title to the Property and each portion thereof, and Trustor possesses a fee estate interest in the Real Estate and Improvements, and is now in possession of, or is presently entitled to possession of, the Property and each portion thereof (provided, however, with respect to after-acquired Collateral, Trustor will be the owner of, have good title to, and will be in possession of, or will be entitled to possession of, such after-acquired Collateral at the time Trustor acquires rights therein);

5.1.4 The Property and each portion thereof is free from liens, encumbrances, possessory interests and adverse claims of title other than the security interest granted by this Deed of Trust, except as otherwise disclosed by Trustor to Beneficiary in writing prior to the date hereof and approved by Beneficiary (“**Permitted Encumbrances**”);

5.1.5 This Deed of Trust creates a perfected, first priority security interest enforceable against the Property and each portion thereof (provided, however, with respect to after-acquired Collateral, this Deed of Trust will create a perfected, first priority security interest in such after-acquired Collateral at the time Trustor later acquires rights therein, with the exception of any purchase money security interests in any of such after-acquired Collateral);

5.1.6 There are no other liens, or any facts which could lead to the imposition of any other liens, that might attain priority over this Deed of Trust;

5.1.7 The Property and each portion thereof is attached to or located in or about the Real Estate and/or Improvements for use in conjunction with the operation of the Real Estate and/or Improvements (provided, however, with respect to after-acquired Collateral, such after-acquired Collateral will be attached to or located in or about the Real Estate and/or Improvements for use in conjunction with the operation of the Real Estate and/or Improvements at the time Trustor acquires rights therein);

5.1.8 Trustor is not “insolvent” (as that term is defined in 11 U.S.C. §101(32)) or the subject of an insolvency proceeding (including, without limitation, an assignment for the benefit of creditors, a voluntary or involuntary bankruptcy proceeding, or the appointment of a receiver, trustee or other custodian for Trustor’s assets), and neither the Loan, this Deed of Trust nor any of the other Loan Documents constitutes a “fraudulent transfer” (as defined in Title 11 of the United States Code and the California Uniform Fraudulent Transfer Act, California Civil Code Section 3439 et seq.) or will have the effect of hindering, delaying or defrauding any creditors of Trustor;

5.1.9 All reports, certificates, affidavits, applications, statements and other data which Trustor provided or caused to be provided to Beneficiary in connection with the Loan, this Deed of Trust or the other Loan Documents are true and correct in all material respects and do not omit any material information;

5.1.10 The Property and each portion thereof, and Trustor's actual and intended use of the Property and each portion thereof, comply with all applicable covenants, conditions and restrictions, common interest development by-laws and rules, zoning ordinances, subdivided lands laws, building codes, flood disaster laws, applicable public health and safety and environmental laws and regulations, and all other ordinances, orders or requirements issued by any local, state or Federal authorities which have or claim regulatory jurisdiction over the Property;

5.1.11 There are no pending or threatened judicial or administrative actions, suits or proceedings, or any set of facts which might lead to litigation, affecting Trustor or the Property, or any portion thereof, which would, if determined adversely either to Trustor or the Property, materially impair either the Property or Trustor's ability to perform the covenants or obligations required to be performed under this Deed of Trust or any other Loan Documents, or any of them;

5.1.12 The Property is not subject to any delinquent and unpaid water charges, sewer rents, property taxes and assessments;

5.1.13 The Property is free from damage caused by fire or other casualty;

5.1.14 No part of the Property has been taken in condemnation, eminent domain or similar proceeding and no such proceeding is pending; and

5.1.15 There exists no Event of Default or other event which would, with the passage of time or the giving of notice or both, become an Event of Default.

5.2 Trustor's Covenants. Trustor, for itself and its successors and assigns, covenants that:

5.2.1 Trustor shall observe, perform and discharge the Obligations when required to be observed, performed and discharged by it, all in accordance with the terms of this Deed of Trust and any other Loan Documents;

5.2.2 Trustor shall preserve its interest in and title to the Property and each portion thereof. If any action at law or in equity is commenced which challenges the validity of, or seeks to encumber, Trustor's title to the Property, or any portion thereof, or which challenges the validity or priority of Beneficiary's interest under this Deed of Trust, Trustor, after seven (7) days' prior written notice from Beneficiary, authorizes Beneficiary, at Trustor's expense, to take all necessary and proper steps for the defense of Trustor's title, including the employment of counsel, the prosecution or defense of litigation, and the compromise or discharge of claims made against Trustor's or Beneficiary's title or interest;

5.2.3 Trustor shall provide any service and perform any other acts necessary to keep the Property and the proceeds thereof free and clear of defenses, rights of set-off and counterclaims except as otherwise permitted herein;

5.2.4 Trustor shall promptly and completely observe, perform and discharge each and every obligation, covenant, condition, restriction and agreement affecting the Property, whether prior and superior to, or subject and subordinate to, this Deed of Trust;

5.2.5 Trustor will not grant any security interest in the Property or any portion thereof other than the security interest granted by this Deed of Trust (provided, however, with respect to after-acquired Collateral, Trustor will not grant any security interest in such after-acquired Collateral other than the security interest granted by this Deed of Trust, with the exception of any purchase money security interests in such after-acquired Collateral);

5.2.6 Trustor shall not use or knowingly permit any of the Property to be used unlawfully or in violation of any provision of this Deed of Trust or any applicable statute, regulation or ordinance or any policy of insurance covering the Property;

5.2.7 Trustor shall promptly comply with all applicable laws, statutes, rulings, regulations and ordinances relating to the possession, operation, maintenance, use and control of the Property;

5.2.8 Trustor shall notify Beneficiary promptly in writing of any Event of Default, of any event which would, with the passage of time or the giving of notice or both, become an Event of Default, or of any other fact or circumstance that might have a material adverse effect on the Property;

5.2.9 Trustor shall pay for or reimburse Beneficiary for all expenses, including attorneys' fees, incurred by Beneficiary in the perfection, preservation, realization, enforcement, and/or exercise of Beneficiary's rights under this Deed of Trust or any other Loan Documents, or if Beneficiary is named or required to make any appearance in a judicial or quasi-judicial proceeding as a result of this Deed of Trust, or any other Loan Document, including expenses incurred by Beneficiary in performing Trustor's Obligations under this Deed of Trust or any other Loan Documents. These expenses shall be considered part of the Obligations;

5.2.10 Trustor shall indemnify, defend and hold harmless Beneficiary against loss of any kind, including, without limitation, title to the Property being vested other than as represented herein, any defect in or lien or encumbrance on the title to the Property, unmarketability of the title to the Property, lack of a right to access to and from the Property, the invalidity or unenforceability of this Deed of Trust, the priority of any lien or encumbrance over the Deed of Trust, other than Permitted Encumbrances, lack of priority of the lien of this Deed of Trust over any statutory lien for services, labor or material arising from an improvement or work related to the Property which is contracted for or commenced prior to the date of this Deed of Trust, or arising from an improvement or work related to the Property which is contracted for or commenced subsequent to the date of this Deed of Trust and which is financed in whole or in part by proceeds of the indebtedness secured by this Deed of Trust, which at the date of this Deed of Trust Beneficiary has advanced or is obligated to advance, and any assessments for street improvements under construction or completed at the date of this Deed of Trust which now have gained or hereafter may gain priority over the Deed of Trust (other than Permitted Encumbrances), as well as attorneys' fees, caused to Beneficiary by reason of its interest in the Property or any portion thereof. These losses shall be considered part of the Obligations. This agreement to indemnify, defend and hold harmless Beneficiary shall survive the reconveyance of this Deed of Trust;

5.2.11 Within ten (10) days following Beneficiary's request, and at Trustor's expense, Trustor shall provide Beneficiary, and any other person designated by Beneficiary, with a

certificate, in a form suitable for recordation, which states: (i) that this Deed of Trust and any other Loan Documents made by Trustor have not been modified following their execution, or specifying what modifications have been made, if any; and (ii) any claims which Trustor asserts (whether by way of affirmative claim or defense, or right of set-off) against Beneficiary. Trustor agrees that a prospective purchaser or assignee of Beneficiary's interest under this Deed of Trust and any other Loan Documents made by Trustor may reasonably rely on this certificate and agrees that, should Trustor fail to so provide this certificate, Trustor shall be deemed to have irrevocably appointed Beneficiary as Trustor's attorney-in-fact to execute and deliver this certificate; and

5.2.12 Trustor shall not create or suffer and shall promptly cause to be paid and/or discharged any encumbrance, lien or charge whatsoever which may be or become an encumbrance, lien or charge against the Property, and shall promptly pay for all utility services provided to the Property, except as permitted under this Deed of Trust or expressly approved by Beneficiary. Without limiting the foregoing, within thirty (30) days after notification of the filing of any lien on the Property (including a lien filed by or on behalf of mechanics, materialmen and laborers and a lien filed with respect to any work heretofore or hereafter performed by or for the benefit of any occupant of all or any part of the Property), Trustor shall release or discharge the same of record by payment, bonding or other method acceptable to Beneficiary, or commence an action to discharge such lien.

### 5.3 Covenants Regarding Financial Statements.

5.3.1 Trustor shall keep accurate books and records of its own financial affairs in a form which will permit the preparation of financial statements in accordance with appropriate accounting principles. Beneficiary and its duly authorized representatives shall have the right to examine and copy Trustor's records and books of account at all reasonable times. Trustor shall provide Beneficiary with annual financial statements of the expenses of the Property within thirty (30) days after the end of each year. Such financial statements shall include a statement of expenses of the Property and changes in financial position, each in reasonable detail. Each statement shall describe, in reasonable detail, and with such substantiation as Beneficiary may request, the expenses of the Property, and shall be certified as true and correct by Trustor. Upon request of Beneficiary, Trustor shall also provide Beneficiary with copies of Trustor's federal and state income tax returns, including all attachments and schedules filed with the returns, within fifteen (15) days of Trustor's filing of said tax returns; and

5.3.2 Trustor shall keep safe and intact all of the above records for a period of three (3) years after the date of the submission to Beneficiary. Beneficiary and its accountants and attorneys, upon request, shall have the right to inspect any and all of the above records during said three (3) year period.

## 6. AGREEMENTS REGARDING INSURANCE.

6.1 Types of Coverage Required. Trustor, at Trustor's expense, shall maintain the following types of insurance from insurers, upon such terms and conditions, and with policy forms, expiration dates and minimum coverage amounts acceptable to Beneficiary in Beneficiary's sole reasonable discretion (collectively, the "**Insurance Policies**"):



6.1.1 Insurance against loss or damage by fire, lightning, windstorm, explosion and smoke damage, and loss or damage from the hazards which are insured against in “all risks” property insurance policies, and against vandalism and malicious mischief, and against such other insurable hazards as Beneficiary may require. The minimum coverage limit of this insurance shall be not less than full replacement cost and in an amount at all times sufficient to prevent Trustor from becoming a co-insurer under the terms thereof, without reduction for depreciation of the Improvements and the items of furniture, furnishings, fixtures and equipment which are included in the Property;

6.1.2 Unless Beneficiary otherwise approves, any and all Insurance Policies shall contain an aggregate maximum deductible equal to the lesser of: (i) Ten Thousand Dollars (\$10,000.00) or (ii) one percent (1%) of the policy face value;

6.1.3 Explosion (including leakage) insurance in respect of sprinkler systems, boilers, heating apparatus or other pressure vessels, if any, at the time located in the Improvements in such amount as shall from time to time be satisfactory to Beneficiary;

6.1.4 General liability insurance against any and all claims (including all costs and expenses of defending the same) for bodily injury, disease or death or for property damage occurring upon, in or about the Property and the adjoining properties, streets or passageways, including a contractual liability endorsement, and an actions of independent contractors endorsement, with coverage of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, or in such greater amounts as Beneficiary shall from time to time reasonably require, having regard to the circumstances and the usual practice at the time of prudent owners of comparable buildings in the area in which the Property is located;

6.1.5 Beneficiary reserves the right to require Trustor to obtain and maintain earthquake coverage in an amount and with a deductible satisfactory to Beneficiary;

6.1.6 Unless Beneficiary otherwise approves, if the Property or any part thereof is situated in an area now or subsequently identified by the Secretary of Housing and Urban Development as having special flood hazards, designated Zone A or Zone V, flood insurance in an amount equal to the replacement cost of the Improvements or the maximum amount of flood insurance available, whichever is the lesser;

6.1.7 Unless Beneficiary otherwise approves, each insurer shall have and maintain an A.M. Best Co. policyholder’s rating of “A-” or better and financial size category of “V” or better; provided that an insurer with a lesser rating shall be permitted if such insurer presents a reinsurance agreement, containing a direct access clause, with one or more insurers which do meet the foregoing rating requirements. In no event shall coverage amounts exceed five percent (5%) of carrier surplus and capital, unless approved in writing by Beneficiary or unless reinsurance is provided. Each insurer shall be fully licensed in the state in which the Property is located;

6.1.8 Unless Beneficiary otherwise approves, the same insurer shall issue each and every coverage required by this Deed of Trust; and

6.1.9 Beneficiary may require such further and other coverages, in addition to those set forth above, from time to time, as are commercially reasonable.

6.2 Mandatory Policy Provisions.

6.2.1 All Insurance Policies must have a “lender’s loss payable” or equivalent endorsement acceptable to Beneficiary;

6.2.2 All Insurance Policies must provide for at least thirty (30) days’ prior written notice to Beneficiary of any cancellation, termination or modification;

6.2.3 All liability Insurance Policies shall name Beneficiary as an additional insured; and

6.2.4 All property Insurance Policies shall provide that proceeds of the payment of a claim shall be payable to Beneficiary as its interest may appear pursuant and subject to a mortgagee clause (without contribution) of standard form attached to, or otherwise made a part of, the applicable policy.

6.3 Proof of Insurance. Trustor shall provide Beneficiary with: (i) the original Insurance Policies, or, if Beneficiary agrees, copies of such Insurance Policies, and receipts evidencing the payment of all premiums for these policies, no later than ten (10) days following demand therefor by Beneficiary; and (ii) certificates which evidence the renewals of all of these policies at least thirty (30) days before their expiration date.

6.4 Foreclosure of Deed of Trust. In the event of foreclosure of this Deed of Trust, or other transfer of title to the Property in satisfaction of the Debt, all right, title and interest of Trustor in and to these policies, and all proceeds payable under these policies, shall vest in the transferee of the Property.

6.5 Trustor’s Failure to Procure or Maintain Insurance. If Trustor fails to procure or maintain any policy or policies of insurance required by Beneficiary or by this Deed of Trust, Beneficiary may, but shall not be obligated to, procure any such policy or policies of insurance and, in such event, Trustor shall promptly reimburse Beneficiary for the cost of any such policy or policies, plus interest at a rate per annum equal to the Default Rate (as defined in the Loan Agreement).

6.6 No Separate Insurance. Trustor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Deed of Trust unless Beneficiary is included thereon under a standard non-contributory mortgagee clause acceptable to Beneficiary. Trustor shall immediately notify Beneficiary whenever any such separate insurance is taken out and shall promptly deliver to Beneficiary the original policy or policies of such insurance. In the event of a foreclosure sale, all interest in all such separate Insurance Policies in force shall pass to Beneficiary, transferee or purchaser, as the case may be, and Trustor agrees to cooperate with Beneficiary to effect a prompt and orderly transfer of all such policies.

## 7. DAMAGE OR DESTRUCTION.

7.1 Notification of Damage or Destruction. Trustor shall immediately notify Beneficiary of any material loss of or damage to the Property or any portion thereof. Trustor shall also so notify any and all insurers who issued policies of insurance which may be reasonably construed to indemnify Trustor against the loss or damage to the Property. For purposes of this Paragraph 7.1, “material” shall be defined to mean a decline in the fair market value of the Property of twenty-five percent (25%) or more, calculated as of the date immediately following the loss or damage as against the date immediately preceding the loss or damage.

7.2 Claim by Beneficiary. Trustor authorizes and empowers Beneficiary, in Beneficiary’s sole discretion, to make a claim and proof of loss under, to settle, compromise or litigate any claim under, and to collect and receive any proceeds of any of the Insurance Policies. Beneficiary shall also be entitled to apply the proceeds of any Insurance Policy to reimburse the costs, including attorneys’ fees, which it incurs to collect these proceeds. Beneficiary shall not be held responsible, however, for any failure to collect any insurance proceeds regardless of the cause of such failure, or for any use of such proceeds by Trustor if such proceeds are paid over to Trustor.

7.3 Beneficiary’s Powers. Except as provided in Paragraph 7.5, Trustor authorizes Beneficiary, in Beneficiary’s sole discretion, and whether or not Beneficiary’s security under the Deed of Trust is impaired, to:

7.3.1 Apply the proceeds, or any portion of the proceeds, to the Debt, whether or not due, and including, but not limited to, principal, accrued interest and advances, and without alteration or modification of the amount or due date of Trustor’s payments under the Loan Documents, or the due date of Trustor’s final payment at maturity, under the Loan Documents. Beneficiary shall enjoy this right whether or not the Property, in its damaged or destroyed condition, is of a sufficient value to adequately secure the indebtedness secured by this Deed of Trust and regardless of the nature or severity of the damage to or loss of the Property;

7.3.2 Hold the proceeds in a segregated account to be disbursed by Beneficiary and/or any responsible trust company, construction loan disbursement company or title insurance company selected by Beneficiary (the “**Disbursing Party**”) to reconstruct or repair the Property to a condition and according to plans and specifications, and upon conditions and terms (including, without limitation, a method of disbursement of construction costs, which shall include, without limitation, the reasonable charges of the Disbursing Party) approved by Beneficiary in Beneficiary’s sole discretion; or

7.3.3 Release the balance of the proceeds, or any portion of the proceeds, to Trustor.

7.4 No Waiver or Cure. If Beneficiary elects to use the proceeds to restore or repair the Property, the receipt and release of the proceeds shall not cure or constitute a waiver of any Event of Default or constitute a payment of the Debt.

7.5 Retention of Net Proceeds by Trustor. Provided and only so long as: (i) no Event of Default exists; (ii) the Property may in the reasonable judgment of Beneficiary be restored to a

viable economic unit having a fair market value not less than the fair market value of such Property immediately prior to such casualty; and (iii) the completion of the Improvements, in the reasonable judgment of a neutral insurance adjustor selected by Beneficiary, can be completed on or before the date which is one (1) year prior to the maturity of the Loan, then, in such event, all net insurance proceeds (proceeds remaining after deducting costs and expenses of collection) which are paid to and received by Beneficiary shall be made available by Beneficiary to Trustor for the Restoration (as defined below) of the Improvements pursuant to Paragraph 7.6; provided, however, that any net insurance proceeds not so applied or that remain unexpended after the Restoration may be applied by Beneficiary to the repayment of the Debt, without penalty or premium, in any manner that Beneficiary shall designate, whether or not then due and payable. If Beneficiary shall receive and retain such insurance money, the lien of this Deed of Trust shall be reduced only by the amount thereof received after expenses of collection and retained by Beneficiary and actually applied by Beneficiary in reduction of the Debt.

7.6 Restoration of Property. Trustor, employing the Proceeds (as hereinafter defined) and its own funds as necessary, will restore, repair, replace or rebuild the Property or cause the same to be restored, repaired, replaced or rebuilt as nearly as possible to its value, condition, character, bulk, floor area and height immediately prior to such damage or destruction, with such changes as may be consented to by Beneficiary in writing. Such restoration, repair, replacement or rebuilding (collectively, the “**Restoration**”) shall be commenced promptly and completed with all reasonable diligence and continuity by Trustor, in good and workmanlike manner, complying with all applicable requirements of all Governmental Authorities (as hereinafter defined). As used herein, the term “**Governmental Authorities**” shall mean all Federal, State, County or City governments, any political subdivision thereof, and any agency, department, court, board or instrumentality of any of them. If requested by Beneficiary, all work shall be performed by a general contractor pursuant to a written construction contract with Trustor, and the general contractor shall obtain and deliver a performance bond and a labor and material payment bond in the amount of the contract, written by a surety company satisfactory to Beneficiary and which shall name Beneficiary and any Disbursing Party as additional obligees.

7.7 Application of Net Proceeds. All net insurance proceeds and all net condemnation proceeds (collectively, “**Proceeds**”) available to reimburse Trustor for the Restoration of the Property pursuant to the provisions of Paragraph 7 or Paragraph 10 shall be paid out by Beneficiary (or, at Beneficiary’s option, a Disbursing Party, whose fees and expenses shall be paid by Trustor) from time to time to persons furnishing labor or materials or both, including architects’ fees and contractors’ compensation, with respect to the Restoration, upon receipt by Beneficiary and any Disbursing Party of:

7.7.1 The certificate of Trustor, dated not more than ten (10) Business Days prior to the date of the proposed draw: (i) requesting the payment of a specified amount of such insurance monies; (ii) describing in reasonable detail the work (including all architects’, engineers’ and builders’ fees and expenses and other similar fees and expenses in connection with such work) and materials applied to the Restoration (or materials delivered to and safely stored on the Real Estate, the ownership of which has passed to Trustor and which is fully insured for loss or damage including coverage for theft and malicious mischief) since the date of the last certificate of Trustor; (iii) stating that such specified amount does not exceed the cost of such work and materials; (iv) stating that Beneficiary has approved the plans and specifications with respect to such work and

materials; (v) stating that such work and materials have not previously been made the basis of any request for any withdrawal of money; and (vi) stating that as of the date of such draw no Event of Default shall have occurred and be continuing;

7.7.2 The certificate of an independent engineer or an independent architect designated by Trustor, who in either case shall be approved by Beneficiary, stating: (i) that the work (including all architects', engineers' and builders' fees and expenses and other similar fees and expenses in connection with such work) and materials described in the accompanying certificates of Trustor were satisfactorily performed or furnished and were necessary, appropriate or desirable to the restoration or replacement of the improvements in accordance with plans and specifications therefor approved by Beneficiary; (ii) that the amount specified in such certificate of Trustor is not in excess of the cost of such work and materials; and (iii) that the balance of the funds being held by Beneficiary or the Disbursing Party equals or exceeds the additional amount, if any, required to complete the Restoration of the Property;

7.7.3 The certification of a title company satisfactory to Beneficiary, dated the date of the draw, that except for Permitted Encumbrances: (i) there exists no filed or recorded lien, encumbrance or charge prior to, on a parity with, or subordinate to, the estate, rights and interest of Trustor in the Property; (ii) the Property is not subject to any filed or recorded mechanic's, laborer's, materialmen's or other similar lien, encumbrance or charge (unless such lien, encumbrance or charge has been bonded or otherwise removed from record, or payment of the underlying claim is otherwise secured, in a manner approved by Beneficiary); and (iii) the Property is not subject to any chattel mortgage, conditional bill of sale or other title retention or security agreement; and

7.7.4 Such other additional data and upon satisfaction of such other additional customary requirements (in any event including evidence of the obtaining and filing of no lien agreements in timely fashion, and where appropriate, lien waivers) as Beneficiary may deem prudent and necessary.

Upon the satisfaction of such conditions, Beneficiary or the Disbursing Party shall pay to Trustor (or if required by Beneficiary, by check payable jointly to Trustor and the contractor or subcontractor who performed the work for which payment is requested or directly to such contractor or subcontractor) the amount specified in the certificate required under Paragraph 7.7.1 above. Such payment shall not reduce the balance of monies deposited with the Disbursing Party below the amount specified in such certificate of the independent engineer or the independent architect as the amount required to complete the Restoration of the Property. Beneficiary may withhold, or may direct the Disbursing Party to withhold, from each amount paid out ten percent (10%) thereof until one hundred percent (100%) of the Restoration is completed and proof has been furnished to Beneficiary that all required certificates of occupancy or equivalent under applicable law have been issued with respect to the Restoration in question, and that no lien or liability has attached or will attach to the Property or to Trustor in connection with such Restoration, and the Property is free and clear of liens or security interests of every kind except Permitted Encumbrances (for such purposes only, it is deemed that no mechanic's or similar lien will attach if it has not attached within one (1) Business Day after the expiration of the period during which such a mechanic's or similar lien may validly attach). Before beginning such Restoration, or entering into any contracts in connection therewith, Trustor shall submit for

Beneficiary's approval complete and detailed plans and specifications thereof. Promptly after receiving Beneficiary's written approval of said plans and specifications, Trustor shall begin and prosecute such Restoration to completion with diligence, including obtaining all necessary permits therefor. Insofar as any permits or certificates of any Governmental Authority, including a new certificate of occupancy, may be necessary, Trustor shall obtain and deliver to Beneficiary such permits or certificates before such portion of the Property which requires the new certificate of occupancy shall be reoccupied for any purpose. The Restoration shall be completed free and clear of mechanic's, materialmen's or similar liens, and security interests of every kind, subject to Permitted Encumbrances and the lien of this Deed of Trust and the other Loan Documents.

7.8 Insufficiency of Proceeds to Restore Property. If the Proceeds are at any time deemed by Beneficiary, on the basis of an opinion of an independent architect selected by Beneficiary, to be insufficient to pay the cost of the Restoration, such deficiency will be borne and provided for by Trustor depositing a sum in cash or a letter of credit acceptable to Beneficiary in an amount equal to the amount of such deficiency with Beneficiary (or any Disbursing Party) upon request (but Beneficiary shall be entitled to draw in whole or in part upon any such sum or letter of credit for any purpose permitted under this Deed of Trust if an Event of Default exists under this Deed of Trust or upon any such letter of credit if such letter of credit is not renewed or extended within thirty (30) days prior to its stated expiration date). The initial sum, if any, to be so deposited with Beneficiary according to this Paragraph shall be in an amount which, when added to the Proceeds, shall, in Beneficiary's opinion, based upon the opinion of such independent architect, be adequate to complete the Restoration. Additionally, Beneficiary shall have the right to require Trustor from time to time to deposit such additional amounts as Beneficiary in its opinion shall deem necessary for such Restoration. Any surplus of funds so deposited shall be returned to Trustor after the Restoration is completed, so long as an Event of Default does not then exist.

## **8. AGREEMENTS REGARDING TAXES.**

8.1 Payment of Taxes. In the event Beneficiary waives the requirement for a tax impound account pursuant to Paragraph 9 below, Trustor shall pay or cause to be paid, at least ten (10) Business Days before the delinquency date, all general, special, supplemental and any other taxes, duties, imposts, assessments, water rates, sewer rents, ground rents, maintenance charges and other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Real Estate, general, special, ordinary or extraordinary, now or hereafter levied or assessed or imposed against Trustor or the Property, or the revenues, rents, issues, income, awards, proceeds or profits thereof, or which may arise in respect of the ownership, occupancy, use, possession or operation thereof, and all transfer, recording or gains taxes accrued upon the sale, transfer or foreclosure or other disposition of the Property, or any interest therein (collectively, the "Taxes"). Trustor shall furnish Beneficiary with receipts which evidence Trustor's payment of Taxes. If Trustor fails to pay any Taxes prior to their delinquency date, Beneficiary may, but shall not be obligated to, pay these delinquent Taxes, interest and penalties. Trustor shall promptly reimburse any amount that Beneficiary pays to satisfy Trustor's obligations for Taxes, plus interest at the Default Rate.

8.2 Contesting Property Taxes. Trustor may in good faith, by appropriate proceedings, contest the validity, applicability or amount of any Taxes, so long as the contest is diligently

pursued. Pending the contest, Trustor shall not be deemed in default under this Deed of Trust by reason of nonpayment of the contested Taxes, if:

8.2.1 Trustor promptly notifies Beneficiary of Trustor's intention to contest such Taxes and Beneficiary determines, in its reasonable opinion, that the non-payment of such Taxes, pending the resolution of Trustor's contest, will not result in the loss, forfeiture or diminution in value of the Property or any interest of Beneficiary in the Property;

8.2.2 Before the asserted Taxes become delinquent, Trustor establishes an irrevocable escrow account with an escrow agent satisfactory to Beneficiary, with escrow instructions satisfactory to Beneficiary, and deposits in said escrow an amount sufficient to satisfy the tax, in the amount originally assessed, and any interest, costs and penalties;

8.2.3 Trustor promptly pays any amount adjudged by a court or administrative body of competent jurisdiction to be due, including all interest, costs and penalties, after the judgment becomes final; and

8.2.4 Any such contest shall be concluded and such Taxes, interest, costs and penalties shall be paid prior to the date on which, under applicable law, the Property may be sold.

## 9. **ESTABLISHMENT OF TAX AND/OR INSURANCE IMPOUND ACCOUNT.**

If required by Beneficiary, Trustor shall make the following payments to Beneficiary, in addition to Trustor's payments due under the Loan Documents, which Beneficiary will hold in an impound account (the "**Impound Account**") and disburse for the payment of real property taxes and assessments against, and/or insurance for, the Property:

9.1 **Initial Payment.** On the date of recordation of this Deed of Trust, Trustor shall make an initial payment to Beneficiary in an amount equal to:

9.1.1 Any then-delinquent real property taxes and assessments and any interest and penalties, and/or any then-delinquent premiums for the insurance required by Paragraph 6 of this Deed of Trust; and

9.1.2 An amount which, when added to Trustor's payment obligations described below, will ensure an account balance which is sufficient to satisfy the next due installment of real property taxes and/or the next due insurance premiums at least thirty (30) Business Days before payment of such installment is due.

9.2 **Monthly Payments.** Trustor shall make monthly payments, on or before the due date of Trustor's monthly payment obligation under the Loan Documents, commencing with the first monthly payment under the Loan Documents, equal to one-twelfth (1/12<sup>th</sup>) of the following, so that the aggregate monthly payment made pursuant to this Paragraph 9.2 shall be sufficient to pay each such amount set forth below at least thirty (30) Business Days before due:

9.2.1 Beneficiary's estimate of the annual real property taxes and assessments against the Property, and other fees or charges which are collected in the same manner as real property taxes against the Property; and

9.2.2 Beneficiary's estimate of the annual premiums for the insurance required by Paragraph 6 of this Deed of Trust.

9.3 Excess Account Balance. If Beneficiary holds funds in the Impound Account in excess of the funds disbursed to pay real property taxes and assessments against, and/or insurance for, the Property, Beneficiary may credit the excess to reduce the amount of Trustor's subsequent quarterly payments or Beneficiary may refund the excess to Trustor.

9.4 Disbursal of Funds. Beneficiary shall disburse the funds in the Impound Account to pay annual real property taxes and assessments against the Property, and other fees or charges which are collected in the same manner as real property taxes against the Property, and/or the premiums for the insurance required by Paragraph 6 of this Deed of Trust; provided, however, upon the occurrence of an Event of Default under this Deed of Trust, Beneficiary may, at its option, apply any and all funds in the Impound Account to satisfy any of Trustor's obligations secured by this Deed of Trust.

9.5 Interest. Unless required by applicable law, Beneficiary shall not be required to pay interest on the funds held in the Impound Account.

9.6 Accountings. Beneficiary shall provide Trustor any and all accountings of the balance of, and of additions to and disbursals from, the Impound Account as may be required by applicable law.

## **10. AGREEMENTS REGARDING CONDEMNATION.**

10.1 Notice of Proceedings. Trustor shall give Beneficiary immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceeding affecting the Property and shall deliver to Beneficiary copies of any and all papers served in connection with such proceedings. Beneficiary may participate, at its own expense, in any such proceedings, and Trustor from time to time will deliver to Beneficiary all instruments requested by Beneficiary to permit such participation.

10.2 Assignment. Except as provided in Paragraph 10.3, Trustor hereby assigns, transfers and sets over unto Beneficiary the entire proceeds of any award and any claim for damages for any of the Property taken or damaged under the power of eminent domain or by condemnation. Beneficiary is authorized to collect any such proceeds. Trustor, upon the request of Beneficiary, shall make, execute and deliver any and all instruments requested for the purpose of confirming the assignment of the aforesaid awards and compensation of Trustor to Beneficiary free and clear of all liens, charges or encumbrances of any kind or nature whatsoever. Beneficiary may, in its sole discretion, elect: (i) to apply the proceeds of the award or claim upon or in reduction of the Debt, whether due or not, or to observe, perform or discharge any of Trustor's other Obligations under this Deed of Trust; or (ii) to make those proceeds available to Trustor or any lessee for repair, restoration or rebuilding of the Improvements on the Property, in the manner and under the conditions that Beneficiary may require. In any event, the Improvements shall be repaired, restored or rebuilt in accordance with plans and specifications to be submitted to and approved by Beneficiary. In any case where proceeds are made available for repair, rebuilding or restoration, the proceeds of the award shall be held and paid out in the same manner and under the same conditions provided in Paragraph 6 hereof for the payment of insurance proceeds toward the



cost of repair, rebuilding or restoration. Any surplus which may remain out of said award or out of any additional deposit made by Trustor after payment of such cost of repair, rebuilding or restoration and the reasonable charges of the Disbursing Party shall, at the option of Beneficiary, in its sole discretion, be applied on account of the Debt or paid to any party entitled thereto as the same appear on the records of Beneficiary. No interest shall be allowed to Trustor on account of any proceeds of any award held by the Disbursing Party. The proceeds of any award held by the Disbursing Party need not be kept separate and apart from any other funds of the Disbursing Party.

10.3 Application of Net Proceeds by Trustor. Provided and only so long as: (i) no Event of Default exists; (ii) the conditions set forth in Paragraph 7.5 are satisfied; and (iii) no material portion of the Improvements nor any material portion or necessary element of the Real Estate is taken, then all net condemnation proceeds (proceeds remaining after deducting costs and expenses of collection) which are paid to and received by Beneficiary shall be made available by Beneficiary to Trustor for the Restoration of the remaining portion of the Property pursuant to the provisions of Paragraph 7; provided, however, any net condemnation proceeds not so applied or that remain unexpended after the Restoration may be applied by Beneficiary to the repayment of the Debt, without penalty or premium, in any manner that Beneficiary shall designate, whether or not then due and payable.

10.4 Event of Default. Upon the occurrence of an Event of Default under this Deed of Trust, Beneficiary may, at its option but without being required so to do, apply any monies at the time on deposit pursuant to this Paragraph 10 against any of the Debt, and performance of the Obligations, in such order and manner as Beneficiary may elect. When the Debt has been fully paid, and all Obligations have been fully performed, any remaining deposits shall be paid to Trustor or to the then owner or owners of the Property as the same appear on the records of Beneficiary. Neither Beneficiary nor the Disbursing Party shall be liable for any act or omission taken in good faith, but only for its gross negligence or willful misconduct.

10.5 Beneficiary Not Responsible. Beneficiary shall not be held responsible for any failure to collect any condemnation proceeds regardless of the cause of such failure or for any use by Trustor of such proceeds as Beneficiary may pay over to Trustor.

## 11. PAYMENT OF EXPENSES.

11.1 Trustor shall pay all of the expenses which Beneficiary and Trustee incur to enforce any terms of this Deed of Trust, whether or not any lawsuit is filed, including, but not limited to, legal fees and disbursements, foreclosure costs and title charges, plus interest at the Default Rate. This obligation shall be secured by this Deed of Trust. Trustor shall pay all reasonable expenses of Beneficiary in connection with the preparation and recordation of a reconveyance of this Deed of Trust.

## 12. MECHANICS' LIENS.

12.1 Trustor's Obligation to Pay Claims. Trustor shall pay when due all claims and demands of mechanics, materialmen, laborers and others for any work performed or materials provided for the construction, alteration or repair of the Property; provided, however, that Trustor shall have the right to contest in good faith any such claim or demand, if Trustor does so diligently and without prejudice to Beneficiary. If Trustor contests any such claim or demand, Trustor shall,

upon Beneficiary's request, promptly provide a bond, cash deposit or other security reasonably satisfactory to Beneficiary to protect Beneficiary's interest and security should the contest be unsuccessful.

12.2 Trustor's Failure to Pay Claims. If Trustor fails to immediately discharge or provide security against any such claim or demand, Beneficiary, at its option, may pay or otherwise satisfy the claim or demand, and demand that Trustor promptly reimburse Beneficiary the amount that Beneficiary paid the claimant and/or any costs, including attorneys' fees, which Beneficiary incurs to pay or satisfy the claim, plus interest at the Default Rate. Trustor's obligation to reimburse Beneficiary shall be secured by this Deed of Trust.

### **13. ACCELERATION UPON ALIENATION OR FURTHER ENCUMBRANCES OR CHANGE OF FORM.**

13.1 Alienation or Further Encumbrance of Property. If the Property, or any part of or any interest in the Property, is sold, conveyed, transferred, hypothecated, alienated, leased or further encumbered, whether voluntarily or involuntarily, without Beneficiary's prior written consent (which consent may be withheld in Beneficiary's sole discretion), Beneficiary shall have the right at its option to declare any Debt or Obligations immediately due and payable regardless of the maturity date specified in the Loan Documents, except where and to the extent such right is limited by applicable law. In any case when Beneficiary may, in its sole discretion, consent to any further encumbrance of the Property, such consent may be conditioned upon delivery to and for the benefit of Beneficiary a subordination agreement duly executed by Trustor and the party for whose benefit such further encumbrance is being made, such subordination agreement being in form and substance acceptable to Beneficiary, in its sole discretion.

13.2 Change in Form or Status of Trustor. Beneficiary shall have the right at its option to declare the Debt and Obligations immediately due and payable regardless of the maturity date specified in the Loan Documents, upon the occurrence of any of the following:

13.2.1 If, without the written consent of Beneficiary being first had and obtained, there is a transfer or assignment of any ownership interest in Trustor which changes the ownership of Trustor; or

13.2.2 If, without the written consent of Beneficiary being first had and obtained, there is any change in the board of directors, trustees or managers of Trustor; or

13.2.3 If, without the written consent of Beneficiary being first had and obtained, any of the following events occurs with respect to Trustor: (i) Trustor materially ceases operations, or the board of directors of Trustor resolves to dissolve and liquidate Trustor; (ii) a judicial decree for winding up and dissolution is granted; (iii) Trustor otherwise terminates its existence, whether voluntarily or involuntarily; (iv) the board of directors of Trustor resolves to consolidate, merge, restructure or enter into any other combination reorganization; (v) if the board of directors, trustees or managers of Trustor resolves to enter into any divisive reorganization such as, by way of example, a "spin-off" or a "split-off" (unless each surviving corporation: (A) remains jointly and severally liable under this Deed of Trust and any other Loan Documents and (B) has executed and delivered such documents as Beneficiary may require and in such form as Beneficiary may require to evidence this continuing obligation); or (vi) if Trustor sells or hypothecates ten percent (10%) or

more of Trustor's gross assets based on both book value and fair market value outside the ordinary course of its business (not including providing security for Loan) in any three (3) year period.

13.3 [Change in Form or Status of Trustor Which is a Limited Liability Company, Corporation or Partnership].<sup>4</sup> If Trustor is a limited liability company, corporation or a partnership, Beneficiary shall have the right at its option to declare the Debt and Obligations immediately due and payable regardless of the maturity date specified in the Loan Documents, upon the occurrence of any of the following:

13.3.1 If, without the written consent of Beneficiary being first had and obtained, there is a transfer, assignment or hypothecation of any stock or ownership interest in such limited liability company, corporation, or partnership, whichever the case may be, which changes the ownership of such entity, in the aggregate, by more than twenty-five percent (25%) as compared with the ownership of such entity as it exists on the date of this Deed of Trust;

13.3.2 If, without the written consent of Beneficiary being first had and obtained, any of the following events occurs with respect to Trustor if it is a limited liability company or a corporation, as the case may be: (i) Trustor materially ceases operations, or its members or the board of directors of Trustor resolves to dissolve and liquidate Trustor; (ii) a judicial decree for winding up and dissolution is granted; (iii) Trustor otherwise terminates its existence, whether voluntarily or involuntarily; (iv) the members or the board of directors of Trustor resolves to consolidate, merge, restructure or enter into any other combination reorganization (unless (A) the net worth of the surviving limited liability company or corporation will exceed Trustor's net worth as of the date of this Deed of Trust, computed on both a book value and a fair market value basis, respectively, and (B) the members or shareholders of Trustor as of the date of this Deed of Trust will own or control not less than twenty-five percent (25%) of the stock, on a fully diluted basis, of the surviving limited liability company or corporation); (v) if the members or the board of directors of Trustor resolves to enter into any divisive reorganization such as, by way of example, a "spin-off" or a "split-off" (unless each surviving limited liability company or corporation: (A) remains jointly and severally liable under this Deed of Trust and any other Loan Documents and (B) has executed and delivered such documents as Beneficiary may require and in such form as Beneficiary may require to evidence this continuing obligation); (vi) if Trustor sells or hypothecates ten percent (10%) or more of Trustor's gross assets based on both book value and fair market value outside the ordinary course of its business (not including providing security for the Loan) in any three (3) year period; or (vii) if Trustor distributes to its members or shareholders, whether such distribution is classified as a dividend, compensation, redemption, loan repayment or otherwise, an amount equal to ten percent (10%) or more of Trustor's gross assets based on both book value and fair market value, respectively, in any three (3) year period; or

13.3.3 If, without the written consent of Beneficiary being first had and obtained, any of the following events occur with respect to Trustor if it is a partnership: (i) if Trustor materially ceases operations; (ii) if the partners of Trustor elect to wind up and dissolve; (iii) if Trustor otherwise terminates its existence, whether by operation of law or by agreement; (iv) if the partners of Trustor elect to restructure, consolidate, merge or enter into any other reorganization with another partnership or entity (unless (A) the net worth of the surviving partnership will exceed

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<sup>4</sup> Use the following Section 13.2 if Trustor is any other entity other than a nonprofit corporation.

Trustor's net worth as of the date of this Deed of Trust, computed on both a book value and a fair market value basis, respectively, and (B) the partners of Trustor will own or control not less than twenty-five percent (25%) of the surviving partnership); (v) if Trustor distributes to its partners, whether such distribution is classified as a capital, income or liquidating distribution, compensation, loan repayment or otherwise, an amount equal to ten percent (10%) or more of Trustor's gross assets based on both book value and fair market value, respectively, in any three (3) year period; or (vi) in the event any of the general partners of Trustor are either a limited liability company, corporation or a partnership, if any of the events of Paragraph 13.2.2 above or this Paragraph 13.2.3 (i) - (v) occur with respect to any such general partners.]

**14. ACCESS TO AND INSPECTION OF THE PROPERTY.**

14.1 Access to Property. Beneficiary and its representatives and agents shall be entitled to access to the Property and each portion thereof, at all reasonable times, for the purposes of inspecting its physical condition.

14.2 Inspection of Records. Trustor shall maintain, and Beneficiary and Beneficiary's representatives and agents shall be entitled to reasonable access to, complete and accurate books and records concerning the operation of the Property as well as copies of all contracts and other instruments that relate to the Property.

**15. REPAIR AND MAINTENANCE; WASTE.**

15.1 Repair and Maintenance. Trustor shall:

15.1.1 Keep the Property in good and safe condition and repair;

15.1.2 Not remove, demolish, abandon or materially alter any of the Property, or permit the same to be done by any other party, without Beneficiary's prior written consent, except to replace an item of equipment, machinery or fixtures with a replacement item of like quality or to comply with a law or regulation which requires that alterations be made to the Property;

15.1.3 Restore, repair or rebuild any part of the Property which is damaged, destroyed, worn or dilapidated, whether or not the costs of repairing such loss or damage is sufficiently covered by insurance proceeds or condemnation awards;

15.1.4 Promptly comply with any law or regulation which requires that alterations be made to the Property;

15.1.5 Not commit or permit any waste or the violation of any law or regulation to occur on the Property; and

15.1.6 Not take or permit any actions or permit any use of the Property which might invalidate any policies of insurance against loss of or damage to the Property.

**16. LAND USE.**

16.1 Trustor shall not initiate, join in or consent to any change in the air or subterranean rights, private restrictive covenant, zoning law or other public or private restriction limiting or defining the uses which may be made of the Property without the prior written consent of

Beneficiary. Trustor shall comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Property. Trustor shall comply with all existing and future requirements of all governmental authorities having jurisdiction over the Property. If, under applicable zoning provisions, the use of all or any part of the Property is or becomes a nonconforming use, Trustor shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Beneficiary.

**17. FURTHER ASSURANCES.**

Trustor shall, on the request of Beneficiary promptly:

17.1 Correction of Errors. Correct any defect, error or omission that may be discovered in this Deed of Trust or in the form or contents of any of the other documents connected with this Deed of Trust;

17.2 Execution of Additional Instruments. Execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to implement the provisions of the immediately preceding subparagraph or to carry out more effectively the purposes of this Deed of Trust and any other Loan Documents; and

17.3 Further Assurances. At the cost of Trustor and without expense to Trustee or Beneficiary, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Trustee or Beneficiary shall from time to time require, for the better assuring, conveying, assigning, transferring and confirming unto Trustee or Beneficiary the Property and rights hereby mortgaged, warranted, given, granted, bargained, sold, assigned, conveyed, confirmed, pledged, assigned, granted a security interest in, and hypothecated or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Trustee or Beneficiary, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust, and, on demand, will execute and deliver and hereby authorizes Trustee and Beneficiary to execute in the name of Trustor or without the signature of Trustor to the extent Trustee or Beneficiary may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, or other security instruments to evidence more effectively the lien hereof upon the Property. Trustor grants to Trustee and Beneficiary an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Trustee or Beneficiary at law and in equity, including such rights and remedies available to Trustee or Beneficiary pursuant to this Paragraph 17.

**18. ADVERSE CLAIMS; REIMBURSEMENT.**

18.1 Trustor shall promptly notify Beneficiary in writing of any litigation or threatened litigation affecting the Property, or any other demand or claim that, if enforced, could impair or threaten to impair Beneficiary's interest in the Property. If any action or proceeding of any kind (including, but not limited to, any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced that might affect Beneficiary's or Trustee's interest in the Property or Beneficiary's right to enforce its security, or any claims or demands are made for

damages or injury, including claims for property damage, personal injury or wrongful death, arising out of or in connection with any accident or fire or other casualty on the Property and/or any Improvements, whether or not Beneficiary and/or Trustee are named as parties to said action or proceeding, then Beneficiary and/or Trustee may, at their option, but shall not be obligated to, make any appearances, pay any claims or expenses (including attorneys' fees), and take any actions as may be necessary or desirable to protect or enforce the security of this Deed of Trust. Trustor shall promptly reimburse Beneficiary for any such claims or expenses (including attorneys' fees) which Beneficiary pays, plus interest at the Default Rate.

## **19. HAZARDOUS SUBSTANCES; ASBESTOS; UNDERGROUND STORAGE TANKS.**

19.1 Definitions. As used in this Deed of Trust, the term "**Hazardous Materials**" shall mean: (i) those substances included within the definitions of "hazardous materials", "hazardous substances", "toxic substances" or "solid wastes", or of comparably defined terms, in, as applicable, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 *et seq.*, as amended ("**CERCLA**"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101-5127; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 *et seq.*; and all other applicable Environmental Laws (as hereinafter defined) that may have been enacted or may be enacted in the future and the regulations adopted and publications promulgated pursuant to such laws; and (ii) any asbestos and asbestos-containing materials ("**Asbestos Materials**"), polychlorinated biphenyls, any flammable explosives, radioactive materials, hydrocarbons, petroleum products and by-products, hazardous wastes, hazardous or toxic substances, or related or similar materials (excluding amounts of such materials commonly used by users of space similar in structure and usage to the Improvements, provided that such use of materials is not: (a) in such quantity or in such manner as to exceed a level at which any regulatory agency can or may take action under any Environmental Laws; (b) in such quantity or in such manner as would create an obligation to clean up or remediate same under any Environmental Law; or (c) in such quantity as to obligate Trustor to report any release or discharge under any Environmental Law).

### 19.2 Representations.

19.2.1 Except as previously and expressly disclosed to Beneficiary in any written reports previously delivered to Beneficiary by Trustor (collectively, the "**Reports**"), Trustor represents and warrants that Trustor has not, and, to the best of Trustor's knowledge after due inquiry and investigation (which shall not require an environmental assessment), no predecessor in title nor any third person at any time occupying or present on the Property has at any time used, generated, processed, transported, disposed of, discharged, stored, released or threatened the release of any Hazardous Materials on, from, under or affecting the Property in any manner that: (i) violates any federal, state or local law, ordinance, rule, regulation or policy governing the use, refinement, handling, treatment, removal, storage, production, manufacture, transportation or disposal of Hazardous Materials (collectively, the "**Environmental Laws**") which are currently in effect; (ii) poses a hazard or potential hazard to human health and safety or the environment; or (iii) would impose liability upon the owner or operator of the Property on account of an act of others which would be described in clause (i) or clause (ii) above.

19.2.2 Trustor represents and warrants that, except as previously disclosed to Beneficiary in the Reports, to the best of Trustor's knowledge after due inquiry and investigation, the Property does not contain and has not in the past contained any Asbestos Materials in friable form, nor is there any current or potential airborne contamination of the Property by asbestos fiber, including any potential contamination that would be caused by maintenance or construction of tenant improvements in the Improvements.

19.2.3 Trustor represents and warrants that no underground storage tanks are located in the soil which underlies the Property.

19.2.4 Trustor represents and warrants that: (i) Trustor has not received an information request from the United States Environmental Protection Agency ("EPA") under §11004 of CERCLA (which authorizes the EPA to require the production of information about the nature and quantity of materials generated, treated, stored or disposed of at a facility, as well as "information relating to the ability of a person to pay for or perform a cleanup"); (ii) Trustor has not participated in discussions with a group of "potentially responsible parties" regarding the detoxification of the Property; and (iii) Trustor has not received actual notification from the EPA, and is unaware of any other person or entity which has received notification from the EPA, that it is a "potentially responsible party" for the detoxification of the Property.

19.2.5 Trustor represents and warrants that no other local, state or Federal regulatory authority or private person has identified Trustor or any other person or entity as a party which might be responsible for the cost of detoxification of the Property or initiated any action (including (i) administrative proceedings before the EPA or a state environmental authority and (ii) lawsuits by a private party for contribution to satisfy its CERCLA liability) to compel the detoxification of the Property or payment for the cost of the detoxification of the Property.

### 19.3 Covenants.

19.3.1 Trustor covenants that it will not, and that it shall employ its best efforts to ensure that tenants or other occupants of the Property in the future do not, use, generate, process, transport, dispose of, discharge, store, release or threaten the release of any Hazardous Materials on, from, under or affecting the Property either: (i) in any manner that violates any Environmental Laws in effect from time to time, or poses a hazard or potential hazard to human health and safety or the environment; or (ii) in kinds or amounts which are greater than are customarily required in the ordinary course of business in violation of applicable laws, except to the extent arising from the actions of Beneficiary or purchaser at foreclosure, or that occur after Beneficiary or other purchaser obtains possession of the Property.

19.3.2 Trustor covenants that any Asbestos Materials located at the Property shall be the sole and exclusive responsibility of Trustor.

19.3.3 Trustor covenants that: (i) Trustor shall not incorporate any building materials which contain Asbestos Materials into the Improvements; and (ii) Trustor shall not place any underground storage tanks in the soil which underlies the Property.

19.3.4 Trustor shall not cause or exacerbate any occurrence or condition on the Property that is or may be in violation of the Environmental Laws. Trustor shall take all

appropriate steps to secure compliance by all tenants and subtenants of the Property with Trustor's obligations under this Paragraph 19.

19.4 Remediation.

19.4.1 To the extent required by law, Trustor shall promptly cause the removal of any Hazardous Materials which Trustor discovers on the Property or in the soil or groundwater which underlies the Property at Trustor's sole expense and will promptly remedy any violation of any Environmental Laws at Trustor's sole expense, except to the extent arising from the actions of Beneficiary or purchaser at foreclosure, or that occur after Beneficiary or other purchaser obtains possession of the Property; if Trustor fails to do so: (i) Beneficiary may cause the removal of any Hazardous Materials and/or remedy any violation of any law or regulation; (ii) Trustor shall promptly reimburse Beneficiary all of its costs and expenses, including attorneys' fees; and (iii) Trustor's obligation to reimburse Beneficiary, plus interest at the Default Rate, shall be an indebtedness which is secured by this Deed of Trust.

19.4.2 To the extent required by law, Trustor shall promptly engage a licensed environmental engineer to remove any Asbestos Materials which Trustor discovers in the Improvements or on the Property at Trustor's sole expense; if Trustor fails to do so: (i) Beneficiary may cause the removal of any Asbestos Materials; (ii) Trustor shall promptly reimburse Beneficiary all of its costs and expenses, including attorneys' fees; and (iii) Trustor's obligation to reimburse Beneficiary, plus interest at the Default Rate, shall be an indebtedness which is secured by this Deed of Trust.

19.5 Notification. Trustor shall promptly provide Beneficiary written notice of: (i) Trustor's obtaining knowledge of any release of any Hazardous Materials on, in, under or from the Property or any other site owned, occupied or operated by Trustor or by any other person for whose conduct Trustor may be responsible, in whole or in part, or whose liability may result in a lien on the Property; (ii) Trustor's receipt of any notice to such effect from any federal, state or other governmental authority; and (iii) Trustor's obtaining knowledge of the incurring of any expense or loss by such governmental authority or by any other person in connection with the assessment, containment or removal of any Hazardous Materials for which expense or loss Trustor may be liable, in whole or in part, or for which expense or loss a lien may be imposed on the Property.

19.6 Indemnity. Except where Claims and costs (as defined below) arise as a result of the actions of the purchaser at foreclosure, or occur after Beneficiary or other purchaser obtains possession of the Property, Trustor shall indemnify and defend (with counsel reasonably approved by Beneficiary) Beneficiary, any assignee of or participant in the Debt, and the directors, trustees, beneficiaries, officers, shareholders, employees and agents of Beneficiary, any parent, subsidiary, affiliate, successor, assignee or participant, and their respective successors and assigns (collectively, Beneficiary's "**Related Parties**"), against and hold them harmless from any claims (including third-party claims for personal injury or real or personal property damage), actions, administrative proceedings (including informal proceedings), notices or demands (collectively, the "**Claims**"), and any judgments, damages, punitive damages, penalties, fines, costs, taxes, assessments, liabilities (including sums paid in settlement of claims), interest or losses, including, without limitation, attorneys' fees and expenses and reasonable allocated costs of Beneficiary's in-



house and outside counsel (including any such fees and expenses incurred in enforcing this Paragraph 19 or collecting any sums due under this Deed of Trust), consultant fees, and expert fees, together with all other costs and expenses of any kind or nature (collectively, the “Costs”) that arise directly or indirectly in connection with: (i) the presence, suspected presence, release or suspected release of any Hazardous Materials in or into the air, soil, groundwater, surface water or Improvements at, on, about, under or within the Property, or any portion thereof, or elsewhere in connection with the transportation to or from the Property or disposal of Hazardous Materials from the Property or posing a hazard or potential hazard to human health and safety or the environment; or (ii) the breach of any representations, warranties or covenants set forth in this Paragraph 19. The indemnification provided in this Paragraph 19 shall specifically apply to and include Claims brought by or on behalf of employees of any Trustor. Trustor hereby expressly waives (with respect to any Claims of Beneficiary arising under this Paragraph 19) any immunity to which Trustor may otherwise be entitled under any industrial or worker’s compensation laws. Upon demand by Beneficiary or Beneficiary’s Related Parties, Trustor shall defend any Claim, such defense to be at Trustor’s sole cost and expense and by counsel reasonably approved by Beneficiary or Beneficiary’s Related Party, which counsel may, without limiting the rights of Beneficiary or Beneficiary’s Related Party pursuant to the next succeeding sentence of this Paragraph, also represent Trustor in such investigation, action or proceeding. Alternatively, Beneficiary or any Related Party may elect, at its option, to conduct its own defense through counsel of its own choosing and at the expense of Trustor. In the event Beneficiary or any of its Related Parties shall suffer or incur any Costs, Trustor shall pay to Beneficiary or such Related Party the total of all such Costs suffered or incurred by Beneficiary or such Related Party, upon demand therefor. Costs shall specifically include capital, operating and maintenance costs incurred in connection with any clean-up, containment, restoration, removal or other remedial work (“**Remedial Work**”) required or performed by any federal, state or local governmental agency or political subdivision, or performed by any non-governmental entity or person, or performed by Beneficiary or any Related Party, as a result of or in connection with: (i) the presence, suspected presence, release or suspected release of any Hazardous Materials on, in, under or from the air, soil, groundwater, surface water or Improvements at, on, about, under or within the Property (or any portion thereof), or as a result of or in connection with the transportation to or from the Property or the disposal of Hazardous Materials from the Property in violation of any Environmental Laws or posing a hazard or potential hazard to human health and safety or the environment; or (ii) the breach of any representations, warranties and covenants set forth in this Paragraph 19.

19.7 Security. Except as otherwise provided below, the indemnities contained in this Paragraph 19 shall be secured by the Property. After this Deed of Trust has been released, reconveyed or otherwise terminated, the indemnity contained in this Paragraph 19 shall survive and shall be deemed to be unsecured obligations of Trustor, and shall be enforceable to the extent permitted by applicable law, as the same may be subsequently amended, and all applicable laws that would apply in the absence of such statutory provisions.

19.8 Survival. Trustor’s obligations under the indemnity contained in this Paragraph 19 shall, to the maximum extent permitted by law, survive: (i) repayment of the Debt and any judicial or nonjudicial foreclosure of this Deed of Trust, or any conveyance in lieu of such foreclosure, notwithstanding that all or any portion of any of the Obligations shall have been discharged thereby; (ii) any election by Beneficiary or any other indemnified party thereunder to purchase all

or any portion of the Property at a foreclosure sale by crediting all or any portion of the Debt and Obligations against the purchase price therefor (except to the extent and only to the extent that Beneficiary or such other indemnified party has specifically elected in writing in its sole discretion to credit against the purchase price any Claims which were liquidated in amount at the time of such foreclosure sale, it being presumed for these purposes that the Debt and Obligations secured hereby shall be discharged by any such crediting); (iii) any reconveyance of this Deed of Trust, or release of any other security for the Debt and Obligations; (iv) acquisition of all or any portion of any of the Property by Beneficiary or any other indemnified party; and (v) any termination or cancellation of this Deed of Trust or any other Loan Documents.

## **20. TRUSTOR'S WAIVERS.**

20.1 Waiver of Statute of Limitations. To the fullest extent permitted by applicable law, Trustor waives the right to assert any applicable statutes of limitations as a defense to the enforcement of this Deed of Trust or any other Loan Documents.

20.2 Waiver of Right to Marshaling. To the fullest extent permitted by applicable law, Trustor, and any person who presently has or subsequently acquires an interest in the Property with actual or constructive notice of this Deed of Trust, waive the benefit of all appraisement, valuation, stay, extension, moratorium, reinstatement and redemption laws now or hereafter in force, and any and all rights under applicable law or common law rule, to require a marshaling of assets upon Beneficiary's exercise of its remedies provided by this Deed of Trust; Beneficiary, in its sole discretion, shall be entitled to determine the order in which the Property shall be subjected to the remedies provided by this Deed of Trust.

## **21. EVENTS OF DEFAULT.**

Each of the following events shall constitute an Event of Default ("**Event of Default**") under this Deed of Trust, which shall entitle Beneficiary to exercise any and all available rights and remedies, including, without limitation, Beneficiary's rights under Paragraph 22 of this Deed of Trust:

21.1 Payment Default; Failure to Perform Obligations. Trustor's failure to make any payment when due of the Debt or Trustor's failure to perform any of the Obligations;

21.2 Default under Loan Documents; Breach of Warranty. An event of default occurs under any of the Loan Documents, Trustor's breach of any warranty, covenant or representation under this Deed of Trust or any other Loan Documents, or Beneficiary's determination that any such warranty or representation is untrue in any material respect;

21.3 Insolvency. If a receiver, liquidator or trustee of Trustor shall be appointed, or if Trustor shall be adjudicated bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against Trustor, or if Trustor shall make an assignment for the benefit of creditors, or if any proceeding for the dissolution or liquidation of a non-individual Trustor shall be instituted and, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Trustor, upon the same not being discharged, stayed or dismissed within ninety (90) days, or if Trustor shall generally not be paying its debts as they become due;

21.4 Default Under Other Agreements. If Trustor shall be in default under any other mortgage or deed of trust (or note secured thereby) or security agreement covering any part of the Property or the Collateral whether it be superior or junior in lien to this Deed of Trust and such default is not cured within applicable grace periods thereunder, or if the debt secured thereby is accelerated;

21.5 Attachment of Levy Against Property. If Trustor has failed to remove a lien within sixty (60) days of the date of attachment, the attachment of any lien or a levy of, or the issuance of a writ of execution against, the Property;

21.6 Encumbrances Against Property. Trustor's sale, conveyance, assignment, lease (other than in the ordinary course of business of operating the Property as a medical office building) or other transfer or disposition of all or any part of the Property or any interest therein, or any further pledge, hypothecation, grant of any security interest in, or further encumbrance of all or any part of the Property or any interest therein, whether voluntarily or involuntarily, by operation of law or otherwise, in violation of the provisions of Paragraph 13;

21.7 Insufficient Security. If Beneficiary, in its sole discretion, believes that, due to a material adverse change, the security for the Debt or Obligations is inadequate; or

21.8 Foreclosure of Liens. If judicial or non-judicial foreclosure proceedings are commenced with respect to any lien encumbering the Property other than this Deed of Trust.

## **22. REMEDIES.**

Upon the occurrence of any Event of Default under this Deed of Trust, Trustor agrees that Beneficiary's remedies shall include any or all of the following:

### **22.1 With Regard to the Real Estate and Improvements.**

22.1.1 Beneficiary may declare any or all of the Debt to be immediately due and payable without any presentment, demand for payment, notice, notice of dishonor or notice of any other kind, unless and to the extent applicable law limits acceleration of the Debt.

22.1.2 Beneficiary may, either in person or by agent, with or without judicial action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon and take possession of the Property, and take any action that Beneficiary determines to be appropriate to preserve the value and marketability of the Property.

22.1.3 Beneficiary may terminate Trustor's license to collect any rent from the Property and, with or without judicial action, or by a receiver appointed by a court, and with or without taking possession of the Property, collect any rent from the Property.

22.1.4 Beneficiary may commence and prosecute an action to foreclose judicially this Deed of Trust, and/or to specifically enforce the provisions or any of the obligations secured by this Deed of Trust, and/or to enjoin any acts which constitute waste of the Property.

22.1.5 Beneficiary may deliver to Trustee a written declaration of default and demand for sale which requests that Trustee record and serve a written notice of default and of

election to cause the Property to be sold, and cause any or all of the Property to be sold under the power of sale granted by this Deed of Trust in the manner hereinbelow specified in Paragraph 24 of this Deed of Trust.

22.1.6 Beneficiary may exercise any other right or remedy available under this Deed of Trust or any other Loan Documents, or at law or in equity.

22.1.7 Beneficiary or its employees, acting by themselves or through a court-appointed receiver, may enter upon, possess, manage, operate, dispose of, and contract to dispose of the Property or any part thereof; take custody of all accounts; negotiate with governmental authorities with respect to the Property's environmental compliance and remedial measures; take any action necessary to enforce compliance with environmental provisions set forth herein, including, but not limited to, spending Rents to abate the problem; contract for goods and services, hire agents, employees and counsel, make repairs, alterations and improvements to the Property necessary, in Beneficiary's judgment, to protect or enhance the security hereof; incur the risks and obligations ordinarily incurred by owners of property (without any personal obligation on the part of the receiver); and/or take any and all other actions which may be necessary or desirable to comply with Trustor's obligations under this Deed of Trust. All sums realized by Beneficiary under this subparagraph, less all costs and expenses incurred by it under this subparagraph, including attorneys' fees, and less such sums as Beneficiary deems appropriate as a reserve to meet future expenses under the subparagraph, shall be applied on the Debt in such order as Beneficiary shall determine. Neither application of said sums to the Debt, nor any other action taken by Beneficiary under this subparagraph, shall cure or waive any Event of Default or notice of default under this Deed of Trust, or nullify the effect of any such notice of default. Beneficiary, or any employee or agent of Beneficiary, or a receiver appointed by a court, may take any action or proceeding under this Deed of Trust without regard to: (i) the adequacy of the security for the Debt; (ii) the existence of a declaration that the Debt has been declared immediately due and payable; or (iii) the filing of a notice of default.

22.1.8 With or without notice, and without releasing Trustor from any obligation under this Deed of Trust, to cure any default of Trustor and, in connection therewith, Beneficiary or its agents, acting by themselves or through a court appointed receiver, may enter upon the Property or any part thereof and perform such acts and things as Beneficiary deems necessary or desirable to inspect, investigate, assess and protect the security hereof, including, without limitation, of any of its other rights: (i) to obtain a court order to enforce Beneficiary's right to enter and inspect the Property for Hazardous Substances pursuant to applicable laws (in connection therewith, the decision of Beneficiary as to whether there exists a release or threatened release of Hazardous Substances onto the Property shall be deemed reasonable and conclusive as between the parties hereto); and (ii) to have a receiver appointed pursuant to applicable laws. All costs and expenses incurred by Beneficiary with respect to the audits, tests, inspections and examinations which Beneficiary or its agents or employees may conduct, including the fees of the engineers, laboratories, contractors, consultants and attorneys, shall be paid by Trustor. All costs and expenses incurred by Trustee and Beneficiary pursuant to this subparagraph (including, without limitation, court costs, consultant fees and attorneys' fees, whether incurred in litigation or not and whether before or after judgment) shall bear interest at the Default Rate from the date they are incurred until said sums have been paid.

22.1.9 Beneficiary may seek a judgment that Trustor has breached its covenants, representations and/or warranties with respect to the environmental matters set forth in Paragraph 19 of this Deed of Trust, by commencing and maintaining an action or actions in any court of competent jurisdiction for breach of contract pursuant to Section 736 of the California Code of Civil Procedure, whether commenced prior to foreclosure of the Property or after foreclosure of the Property, and to seek the recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses actually incurred or advanced by Beneficiary (collectively, the “**Environmental Costs**”) relating to the cleanup, remediation or other response action of or to the Property which were made by Beneficiary in good faith. All Environmental Costs incurred by Beneficiary under this subparagraph (including, without limitation, court costs, consultant fees and attorneys’ fees, whether incurred in litigation or not and whether before or after judgment) shall bear interest at the Default Rate from the date of expenditure until said sums have been paid. Beneficiary shall be entitled to bid, at the sale of the Property held under subparagraphs 22.1.4 and 22.1.5 above, the amount of said costs, expenses and interest in addition to the amount of the other obligations hereby secured as a credit bid, the equivalent of cash. Trustor acknowledges and agrees that notwithstanding any term or provision contained herein, the Environmental Costs shall be exceptions to any nonrecourse or exculpatory provision of this Deed of Trust or the Loan Documents, Trustor shall be fully and personally liable for the Environmental Costs under this Deed of Trust, such liability shall not be limited to the original principal amount of the obligations secured by this Deed of Trust, and Trustor’s obligations shall survive the foreclosure, deed in lieu of foreclosure, release, reconveyance or any other transfer of the Property or this Deed of Trust. For the purposes of any action brought under this subparagraph, Trustor hereby waives the defense of laches and any applicable statute of limitations.

22.1.10 Beneficiary may waive its lien against the Property, or any portion thereof, to the extent such property is found to be environmentally impaired in accordance with Section 726.5 of the California Code of Civil Procedure and to exercise any and all rights and remedies of an unsecured creditor against Trustor and all of Trustor’s assets and property for the recovery of any deficiency and Environmental Costs, including, but not limited to, seeking an attachment order pursuant to Section 483.010 of the California Code of Civil Procedure. As between Beneficiary and Trustor, for purposes of Section 726.5 of the California Code of Civil Procedure, Trustor shall have the burden of proving that Trustor or any related party (or any affiliate or agent of Trustor or any related party) was not in any way negligent in permitting the release or threatened release of Hazardous Substances. Trustor acknowledges and agrees that notwithstanding any term or provision contained in this Deed of Trust or any other Loan Documents, all judgments and awards entered against Trustor shall be exceptions to any nonrecourse or exculpatory provision of this Deed of Trust or the Loan Documents, Trustor shall be fully and personally liable for all judgments and awards entered against Trustor under this Deed of Trust, such liability shall not be limited to the original principal amount of the obligations secured by this Deed of Trust, and Trustor’s obligations shall survive the foreclosure, deed in lieu of foreclosure, release, reconveyance or any other transfer of the Property or this Deed of Trust. For the purposes of any action brought under this subparagraph, Trustor hereby waives the defense of laches and any applicable statute of limitations.

22.1.11 Trustor shall indemnify Beneficiary and Trustee against all claims, liabilities, losses and damages (including, without limitation, a tenant’s claims for failure to

perform an obligation under a Lease) which Beneficiary and/or Trustee might incur if Beneficiary or Trustee elects to exercise its remedies upon default. This obligation shall survive termination of this Deed of Trust.

22.2 With Regard to Personal Property.

22.2.1 Beneficiary may initiate an action for a money judgment against Trustor with or without foreclosure of the security interest granted by this Deed of Trust.

22.2.2 Beneficiary may enter upon the Real Estate and/or Improvements and take possession of the personal property collateral with or without judicial process.

22.2.3 Beneficiary may notify all account or contract debtors of Trustor that their accounts or contracts have been assigned to Beneficiary, and make direct demand upon the account or contract debtor to directly collect such accounts or contracts and proceeds of the Intangible Personal Property, and to do all things incident to such notification, demand and collections in connection with any particular assigned account or contract.

22.2.4 Beneficiary may direct Trustor to assemble the personal property collateral and produce the tangible personal property for Trustor at a place designated by Beneficiary.

22.2.5 Beneficiary may enter upon the Real Estate and/or Improvements and remove any tangible personal property collateral which is equipment unusable without removal of same from its then-current location.

22.2.6 Beneficiary may, prior to the disposition of the personal property collateral, store, process, repair or recondition it or otherwise prepare it for disposition in any manner and to the extent Beneficiary deems appropriate.

22.2.7 Beneficiary may sell, lease or otherwise dispose of the personal property collateral, in its then existing condition or following any commercially reasonable preparation or processing, as a unit or in parcels, at wholesale or retail, at a public or private sale (at which sale Beneficiary may be a bidder), and at any commercially reasonable time and place (including, without limitation, on the Real Estate and/or Improvements), whether or not such personal property is present at the place of sale, for cash or credit or future delivery, and on any commercially reasonable terms and conditions.

22.2.8 To the extent permitted by Division 9 of the California Commercial Code, Beneficiary may retain the personal property collateral in satisfaction of Trustor's obligations under the Loan Documents.

22.2.9 Beneficiary may apply the proceeds from any sale of the personal property collateral in the manner provided by Section 9604 of the California Commercial Code, including, without limitation, in payment of the attorneys' fees and legal expenses incurred by Beneficiary.

22.2.10 Beneficiary may exercise any of the other rights and remedies which Division 9 of the California Code provides a secured party upon a debtor's default.

**23. MIXED COLLATERAL FORECLOSURE.**

23.1 Upon the occurrence of an Event of Default, Beneficiary shall have, without limitation, all of the rights which Section 9604 of the California Commercial Code accords the holder of real and personal property security for an obligation to conduct separate foreclosures, or a so-called “unified” foreclosure, of some or all of its so-called “mixed” real and personal property security.

**24. TRUSTEE SALE.**

Should Beneficiary elect to foreclose by exercise of the power of sale granted by this Deed of Trust:

24.1 Declaration of Default. Beneficiary shall deliver to Trustee a written declaration of default which recites facts which demonstrate Trustor’s default, and a demand that Trustee sell the Property;

24.2 Deposit with Trustee. Beneficiary shall deposit the Loan Documents and this Deed of Trust, if required by law, with Trustee;

24.3 Acceptance of Declaration of Default. Trustee shall accept Beneficiary’s declaration of default as true and as demonstrative of Trustor’s default, and shall record and serve a written notice of default and of election to cause the Property to be sold in the manner required by applicable law;

24.4 Date of Trustee’s Sale. If, after the expiration of any period of time provided by applicable law, Trustor’s default has not been cured and Trustor’s obligations have not been reinstated in the manner required by applicable law, Trustee shall establish a date for the sale of the Property and record and serve a notice of sale in the manner required by applicable law;

24.5 Trustee’s Sale. If, on or before the date scheduled for the sale of the Property, Trustor’s default has not been cured and Trustor’s obligations have not been reinstated, and Trustor has not redeemed the Property, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by Trustee in the notice of sale, either as a whole or in separate parcels, and in such order as Trustee may determine, at public auction to the highest bidder for cash payable at the time of sale;

24.6 Postponement of Trustee’s Sale. Trustee may postpone the sale of all or any portion of the Property in accordance with Section 2924g of the California Civil Code by public announcement at the time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement or as otherwise allowed by said statute;

24.7 Delivery of Deed. Trustee shall deliver to the auction sale purchaser of the Property a deed which conveys title to the Property without any covenant or warranty, express or implied;

24.8 Eligible Purchasers. Any person, including Trustor, Trustee or Beneficiary, may purchase the Property at Trustee’s public auction; Beneficiary may credit the amount of its auction

sale bid by the amount of the Debt, including, without limitation, trustee's fees and costs and expenses (including attorneys' fees) of the sale of the Property; and

24.9 Application of Sale Proceeds. The proceeds of Trustee's public auction of the Property shall be applied in the following manner:

24.9.1 Payment of the costs and expenses of the sale, including, but not limited to, Trustee's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Trustee;

24.9.2 Repayment of all of Beneficiary's expenditures under the terms of this Deed of Trust, plus interest at the Default Rate;

24.9.3 Payment of the Debt and all other obligations of Trustor secured by this Deed of Trust, in any order that Beneficiary chooses; and

24.9.4 The remainder, if any, to satisfy the outstanding balance of obligations secured by any junior liens or encumbrances in the order of their priority, then to Trustor or Trustor's successor in interest.

## **25. APPOINTMENT OF RECEIVER.**

25.1 Appointment of Receiver. In any action to foreclose this Deed of Trust, or sell all or part of the Property, or upon any Event of Default, Trustee or Beneficiary shall be entitled to the appointment of a receiver without notice, without regard to the solvency or insolvency of Trustor at the time of application for such receiver, and without regard to the then value of the Property or whether the same shall be then occupied as a homestead or not, and Trustee, Beneficiary under this Deed of Trust or any beneficiary or obligee under the Loan Documents may be appointed as such receiver. Such receiver shall have the power to collect any Rents during the pendency of such foreclosure suit, and also during any further times when Trustor, except for the intervention of such receiver, would be entitled to collect any Rents, and any and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of said period. The court from time to time may authorize the receiver to apply the net income in its hands, after deducting reasonable compensation for the receiver and its counsel as allowed by the court, in payment (in whole or in part) of any or all of the Debt secured hereby, including, without limitation, the following, in such order of application as Trustee or Beneficiary may elect: (i) amounts due upon Loan or under the applicable Loan Documents secured hereby; (ii) amounts due upon any decree entered in any suit foreclosing this Deed of Trust; (iii) costs and expenses of foreclosure and litigation upon the Property; (iv) insurance premiums, repairs, taxes, special assessments, water charges and interest, penalties and costs in connection with the Property; (v) any other lien or charge upon the Property that may be or become superior to the lien of this Deed of Trust, or of any decree foreclosing the same, provided that such application is made prior to foreclosure sale; and (vi) the deficiency in case of a deficiency.

25.2 Reimbursement of Advances. Trustor agrees to promptly reimburse any monies which Beneficiary advances in connection with the appointment of a receiver or the receiver's



operation of the Property, plus interest at the Default Rate. Trustor's obligation to reimburse Beneficiary shall be secured by this Deed of Trust.

25.3 Possession and Operation of Properties. Trustor agrees that the receiver or his agents shall be entitled to enter upon and take possession of, and operate, manage and control, the Property to the same extent and in the same manner as Trustor might lawfully do.

**26. CUMULATIVE REMEDIES.**

26.1 All of Beneficiary's remedies upon the occurrence of an Event of Default are cumulative. Beneficiary's prosecution of any one of these remedies shall not preclude Beneficiary from simultaneously or subsequently prosecuting any other remedy or remedies under this Deed of Trust or any other Loan Documents. No act of Beneficiary shall be construed as an election to proceed under any particular provision of this Deed of Trust to the exclusion of any other provision of this Deed of Trust, or as an election of remedies to the exclusion of any other remedy that may then or thereafter be available to Beneficiary. No delay or failure by Beneficiary to exercise any right or remedy under this Deed of Trust shall be construed to be a waiver of that right or remedy or of any default by Trustor. Beneficiary may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

**27. RELATIONSHIP BETWEEN BENEFICIARY AND TRUSTOR; BENEFICIARY LIABILITY.**

27.1 Trustor and Beneficiary intend that the relationship created under the Deed of Trust and any other Loan Documents shall be solely that of debtor and creditor. Nothing contained in the Deed of Trust or any other Loan Document shall ever be construed as creating a joint venture, partnership, tenancy-in-common, joint tenancy or co-ownership relationship between Trustor and Beneficiary, or as creating for Beneficiary any interest in the Property other than the liens on and security interests in the Property as provided in this Deed of Trust and any other Loan Documents securing the Debt and Obligations.

**28. BENEFICIARY NOT LIABLE.**

28.1 Beneficiary shall never be responsible or liable for the debts, losses, obligations or duties of Trustor with respect to the Property. Consistent with the provisions of the Loan Documents, Trustor shall, at all times, be free to determine and to follow its own policies and practices in the conduct of its business with respect to the Property. Notwithstanding any provision hereof or of any other Loan Documents, Beneficiary shall in no event ever be liable to Trustor for any reduction in value of the Property or for any loss, whether actual or speculative, with respect to any actual or potential sale of the Property. All obligations to pay taxes, assessments, insurance premiums, fines, impositions and all other charges or fees relating to or arising from the ownership, operation, use or occupancy of the Property shall be the sole responsibility of Trustor.

**29. PROHIBITION ON FILING CASE UNDER BANKRUPTCY CODE.**

29.1 Until the amounts due Beneficiary secured hereby are paid in full, Trustor shall not file a case under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**"). In the event that Trustor fails to satisfy any of its obligations to pay Beneficiary under this Deed of Trust, or a voluntary or involuntary bankruptcy case is commenced in violation hereof, the parties

acknowledge that Beneficiary shall have automatic relief from the stay imposed pursuant to 11 U.S.C. § 362.

**30. MISCELLANEOUS TERMS AND CONDITIONS.**

30.1 Time Of Essence. Time is of the essence with respect to the performance of all obligations created by this Deed of Trust.

30.2 Charge for Statement; Reconveyance. Trustor agrees to pay Beneficiary a reasonable charge for providing any statement of the unpaid balance or the status of the obligations secured by this Deed of Trust. Trustor agrees to pay Beneficiary a reasonable charge for preparing a reconveyance when the Debt is completely paid and all of the Obligations have been completely satisfied. Trustor agrees that, as of the date of this Deed of Trust, Three Hundred Dollars (\$300.00) is a reasonable charge for preparing a reconveyance.

30.3 Certain Powers of Trustee. At any time or from time to time, and upon the written request of Beneficiary and the presentation of this Deed of Trust and the Loan Documents, and without affecting the personal liability of any person for payment of the Debt or performance of the Obligations or the effect of this Deed of Trust upon the remainder of the Property, Trustee may: (i) reconvey any part of the Property; (ii) consent in writing to the making of any subdivision map or plat thereof; (iii) join in granting any easement thereon; or (iv) join in any extension agreement or any agreement subordinating the lien created by this Deed of Trust.

30.4 Certain Rights of Beneficiary. Without affecting Trustor's liability for the payment of the Debt or performance of the Obligations, Trustee or Beneficiary may from time to time and without notice to Trustor: (i) release any person liable for the payment of the Debt or performance of the Obligations; (ii) extend or modify the terms of payment of the Debt or performance of the Obligations; or (iii) accept additional real or personal property of any kind as security or alter, substitute or release any property securing the Debt and Obligations.

30.5 Acceptance by Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

30.6 Substitution of Trustee. Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to Trustee, which instrument, when executed and acknowledged by Beneficiary and recorded in the office of the recorder of the county where the Real Estate is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from Trustee, succeed to all its title, estate, rights, powers and duties. This instrument must contain the name and address of the new Trustee. If a notice of default has been recorded, this power of substitution cannot be exercised until the costs, fees and expenses of Trustee have been paid to Trustee, who shall then endorse the instrument of substitution. This procedure for substitution of trustees shall be exclusive of all other provisions for substitution, statutory or otherwise.

30.7 Notices. All notices or other communications required or permitted by this Deed of Trust (for purposes of this Paragraph referred to collectively as "**Notices**"), to be effective, shall be in writing, properly addressed, and shall be given: (i) by personal delivery; or (ii) by established overnight commercial courier with delivery charges prepaid or duly charged, to the following

address specified by each party:

To Beneficiary:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

With Copies to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

To Trustor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

To Trustee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Trustor requests that a copy of any notice of default and any notice of sale under this Deed of Trust be mailed to Trustor at the foregoing address. Notices delivered by personal delivery shall be deemed to have been given upon tender to a natural person at the address shown. Notices delivered by established overnight commercial courier shall be deemed to have been given the one business day after sent by such overnight commercial courier.

30.8 Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Trustor and the successors and assigns of Trustor, including all successors in interest of Trustor in and to all or any part of the Property, and shall inure to the benefit of Trustee and Beneficiary and their respective successors and assigns, and shall constitute covenants running with the land. All references in this Deed of Trust to Trustor, Trustee or Beneficiary shall be deemed to include all such parties' successors and assigns.

30.9 Severability. A determination that any provision of this Deed of Trust is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Deed of Trust to any person or

circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

30.10 Gender. Within this Deed of Trust, words of any gender shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, and vice versa unless the context otherwise requires.

30.11 Waiver. Beneficiary shall not be deemed to have waived any provision of this Deed of Trust or any other Loan Documents unless such waiver is in writing and is signed by Beneficiary. Without limiting the application of the preceding sentence, Beneficiary's acceptance of any payment with knowledge of a default by Trustor shall not be deemed a waiver of the default. No waiver by Beneficiary of any default on the part of Trustor or breach of any of the provisions of this Deed of Trust shall be considered a waiver of any other or subsequent default or breach, and no delay, omission or forbearance in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such right and powers, and every such right and power may be exercised from time to time.

30.12 Paragraph Headings. The headings of the sections and paragraphs of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms of this Deed of Trust.

30.13 Governing Law. The rights and obligations of Trustor and Beneficiary under this Deed of Trust shall be governed by and construed in accordance with the laws of the State of California without giving effect to conflict of laws.

30.14 Consent to Jurisdiction. Trustor agrees that any suit, action or proceeding arising out of, under, on or by reason of this Deed of Trust or any other dispute between Trustor and Beneficiary (or by Trustor as against Beneficiary) may be brought and enforced in any state or federal court sitting in Orange County, California (or, should Beneficiary so elect, in its sole discretion, any court of the jurisdiction of Trustor's principal office), and hereby submits to the personal jurisdiction of each such court and agrees that service of any summons and complaint or other process and any other document required to be served on Trustor for purposes of any such suit, action or proceeding need not be personally served, but may be served, with the same effect as personal service, by certified mail addressed to Trustor at the address set forth herein for Trustor or at the last known address of Trustor, or by any other means permitted by applicable law, Trustor hereby waiving personal service thereof. Nothing contained herein shall affect the rights of Beneficiary to bring a suit, action or proceeding in any other appropriate jurisdiction.

30.15 Counting of Days. The term "days" when used herein shall mean calendar days, unless otherwise specified. "**Business Day**" shall mean any day excluding Saturday, Sunday, and any other officially recognized national holiday. If any time period ends on a Saturday, Sunday or officially recognized national holiday, the period shall be deemed to end on the next succeeding Business Day.

30.16 Trustor's Obligations Are Not Delegable. Trustor may not delegate Trustor's Obligations or any other duties under this Deed of Trust or any other Loan Documents without Beneficiary's prior written consent.

30.17 Beneficiary's Rights Are Assignable. Beneficiary shall have the right to sell, assign, pledge or otherwise transfer this Deed of Trust or any other Loan Documents without Trustor's consent. Beneficiary shall notify Trustor of any such transfer.

30.18 Entire Agreement Modifications. The Loan Documents constitute the entire agreement of Trustor, Trustee and Beneficiary with respect to the matters set forth herein, and all prior agreements between and among them are superseded. This Deed of Trust may not be amended, revised, waived, discharged, released or terminated orally, but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination of this Deed of Trust which is not so documented shall not be effective as to any party.

30.19 Release of Previous Holder. The word "**Beneficiary**" when used herein shall include the successors and assigns of the original Beneficiary named herein, and the obligee, obligees, holder or holders, from time to time, of the Debt and Obligations. However, whenever the Debt and Obligations are sold, each prior holder shall be automatically freed and relieved, on and after the date of such sale, of all liability with respect to the performance of each covenant and obligation of Beneficiary under this Deed of Trust thereafter to be performed, provided that any monies in which Trustor has an interest, which monies are then held by the seller of the Debt and Obligations, are turned over to the purchaser of the Debt and Obligations.

30.20 Limit on Liability. Neither Beneficiary nor any Disbursing Party (as defined in Paragraph 7) shall be liable for any act or omission taken in good faith but only for its gross negligence or willful misconduct.

30.21 State or Federal Law Remedies.

30.21.1 In the event that any provision in this Deed of Trust shall be inconsistent with any provision of any applicable mortgage or deed of trust foreclosure statute, any applicable statute relating to personal property security or collateral, or any other applicable state or federal statute, the provisions of such statute shall take precedence over the provisions of this Deed of Trust, but shall not invalidate or render unenforceable any other provision of this Deed of Trust that can be construed in a manner consistent with such statute.

30.21.2 If any provision of this Deed of Trust shall grant to Beneficiary any rights or remedies upon default of Trustor which are more limited than the rights that would otherwise be vested in Beneficiary under any applicable state or federal statute in the absence of said provision, Beneficiary shall be vested with the rights granted in such statute to the full extent permitted by law.

30.21.3 Without limiting the generality of the foregoing, all expenses incurred by Beneficiary, to the extent reimbursable under any applicable state or federal statute, whether incurred before or after any decree or judgment of foreclosure, and whether or not provided for elsewhere in this Deed of Trust, shall be added to the Debt or by the judgment of foreclosure.

30.22 **WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY LAW, TRUSTOR WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION**

**OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS DEED OF TRUST OR ANY OF THE OTHER LOAN DOCUMENTS. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY TRUSTOR, AND TRUSTOR ACKNOWLEDGES THAT NEITHER BENEFICIARY NOR ANY PERSON ACTING ON BEHALF OF BENEFICIARY HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR HAS TAKEN ANY ACTIONS WHICH IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. TRUSTOR FURTHER ACKNOWLEDGES THAT IN THE SIGNING OF THIS DEED OF TRUST AND IN THE MAKING OF THIS WAIVER IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH SUCH COUNSEL. TRUSTOR FURTHER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISION.**

30.23 Approvals or Consents. All approvals or consents required of Beneficiary in this Deed of Trust may be given, withheld or conditioned by Beneficiary in its sole and absolute discretion, unless expressly provided to the contrary.

30.24 Interpretation. Trustor and Beneficiary have each been represented by independent counsel or have had the opportunity to select independent counsel in connection with the terms and conditions of this Deed of Trust and each of the other Loan Documents and the enforceability of all such documents. Trustor and Beneficiary therefore agree that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in any interpretation of this Deed of Trust or any other Loan Document.

30.25 Execution of Deed of Trust. This Deed of Trust was executed voluntarily without any duress or undue influence on the part of or on behalf of the parties hereto. The parties acknowledge that they have read and understood this Deed of Trust, its legal effect and its tax ramifications. Each party acknowledges that such party has had a reasonable opportunity to obtain independent legal counsel for advice and representation in connection with this Deed of Trust. Each party further acknowledges that such party is not relying on the legal counsel employed by any of the other parties to this Deed of Trust.

30.26 Joint and Several. In the event Trustor is composed of more than one party, the obligations, covenants, agreements and warranties contained herein as well as the obligations arising therefrom are and shall be joint and several as to each such party.

[Remainder of Page Left Blank; Signature Page Follows]

**IN WITNESS WHEREOF**, by Trustor's signature below, Trustor agrees to all of the terms and conditions of this Deed of Trust.

**TRUSTOR**

[*COMPLETE LEGAL NAME OF TRUSTOR*]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_





**REQUEST FOR RECONVEYANCE**

TO TRUSTEE:

The undersigned is the holder of the note or notes secured by this Deed of Trust. This note or these notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. This note or these notes and this Deed of Trust are hereby delivered to you and you are hereby directed to cancel them and to reconvey, without warranty, all of the estate which you hold under this Deed of Trust to the person or persons legally entitled thereto.

Dated: \_\_\_\_\_

HOLDER:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF REAL ESTATE**

*[INSERT LEGAL DESCRIPTION]*

**ATTACHMENT A**  
**COLLATERAL**

Trustor: [COMPLETE LEGAL NAME OF BORROWER]

Beneficiary: [COMPLETE LEGAL NAME OF LENDER]

All right, title and interest of Trustor in and to all personal property and all other assets of Trustor, wherever located and whether now or hereafter existing or now owned or hereafter acquired or arising out of Trustor's business operations, including but not limited to the following:

- a) All Accounts;
- b) All As-Extracted Collateral;
- c) All Chattel Paper;
- d) All Contracts;
- e) All Deposit Accounts;
- f) All Documents;
- g) All Equipment;
- h) All Fixtures;
- i) All General Intangibles, including, without limitation, Payment Intangibles, Copyrights, Patents, Trademarks, Licenses, designs, drawings, technical information, marketing plans, customer lists, trade secrets, proprietary or confidential information, inventions (whether or not patentable), procedures, know-how, models and data;
- j) All Instruments, including, without limitation, Promissory Notes;
- k) All Inventory;
- l) All Investment Property;
- m) All Letters of Credit;
- n) All Letter-of-Credit Rights;
- o) All Money;
- p) All Supporting Obligations;
- q) All other Goods and personal property wherever located, whether tangible or intangible, and whether now owned or hereafter acquired, existing, leased or consigned by or to Trustor; and
- r) To the extent not otherwise included, all Proceeds of each of the foregoing and all accessions to, substitutions and replacements for and rents, profits and products of each of the foregoing.

## **Definitions:**

The following terms shall have the meanings set forth for such terms in the Uniform Commercial Code as in effect in the State of California or such other state as is applicable to the parties to this Security Agreement or the Collateral from time to time, as the same may be amended, modified, supplemented, or replaced from time to time, and shall expressly include the items contained in parentheses following such term (if any): **“Accounts”** (including Health Care Insurance Receivables), **“As-Extracted Collateral,”** **“Chattel Paper”** (including Tangible Chattel Paper and Electronic Chattel Paper), **“Commodity Account,”** **“Commodity Contract,”** **“Deposit Account,”** **“Documents,”** **“Electronic Chattel Paper,”** **“Equipment,”** **“Fixtures,”** **“General Intangibles”** (including Payment Intangibles and Software), **“Goods,”** **“Health Care Insurance Receivables,”** **“Instrument,”** **“Inventory”** (including all Goods held for sale or lease or to be furnished under a contract of service, and including returns and repossessions), **“Investment Property”** (including Securities, Securities Accounts, Security Entitlements, Commodity Accounts and Commodity Contracts), **“Letter-of-Credit Rights”** (whether or not the letter of credit is evidenced by a writing), **“Money,”** **“Payment Intangibles,”** **“Proceeds,”** **“Promissory Notes,”** **“Security,”** **“Securities Account,”** **“Security Entitlement,”** **“Software,”** **“Supporting Obligations”** and **“Tangible Chattel Paper.”** Each of the foregoing terms shall include all of such items now owned, or hereafter acquired, by Borrower.

**“Contracts”** means all contracts (including any customer, vendor, supplier, service or maintenance contract), leases, licenses, undertakings, purchase orders, permits, franchise agreements or other agreements (other than any right evidenced by Chattel Paper, Documents or Instruments), whether in written or electronic form, in or under which Trustor now holds or hereafter acquires any right, title or interest, including, without limitation, with respect to an Account, any agreement relating to the terms of payment or the terms of performance thereof.

**“Copyrights”** means all of Trustor’s right, title, and interest in and to the following: (a) all copyrights, rights and interests in copyrights, works protectable by copyright, copyright registrations, and copyright applications; (b) all renewals of any of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due and/or payable under any of the foregoing, including, without limitation, damages or payments for past or future infringements for any of the foregoing; (d) the right to sue for past, present, and future infringements of any of the foregoing; and (e) all rights corresponding to any of the foregoing throughout the world.

**“Licenses”** means all of Trustor’s right, title, and interest in and to (a) any and all licensing agreements or similar arrangements in and to its Patents, Copyrights, or Trademarks, (b) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future breaches thereof, and (c) all rights to sue for past, present, and future breaches thereof.

**“Patents”** means all of Trustor’s right, title, and interest in and to: (a) any and all patents and patent applications; (b) all inventions and improvements described and claimed therein; (c) all reissues, divisions, continuations, renewals, extensions, and continuations-in-part thereof; (d) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements thereof; and (f) all rights corresponding to any of the foregoing throughout the world.

**“Stock Rights”** means all dividends, instruments or other distributions and any other right or property which Trustor shall receive or shall become entitled to receive for any reason whatsoever with respect to, in substitution for or in exchange for any units or equity interests constituting Collateral, any right to receive a unit or equity interest and any right to receive earnings, in which Trustor now has or hereafter acquires any right, issued by an issuer of such units or such equity interests.

**“Trademarks”** means all of Trustor’s right, title, and interest in and to the following: (a) all trademarks (including service marks), trade names, trade dress, and trade styles and the registrations and applications for registration thereof and the goodwill of the business symbolized by the foregoing; (b) all licenses of the foregoing, whether as licensee or licensor; (c) all renewals of the foregoing; (d) all income, royalties, damages, and payments now or hereafter due or payable with respect thereto, including, without limitation, damages, claims, and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (f) all rights corresponding to any of the foregoing throughout the world.