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Prepared by:
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Commitment No. 97158

AFTER RECORDING RETURN TO:
Donald E. Jackson
P.O. Box 167
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6819549
12/19/97 4:48 PM 83.00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
REC BY:R FRESQUES ,DEPUTY - WI

6819549

DEED OF TRUST AND SECURITY AGREEMENT

STATE OF UTAH §
COUNTY OF SALT LAKE § KNOW ALL MEN BY THESE PRESENTS:
§

THAT STEVSIM, INC., a Delaware corporation, whose mailing address is 1507 Avenue M, Brooklyn, New York 11230, being the Debtor and hereinafter called "Grantor", (whether one or more) in consideration of TEN AND NO/100 DOLLARS (\$10.00) in hand paid, and the debt and trust hereinafter mentioned, have GRANTED, SOLD AND CONVEYED and by these presents do GRANT, SELL AND CONVEY unto LANDMARK TITLE COMPANY, Trustee, whose mailing address is 2100 South 675 East, Suite 200, Salt Lake City, Utah 84106, hereinafter called the "Trustee" (whether one or more) and to his successors in trust, all of the following:

- A. The real property situated in the County of Salt Lake, State of Utah, described with particularity on Exhibit "A," attached hereto and made a part hereof by reference, together with all and singular the easements, tenements, and hereditaments now or hereafter appertaining or belonging or in any manner appurtenant thereunto, and all of the estate, right, title and interest of Grantor in and to the same (hereinafter collectively referred to as the "Property" or "Mortgaged Premises"); and
- B. All buildings, structures, improvements and appurtenances now or hereafter located, constructed, erected, installed, affixed, placed and/or maintained in or upon the Property, together with all replacements and substitutions thereof; and
- C. All apparatus, chattels, fixtures, equipment, machinery, furniture, furnishings, appliances and articles of tangible and intangible personal property now owned or hereafter acquired by the Grantor and now or hereafter

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located in, on or about the Property, or used for the operation or maintenance of the aforesaid Property and the buildings and improvements thereon, including, but not limited to (1) all equipment, plumbing and water softening equipment and systems, leasehold improvements, decorations, video and sound equipment, signs, utensils, furnaces, radiators, heaters, steam boilers, hot water boilers, oil burners, pipes, heating and electrical equipment and appliances, fans, thermostats, stoves, ranges, ovens, venthoods, and other cooking apparatus, dishwashers, disposals, refrigerators, ice boxes, carpeting, rugs, floor coverings, draperies, shades, awnings, mirrors, gas and electrical light fixtures, screens, screen doors, blinds, basins, faucets, pipes and other plumbing fixtures and equipment, wires, gas and electric fixtures, air conditioning equipment, sprinkler systems, elevators, motors, dynamos, cabinets, incinerators, lawn plants and shrubbery, canopies, speaker boxes, cash registers, machinery, appliances, furnishings, furniture, tools, materials of every kind, nature and description, provided, however, personal property owned by tenants of the Property shall not be covered hereby; (2) all revenues, receivables, income and accounts arising from and out of the Property and the operations conducted thereon; (3) all contract rights, chattel paper, instruments, general intangibles, files, records, drawings, plans and specifications, accounts receivable and accounts payable ledgers, leases of personal property, warranties and guaranties related to the renting, letting or operations of the Property, PROVIDED, HOWEVER, that any of the foregoing owned by tenants of the Property and not by Grantor shall not be covered hereby; (4) all additions, accessions and accessories to the foregoing personal property, all replacements and substitutions thereto or therefore, all parts therein, and all similar property hereafter acquired; and (5) all cash and noncash proceeds of the aforescribed personal property (all of which tangible and intangible personal property is hereinafter collectively referred to as the "Collateral", and to the extent permitted by law, the foregoing items of Collateral shall be considered part of the hereinabove described real estate); and

- D. All rents, issues and profits arising and to arise during the term of this Deed of Trust for or on account of or with respect to the Mortgaged Premises, as herein defined, together with all leases now existing or hereafter made, executed and delivered, whether written or verbal, covering all or any portion of the Property or any improvement now or hereafter located thereon, any

extension or renewal of any such leases, and any and all liens securing and guarantees of such leases; and

- E. All judgments, awards, and settlements (and all proceeds thereof and other rights with respect thereto) made or to be made with respect to any of the Property and buildings and improvements thereon, under, or in connection with any power of eminent domain; and
- F. All rights to collect and receive any sums payable as or for damages to any of the buildings, improvements, tangible and intangible personal property located on the Property, for any reason or by virtue of any occurrence, including, but not limited to all policies of insurance covering loss or damage to the Mortgaged Premises or any portion thereof, together with any right to unearned premiums respecting such policies.

ALL of the above and foregoing are herein collectively referred to as the "Mortgaged Premises" or "Mortgaged Property", and are hereby declared to be subject to the lien of this Deed of Trust and Security Agreement (hereinafter referred to as the "Deed of Trust"), notwithstanding the execution and/or filing of any financing statements covering or describing any part or portion thereof. This Deed of Trust does not and is not intended to cover tenant owned property, or any property owned by any other person or entity.

TO HAVE AND TO HOLD the Mortgaged Premises with all the rights, improvements and appurtenances thereto belonging, or in anywise appertaining unto the Trustee, its successors and assigns, forever. The Grantor covenants that the Grantor is seized of an indefeasible estate in fee simple to the Mortgaged Premises, that the Grantor has a good right to sell, convey and mortgage the same, that the Mortgaged Premises are free and clear of all general and special taxes, liens, charges and encumbrances of every kind and character, and that the Grantor hereby warrants and will forever defend the title thereto against the claims of all persons whomsoever, SAVE AND EXCEPT only those exceptions which are listed in Exhibit "B" attached hereto (Permitted Exceptions).

THIS DEED OF TRUST IS MADE SUBJECT TO THE FOLLOWING COVENANTS, CONDITIONS, AND AGREEMENTS:

1. INDEBTEDNESS SECURED:

- (a) This conveyance is made in trust, however, to secure payment of a debt in the principal sum of **ONE MILLION FIVE HUNDRED TWENTY-SEVEN THOUSAND AND NO/100 DOLLARS (\$1,527,000.00)** evidenced by a Promissory Note of even date herewith, hereinafter called the "Note" or "Secured

Indebtedness" the terms of which are incorporated herein by reference, executed by Grantor herein which is payable to the order of **CONSECO MORTGAGE CAPITAL, INC.** being the secured party and hereinafter called the "Noteholder" (whether one or more) at its offices at Boatmen's First National Bank Building, 701 S. Taylor Street, Suite 400, Amarillo, Potter County, Texas, or at such other place as the Noteholder may from time to time designate in writing, with interest and in installments as stipulated and provided therein and finally maturing on **January 1, 2023.**

- (b) This Deed of Trust shall secure the payment of the above described Note, including any and all future advancements made by the Noteholder thereunder, and any and all additional indebtedness of the Grantor to the Noteholder with respect to the Mortgaged Premises, whether or not incurred or becoming payable under the provisions hereof and whether as future advancements or otherwise, together with all renewals or extensions of said Note or other indebtedness.
- (c) This Deed of Trust shall secure the payment of any and all sums which Noteholder may expend or become obligated to expend, at Noteholder's option, to cure any breach or default of Grantor under this Deed of Trust and Security Agreement, together with interest on all such sums from the respective dates which Noteholder may expend such sums at the rate of 18% per annum.
- (d) This Deed of Trust shall also secure the payment of any and all amounts which Noteholder may expend or become obligated to expend in collecting the indebtedness secured hereby or the rents herein assigned, in foreclosing the lien of this Deed of Trust, in preserving or protecting any of the Mortgaged Premises, or in pursuing or exercising any right or remedy hereunder or with respect hereto consequent upon any default of the Grantor hereunder, including, but not limited to, attorney's fees, court costs, abstracting expenses, receiver's fees, appraiser's fees, watchmen's fees, storage fees and other expenses reasonably incurred to protect and preserve the Mortgaged Premises or in maintaining the priority of this Deed of Trust, or in retaking, holding, preparing for sale or selling the Collateral, together with interest on all such sums from the respective dates which the Noteholder may expend such sums at the rate of 18% per annum.

2. PRESERVATION AND MAINTENANCE OF PROPERTY. With respect to the Mortgaged Premises, the Grantor covenants and agrees to keep

the same in good condition and repair; to pay all general and special taxes and assessments and other charges that may be levied or assessed upon or against the same as they become due and payable and to furnish to the Noteholder receipts showing payment of any such taxes and assessments, if demanded; to pay all debts for repair or improvements, now existing or hereafter arising, that may become liens upon or charges against the same; to comply with or cause to be complied with all requirements of any governmental authority relating to the Mortgaged Premises; and to promptly repair, restore, replace or rebuild any part of the Mortgaged Premises which may be damaged or destroyed by any casualty whatsoever or which may be affected by any condemnation proceeding or exercise of eminent domain. The Grantor further covenants and agrees that the Grantor will not commit nor suffer to be committed any waste of the Mortgaged Premises; nor initiate, join in or consent to any change in any private restrictions limiting or defining the uses which may be made of the Mortgaged Premises or any part thereof without Noteholder's consent which will not be unreasonably withheld; nor permit any lien or encumbrance of any kind or character to accrue or remain on the Mortgaged Premises, or any part thereof, which might take precedence over the lien of this Deed of Trust except for the Permitted Exceptions.

3. INSURANCE. The Grantor will keep or cause the Mortgaged Premises to be insured for the benefit of the Noteholder against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, vandalism and malicious mischief and (as, when and to the extent insurance against war risks is obtained from the United States of America or any other agency thereof) against war risks, all in amounts approved by the Noteholder not less than 100% of the full replacement value, and shall provide the Noteholder with policies of liability insurance or Certificates of Insurance in amounts approved by Noteholder, business interruption insurance in an amount sufficient to cover the principal and interest payable under the terms of the Note secured hereby for a period of at least six (6) months, and flood insurance in an amount equal to the lesser of the outstanding principal balance of the indebtedness secured hereby or the maximum amount of coverage made available with respect to the Mortgaged Premises under the National Flood Insurance Program (or evidence satisfactory to Noteholder that the Mortgaged Premises are not located in an area designated by the Secretary of Housing and Urban Development as an area having special flood or mudslide hazards and that flood insurance is not required for this loan under the terms of any law, regulation or rule governing Noteholder's activities), and when and to the extent required by the Noteholder, against any other risk insured against by persons operating like properties in the locality of the Mortgaged Premises; all insurance herein provided for shall be in form and companies approved by the Noteholder, which approval shall not be unreasonably withheld; regardless of types or amounts of

insurance required or approved by the Noteholder, the Grantor will assign and deliver to the Noteholder all policies of insurance which insure against any loss or damage to the Mortgaged Premises, as collateral and further security for the payment of money secured by this Deed of Trust, with loss payable to the Noteholder; not less than fifteen (15) days prior to the expiration dates of each policy required by the Noteholder pursuant to this paragraph, the Grantor will deliver to the Noteholder a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to the Noteholder; and in the event of a foreclosure of this Deed of Trust, the purchaser of the Mortgaged Premises shall succeed to all the rights of the Grantor, including any right to unearned premiums, in and to all policies of insurance assigned and delivered to the Noteholder pursuant to the provisions of this paragraph. If the Noteholder by reason of such insurance receives any money for loss or damage to the Mortgaged Premises, such money shall be made available to the Grantor for restoration of the Mortgaged Premises, subject to compliance with the following terms and conditions:

- (a) There shall be no default under the Note, this Deed of Trust, or any other instrument executed in connection with this transaction;
- (b) The Grantor shall deposit with the Noteholder all additional sums which are reasonably estimated by Noteholder as necessary to completely pay the costs of restoration of the Mortgaged Premises, which sums shall be disbursed by the Noteholder prior to any further disbursements of insurance proceeds; and
- (c) Prior to any disbursement by the Noteholder, the following information shall have been obtained by the Grantor at its expense and submitted to the Noteholder, which information shall be in form and substance satisfactory to Noteholder, which shall not unreasonably withhold its approval:
 - (1) Architect's plans and specifications for all construction and restoration with a total cost of \$50,000 or more or drawings for restoration with a total cost of less than \$50,000, which plans and specifications or drawings (i) shall contain an estimate of the costs of all construction and restoration, and (ii) shall be submitted to Noteholder for written approval; provided, that if Noteholder has not provided written approval or written objections to the plans and specifications or drawings within fifteen (15) days after its receipt of the same, then such plans and

specifications or drawings shall be deemed to have been approved by Noteholder;

- (2) A request for advance, signed by the Grantor, accompanied by billing statements, vouchers and invoices, which request for advance shall expressly warrant that the work for which the advance is requested has been performed in accordance with the approved plans and specifications for restoration costing \$50,000 or more, or in accordance with approved drawings for restoration costing less than \$50,000;
- (3) Proof that all invoices for labor and materials have been paid, except those contained in the current request for advance;
- (4) Lien waivers from all payees under previous requests for advances;
- (5) A report from the architect which shall specify the percentage of completion of construction, shall provide detailed comments on specific work performed since the date of the last such report, and shall certify that there are sufficient funds remaining in escrow to pay the cost of construction; and
- (6) At the request of the Noteholder, an endorsement to its title policy insuring this Deed of Trust, which endorsement shall show no liens of record or additional encumbrances not fully subordinate to this Deed of Trust.

In the event of any Event of Default under the Note, this Deed of Trust or any other instrument securing the indebtedness evidenced by this Note, the undisbursed balance of money held by the Noteholder shall, at the option of the Noteholder, be applied toward payment of the money secured by this Deed of Trust or for payment of repairs to the Mortgaged Premises. The Noteholder shall not be obligated to see to the proper application of any amount paid over to the Grantor.

Grantor specifically covenants and agrees that in the event Grantor has provided Noteholder with evidence satisfactory to Noteholder that flood insurance covering the Mortgaged Premises should not be required at the time of execution of this Deed of Trust and the Mortgaged Premises should thereafter become eligible for flood insurance under the National Flood Insurance Program, or under any subsequent Act of Congress of the United States, and should the Mortgaged Premises be located in an area now or

hereafter designated by the Secretary of Housing and Urban Development as an area having special flood or mudslide hazards, Grantor and Grantor's successors in title shall maintain, at their sole cost and expense, flood insurance available under the National Flood Insurance Program in such amounts and in such form as may be required by Noteholder.

As long as WILLOW CREEK SYSTEMS, INC. is the Tenant or remains liable as Tenant and there is no default under the terms of the existing lease, the insurance proceeds will be used and disbursed in accordance with the terms and provisions of the lease.

4. REPRESENTATIONS AND WARRANTIES AS TO HAZARDOUS MATERIALS: Grantor hereby represents and warrants to Noteholder (i) that the Property does not have stored or contained on it any hazardous waste, asbestos, waste oil, or petroleum hydrocarbons except as previously disclosed to Noteholder in writing, pesticides or toxic or hazardous substances or any such materials, including such materials in underground storage tanks; (ii) that Grantor has never been and is not now party to any litigation or administrative proceedings and none is presently threatened, which asserts or alleges that Grantor violated any federal, state or local environmental law, statute, or regulation or the common law of any state pertaining to the condition or use of the real property described on the attached Exhibit "A"; (iii) that, to the best of Grantor's knowledge, neither Grantor nor the Property is or has been subject to any judgment, decree, order or citation related to or arising out of any federal, state or local environmental law, statute, or regulation; (iv) as to all operations on the Property, Grantor represents and warrants, to the best of Grantor's knowledge, that during all previous times, and in the future times while Noteholder has a Deed of Trust lien interest in the Property, Grantor has been and will be in material compliance with all present federal, state, and local environmental statutes, regulations, and ordinances and have and will secure and hold all applicable licenses and permits. Grantor shall, if required by Noteholder, after default, have an engineer satisfactory to Noteholder perform an environmental investigation of the Property, including but not limited to soil and groundwater analysis if deemed necessary by the engineer, to determine the existence and levels of hazardous substances on the Property, and assess compliance with all applicable federal, state and local environmental laws, statutes and regulations. Except as previously disclosed to Noteholder in writing, Grantor hereby further represents and warrants to Noteholder that it has not caused or permitted and Grantor will not hereafter cause or permit (i) the use of the Property for any of (a) a sanitary land fill, (b) a dump, or (c) disposal of hazardous waste, waste oil, or petroleum hydrocarbons, pesticides or toxic or hazardous substances as defined in any federal, state or local environmental law, statute or regulation of any kind, (ii) the deposit or location in, under

or upon the Property or any adjacent parcels thereto which are owned or controlled by Grantor, of any such hazardous waste, waste oil, pesticides, substances or materials in violation of any applicable federal, state or local environmental law, statute or regulation, or (iii) the contamination by any such hazardous waste, waste oil, or petroleum hydrocarbons, pesticides, substances or materials of any part of the Property or any adjacent parcels thereto which are owned or controlled by Grantor, including the ground water located thereon. All toxic or hazardous substances or materials, or oil or petroleum hydrocarbons as defined in any federal, state or local environmental law, statute or regulation, which have been or may be used by any person for any purpose upon the Property have been and shall be used or stored thereon only in a safe, approved manner, in accordance with all material industrial standards and all laws, regulations, and material requirements for such storage promulgated by any governmental authority exercising jurisdiction over the Property. The Property has not been and will not hereafter be used for the purpose of storing such substances for any use other than normal business operations and no such storage or use has been or will hereafter otherwise be allowed on the Property or any adjacent parcels thereto which are owned or controlled by Grantor in such a manner which has caused or will cause, the release of such substances onto the Property or any adjacent parcels thereto which are owned or controlled by Grantor. Grantor agrees to provide the Noteholder immediately upon receipt or sending copies of any correspondence, notice, pleading, citation, complaint, order, decree or other documents from any source (public entity or private actual or potential litigant) asserting or alleging a circumstance or condition in violation of any federal, state or local environmental law, statute or regulation or the common law of any state pertaining to the use or condition of real property. Grantor shall protect, defend, indemnify and hold Noteholder harmless from and against all loss, cost (including attorneys' fees), liability, damage, claim or obligation, whenever asserted or brought, known or unknown, (i) arising in connection with or resulting from any breach of warranty, misrepresentation or nonfulfillment of any agreement by Grantor herein, (ii) based upon or otherwise resulting from an alleged or claimed violation of any federal, state or local environmental law, regulation or ordinance, or common law of any state, including but not limited to any tort claims, that pertain or relate in any respect or manner to the Property, incurred by Noteholder by reason of any violation of any applicable statute or regulation (whether such liability is to a private party or any government unit, state or federal), or (iii) by reason of the imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of such violation, without regard to fault on the part of Grantor.

Nothing contained in this paragraph is intended to prohibit the Tenant, **WILLOW CREEK SYSTEMS, INC.**, from storing and selling

hazardous items within the WILLOW CREEK SYSTEMS, INC. facility, provided such storage and sale complies with all laws and regulations.

To the extent the representations and warranties of Grantor contained in the preceding paragraph applies to time periods occurring before Grantor acquired title to the Property, such representations and warranties are made and limited to the best of Grantor's knowledge.

5. COMPLIANCE WITH GOVERNMENTAL, INSURANCE, AND OTHER REQUIREMENTS. Grantor shall comply in all material respects with, or cause to be complied with, all statutes, ordinances, orders, requirements, or decrees relating to the Property or the use thereof of any federal, state, or municipal authority, and shall observe and comply with all conditions and requirements necessary to maintain in force the insurance required under this Deed of Trust and to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions, and nonconforming uses) privileges, franchises, and concessions which are applicable to the premises or which have been granted to or contracted for by Grantor in connection with any existing or presently contemplated use of the premises. In the event that any building or other improvement on the premises must be altered or removed to enable Grantor to comply with the foregoing provisions of this Section, Grantor shall not commence any such alterations or removals without Noteholder's prior approval of the need therefore and the plans and specifications pertaining thereto. After such approval, which shall not be unreasonably withheld or delayed, Grantor, at its sole cost and expense, may effect the alterations or removal so required and approved by Noteholder. Grantor shall not by act or omission permit any building or other improvement on land not subject to the lien of this Deed of Trust to rely on the premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Grantor hereby assigns to Noteholder any and all rights to give consent for all or any portion of the premises or any interest therein to be so used. Similarly, no building or other improvement on the premises shall rely on any land not subject to the lien of this Deed of Trust or any interest therein to fulfill any governmental or municipal requirements. Grantor shall not by act or omission impair the integrity of the premises as a single zoning lot separate and apart from all other premises. Any act or omission by Grantor which would result in a violation of any of the provisions of this Section shall be void. Grantor shall duly and punctually perform and comply with all covenants and conditions expressed as binding upon it under any recorded document or any other agreement of any nature whatsoever binding upon it which pertains to the Mortgaged Premises.

6. CONDEMNATION. The Grantor covenants and agrees that if at any time all or any portion of the Mortgaged Premises shall be taken or damaged under the power of eminent domain the award received by condemnation proceedings for any property so taken, or any payment received in lieu of such condemnation proceedings, shall be paid directly to the Noteholder and all or any portion of such award or payment, at the option of Noteholder, shall be applied to the indebtedness hereby secured or paid over, wholly or in part, to the Grantor for the purpose of altering, restoring or rebuilding any part of the Mortgaged Premises which may have been altered, damaged or destroyed as a result of any taking or damage, or for any other purpose or object satisfactory to Noteholder; provided, that the Noteholder shall not be obligated to see to the application of any amount of funds paid over to the Grantor.

As long as WILLOW CREEK SYSTEMS, INC. is the Tenant or remains liable as Tenant and there is no default under the terms of the existing lease, the condemnation proceeds will be used and disbursed in accordance with the terms and provisions of the lease.

7. INDULGENCES, EXTENSIONS, RELEASES, AND WAIVERS:

- (a) Noteholder may at any time, without notice to any person, grant to the Grantor any indulgence, forbearance or any extension of time for the payment of any indebtedness secured hereby or allow any change or substitute of or for any of the property described in this Deed of Trust or any other collateral which may be held by the Noteholder, without in any manner affecting the liability of the Grantor, any endorsers of the indebtedness hereby secured or any other person liable for the payment of said indebtedness, together with interest and any other sums which may be due and payable to the Noteholder, and also without in any manner affecting or impairing the lien of this Deed of Trust upon the remainder of the property and other collateral which is not changed or substituted; and it is also understood and agreed that the Noteholder may at any time, without notice to any person, release any portion of the Mortgaged Premises or any other collateral or any portion of any other collateral which may be held as security for the payment of the indebtedness hereby secured, either with or without any consideration for such release or releases, without in any manner affecting the liability of the Grantor, all endorsers, and all other persons who are or shall be liable for the payment of said indebtedness, and without affecting, disturbing or impairing in any manner whatsoever the validity and priority of the lien of this Deed of Trust upon the entire remainder of the Mortgaged Premises which is unreleased, and without in any manner affecting or impairing to any extent whatsoever any and

all other collateral security which may be held by the Noteholder. It is distinctly understood and agreed by the Grantor and Noteholder that any release or releases may be made by the Noteholder without the consent or approval of any person or persons whatsoever.

- (b) Any failure by the Noteholder to insist upon the strict performance by the Grantor of any of the terms and provisions hereof shall not be deemed to be a waiver of any of Noteholder's rights and the Noteholder, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the Grantor of any and all of the terms and provisions of this Deed of Trust to be performed by the Grantor. Neither the Grantor nor any other person now or hereafter obligated for the payment of the whole or any part of the sums now or hereafter secured by this Deed of Trust shall be relieved of such obligation by reason of the failure of the Noteholder to comply with any request of the Grantor or of any other person so obligated to take action to foreclose this Deed of Trust or otherwise enforce any of the provisions of this Deed of Trust or of any obligations secured by this Deed of Trust, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the indebtedness secured by this Deed of Trust, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Premises and the Noteholder extending, from time to time, the time of payment or modifying the terms of the Note or Deed of Trust without first having obtained the consent of the Grantor or such other person and, in the latter event, the Grantor and all such other persons shall continue liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by the Noteholder; regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Premises, the Noteholder may release the obligation of anyone at any time liable for any of the indebtedness secured by this Deed of Trust or any part of the indebtedness secured by this Deed of Trust or any part of the security held for the indebtedness, and may from time to time extend the time of payment or otherwise modify the terms of the Note and/or Deed of Trust without, as to the security or the remainder thereof, in anywise impairing or affecting the lien of this Deed of Trust, or the priority of such lien as security for the payment of the indebtedness as it may be so extended or modified, over any subordinate lien; the holder of any subordinate lien shall have no right to

terminate any lease affecting the Mortgaged Premises whether or not such lease be subordinate to this Deed of Trust; and the Noteholder may resort to any other security therefor held by the Noteholder in such order and manner as the Noteholder may elect.

7. SECURITY AGREEMENT. This Deed of Trust shall also be construed to be, and shall be construed as, a Security Agreement with respect to any of the properties described herein which are characterized by law as fixtures or personal property, of whatever nature (hereinafter referred to as the "Collateral").

- (a) Assembly of Collateral. Upon default hereunder and acceleration of the indebtedness pursuant to the provisions hereof or the Note secured hereby, the Noteholder may, at its discretion, require the Grantor to assemble the Collateral and make it available to the Noteholder at a place reasonably convenient to both parties to be designated by the Noteholder.
- (b) Manner of Sale. Upon default hereunder and acceleration of the indebtedness pursuant to the provisions hereof, or the Note secured hereby, all or any part of the Collateral may, at the sole discretion of the Noteholder, be combined with the real property covered hereby and sold together with such real property as an entirety, or the Collateral (or any part of the Collateral not sold together with the real property) may be sold separately as one parcel, or in such parcels, manner or order as the Noteholder, in its sole discretion, may elect.
- (c) Notice of Sale. The Noteholder shall give the Grantor notice, by registered or certified mail, postage prepaid, of the time and place of any public sale of any Collateral or of the time after which any private sale or other intended disposition thereof is to be made, by sending notice to the Grantor at least ten (10) days before the time of the sale or other disposition, which provisions for notice the Grantor and Noteholder agree are reasonable.
- (d) Additional Documents. The Grantor will, from time to time, within fifteen (15) days after the request by the Noteholder, execute, acknowledge and deliver any Financing Statement, Renewal Affidavit, Certificate, Continuation Statement, Inventory or other similar documents as the Noteholder may reasonably request in order to protect, preserve, continue, extend or maintain the security interest under the priority of this Deed of Trust and will, upon demand, pay reasonable expenses

incurred by the Noteholder in the preparation, execution and filing of any such documents.

8. TAXES. The Grantor will pay, or cause to be paid (prior to delinquency) all taxes and assessments levied or assessed upon the Mortgaged Premises, or the interest created therein by this Deed of Trust, and upon request of Noteholder will exhibit the receipts therefore to the Noteholder (unless such payments are made by the Noteholder as herein after provided) and will defend the title and possession of the Mortgaged Premises to the end that this Deed of Trust shall be and remain a first lien on the Mortgaged Premises until the debt is paid.

The Grantor hereby agrees to pay any and all taxes (excepting federal or state income taxes assessed on monies paid to the Noteholder) which may be levied or assessed directly or indirectly upon the Note and this Deed of Trust, or the debt secured hereby, without regard to any law which may be hereafter enacted imposing payment of the whole or any part thereof upon the Noteholder, its successors or assigns; and, upon violation of this agreement, or upon the rendering by any court of competent jurisdiction of a decision that such an agreement by a Grantor is legally inoperative, or if the rate of said tax added to the rate of interest provided for in said Note shall exceed the then maximum contract rate of interest, then, and in any such event, the debt hereby secured, without deduction, shall, at the option of the Noteholder, its successors or assigns, become immediately due and payable, anything contained in this Deed of Trust or in the Note secured hereby notwithstanding, providing Grantor shall not be required to pay any prepayment penalty as a result of Noteholder's acceleration of the maturity of the indebtedness. The additional amounts which may become due and payable hereunder shall be part of the debt secured by this Deed of Trust; provided, however, the provisions of this paragraph shall not apply to the amount to be paid under the present mortgage tax law, which Noteholder will pay, or to state and federal income taxes on interest paid to Noteholder on the Note secured hereby.

10. EVENTS OF DEFAULT. The Grantor shall be in default under this Deed of Trust and Security Agreement upon the occurrence of any of the following events or conditions, if any of the following events or conditions continues uncorrected for a period of thirty (30) days after written notice to Grantor of such event or condition (an "Event of Default"):

- (a) The Grantor shall fail to pay the Secured Indebtedness or any part or installment thereof as and when the same shall become due and payable, whether by acceleration, extension or otherwise; or

- (b) The Grantor should fail to keep, observe, perform or comply with any term, provision or covenant enjoined upon the Grantor by the terms of this Deed of Trust and Security Agreement, the Note, or any other instrument evidencing or securing the Secured Indebtedness; or
- (c) Any warranty, representation or statement made or furnished to the Noteholder by or on behalf of the Grantor proves to have been false or misleading in any material respect when made or furnished; or
- (d) Upon the institution of any foreclosure proceeding by the holder of any mortgage or lien upon the Mortgaged Premises that is of equal dignity or superior to the lien of this instrument; or
- (e) If any law is hereafter passed by the State of Utah deducting from the value of land for the purpose of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages or debts and the interest thereon secured by mortgages, for state or local purposes, or changing the manner of collection of any such taxation the effect of which would materially and adversely affect the security for the repayment of the Secured Indebtedness, and if Grantor fails to immediately alleviate any adverse effect on the security for the repayment of the Secured Indebtedness; or
- (f) Should the Grantor become insolvent, admit in writing an inability to pay debts as they mature, or make an assignment for the benefit of creditors; or
- (g) Should the Grantor file any petition in bankruptcy or be adjudged bankrupt or insolvent, or should a receiver, trustee, conservator or liquidator be appointed for the Grantor or for any substantial part of the Grantor's property or affairs, or should the Grantor commit an act of bankruptcy or petition or apply to any court or tribunal for any receiver, trustee, conservator or liquidator for any of the Grantor's property or affairs, or should any proceeding be commenced by Grantor relating to the Grantor under any bankruptcy, insolvency, reorganization, arrangement, readjustment or debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or should the Grantor indicate by any act the Grantor's consent to, approval of, or acquiescence of any such proceeding, application or petition, or should a third person commence any such proceeding, file a petition or make such application and, if such action be taken involuntarily against Grantor, such filing, application

or proceeding is not vacated, set aside, discharged or bonded within sixty (60) days after the occurrence of such event; or

- (h) Should any levy, seizure, execution, replevin or attachment be issued or commenced against the Mortgaged Premises or which jeopardizes the lien or security interest of Noteholder, and the same remains unsatisfied for a period of thirty (30) days.
- (i) Should the Grantor fail to obtain and maintain, or cause to be obtained and maintain, or fail to provide Noteholder policies or certificates reflecting the insurance coverages required by this Deed of Trust or by any other document securing payment of the Note.

If the Event of Default is such that cannot be cured within the thirty (30) day period, Noteholder shall not have the privilege of accelerating the maturity of the note if Grantor, or its successors takes action, within the thirty (30) day period, to start to cure the event of default and proceeds diligently and without interruption until the Event of Default is fully cured. If, after commencing to cure the default, Grantor ceases its efforts to cure, Noteholder hereof may, at that time, exercise all of the remedies available to it.

11. NOTEHOLDER'S RIGHTS:

- (a) Upon the failure of the Grantor to pay any of the taxes or assessments or other charges above mentioned as they become due and payable, or to pay any other of the debts or liens above mentioned at the time above mentioned, or to insure the Mortgaged Premises or deliver the policies of insurance as herein agreed, or to perform any of the Grantor's covenants and agreements herein, the Noteholder is hereby authorized, at its option, to insure the Mortgaged Premises, or any part thereof, and pay the costs of such insurance, and to pay such taxes, liens, assessments or other charges herein mentioned, or any part thereof, and to remedy the Grantor's failure to perform hereunder and pay the costs associated herewith, and the Grantor hereby agrees to refund on demand all sum or sums so paid, with interest thereon at the rate of 18% per annum; and any such sum or sums so paid shall become a part of the indebtedness hereby secured; provided, however, that the retention of a lien hereunder for any sum so paid shall not be a waiver of subrogation or substitution which the Noteholder might otherwise have had, and in the event of the failure by the Grantor to keep the Mortgaged Premises insured in the manner and time herein provided, or the failure to deliver renewal

policies in the manner and time herein provided, or if any installment of principal and interest is not paid at or within the time required by terms of the Note secured hereby, or in the case of the actual or threatened demolition or removal of any of the Mortgaged Premises, or the failure to do any of the things herein agreed to be done, or on the breach of any of the terms of this Deed of Trust or the Note secured hereby then, in any of such events, whether the Noteholder has paid any of the taxes, liens or other charges, or procured the insurance or remedied the Grantor's failure to perform, all as above mentioned, or not, the Noteholder shall be entitled to exercise any or all remedies provided or referenced in this Deed of Trust.

- (b) Upon the institution of any foreclosure proceedings by the holder of any mortgage or lien upon the Mortgaged Premises, or if any law is hereafter passed by the State of Utah deducting from the value of land for the purpose of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages or debts, and the interest thereon secured by mortgages for state or local purposes, or changing the manner of collection of any such taxation so as to affect this Deed of Trust or, in case the Grantor should become insolvent or should the Grantor make an assignment for the benefit of creditors, file a petition in bankruptcy, be adjudicated insolvent or bankrupt, petition or apply to any tribunal for any receiver or trustee for the Grantor or for any substantial part of the Grantor's property, commence any proceeding relating to the Grantor under the bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect, which proceeding is not dismissed within sixty (60) days, or by any act indicate the Grantor's consent to approval of, or acquiescence in any such proceeding, application or petition, or should a third person commence any such proceeding, file a petition or make such application which is not dismissed within sixty (60) days then, and in any of said events, the Noteholder shall be entitled to exercise any or all remedies provided or referenced in this Deed of Trust.
- (c) In addition to any other remedy herein specified, if any default under this Deed of Trust shall occur, Noteholder may, subject to the limitations previously set forth herein, at its option, (i) declare the entire indebtedness secured hereby to be immediately due and payable, without notice or demand (each of which is hereby expressly waived by Grantor) whereupon the same

shall become immediately due and payable, (ii) commence foreclosure proceedings as provided in Section 11(d) hereof, (iii) institute proceedings for the complete foreclosure of this Deed of Trust, (iv) institute proceedings to collect any delinquent installment or installments of the indebtedness secured hereby without accelerating the due date of the entire indebtedness by proceeding with foreclosure of this Deed of Trust with respect to any delinquent installment or installments of such indebtedness only and any sale of the Mortgaged Premises under such a foreclosure proceeding shall be subject to and shall not affect the unmatured part of the indebtedness and this Deed of Trust shall be and continue as a lien on the Mortgaged Premises securing the unmatured indebtedness, (v) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in this Deed of Trust, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Noteholder shall elect, or (vi) enforce this Deed of Trust in any other manner permitted under the laws of the state in which the Mortgaged Premises are situated.

- (d) If Grantor shall well and truly pay, or cause to be paid, the Note, and other debt that may be owing, and do keep and perform each and every covenant, condition, and stipulation herein and in the Note contained, then these presents shall become null and void; otherwise to be and remain in full force and effect. If there is a default in any payment, or part thereof, under the Note, or if Grantor shall fail to keep or perform any of the covenants, conditions or stipulations herein, after notice as provided herein, then the Note, together with all other sums secured hereby shall, at the option of the Noteholder, become at once due and payable without demand or notice other than that demand or notice provided for herein, and in the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause said Property to be sold to satisfy all obligations secured hereby, and Trustee shall file such notice for record in each county wherein said Property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee, the Note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been

given as then required by law, Trustee, without demand on Trustor, shall sell said Property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale: provided, if the sale is postponed for longer than the time period allowed by law, notice thereof shall be given in the same manner as the original notice of sale, if required. Trustee shall execute and deliver to the purchaser its Deed conveying said Property so sold, but without any covenant or warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees, (2) cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate of interest specified in the Note from date of expenditure; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place.

Trustor agrees to surrender possession of the Property to the Purchaser at the aforesaid sale, immediately after such sale, in the event such possession has not previously been surrendered by Trustor.

Upon the occurrence of any default hereunder or under the provisions of the terms and conditions of any obligations of Trustor secured hereby, including any guaranties, promissory notes, security agreements, loan agreements, or letters of credit, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Trust Deed in the manner provided by law for the foreclosure of mortgages on real

property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court.

- (e) If default be made in the payment of any installment of the Note, or any part thereof, or if for any reason (other than the fault of the Noteholder) Grantor fails to keep or perform any of the covenants, conditions or stipulations herein, the Noteholder shall, subject to the limitations previously set forth herein, have the option to proceed with foreclosure in satisfaction of such items, either through the courts or by directing the Trustee to proceed as if under a foreclosure conducting the sale as herein provided and without declaring the whole debt due, and provided that if said sale is made because of such default, such sale may be made subject to the unmaturred part of the Note and debt secured by this Deed of Trust, and such sale, if so made, shall not in any manner affect the unmaturred part of the debt secured by this deed of Trust, but, as to such unmaturred part this Deed of Trust shall remain in full force as though no sale had been made under the provisions of this paragraph. Several sales may be made without exhausting the right of sale for any unmaturred part of said debt, it being the purpose to provide for a foreclosure and sale of the Mortgaged premises for any maturred portion of said debt without exhausting the power of foreclosure and to sell the Mortgaged Premises for any other part of said debt whether maturred at the time or subsequently maturing.
- (f) Neither the exercise of, nor the failure to exercise, any option given under the terms of this Deed of Trust shall be considered as a waiver of the right to exercise the same, or any other option given herein, and the filing of a suit to foreclose this Deed of Trust, either on any maturred portion of the debt or for the whole debt, shall never be considered an election so as to preclude foreclosure under the power of sale after a dismissal of the suit; nor shall the filing of the necessary notices for foreclosure, as provided in this Deed of Trust, preclude the prosecution of a later suit thereon.
- (g) Noteholder shall have the right to become the purchaser at all sales to enforce this trust, being the highest bidder, and to have the amount for which such property is sold credited on the debt then owing.
- (h) Nothing in this Deed of Trust or in any other documents relating to the loan secured hereby, except as may

expressly be provided in the Subordination, Non-Disturbance and Attornment Agreement of even date herewith, shall be construed to obligate Noteholder, expressly or by implication, to perform, under any of the covenants of Grantor, as landlord, tenant, or assignor, under any of the leases assigned to Noteholder or to pay any sum of money or damages therein provided to be paid by the landlord or landlord's assignee, each and all of which covenants and payments Grantor agrees to perform and pay.

12. SUBSTITUTE TRUSTEE. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of the county in which said Property or some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

13. LEASES. The Grantor shall comply with and observe Grantor's obligations as landlord under all leases of the Mortgaged Premises, or any part thereof. Grantor, at Noteholder's request, shall furnish Noteholder with executed copies of all leases now existing, or hereafter made, of all or any part of the Mortgaged Premises and all leases now or hereafter entered into. Grantor shall not, without Noteholder's written consent, which consent shall not be unreasonably withheld or delayed, execute, modify, surrender or terminate, either orally or in writing, any such lease now existing, or hereafter made, of all or part of the Mortgaged Premises, permit an assignment or sublease of such a lease without Noteholder's prior written consent, or request or consent to the subordination of any leases of all or any part of the Mortgaged Premises to any lien subordinate to this Deed of Trust. Upon Noteholder's request Grantor shall assign to Noteholder as additional security all leases now existing or hereafter made of all or any part of the Mortgaged Premises.

14. FEES AND EXPENSES. It is agreed that if, and as often as this Deed of Trust or the Note secured hereby is placed in the hands of an attorney for collection, or to protect the priority or validity of this Deed of Trust, or to defend any suit affecting the title to the Mortgaged Premises, or to enforce or defend any of the Noteholder's rights hereunder, the Grantor shall pay to the Noteholder its reasonable attorney's fees, together with all court costs, expenses for title examination, title insurance, or other disbursements relating to the Mortgaged Premises, which sum shall be secured hereby.

15. ESTOPPEL CERTIFICATE. The Grantor, upon request made either personally or by mail shall certify, by a writing duly acknowledged, to the Noteholder or to any proposed assignee of this Deed of Trust, the amount of principal and interest then owing on this Deed of Trust and whether any offsets or defenses exist against the mortgage debt, within six (6) days in case the request is made personally, or within ten (10) days after the mailing of such request in case the request is made by mail.

16. NOTICE. Every provision for notice and demand or request shall be deemed to be given on the earlier of the second business day following the date notice is deposited in the United States Mail by certified or registered mail, return receipt requested, with proper amounts of postage affixed thereto, the day following the date on which the notice is delivered to a nationally recognized overnight courier (Federal Express, United Parcel Service, or a similar courier), or the date on which the notice is actually received. If the notice is delivered by electronic transmission, the cure period commences upon the date the notice is delivered.

17. CHANGE IN PROPERTY. The Grantor covenants and agrees to permit or suffer none of the following without the written consent of the Noteholder, which consent shall not be unreasonably withheld:

- (a) Any structural alteration of, or addition to, the buildings or improvements now or hereafter situated upon the above described real property; or
- (b) The removal from the premises of any part of the property covered by this Deed of Trust, except the renewal, replacement, or substitution of fixtures, equipment, machinery, apparatus and articles of personal property (replacement or substituted items must be of like or better quality than the removed items) covered hereby may be made in the normal course of business.

As long as **WILLOW CREEK SYSTEMS, INC.** is the Tenant or remains liable as Tenant and there is no default under the terms of the existing Lease, the Tenant may make those changes to the property which are allowed by the Lease without Noteholder's consent.

18. TAX AND INSURANCE ESCROWS. Upon Noteholder's request, which request shall not be made unless Grantor defaults in the payment of taxes, assessments or insurance premiums, Grantor agrees to pay to Noteholder together with and in addition to each installment of interest or of principal and interest payable under the terms of the Note secured hereby, a pro rata portion of the taxes, assessments and insurance premiums next to become due, as estimated by Noteholder, so that Noteholder will have sufficient

funds on hand to pay said taxes, assessments and premiums thirty (30) days before the due date thereof. Any deficit shall immediately be paid to Noteholder by Grantor. Moneys so held shall not bear interest, shall not be trust funds and, upon default, may be applied by Noteholder on account of the Deed of Trust indebtedness. It shall be the responsibility of the Grantor to furnish Noteholder bills in sufficient time to pay the taxes and assessments before the penalty attaches and the insurance premiums before the policies lapse.

19. MAINTENANCE ESCROW DEPOSIT. Intentionally omitted.

20. SUBROGATION. In the event all or any portion of the proceeds of the loan evidenced and secured hereby are used for the purpose of retiring debt or debts secured by prior liens on the Mortgaged Premises, the Noteholder shall be subrogated to the rights and lien priority of the holder of the lien so discharged.

21. MISCELLANEOUS:

- (a) The rights of the Noteholder arising under the clauses and covenants contained in this Deed of Trust shall be separate, distinct and cumulative, and none of them shall be in exclusion of the others; and no act of the Noteholder shall be construed as an election to proceed under any one provision herein to the exclusion of any other provisions, anything herein, or otherwise, to the contrary notwithstanding.
- (b) The covenants and agreements contained herein are binding upon the Grantor and the successors and assigns of the Grantor, and shall inure to the benefit of the Noteholder and its successors and assigns.
- (c) In case of any sale of the property covered by this Deed of Trust by virtue of judicial proceedings, or otherwise, the Mortgaged Premises may be sold in one parcel and as an entirety, or in such parcels, manner or order as the Noteholder, in its sole discretion, may elect.
- (d) Wherever used in this Deed of Trust unless the context clearly indicates a contrary intent, or unless otherwise specifically provided herein, the word "Grantor" shall mean "Grantor and/or any subsequent owner or owners of the Mortgaged Premises", the word "Beneficiary" shall mean "Beneficiary and any subsequent holder or holders of this Deed of Trust", the word "Note" shall mean "note(s) secured by this Deed of Trust", and the word "person" shall mean "an individual, corporation, partnership or unincorporated association".

- (e) This Deed of Trust cannot be changed except by an agreement in writing signed by the party against whom enforcement of the change is sought, and in recordable form.
- (f) This Deed of Trust covering property situated in the State of Utah is given as an incident to a lending transaction negotiated and consummated in Amarillo, Texas, and is to be governed by the laws of the State of Texas, provided however, the laws of the State of Utah will govern any foreclosure of the lien of this Deed of Trust.
- (g) The Grantor covenants and agrees that it will perform all of the terms and conditions of the Assignment of Leases of even date between Grantor and Noteholder, and a default under said Assignment of Lease or Leases shall constitute an Event of Default under this Deed of Trust.
- (h) Grantor covenants and warrants that Grantor is in full compliance with all applicable environmental laws and regulations and that Grantor has no knowledge of any present or past site contamination.

22. NOTEHOLDER'S RIGHT TO DEAL WITH TRANSFEREE. In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of said premises, Noteholder is hereby authorized and empowered to deal with such vendee or transferee with reference to said premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with Grantor, without in any way releasing, or discharging Grantor from said Grantor's covenants and undertakings hereunder.

23. USURY. This Deed of Trust and Security Agreement, the Note, and all other agreements between the Noteholder and the Grantor are hereby expressly limited so that in no contingency or event whatsoever, whether acceleration of maturity of the Secured Indebtedness, or otherwise, shall the amount paid or agreed to be paid to the Noteholder for the use, forbearance, or detention of the money advanced or to be advanced hereunder, exceed the highest lawful rate permissible under the laws of the State of Texas as applicable to this transaction. In determining whether or not the rate of interest exceeds the highest lawful rate the Grantor and the Noteholder intend that all sums paid hereunder which are deemed interest for the purpose of determining usury be prorated, allocated, or spread in equal parts over the longest period of time permitted under the applicable laws of the State of Texas. If, from any circumstances whatsoever, fulfillment of any provision hereof, of the Note, or of any other agreement securing the Secured Indebtedness, at any time performance of such provisions shall be

due shall involve the payment of interest in excess of that authorized by law, the obligation to be fulfilled shall be reduced to a limit so authorized and if, from any circumstances whatsoever the Noteholder shall ever receive as interest an amount which would exceed the highest lawful rate, the amount which would be excessive shall be either applied to the reduction of the unpaid principal balance of the Secured Indebtedness (and not to the payment of interest) or refunded to the Grantor, and the Noteholder shall not be subject to any penalty provided for the contracting for, charging, or receiving interest in excess of the maximum lawful rate, regardless of when or the circumstances under which such application for refund was made.

24. PARTIAL INVALIDITY. Grantor and Noteholder intend and believe that each provision in this Deed of Trust and the Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Deed of Trust or the Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Deed of Trust or the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Grantor and Noteholder that such portion, provision or provisions shall be given force to the fullest possible extent that it or they are legal, valid and enforceable, that the remainder of this Deed of Trust and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Grantor and Noteholder under the remainder of this Deed of Trust and the Note shall continue in full force and effect. If under the circumstances interest in excess of the limit allowable by law shall have been paid by Grantor in connection with the loan evidenced by the Note, such excess shall be applied by Noteholder to the unpaid principal balance of the Note or refunded to Grantor in the manner to be determined by Noteholder and if any such excess interest has accrued, Noteholder shall eliminate such excess interest so that under no circumstances shall interest on the loan evidenced by the Note exceed the maximum rate allowed by the law.

25. EXCULPATORY PROVISION. Notwithstanding anything to the contrary contained herein, it is understood and agreed that Grantor has executed the Note which this Deed of Trust secures for the sole purpose of establishing the existence of the indebtedness secured hereby, and Noteholder agrees by accepting this Deed of Trust that it will look solely to the Mortgaged Premises and the rents, issues, and profits therefrom for the payment of the indebtedness secured hereby, and all other amounts required to be paid under the terms of the Loan Documents and any other document executed in connection herewith and not to Grantor or the partners, officers,

directors, members, managers or shareholders of Grantor, except as provided in this paragraph. Noteholder further agrees that in connection with any action to foreclose or enforce any provisions of the Loan Documents or any other document executed in connection herewith, Noteholder will not seek any deficiency judgment against Grantor or the partners, officers, directors, members, managers or shareholders of Grantor; provided, however, that nothing in this paragraph shall be, or be deemed to be, a release or impairment of said indebtedness or the lien created hereby upon the Mortgaged Premises or preclude Noteholder from suing upon the Note and foreclosing this Deed of Trust in case of any default or defaults hereunder or under the Note secured hereby or from enforcing any of its rights, including any remedy of injunctive or other equitable relief; and provided further that Grantor and any partner of Grantor shall be and shall remain personally liable for the following:

- (a) all loss, damage, cost, and expense, including, without limitation, reasonable attorneys' fees, suffered by Noteholder as a result of a material intentional breach of Grantor's warranties and representations of this Deed of Trust or as a result of the intentional or negligent waste of the Mortgaged Premises; however, the liability of Grantor hereunder shall be limited to the actual damages caused by such material breach;
- (b) all rents, revenues, issues, and profits from the Mortgaged Premises received during the period of any default under this Deed of Trust or after acceleration of the indebtedness and other sums owing under the Note and the Deed of Trust and not applied to payment of the Note or other sums due under the Loan Documents or to the payment of the normal operating expenses of the Mortgaged Premises;
- (c) all rents from the Mortgaged Premises collected more than one (1) month in advance which are not earned at the time of the occurrence of any event of default under the Deed of Trust and which are not applied to the payment of the Note or other sums due under the Loan Documents or to the payment of normal operating expenses of the Mortgaged Premises;
- (d) all insurance proceeds and condemnation awards in respect of the Mortgaged Premises which are not applied in accordance with the provisions of this Deed of Trust;
- (e) any and all of Noteholder's costs, losses, expenses, damages, or liabilities, including, without limitation, all reasonable attorneys' fees, directly or indirectly arising out of or attributable to the use, generation,

storage, release, threatened release, discharge, disposal, or presence on, under or about the Mortgaged Premises during Grantor's ownership thereof of any materials, waste, or substances defined or classified as hazardous or toxic under federal, state, or local laws or regulations;

- (f) all loss, damage, cost, and expense, including, without limitation, reasonable attorneys' fees, suffered by Noteholder as a result of any violation of the use restrictions and/or exclusivity restrictions in the **WILLOW CREEK SYSTEMS, INC.** lease.

26. WASTE. The Grantor covenants that Grantor will keep the premises herein conveyed in as good order, repair, and condition as they are now, reasonable wear and tear and damage by insured casualty excepted, and that it will not commit or permit any waste.

27. LIMITATIONS UPON PREPAYMENT. Grantor acknowledges that the Promissory Note secured by this Deed of Trust contains a prohibition against prepayment of any principal prior to its maturity during the first **thirteen (13)** years of the loan term and that there are premiums imposed upon any prepayments made after the **thirteen (13)** years have expired. Grantor recognizes that the restrictions and limitations contained in the Promissory Note secured hereby are made a part of this Deed of Trust by reference just as fully as if they were copied herein in full and that such restrictions and limitations are fully enforceable according to their terms as stated in the Note.

28. TRANSFERABILITY. Upon the payment of a transfer fee equal to one (1) percent of the principal balance then owing upon the Note secured hereby, the property described in this Deed of Trust may be conveyed to an entity that assumes the indebtedness secured hereby provided the entity to which the property is conveyed satisfies and agrees to be bound by the conditions set in Paragraph 29 of this Deed of Trust. Upon the sale of the property the Grantor will be released from future obligations under the Deed of Trust and other loan documents.

29. FURTHER REPRESENTATIONS AND COVENANTS. Grantor represents to and covenants with Noteholder as follows:

- (a) Grantor is a "Single Purpose" entity that owns no other property and is engaged in no business activities other than owning the Property and performing the obligations imposed upon the Grantor, as Landlord, under the terms of the **WILLOW CREEK SYSTEMS, INC.** lease, dated December 19th, 1997;

- (b) That until such time as the loan secured by this Deed of Trust is paid in full, Grantor will acquire no other real property and will engage in no business activities other than the owning of the Property and the other property described in paragraph (a) hereof, performing its obligations as Landlord under the **WILLOW CREEK SYSTEMS, INC.** lease;
- (c) That Grantor is not in any way indebted to any person or entity for any amounts other than the debt evidenced by the Promissory Note secured by this Deed of Trust;
- (d) That until such time as the loan secured by this Deed of Trust is paid in full, Grantor will incur no indebtedness, without Noteholder's prior written consent, other than any indebtedness that may be required to allow Grantor to perform its obligations as Landlord under the terms of the **WILLOW CREEK SYSTEMS, INC.** lease;
- (e) That until such time as the loan secured by this Deed of Trust is paid in full, Grantor will not engage in a Merger, Consolidation, Sale, Lease or Asset Transfer with an entity that does not qualify as a "Single Purpose" entity;
- (f) In the event Grantor is a partnership, none of the assets of any of its partners, either general or limited, will be co-mingled with the assets of the Grantor;
- (g) In the event Grantor is a corporation or limited liability company, none of the assets of any of its shareholders will be co-mingled with the assets of Grantor.

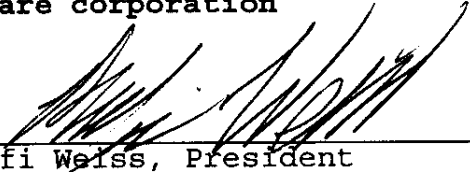
Any violation of the covenants and representations contained in this paragraph will be deemed to be an act of default, and unless cured within the times allowed by this Deed of Trust, Noteholder may exercise the rights afforded it in the event of default as those rights are defined in this Deed of Trust.

30. PROHIBITION AGAINST SALE OF PROPERTY. As long as the lien evidenced by this Deed of Trust and Security Agreement is outstanding and unreleased, Grantor may not sell, convey, transfer or make any disposition of the Property described on Exhibit "A" which would allow the then lessee under the **WILLOW CREEK SYSTEMS, INC.** Lease dated December 19, 1997 to exercise any rights to purchase the Property under the terms of said Lease. Further, Grantor shall not sell, convey or transfer the Property described on Exhibit "A" to **WILLOW CREEK SYSTEMS, INC.** or any assignee or subtenant under the **WILLOW CREEK SYSTEMS, INC.** lease unless and until such time as the Tenant enters into a written agreement with

Noteholder that such acquisition of the Property by the Tenant will not in any way have the effect of merging the Leasehold and Fee titles. An attempted sale, conveyance and/or transfer will be void and will not transfer title to the Property.

Executed this 16th day of December, 1997.

STEVSIM, INC.,
a Delaware corporation

By: 
Rafi Weiss, President

Attest:

Name: _____
Assistant Secretary

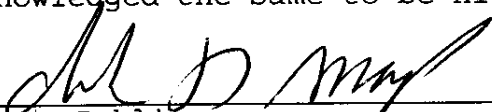
ACKNOWLEDGMENT

STATE OF NY
COUNTY OF Kings

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§
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December 16, 1997

Personally appeared before me the above-named **Rafi Weiss**, who being by me duly sworn, did say that he is President of **STEVSIM, INC., a Delaware corporation**, as aforesaid, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed of said corporation.


Notary Public
My commission expires: April 4, 1998

ISAK D. MARYL
Notary Public, State of New York
No. 24-692094
Qualified in Kings County
Commission Expires April 4, 1998 ✓

EXHIBIT "A" TO
INSTRUMENT DATED DECEMBER 16, 1997
EXECUTED BY
STEVESIM, INC.,
a Delaware corporation
IN FAVOR OF
CONSECO MORTGAGE CAPITAL, INC.,
a Delaware corporation

LEGAL DESCRIPTION

Situated in Salt Lake County, State of Utah, to-wit:

PARCEL 1:

BEGINNING on the South right-of-way line of North Temple Street at a point North 89°12'01" East 504.03 feet, more or less, and North 700.45 feet, more or less, from the Southwest corner of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian, said Section corner being an unmarked County Survey Monument located at the South right-of-way line of the Salt Lake Garfield and Western Railroad, said beginning point is also South 0°04'57" West 34.69 feet and North 89°12'01" East 504.03 feet, more or less, and North 700.45 feet, more or less, from an unmarked County Survey Monument which is South 89°57'27" West 2639.8 feet from the North Quarter corner of Section 3, Township 1 South, Range 1 West, Salt Lake Base and Meridian as shown on the Area Reference Plat on file in the Salt Lake County Surveyor's Office, and said point of beginning being also North 89°58'38" East 501.33 feet and South 66.60 feet from a Salt Lake City Survey Monument, said Monument being South 89°58'38" West 2577.29 feet from a Salt Lake City Monument at the intersection of North Temple Street and Redwood Road to the North, said point of beginning having also been described as being East 504 feet and North 704 feet, more or less, from the Southwest corner of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian, and running thence South 210.00 feet; thence South 89°58'38" West 0.20 feet to a fence line; thence South 0°14'09" West along said fence line 121.51 feet; thence South 89°58'38" West 161.82 feet; thence North 331.51 feet to the South right-of-way line of said North Temple Street; thence North 89°58'38" East along said South line, 162.52 feet to the point of BEGINNING.

PARCEL 2:

A perpetual, non-exclusive easement for ingress and egress, appurtenant to PARCEL 1, created by that certain Easement And Maintenance Agreement recorded December 19, 1997 as Entry No. 0819547 of the Official Records of the Salt Lake County Recorder, over the following described tract of land, to-wit:

BEGINNING on the South line of North Temple Street at a point 323.33 feet North 89°58'38" East and South 66.60 feet from a Salt Lake City Survey

Monument, said monument being South 89°58'38" West 2577.29 feet from a Salt Lake City Monument at the intersection of North Temple Street and Redwood Road to the North, said point of beginning being also East 326 feet and North 704 feet, more or less, from the Southwest corner of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian, and running thence South 360 feet, more or less; thence South 19°28'15" East 6.06 feet to the Southeast corner of the land conveyed to ROBERT H. BREINHOLT and JANE T. BREINHOLT in that certain Special Warranty Deed recorded April 16, 1993 as Entry No. 5479167 in Book 6640 at Page 2658 of the Official Records of the Salt Lake County Recorder; thence East 28 feet; thence North 19°28'15" West 6.06 feet; thence North 360 feet, more or less, to the South line of North Temple Street; thence West 28 feet to the point of BEGINNING.

PARCEL 3:

A perpetual, non-exclusive easement for ingress and egress, appurtenant to **PARCEL 1**, created by that certain Easement And Maintenance Agreement recorded December 19, 1997 as Entry No. 6819547 of the Official Records of the Salt Lake County Recorder, over the following described tract of land, to-wit:

BEGINNING at a point North 89°58'38" East 351.33 feet and South 383.91 feet from a Salt Lake City Survey Monument, said monument being South 89°58'38" West 2577.29 feet from a Salt Lake City Monument at the intersection of North Temple Street and Redwood Road to the North, said point of beginning being also East 354 feet and North 704 feet, more or less, and South 317.51 feet from the Southwest corner of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian, and running thence North 89°58'38" East 149.36 feet to a fence line; thence South 0°14'09" West along said fence line 28.00 feet; thence South 89°58'38" West 149.25 feet; thence North 28.00 feet to the point of BEGINNING.

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EXHIBIT "B"
TO DEED OF TRUST AND SECURITY AGREEMENT
DATED DECEMBER 16, 1997
EXECUTED BY
STEVSIM, INC.,
a Delaware corporation
IN FAVOR OF
CONSECO MORTGAGE CAPITAL, INC.,
a Delaware corporation

"PERMITTED EXCEPTIONS"

1. Taxes for the year 1997, and thereafter. Taxes for the year 1997 are now due and payable (delinquent after November 30, 1997), in the amount of \$13.15 under Sidwell No. 08-34-353-015, in the amount of \$8,250.73 under Sidwell No. 08-34-353-016, and in the amount of \$11,600.72 under Sidwell No. 08-34-353-018. [NOTE: Said Sidwell Numbers affect this and other land.] (Tax District No. 11)

2. (Affects PARCEL 2)
A right of way and easement 12 feet in width to lay, maintain, operate, repair, inspect, protect, remove and replace pipe lines, valves, valve boxes and other gas transmission and distribution facilities, as created in favor of MOUNTAIN FUEL SUPPLY COMPANY by Right of Way and Easement Grant recorded April 19, 1973 as Entry No. 2533458, in Book 3306, at Page 15 of the Official Records, through and across said property as follows:

The land of the Grantors located in the Southwest quarter of the Southwest quarter of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian; the center line of said right of way and easement shall extend through and across the above described land and premises as follows, to-wit: Beginning at a point 322 feet East and 693 feet North from the Southwest corner of said Section 34, thence South 275 feet.

[The Company also excepts the other rights, terms, conditions and covenants incidental to said right of way and easement set forth in said Right of Way And Easement Grant.]

3. A perpetual easement for ingress, egress and regress for vehicular and pedestrian traffic over, through and across the following described land, as disclosed by mesne instruments of record, including, but not limited to, that certain Warranty Deed recorded May 15, 1974 as Entry No. 2621883, in Book 3587, at Page 22 of the Official Records, to-wit:

Beginning on the South line of North Temple Street at a point 323.33 feet North 89°58'38" East and South 66.60 feet from a Salt Lake City Survey Monument, said monument being South 89°58'38" West 2577.69 feet from a Salt Lake City Survey Monument at the intersection of North Temple Street and Redwood Road to the North, said point of beginning being also East 326 feet and North 704 feet, more or less, from the Southwest corner of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian, and running thence South 360 feet, more or less, thence South 19°28'15" East 15 feet; thence South 310 feet, more or less; thence East 28 feet; thence North 310 feet, more or less; thence North 19°28'15" West 15 feet; thence North 360 feet, more or less, to the South line of North Temple Street; thence West 28 feet to the point of beginning.

4. A right-of-way and/or easement, 5 feet in width, in favor of THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY to construct, operate, maintain and remove communication and other facilities as constructed on or across the property herein described, as created by Right-Of-Way Easement recorded October 1, 1974 as Entry No. 2655196 in Book 3692 at Page 493 of the Official Records, through and across said property as depicted on the plat designated Exhibit "A" attached to and made a part of said Right-Of-Way Easement.
5. A right-of-way for the Brighton and North Point Canal, as the same may be found to intersect the herein described property, as disclosed by mesne instruments of record, including, but not limited to, that certain Quit Claim Deed recorded February 19, 1975 as Entry No 2685662 in Book 3788 at Page 15 of the Official Records.
6. The effects of that certain Abstract Of Findings and Order, executed by Salt Lake City Board of Adjustment, Case No. 7313, recorded December 13, 1976 as Entry No. 2886322, in Book 4425, at Page 707 of the Official Records.
7. A right of way and easement 5 feet in width to construct, operate, maintain and remove communication and other facilities as created in favor of THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY by Right-Of-Way Easement recorded October 3, 1980 as Entry No 3485264, in Book 5159, at Page 538 of the Official Records, through and across said property as shown on the plat designated as Exhibit "A" attached to and made a part of said Right-Of-Way Easement.
8. A declaration Of And Grant Of Easements, dated April 8, 1994, executed by and between ROBERT H. and JANE T. BREINHOLT and HEBER S. JACOBSEN, recorded April 11, 1994 as Entry No. 5791610, in Book 6915, at Page 2902 of the Official Records.

9. A perpetual easement for the purpose of constructing thereof a traffic signal pole and appurtenant parts thereof, as created in favor of the UTAH DEPARTMENT OF TRANSPORTATION by Easement recorded July 12, 1996 as Entry No. 6404303, in Book 7442, at Page 288 of the Official Records, through and across said property as follows:

Upon part of an entire tract of property in the SW 1/4 SW 1/4 of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian, in Salt Lake County Utah. The boundaries of said part of an entire tract are described as follows: Beginning at a point in the Southerly right of way line of North Temple Street 66.60 feet perpendicularly distant southerly from the monument line of said Street, at a point opposite Engineers Station 100+39.00, which point is also 504.03 feet North 89°12'01" East and 700.45 feet North and 25.15 feet South 89°58'38" West from the Southwest corner of said Section 34; thence South 0°01'22" East 6.00 feet; thence South 89°58'38" West 8.00 feet; thence North 0°01'22" West 6.00 feet to said southerly right of way line; thence North 89°58'38" East 8.00 feet along said right of way line to the point of beginning as shown on the official map of said project on file in the Office of the Utah Department of Transportation.

10. A perpetual easement for the purpose of construction thereof a traffic signal pole and appurtenant parts thereof, as created in favor of the UTAH DEPARTMENT OF TRANSPORTATION by Easement recorded July 12, 1996 as Entry No. 6404304, in Book 7442, at Page 290 of the Official Records, through and across said property as follows:

Upon part of an entire tract of property in the SW 1/4 SW 1/4 of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian, in Salt Lake County, Utah. The boundaries of said part of an entire tract are described as follows: Beginning at a point in the Southerly right of way line of North Temple Street 66.60 feet perpendicularly distant southerly from the monument line of said Street, at a point opposite Engineers Station 99+83.00, which point is also 504.03 feet North 89°12'01" East and 700.45 feet North and 91.15 feet South 89°58'38" West from the Southwest corner of said Section 34; thence South 0°01'22" East 6.00 feet; thence South 89°58'38" West 8.00 feet; thence North 0°01'22" West 6.00 feet to said southerly right of way line; thence North 89°58'38" East 8.00 feet along said right of way line to the point of beginning as shown on the official map of said project on file in the Office of the Utah Department of Transportation.

11. Matters disclosed by that certain ALTA/ACSM Land Title Survey, dated November 10, 1997, prepared by BUSH & GUDGELL, INC., as Job No. 44677, certified by ROBERT BYRON JONES, License No. 127636.
12. An Easement And Maintenance Agreement, dated as of December 18, 1997, executed by and among HEBER S. JACOBSEN, an individual, and WILLOW CREEK SYSTEMS, INC., a Utah corporation, recorded December 19, 1997 as Entry No. ~~1085~~ 6819547 in Book _____, at Page _____ of the Official Records.