



W2522981

E# 2522981 PG 1 OF 58
ERNEST D ROWLEY WEBER COUNTY RECORDER
11-APR-11 4:37 PM FEE \$126.00 DEP LF
REC FOR: CHARGER TITLE
ELECTRONICALLY RECORDED

Tax Parcel Nos.: 10-038-0014; 10-038-0011

WHEN RECORDED RETURN TO:
Private Capital Group, Inc.
160 West Canyon Crest Rd.
Alpine, Utah 84004

CT2598LP

Recorder's Use Only

DEED OF TRUST

THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE TRUST ESTATE IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, BENEFICIARY IS THE "SECURED PARTY" AND GRANTOR IS THE "DEBTOR." GRANTOR IS THE RECORD OWNER OF THE PROPERTY.

REQUEST FOR NOTICE

A COPY OF ANY NOTICE OF DEFAULT AND A COPY OF ANY NOTICE OF SALE ASSOCIATED WITH THE PROPERTY SECURING THIS DEED OF TRUST SHALL BE MAILED TO GRANTOR, TRUSTEE & BENEFICIARY AT THE ADDRESSES INDICATED HEREINBELOW.

THIS DEED OF TRUST (as it may be amended and modified from time to time, the "Deed of Trust") is made and entered into on April 7, 2011 by and among LITTLE MOUNTAIN RABBIT PATCH, LLC, a Utah limited liability company, as Grantor, whose address is 791 South 9300 West, Ogden, UT 84404 ("Grantor"), Douglas J. Shumway, Esq., of the law firm of Shumway Van & Hansen, Chtd., whose address is 160 West Canyon Crest Rd., Alpine, Utah 84004, as trustee ("Trustee"), and the individuals/entities listed on the attached Exhibit A, and their successors and assigns, as beneficiary and secured party ("Beneficiary").

WITNESSETH:

WHEREAS, Beneficiary has agreed to make a loan available to the Grantor in the principal amount of \$1,000,000.00 (the "Loan"), pursuant to a secured promissory note of even date herewith, executed by the Grantor, as Maker, for the benefit of Beneficiary, as Holder;

WHEREAS, the Grantor owns a 164,880 square foot warehouse along with approximately 48.37 acres of land located in Weber County, State of Utah, as more particularly described in Exhibit "B" hereto;

WHEREAS, Beneficiary desires to secure the performance of Grantor's Obligations, as described herein, under the Note, and any other documents, agreements or instruments governing, evidencing or securing the Note, and Grantor is willing to enter into this Deed of Trust to secure the obligations of Grantor to Beneficiary.

ARTICLE I: DEFINITIONS

1.1 DEFINITIONS. As used herein, the following terms shall have the following meanings:

Anti-Terrorism Laws: Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, orders and ordinances of any Governmental Authority relating to terrorism or money laundering, including, without limiting the generality of the foregoing, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. No. 107-56); the Trading with the Enemy Act (50 U.S.C.A. App. 1 et seq.); the International Emergency Economic Powers Act (50 U.S.C.A. §§1701 to 1706); Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (relating to "*Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism*") and the United States Treasury Department's Office of Foreign Assets Control list of "*Specifically Designated National and Blocked Persons*" (as published from time to time in various mediums, including, without limitation, at <http://www.treas.gov/ofac/t11sdn.pdf>).

Architectural Barrier Laws: Any and all architectural barrier laws including, without limitation, the Americans with Disabilities Act of 1990, P.L. 101-336 as amended, or any successor thereto.

Beneficiary: The individuals/entities listed on the attached Exhibit A, whose address for notice hereunder is c/o Private Capital Group, Inc., 160 West Canyon Crest Rd., Alpine, Utah 84004, and the subsequent holder or holders, from time to time, of the Note.

Beneficiary's Agent: Grantor, for the purpose of collecting Rent, and applying Rent, as set forth in this Deed of Trust, which agency shall never be deemed to be that of trustee and beneficiary for any purpose, and which agency relationship cannot be terminated by Grantor so long as the Loan Documents are in effect.

CGL: The broadest available form of commercial general liability insurance (utilizing the then prevailing ISO form or an equivalent form acceptable to Beneficiary in its sole discretion).

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

Code: The Uniform Commercial Code, as amended from time to time, in effect in the state in which the Land is located.

Constituent Party: Any (i) general partner or managing member of Grantor, as applicable, or (ii) any signatory to this Deed of Trust that signs on Grantor's behalf that is a corporation, general partnership, limited partnership, limited liability company, joint venture, trust, or other type of business organization.

Contracts: All of the right, title, and interest of Grantor, including equitable rights, in, to, and under any and all (i) contracts and agreements for the purchase or sale of all or any portion of the Mortgaged Property, whether such contracts or agreements are now or at any time hereafter existing, including but without limitation, any and all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under the Contracts, including all amendments and supplements to and renewals and extensions of the Contracts at any time made, and together with all payments, earnings, income, and profits arising from the sale of all or any portion of the Mortgaged Property or from the Contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any of the Contracts; (ii) contracts, licenses, permits, and rights relating to living unit equivalents or other entitlements for water, wastewater, and other utility services whether executed, granted, or issued by a private person or entity or a Governmental Authority or quasi-governmental agency, which are directly or indirectly related to, or connected with, the development, ownership, maintenance or operation of the Mortgaged Property, whether such contracts, licenses, and permits are now or at any time thereafter existing, including without limitation, any and all rights of living unit equivalents or other entitlements with respect to water, wastewater, and other utility services, certificates, licenses, zoning variances, permits, and no-action letters from each governmental authority required: (a) to evidence compliance by Grantor and all improvements constructed or to be constructed on the Mortgaged Property with all Legal Requirements applicable to the Mortgaged Property, and (b) to develop and/or operate the Mortgaged Property as a commercial and/or residential project, as the case may be; (iii) any and all right, title, and interest Grantor may have in any financing arrangements relating to the financing of or the purchase of all or any portion of the Mortgaged Property by future purchasers; and (iv) all other contracts which in any way relate to the use, enjoyment, occupancy, operation, maintenance, repair, management or ownership of the Mortgaged Property (save and except any and all Leases), including, but not limited to, maintenance and service contracts and management agreements.

Debtor Relief Laws: Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or similar laws affecting the rights of creditors.

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

Disposition: Any sale, lease, exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Mortgaged Property (or any interest therein) or all or any part of the legal and beneficial ownership interest in Grantor (if Grantor is a corporation, partnership, general partnership, limited partnership, joint venture, trust, or other type of business

association or legal entity), except as may be expressly permitted under this Deed of Trust or the other Loan Documents.

Environmental Law: Any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended: Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C.A. §§9601 et seq.; Resource, Conservation and Recovery Act ("RCRA"), 42 U.S.C.A. §§6901 et seq. as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C.A. §§2601 et seq.; Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C.A. §§1101 et seq.; Clean Water Act ("CWA"), 33 U.S.C.A. §§1251 et seq.; Clean Air Act ("CAA"), 42 U.S.C.A. §§7401 et seq.; Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C.A. §§1251 et seq.; and any corresponding state laws or ordinances; and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes and regulations, as such statutes, regulations, rules, guidelines, and standards are amended from time to time.

ERISA: The Employee Retirement Income Security Act of 1974, 29 U.S.C.A. §§1001 et seq., as amended, and any and all successor statutes thereof.

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

Fixtures: All materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Grantor and now or hereafter attached to, installed in, or used in connection with (temporarily or permanently) any of the Improvements or the Land, which are now owned or hereafter acquired by Grantor and are now or hereafter attached to the Land or the Improvements, and including but not limited to any and all partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, refrigeration, plumbing, laundry, lighting, generating, cleaning, waste disposal, transportation (of people or things, including but not limited to, stairways, elevators, escalators, and conveyors), incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and lighting, traffic control, waste disposal, raw and potable water, gas, electrical, storm and sanitary sewer, telephone and cable television facilities, and all other utilities whether or not situated in easements, together with all accessions, appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof.

GAAP: Generally accepted accounting principles, as promulgated by the Financial Accounting Standards Board.

Governmental Authority: Any and all applicable courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence.

Grantor: The individual or entity (or individuals or entities, if more than one) described as Grantor in the initial paragraph of this Deed of Trust and the successors, assigns, heirs and legal representatives thereof, and any and all subsequent owners of the Mortgaged Property or any part thereof (without hereby implying Beneficiary's consent to any Disposition of all or any part of the Mortgaged Property).

Guarantor (individually and/or collectively, as the context may require): Those persons, firms, or entities, if any, individually and/or collectively, as the context may require, designated as Guarantor in any Guaranty.

Guaranty (individually and/or collectively, as the context may require): That instrument or those instruments of guaranty, if any, now or hereafter in effect, from Guarantor to Beneficiary guaranteeing the repayment of all or any part of the Indebtedness or the satisfaction of, or continued compliance with, the Obligations, or both.

Hazardous Substance: Any substance, product, waste, or other material which is or becomes listed, regulated, or addressed as being a toxic, hazardous, polluting, or similarly harmful substance under any Environmental Law, including without limitation: (i) any substance included within the definition of "hazardous waste" pursuant to Section 1004 of RCRA; (ii) any substance included within the definition of "hazardous substance" pursuant to Section 101 of CERCLA; (iii) asbestos or asbestos containing materials in any form that are or could become friable; (iv) polychlorinated biphenyls; (v) petroleum products; (vi) underground storage tanks, whether empty, filled or partially filled with any substance; (vii) any radioactive materials, urea formaldehyde foam insulation or radon; and (viii) any other chemical, material or substance, the exposure to which is prohibited, limited or regulated by any Governmental Authority on the basis that such chemical, material or substance is toxic, hazardous or harmful to human health or the environment.

Impositions: (i) All real estate and personal property taxes, charges, assessments, standby fees, excises, and levies and any interest, costs, or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied, or imposed upon the Mortgaged Property or the ownership, use, occupancy, or enjoyment thereof, or any portion thereof, or the sidewalks, streets, or alleyways adjacent thereto; (ii) any charges, fees, license payments, or other sums payable for or under any easement, license, or agreement maintained for the benefit of the Mortgaged Property; (iii) water, gas, sewer, electricity, and other utility charges and fees relating to the Mortgaged Property; and (iv) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Mortgaged Property.

Improvements: Any and all buildings, covered garages, air conditioning towers, open parking areas, structures and other improvements of any kind or nature, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed, or constructed upon the Land or any part thereof.

Indebtedness: (i) The principal of, interest on, or other sums evidenced by the Note or the Loan Documents; (ii) any other amounts, payments, or premiums payable under the Loan Documents; (iii) such additional or future sums (whether or not obligatory), with interest thereon, as may hereafter be borrowed or advanced from Beneficiary, its successors or assigns, by the then record owner of the Mortgaged Property, when evidenced by a promissory note which, by its terms, is secured hereby (it being contemplated by Grantor and Beneficiary that such future indebtedness may be incurred); (iv) any and all other indebtedness, obligations, and liabilities of any kind or character of Grantor to Beneficiary, now or hereafter existing, absolute or contingent, due or not due, arising by operation of law or otherwise, or direct or indirect, primary or secondary, joint, several, joint and several, fixed or contingent, secured or unsecured by additional or different security or securities, voluntarily or involuntarily incurred, known or unknown, or originally payable to Beneficiary or to a third party and subsequently acquired by Beneficiary, including, without limitation, (A) late charges, loan fees or charges, and overdraft indebtedness, (B) costs incurred by Beneficiary in establishing, determining, continuing or defending the validity or priority of any lien securing the payment of any Indebtedness or in pursuing any of its rights or remedies under any Loan Document or in connection with any proceeding involving Beneficiary as a result of any financial accommodation to Grantor, (C) debts, obligations and liabilities for which Grantor would otherwise be liable to Beneficiary were it not for the invalidity or unenforceability of them by reason of any Debtor Relief Laws or for any other reason, and (D) reasonable costs and expenses of attorneys and paralegals, whether any suit or other action is instituted, and court costs if suit or action is instituted, (whether any such fees, costs or expenses are incurred at the trial court level or on appeal, in any Debtor Relief Laws proceeding, in administrative proceedings, in probate proceedings or otherwise); (v) any of the foregoing indebtedness, obligations, and liabilities to Beneficiary of Grantor as a member of any partnership, joint venture, trust or other type of business association, or other group, and whether incurred by Grantor as principal, surety, endorser, guarantor, accommodation party or otherwise; and (vi) any and all renewals, modifications, amendments, restatements, rearrangements, consolidations, substitutions, replacements, enlargements, and extensions of any of the foregoing, it being contemplated by Grantor and Beneficiary that Grantor may hereafter become indebted to Beneficiary in further sum or sums. Notwithstanding the foregoing provisions of this definition, this Deed of Trust and the other Loan Documents shall not secure any such other Indebtedness with respect to which Beneficiary is by applicable law prohibited from obtaining a lien on real estate. Further, the term "Indebtedness" shall not operate or be effective to constitute or require any assumption or payment by any person, in any way, of any debt or obligation of any other person to the extent that the same would violate or exceed the limit provided in any applicable usury or other law or include any consumer loan to the extent treatment of such loan or extension of credit as part of the Indebtedness would violate any Governmental Requirement.

Land: All that certain real property or interest therein situated in the County of Weber, State of Utah, more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference, together with all right, title, interest, and privileges of Grantor in and to (i) all streets, ways, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to such real property or the improvements thereon; (ii) any strips or gores of real property between such real property and abutting or adjacent properties; (iii) all

water and water rights, timber and crops pertaining to such real estate; and (iv) all appurtenances and all reversions and remainders in or to such real property.

Lease Rent Notice: A notice from Beneficiary to any lessee under a Lease stating that the License has terminated and instructing each such lessee under a Lease to pay all current and future Rents under the Leases directly to Beneficiary, and attorn in respect of all other obligations thereunder directly to Beneficiary, or the Trustee on Beneficiary's behalf.

Leases: Any and all leases, master leases, subleases, licenses, concessions, or other agreements (whether written or oral, or now or hereafter in effect) which grant to third parties a possessory interest in and to, or the right to use or occupy, all or any part of the Mortgaged Property, together with all security and other deposits or payments made in connection therewith.

Legal Requirements: (i) Any and all present and future judicial decisions, statutes (including Architectural Barrier Laws, Anti-Terrorism Laws and Environmental Laws), orders, rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to Grantor, any Constituent Party, any Guarantor or the Mortgaged Property, including, without limiting the generality of the foregoing, the ownership, use, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction thereof, (ii) any and all covenants, conditions, and restrictions contained in any deeds, other forms of conveyance, or in any other instruments of any nature that relate in any way or are applicable to the Mortgaged Property or the ownership, use, or occupancy thereof, (iii) Grantor's or any Guarantor's presently or subsequently effective bylaws and articles of incorporation, operating agreement and articles of organization or partnership, limited partnership, joint venture, trust, or other form of business association agreement, (iv) any and all Leases, (v) any and all Contracts, and (vi) any and all leases, other than those described in (iv) above, and other contracts (written or oral), other than those described in (v) above, of any nature that relate in any way to the Mortgaged Property and to which Grantor or any Guarantor may be bound, including, without limiting the generality of the foregoing, any lease or other contract pursuant to which Grantor is granted a possessory interest in and to the Land and/or the Improvements.

License: A limited, non-assignable license, subject to automatic termination, under this Deed of Trust, and all other terms and provisions hereof, to exercise and enjoy all incidences of the status of a lessor with respect to the Rents, including the right to collect, demand, sue for attach, levy, recover, and receive the Rents as Beneficiary's Agent and to give proper receipts, releases and acquittances therefor.

Loan Documents: The Note, this Deed of Trust, the Guaranties, if any, and any and all other documents now or hereafter executed by Grantor, Guarantor, or any other person or party in connection with the loan evidenced by the Note or in connection with the payment of the Indebtedness or the performance and discharge of the Obligations.

Material Adverse Effect: Any material and adverse effect on (i) the business condition (financial or otherwise), operations, prospects, results of operations, capitalization, liquidity or any properties of Grantor, taken as a whole, (ii) the value of the Mortgaged Property, (iii) the ability of Grantor (or if Grantor is a partnership, joint venture, trust or other type of business

association, of any of the parties comprising Grantor or of the ground lessor if the estate held by Grantor in the Land is a leasehold estate) to pay and perform the Indebtedness and the Obligations, respectively, or (iv) the validity, enforceability or binding effect of any of the Loan Documents.

Maximum Lawful Rate: The maximum lawful and non-usurious rate of interest which may be contracted for, charged, taken, received or reserved by Beneficiary in accordance with the applicable laws of the State of Utah (or applicable United States federal law to the extent that it permits Beneficiary to contract for, charge, take, receive or reserve a greater amount of interest than under Utah law), taking into account all Charges (as herein defined) made in connection with the transaction evidenced by the Note and the other Loan Documents. Additionally, to the extent permitted by applicable law now or hereafter in effect, Beneficiary may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under other applicable law by giving notice, if required, to Grantor as provided by applicable law now or hereafter in effect.

Minerals: All substances in, on, under, or above the Land which are now, or may become in the future, intrinsically valuable (that is, valuable in themselves) and which now or may be in the future enjoyed through extraction or removal from the property, including without limitation, oil, gas, and all other hydrocarbons, coal, lignite, carbon dioxide and all other nonhydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron and all other metallic substances or ores.

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

Note: That certain Promissory Note of even date herewith, incorporated herein by this reference, executed by Grantor and payable to the order of Beneficiary in the principal amount of \$1,000,000.00, bearing interest as therein specified, containing an attorneys' fee clause, interest and principal being payable as therein specified, and finally maturing on April 7, 2012, and secured by, among other things, this Deed of Trust; and any and all renewals, modifications, amendments, rearrangements, consolidations, reinstatements, enlargements, or extensions of such promissory note or of any promissory note or notes given in renewal, substitution or replacement therefor.

Obligations: Any and all of the covenants, conditions, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Grantor, Guarantor, or any other person or party to the Loan Documents to Beneficiary, Trustee, or others as set forth in the Loan Documents, the Leases, and in any deed, lease, sublease, or other form of

conveyance, or any other agreement pursuant to which Grantor is granted a possessory interest in the Land.

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

Permitted Exceptions: Only such liens, easements, restrictions, security interests, and other matters (if any) as reflected on the title insurance policy associated with this Loan and the liens and security interests created by the Loan Documents.

Personalty: All of the right, title, and interest of Grantor in and to (i) furniture, furnishings, equipment, machinery, goods (including, but not limited to, crops, farm products, timber and timber to be cut, and extracted Minerals); (ii) general intangibles, money, insurance proceeds, accounts, contract and subcontract rights, trademarks, trade names, copyrights, chattel paper, instruments, investment property, letters of credit, inventory; (iii) all cash funds, fees (whether refundable, returnable or reimbursable), deposits or other funds or evidences of cash, credit or indebtedness deposited by or on behalf of Grantor with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures, Contracts, or Personalty, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; and (iv) all other personal property of any kind or character as defined in and subject to the provisions of the Code (Article 9 - Secured Transactions); any and all of which are now owned or hereafter acquired by Grantor, and which are now or hereafter situated in, on, or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof.

Prohibited Person: Any person or entity that (i) is specifically named or listed in, or otherwise subject to, any Anti-Terrorism Laws, (ii) is owned or controlled by, or acting for or on behalf of any person or entity specifically named or listed in, or otherwise subject to, any Anti-Terrorism Laws, (iii) Beneficiary is prohibited from dealing with, or engaging in any transaction with, pursuant to any Anti-Terrorism Laws, or (iv) is affiliated with any person or entity described in clauses (i)-(iii) of this definition.

Release: The terms "release," "removal," "environment," and "disposal" shall have the meanings given such terms in CERCLA, and the term "disposal" shall also have the meaning given it in RCRA; provided that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, and provided further that to the extent the laws of the state in which the Property is located establish a meaning for "release," "removal," "environment," or "disposal," which is broader than that specified in either CERCLA and RCRA, such broader meaning shall apply.

Remedial Work: Any investigation, site monitoring, containment, cleanup, removal, restoration, or other work of any kind or nature reasonably necessary in the sole opinion of Beneficiary under any applicable Environmental Law or desirable in connection with the current or future presence, suspected presence, release, or suspected release of a Hazardous Substance in or into the air, soil, ground water, surface water, or soil vapor at, on, about, under, or within the Mortgaged Property, or any part thereof. The parties contemplate that any Remedial Work will result in decontamination of the Mortgaged Property to permit any future use of the Property, including as residential property, and shall not comprise any restrictions or conditions in connection with future development of the Mortgaged Property.

Rents: All of the rents, royalties, income, issues, bonus monies, revenues, proceeds, profits, security and other types of deposits (after Grantor acquires title thereto), and other benefits paid or payable by parties to the Leases (other than Grantor) for using, leasing, licensing, possessing, operating from, residing in, selling, or otherwise enjoying all or any portion of the Mortgaged Property.

Subordinate Mortgage: Any mortgage, deed of trust, pledge, lien (statutory, constitutional, or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, covering all or any portion of the Mortgaged Property executed and delivered by Grantor, the lien of which is subordinate and inferior to the lien of this Deed of Trust.

Tax Code: The U.S. Internal Revenue Code of 1986, as amended, any and all U.S. Department of Treasury Regulations issued pursuant thereto in temporary or final form, and any and all federal, state, county, municipal and city rules and rulings, notices, requirements, statutes, regulations or laws governing or relating to taxes and/or taxation, and any and all successor statutes thereof.

Trustee: The individual described as Trustee in the initial paragraph of this Deed of Trust.

1.2 ADDITIONAL DEFINITIONS. As used herein, the following terms shall have the following meanings:

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

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

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

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

(e) All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.

ARTICLE II: GRANT

2.1 GRANT. To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Grantor has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY, unto Trustee, in trust, the Mortgaged Property (but expressly excluding Rents), subject, however, to the Permitted Exceptions, TO HAVE AND TO HOLD the Mortgaged Property (but expressly excluding Rents) unto Trustee, forever, and Grantor does hereby bind itself, its successors, and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property (but expressly excluding Rents) unto Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Grantor shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall fully perform and discharge (or cause to be fully performed and discharged) the Obligations on or before the date same are to be performed and discharged, then the liens, security interests, estates, and rights granted by the Loan Documents shall terminate, in accordance with the provisions hereof, otherwise same shall remain in full force and effect. A certificate or other written statement executed on behalf of Trustee or Beneficiary confirming that the Indebtedness has not been fully paid or the Obligations have not been fully performed or discharged shall be sufficient evidence thereof for the purpose of reliance by third parties on such fact.

ARTICLE III: WARRANTIES & REPRESENTATIONS

Grantor hereby unconditionally warrants and represents to Beneficiary, as of the date hereof and at all times during the term of this Deed of Trust, as follows:

3.1 ORGANIZATION AND POWER. If Grantor or any Constituent Party is a corporation, limited liability company, general partnership, limited partnership, joint venture, trust, or other type of business association, as the case may be, Grantor and any Constituent Party, if any, (a) is either a corporation duly incorporated or limited liability company duly organized with a legal status separate from its affiliates, or a partnership or trust, joint venture or other type of business association duly organized, validly existing, and in good standing under the laws of the state of its formation or existence, and has complied with all conditions prerequisite to its doing business

in the state in which the Mortgaged Property is located, and (b) has all requisite power and all governmental certificates of authority, licenses, permits, qualifications, and documentation to own, lease, and operate its properties and to carry on its business as now being, and as proposed to be, conducted.

3.2 VALIDITY OF LOAN DOCUMENTS. The execution, delivery, and performance by Grantor of and under the Loan Documents (other than the Guaranty), (a) if Grantor, or any signatory who signs on its behalf, is a corporation, general partnership, limited partnership, limited liability company, joint venture, trust, or other type of business association, as the case may be, are within Grantor's and each Constituent Party's powers and have been duly authorized by Grantor's and each Constituent Party's board of directors, shareholders, partners, members, managers, venturers, Trustees, or other necessary parties, and all other requisite action for such authorization has been taken, (b) have received any and all requisite prior governmental approvals in order to be legally binding and enforceable in accordance with the terms thereof, and (c) will not violate, be in conflict with, result in a breach of, or constitute (with due notice or lapse of time, or both) a default under or violation of any Legal Requirement or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of Grantor's and any Constituent Party's or Guarantor's property or assets, except as contemplated by the provisions of the Loan Documents. The Loan Documents constitute the legal, valid, and binding obligations of Grantor, Guarantor, and others obligated under the terms of the Loan Documents, enforceable in accordance with their respective terms.

3.3 INFORMATION. All information, financial statements, reports, papers, and data given or to be given to Beneficiary with respect to Grantor, each Constituent Party, Guarantor, others obligated under the terms of the Loan Documents, or the Mortgaged Property are, or at the time of delivery will be, accurate, complete, and correct in all material respects and do not, or will not, omit any fact, the inclusion of which is necessary to prevent the facts contained therein from being materially misleading. Since the date of the financial statements of Grantor, any Constituent Party, or of any Guarantor or other party liable for payment of the Indebtedness or performance of the Obligations or any part thereof heretofore furnished to Beneficiary, no Material Adverse Effect has occurred, and except as heretofore disclosed in writing to Beneficiary, Grantor, each Constituent Party, each Guarantor, or any other such party has not incurred any material liability, direct or indirect, fixed or contingent. Grantor acknowledges and understands that Beneficiary may be required, and hereby authorizes Beneficiary, to obtain, verify and record information that identifies Grantor, each Constituent Party and/or Guarantor, which information may include the names and addresses of such parties and other information that will allow Beneficiary to identify such parties in accordance with the requirements of certain Anti-Terrorism Laws.

3.4 TITLE AND LIEN. Grantor has good and indefeasible title to the Land (in fee simple, if the lien created hereunder be on the fee, or a first and prior leasehold estate, if it be created on the leasehold estate) and Improvements, and good and marketable title to the Fixtures and Personalty, free and clear of any liens, charges, rights of first refusal or first offer, encumbrances, security interests, claims, easements, restrictions, options, leases (other than the Leases), covenants, and other rights, titles, interests, or estates of any nature whatsoever, except the Permitted Exceptions. This Deed of Trust constitutes a valid, subsisting first lien on the Land, the Improvements, the Leases and the Fixtures; a valid, subsisting first priority security interest in

and to the Personalty, Contracts, and to the extent that the term Leases include items covered by the Code, in and to the Leases; and a valid, absolute assignment of the Rents; all in accordance with the terms hereof, and all subject to the Permitted Exceptions.

3.5 BUSINESS PURPOSES. The loan evidenced by the Note is solely for the purpose of carrying on or acquiring a business of Grantor, and is not for personal, family, household, or agricultural purposes. The Mortgaged Property forms no part of any property owned, used or claimed by Grantor as a residence or business homestead and is not exempt from forced sale under the laws of the State in which the Mortgaged Property is located. Grantor hereby disclaims and renounces each and every claim to all or any portion of the Mortgaged Property as a homestead.

3.6 TAXES. Grantor, each Constituent Party, and Guarantor have filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them (including, without limitation, those required under the Tax Code) and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Neither Grantor, any Constituent Party, nor Guarantor knows of any basis for any additional assessment in respect of any such taxes and related liabilities. Grantor, each Constituent Party and Guarantor believe that their respective tax returns properly reflect the income and taxes of Grantor, each Constituent Party and Guarantor for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit.

3.7 MAILING ADDRESS. Grantor's mailing address, as set forth in the opening paragraph hereof or as changed pursuant to the provisions hereof, is true and correct.

3.8 RELATIONSHIP OF GRANTOR AND BENEFICIARY. Notwithstanding any prior business or personal relationship between Grantor and Beneficiary, or any officer, director or employee of Beneficiary, the relationship between Grantor and Beneficiary is solely that of debtor and creditor, Beneficiary has no fiduciary or other special relationship with Grantor, Grantor and Beneficiary are not partners or joint venturers, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Grantor and Beneficiary to be other than that of debtor and creditor.

3.9 NO RELIANCE ON BENEFICIARY. Grantor is experienced in the ownership and operation of properties similar to the Mortgaged Property, and Grantor and Beneficiary have and are relying solely upon Grantor's expertise and business plan in connection with the ownership and operation of the Mortgaged Property. Grantor is not relying on Beneficiary's expertise or business acumen in connection with the Mortgaged Property.

3.10 ENVIRONMENTAL AND HAZARDOUS SUBSTANCES. The following representations and warranties of Grantor are made without regard to whether Beneficiary has, or hereafter obtains, any knowledge or report of the environmental condition of the Mortgaged Property:

(a) The Mortgaged Property and the operations conducted thereon do not violate any applicable law, statute, ordinance, rule, regulation, order, or determination of any Governmental Authority or any restrictive covenant or deed restriction (recorded or otherwise), including

without limitation all applicable zoning ordinances and building codes, flood disaster laws and Environmental Laws.

(b) Without limitation of Section 3.10(a) immediately preceding, the Mortgaged Property and operations conducted thereon by the current owner or operator of such Mortgaged Property, are not in violation of or subject to any existing, pending, or threatened action, suit, investigation, inquiry, or proceeding by any governmental or nongovernmental entity or person or to any remedial obligations under any Environmental Law.

(c) All notices, permits, licenses, or similar authorizations, if any, required to be obtained or filed in connection with the ownership, operation, or use of the Mortgaged Property, including, without limitation, the past or present generation, treatment, storage, disposal, or release of a Hazardous Substance into the environment, have been duly obtained or filed.

(d) The Mortgaged Property does not contain any Hazardous Substance.

(e) Grantor has taken all steps necessary to determine and has determined that no Hazardous Substances have been or will be generated, treated, placed, held, located, or otherwise released on, under, from, or about the Mortgaged Property.

(f) Grantor has not undertaken, permitted, authorized, or suffered and will not undertake, permit, authorize, or suffer the presence, use, manufacture, handling, generation, transportation, storage, treatment, discharge, release, burial, or disposal on, in, under, from or about the Mortgaged Property of any Hazardous Substance or the transportation to or from the Mortgaged Property of any Hazardous Substance.

(g) There is no pending or threatened litigation, proceedings, or investigations before or by any administrative agency in which any person or entity alleges or is investigating any alleged presence, release, threat of release, placement on, in, under, from or about the Mortgaged Property, or the manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal on, under, from or about the Mortgaged Property, or the transportation to or from the Mortgaged Property, of any Hazardous Substance.

(h) Grantor has not received any notice, and has no actual or constructive knowledge, that any Governmental Authority or any employee or agent thereof has determined, or threatens to determine, or is investigating any allegation that there is a presence, release, threat of release, placement on, in, under, from or about the Mortgaged Property, or the use, manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal on, in, under, from or about the Mortgaged Property, or the transportation to or from the Mortgaged Property, of any Hazardous Substance.

(i) There have been no communications or agreements with any Governmental Authority or any private entity, including, but not limited to, any prior owners or operators of the Mortgaged Property, relating in any way to the presence, release, threat of release, placement on, under or about the Mortgaged Property, or the use, manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal on, in, under or about the

Mortgaged Property, or the transportation to or from the Mortgaged Property, of any Hazardous Substance.

(j) Neither Grantor nor, to the best knowledge, information and belief of Grantor, any other person, including, but not limited to, any predecessor owner, tenant, licensee, occupant, user, or operator of all or any portion of the Mortgaged Property, has ever caused, permitted, authorized or suffered, and Grantor will not cause, permit, authorize, or suffer, any Hazardous Substance to be placed, held, located, or disposed of, on, in, under or about any other real property, all or any portion of which is legally or beneficially owned (or any interest or estate therein which is owned) by Grantor in any jurisdiction now or hereafter having in effect a so-called "*superlien*" law or ordinance or any part thereof, the effect of which law or ordinance would be to create a lien on the Mortgaged Property to secure any obligation in connection with the "*superlien*" law of such other jurisdiction.

(k) Grantor has been issued all required federal, state, and local licenses, certificates, or permits relating to, and Grantor and its facilities, business assets, property, leaseholds, and equipment are in compliance in all respects with all applicable federal, state, and local laws, rules, and regulations relating to, air emissions, water discharge, noise emissions, solid or liquid waste disposal, hazardous waste or materials, or other environmental, health, or safety matters.

3.11 NO LITIGATION. Except as disclosed in writing to Beneficiary, there are no (i) judicial, administrative, mediation or arbitration actions, suits, or proceedings, at law or in equity, before any Governmental Authority or arbitrator pending or threatened against or affecting Grantor, Guarantor, or any Constituent Party or involving the Mortgaged Property, (ii) outstanding or unpaid judgments against Grantor, any Guarantor, any Constituent Party, or the Mortgaged Property, or (iii) defaults by Grantor with respect to any order, writ, injunction, decree, or demand of any Governmental Authority or arbitrator.

3.12 ERISA. Grantor is not an "*employee benefit plan*," as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA and the assets of Grantor do not constitute "*plan assets*" of one or more such plans within the meaning of 29 C.F.R. §2510.3-101 (1998).

3.13 NO BANKRUPTCY. No bankruptcy or insolvency proceedings are pending or contemplated by Grantor or, to the best knowledge, information and belief of Grantor, threatened against Grantor or by or against any endorser, cosigner or guarantor of the Note.

3.14 COMPLIANCE WITH LEGAL REQUIREMENTS. The Land and the Improvements and the intended use thereof by Grantor comply with all Legal Requirements, including, without limitation, all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, applicable health and environmental laws and regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over the Mortgaged Property.

3.15 SEPARATE TAX PARCEL; LEGAL LOT. The parcels that make up the Mortgaged Property are taxed separately without regard to any other real estate and such parcels constitute legally subdivided lots under all applicable Legal Requirements (or, if not subdivided, no subdivision or

platting of the Land is required under applicable Legal Requirements), and for all purposes may be mortgaged, conveyed or otherwise dealt with as independent parcels.

3.16 UTILITIES; ACCESS. All utility services necessary and sufficient for the full use, occupancy, operation and disposition of the Land and the Improvements for their intended purposes are available to the Mortgaged Property, including water, storm sewer, sanitary sewer, gas, electric, cable and telephone facilities, through public rights-of-way or duly recorded perpetual private easements; all streets, roads, highways, bridges and waterways necessary for access to and full use, occupancy, operation and disposition of the Land and the Improvements have been completed, have been dedicated to and accepted by the appropriate municipal authority and are open and available to the Land and the Improvements without further condition or cost to Grantor; all curb cuts, driveways and traffic signals shown on the survey delivered to Beneficiary prior to the execution and delivery of this Deed of Trust are existing and have been fully approved by the appropriate governmental authority.

3.17 MONEY LAUNDERING; ANTI-TERRORISM LAWS. None of Grantor, any Constituent Party nor Guarantor (nor any person or entity owning an interest in Grantor, any Constituent Party or Guarantor) (i) is a Prohibited Person, or (ii) has violated any Anti-Terrorism Laws. No Prohibited Person holds or owns any interest of any nature whatsoever in Grantor, any Constituent Party or Guarantor, as applicable, and none of the funds of Grantor, any Constituent Party or Guarantor have been derived from any activity in violation of Anti-Terrorism Laws.

3.18 NO FOREIGN PERSON. Neither Grantor nor Guarantor is a "foreign person" within the meaning of §1445(f)(3) of the Tax Code.

ARTICLE IV: AFFIRMATIVE COVENANTS

Grantor hereby unconditionally covenants and agrees with Beneficiary, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged as follows:

4.1 PAYMENT AND PERFORMANCE. Grantor will pay the Indebtedness as and when specified in the Loan Documents, and will perform and discharge all of the Obligations, in full and on or before the dates same are to be performed.

4.2 EXISTENCE. Grantor will and will cause each Constituent Party to preserve and keep in full force and effect its existence (separate and apart from its affiliates), good standing, rights, franchises, trade names, trademarks and other associated goodwill whether existing at common law or as a federal or state registration.

4.3 COMPLIANCE WITH LEGAL REQUIREMENTS. Grantor will promptly and faithfully comply with, conform to, and obey all Legal Requirements, whether the same shall necessitate structural changes in, improvements to, or interfere with the use or enjoyment of, the Mortgaged Property. If at any time Grantor obtains knowledge that Grantor, any Constituent Party or Guarantor is, or becomes, a Prohibited Person or are indicted, arraigned or custodially detained on charges or allegations involving or relating to any Anti-Terrorism Laws, Grantor shall immediately notify Beneficiary in writing of same.

4.4 FIRST LIEN STATUS. Grantor will protect and preserve the first lien and security interest status of this Deed of Trust and the other Loan Documents and will not permit to be created or to exist in respect of the Mortgaged Property or any part thereof any lien or security interest on a parity with, superior to, or inferior to any of the liens or security interests hereof, except for the Permitted Exceptions.

4.5 PAYMENT OF IMPOSITIONS. Grantor will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the earlier to occur of (i) the due date thereof, (ii) the date any fine, penalty, interest, or cost may be added thereto or imposed, or (iii) the date prior to any date any lien may be filed for the nonpayment thereof (if such date is used to determine the due date of the respective item), and Grantor shall deliver to Beneficiary a written receipt evidencing the payment of the respective Imposition.

4.6 REPAIR. Grantor will keep the Mortgaged Property in first-class order and condition and will make all repairs, replacements, renewals, additions, betterments, improvements, and alterations thereof and thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep same in such order and condition. Grantor will prevent any act, occurrence, or neglect which might impair the value or usefulness of the Mortgaged Property for its intended usage. In instances where repairs, replacements, renewals, additions, betterments, improvements, or alterations are required in and to the Mortgaged Property on an emergency basis to prevent loss, damage, waste, or destruction thereof, Grantor shall proceed to repair, replace, add to, better, improve, or alter same, or cause same to be repaired, replaced, added to, bettered, improved, or altered, notwithstanding anything to the contrary contained in Section 5.2 hereof; provided, however, that in instances where such emergency measures are to be taken, Grantor will notify Beneficiary in writing of the commencement of same and the measures to be taken, and, when same are completed, the completion date and the measures actually taken.

4.7 INSURANCE. Grantor will, at Grantor's own expense, obtain and maintain and keep in full force and effect insurance upon and relating to the Mortgaged Property with such insurers, in such amounts and covering such risks as shall be requested by and satisfactory to Beneficiary, from time to time, including but not limited to: (i) CGL providing coverage against (among others) bodily injury and disease, including death resulting therefrom, personal injury and property damage, written on an "occurrence" basis with respect to the business and any other activities carried on, in or from the Mortgaged Property and with respect to Grantor's use and occupancy thereof (including a provision for contractual liability coverage insuring Grantor for the performance of its indemnity obligations set forth in this Deed of Trust), having limits of not less than \$1,000,000.00 per occurrence and \$5,000,000.00 general aggregate per location (or with such increased limits as may be required from time to time by Beneficiary by giving notice to Grantor), with no deductible or self-insured retention in excess of \$10,000.00 to apply to any coverage provided by the CGL policy without the prior written approval of Beneficiary; (ii) the broadest available form of "all risks" or "special form" property insurance (utilizing the then prevailing "ISO Special Form" property insurance form or an equivalent form acceptable to Beneficiary), including but not limited to, coverage for the Mortgaged Property, and all improvements, betterments, alterations and additions to the Mortgaged Property and all furniture,

fixtures, equipment, merchandise and all other items of Grantor's personal property in, on, at, or about the Mortgaged Property, with no exclusions permitted thereunder with respect to vandalism, acts of terrorism, malicious mischief, or sprinkler leakage, including earthquake and flood as covered causes of losses and including an agreed amount endorsement for not less than one hundred percent (100%) of the full replacement cost (new, without deduction for depreciation) of the covered items and property and an ordinance or law coverage endorsement, with no deductible or self-insured retention in excess of \$10,000.00 to apply to any loss covered by such property insurance, and it being the parties' intent that Grantor structure its property insurance program so that no coinsurance penalty is imposed and there are no valuation disputes with any insurer or with Beneficiary; (iii) business income and extra expense coverage for no less than six (6) months of income and expenses; (iv) workers' compensation insurance to the statutory limit and employer's liability (and/or commercial umbrella) insurance having a limit of not less than \$1,000,000.00 per occurrence; (v) automobile liability insurance covering owned, non-owned or rented automotive equipment having the combined single limit of not less than \$1,000,000.00 with respect to injuries or damages in any one occurrence; and (vi) such other insurance with other coverages or increased coverages, if any, as Beneficiary may require from time to time. Each insurance policy issued pursuant to this Section 4.7 shall be issued by good and solvent insurance companies satisfactory to Beneficiary, to be licensed in the State of Missouri, and having a "General Policyholders Rating" of at least "A, IX" or better by Best's Insurance Guide and/or "A- or better" by Standard & Poor Insurance Solvency Review, or such better rating as may be required by Beneficiary with respect to such insurance, and all such policies shall provide, by way of endorsements, riders, or as otherwise applicable, that: (a) with respect to the CGL and all other liability insurance, if the policy contains a general aggregate limit, such policy shall include an "Aggregate Limits of Insurance Per Location" endorsement (using the applicable ISO form or an equivalent form acceptable to Beneficiary); (b) with respect to the CGL and all other liability insurance, such insurance shall name Beneficiary as an "Additional Insured" (using the applicable ISO form, or an equivalent form reasonably acceptable to Beneficiary, without modification and under the commercial umbrella, if any, and which policy shall contain standard CGL "other insurance" wording, unmodified in any way that would make it excess over or contributory with the additional insured's own commercial general liability coverage), and with respect to the property and other applicable insurance, such insurance shall contain a standard "Mortgagee clause" and shall be payable to Beneficiary as a mortgagee and not as a co-insured, and with respect to all policies and insurance carried by Grantor for the benefit of Beneficiary, such insurance shall be payable to Beneficiary as Beneficiary's interest may appear; (c) the coverage of Beneficiary under such insurance policies shall not be terminated, reduced, or affected in any manner regardless of any breach or violation by Grantor of any warranties, declarations or conditions in any such policy; (d) no such insurance policies shall be canceled, endorsed, altered or reissued to effect a change in coverage for any reason (including, without limitation, excluding any individual risk events such as acts of terrorism) and to any extent whatsoever unless the insurer with respect to such policy shall have first given Beneficiary no less than thirty (30) days' prior written notice thereof; and (e) Beneficiary shall be permitted, but shall not be obligated, to make premium payments to prevent any cancellation, endorsement, alteration or reissuance of any such insurance policies, and such payments shall be accepted by the applicable insurer to prevent same. Beneficiary shall be furnished with the original of each such initial policy coincident with the execution of this Deed of Trust and the original of each renewal policy not less than fifteen (15) days prior to the

expiration of the initial, or each immediately preceding renewal, policy, and Beneficiary shall additionally be thereupon concurrently furnished with receipts or other evidence that the premiums on each and all such insurance policies have been paid for at least one (1) year. Grantor shall furnish to Beneficiary, on or before thirty (30) days after the close of each of Grantor's fiscal years while this Deed of Trust is in force and effect, a statement certified by Grantor or a duly authorized officer of Grantor of the amounts of insurance maintained in compliance with this Section 4.7, of the risks covered by such insurance and of the insurance company or companies which carry such insurance. For purposes of this Section 4.7, the term "ISO" (herein so called) shall mean Insurance Services office. It is expressly understood and agreed that the insurance coverages required in this Section 4.7 hereinabove represent Beneficiary's minimum requirements and it is further understood and agreed that in any event the insurance coverages required in this Section 4.7 are not to be construed to void or limit Grantor's indemnity obligations contained in this Deed of Trust. Neither shall (A) the insolvency, bankruptcy or failure of any insurance company covering Grantor or the Mortgaged Property, (B) the failure of any insurance company to pay claims occurring, nor (C) any exclusion from or insufficiency of coverage be held to affect, negate or waive any of Grantor's indemnity obligations under this Deed of Trust or any other provision of this Deed of Trust.

In case of Grantor's failure to keep the Mortgaged Property properly insured as required herein, Beneficiary, after notice to Grantor, at its option may (but shall not be required to) acquire such insurance as required herein at Grantor's sole expense.

4.8 INSPECTION. Grantor will permit Trustee and Beneficiary, and their respective agents, representatives, and employees, to inspect the Mortgaged Property at all reasonable times, with or without prior notice to Grantor.

4.9 PROPERTY REPORTS. Grantor will maintain full and accurate books of account and other records reflecting the results of the operations of the Mortgaged Property and will furnish, or cause to be furnished, to Beneficiary: (i) on or before thirty (30) days after the end of each calendar month and on or before one hundred twenty (120) days after the end of each fiscal year of Grantor, an operating statement for the Mortgaged Property, such reports to be in such form and in reasonable detail as Beneficiary may request, setting forth the financial condition and the income and expenses for the Mortgaged Property for the immediately preceding calendar month or fiscal year, as applicable, and a certificate executed by Grantor certifying that such report has been prepared in accordance with accepted accounting principles, (ii) within thirty (30) days after the end of each calendar month or more often upon request of Beneficiary, a written statement (rent roll) certified as true, correct and complete by Grantor, containing the information specified below as to each of the Leases, (iii) on or before one hundred twenty (120) days after the end of each fiscal year of Grantor, a certificate by Grantor certifying that, as of the date thereof, there does or does not (as the case may be) exist an event which constitutes, or which upon due notice or lapse of time or both would constitute an Event of Default or, if an Event of Default exists, specifying the nature thereof, (iv) immediate notice of any material adverse change in the Mortgaged Property's financial condition or business prospects, (v) on or before sixty (60) days prior to the start of each fiscal year an annual budget for the Mortgaged Property for the next fiscal year, in form and substance acceptable to Beneficiary, and (vi) upon request of Beneficiary, and at Grantor's expense, such other operating, financial and credit

information as Beneficiary may reasonably request with respect to the Mortgaged Property. The rent roll specified in clause (ii) above shall contain the following: tenant name, suite or unit number, square feet of leased space, apartment type (if applicable), commencement and expiration date, lease renewal options, the date rental payments began, number of months of free rent (if applicable) or other concessions, base rent, escalation provisions (if applicable), vacancies and recent rental activities, furnished or unfurnished status (if applicable), expense stop (if applicable), and other pertinent information. The fiscal year of the Mortgaged Property ends on December 31. At any time and from time to time Grantor shall deliver to Beneficiary such other financial data as Beneficiary shall reasonably request with respect to the ownership, maintenance, use and operation of the Mortgaged Property, and Beneficiary shall have the right, at reasonable times and upon reasonable notice, to audit, examine, and make copies or extracts of Grantor's books of account and records relating to the Mortgaged Property, all of which shall be maintained and made available to Beneficiary and Beneficiary's representatives for such purpose at the address specified herein for Grantor or at such other location as Beneficiary may approve. Upon Beneficiary's request, Grantor shall also furnish Beneficiary with convenient facilities and all books and records necessary for an audit of such statements.

4.10 FINANCIAL STATEMENTS.

(a) Grantor. Grantor shall maintain full and accurate books of accounts and other records reflecting Grantor's financial condition and transactions, and shall furnish, or cause to be furnished, to Beneficiary: (i) within thirty (30) days of a written request to do so, financial statements (which shall mean and include a balance sheet, statement of cash flow and income statement for Grantor, such reports to be in such form and in reasonable detail as Beneficiary may request, setting forth the financial condition (including all contingent liabilities), cash flow and the income and expenses for Grantor for the immediately preceding fiscal year) of Grantor, prepared in accordance with accepted accounting principles consistently applied, and which fairly present the financial condition and transactions of Grantor as of the date thereof or for the period covered thereby, and certified to by an independent certified public accountant; (ii) a tax return for each fiscal year of Grantor from and after the date hereof, within thirty (30) days after same has been filed with the Internal Revenue Service, but in no event later than one hundred twenty (120) days after the end of each fiscal year (provided, however, if Grantor shall have duly filed for an extension of the filing deadline for such tax return, and promptly furnished evidence thereof to Beneficiary, then such tax return shall be delivered to Beneficiary on or before two hundred fifty-five (255) days after the end of such fiscal year); (iii) upon request, a certificate by Grantor certifying that, as of the date thereof, there does or does not (as the case may be) exist an event which constitutes, or which upon due notice or lapse of time or both would constitute an Event of Default or, if an Event of Default exists specifying the nature thereof; and (iv) immediate notice of any material adverse changes in the financial condition or business prospects of Grantor.

(b) Guarantor. Grantor shall cause Guarantor (or if Guarantor is more than one party, then each party constituting Guarantor) to promptly furnish or cause to be furnished to Beneficiary: (i) within thirty (30) days of a written request to do so, financial statements (which shall mean and include a balance sheet, statement of cash flow and income statement for Guarantor, such reports to be in such form and in reasonable detail as Beneficiary may request, setting forth the financial

condition (including all contingent liabilities), cash flow and the income and expenses for Guarantor for the immediately preceding fiscal year) of Guarantor, prepared in accordance with accepted accounting principles consistently applied, and which fairly present the financial condition and transactions of Guarantor as of the date thereof or for the period covered thereby, and certified to by an independent certified public accountant; (ii) a tax return for each fiscal year of Guarantor from and after the date hereof, within thirty (30) days after same has been filed with the Internal Revenue Service, but in no event later than one hundred twenty (120) days after the end of each fiscal year (provided, however, if Guarantor shall have duly filed for an extension of the filing deadline for such tax return, and promptly furnished evidence thereof to Beneficiary, then such tax return shall be delivered to Beneficiary on or before two hundred fifty-five (255) days after the end of such fiscal year); (iii) upon request, a certificate by Guarantor certifying that, as of the date thereof, there does or does not (as the case may be) exist an event which constitutes, or which upon due notice or lapse of time or both would constitute an Event of Default or, if an Event of Default exists specifying the nature thereof; and (iv) immediate notice of any material adverse changes in the financial condition or business prospects of Guarantor.

(c) Additional Matters. Grantor shall, and shall cause Guarantor to, allow Beneficiary from time to time to inspect all books and records relating to Grantor's and Guarantor's, as applicable, financial condition and to the Indebtedness, and to make and take away copies of such books and records. If Grantor or Guarantor is a corporation, limited liability company, partnership, joint venture, trust or other type of business association, Grantor or Guarantor shall provide Beneficiary with any and all financial statements and other documents and make any and all disclosures to Beneficiary with respect to any of the Constituent Parties, as Grantor or Guarantor is required to provide and make, and in the manner required to be provided and made, with respect to Grantor or Guarantor pursuant to this section.

4.11 ENFORCEMENT OF LEASES. Grantor shall (i) submit any and all proposed Leases to Beneficiary for approval prior to the execution thereof, (ii) duly and punctually perform and comply with any and all representations, warranties, covenants, and agreements expressed as binding upon the lessor under any Lease, (iii) maintain each of the Leases in full force and effect during the term thereof, (iv) appear in and defend any action or proceeding in any manner connected with any of the Leases, (v) deliver to Beneficiary true, correct and complete copies of all Leases, and (vi) deliver to Beneficiary such further information, and execute and deliver to Beneficiary such further assurances and assignments, with respect to the Leases as Beneficiary may from time to time request. Without Beneficiary's prior written consent, Grantor shall not (i) do or knowingly permit to be done anything to impair the value of any of the Leases, (ii) except for security or similar deposits, collect any of the Rent more than one (1) month in advance of the time when the same becomes due under the terms of any Lease, (iii) discount any future accruing Rents, (iv) amend, modify, rescind, conceal, surrender or terminate any of the Leases, or (v) assign or grant a security interest in or to the License (as such term is defined in Section 9.2 hereof) or any of the Leases and/or Rents.

4.12 PAYMENT FOR LABOR AND MATERIALS. Grantor will promptly pay all bills for labor, materials, and specifically fabricated materials incurred in connection with the Mortgaged Property and never permit to exist in respect of the Mortgaged Property or any part thereof any lien or security interest, even though inferior to the liens and security interests hereof, for any

such bill, and in any event never permit to be created or exist in respect of the Mortgaged Property or any part thereof any other or additional lien or security interest on a parity with, superior, or inferior to any of the liens or security interests hereof, except for the Permitted Exceptions.

4.13 FURTHER ASSURANCES AND CORRECTIONS. From time to time, at the request of Beneficiary, Grantor will (i) promptly correct any defect, error, or omission which may be discovered in the contents of this Deed of Trust or in any other Loan Document or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver, record and/or file such further instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents) and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in Beneficiary's opinion, to carry out more effectively the purposes of this Deed of Trust and the Loan Documents and to subject to the absolute assignments, liens and security interests hereof and thereof any property intended by the terms hereof or thereof to be covered hereby or thereby, including without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Mortgaged Property; (iii) execute, acknowledge, deliver, procure, file, and/or record any document or instrument (including without limitation, any financing statement) deemed advisable by Beneficiary in Beneficiary's sole discretion to protect the liens and the security interests herein granted against the rights or interests of third persons; (iv) promptly deliver to Beneficiary any certification or other evidence requested by Beneficiary confirming compliance by Grantor, each Constituent Party and Guarantor with all Anti-Terrorism Laws, and confirming that neither Grantor, each Constituent Party nor Guarantor (nor any person or party owning any interest of any nature whatsoever in Grantor, any Constituent Party or Guarantor) is a Prohibited Person; and (v) pay all costs connected with any of the foregoing.

4.14 TAX ON DEED OF TRUST. If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Indebtedness or any part thereof (whether pursuant to the Tax Code or otherwise), Grantor will immediately pay all such taxes, provided that if such law as enacted makes it unlawful for Grantor to pay such tax, Grantor shall not pay nor be obligated to pay such tax. Nevertheless, if a law is enacted making it unlawful for Grantor to pay such taxes, then Grantor must prepay the Indebtedness in full within sixty (60) days after demand therefor by Beneficiary.

4.15 STATEMENT OF UNPAID BALANCE. At any time and from time to time, Grantor will furnish promptly, upon the request of Beneficiary, a written statement or affidavit, in form satisfactory to Beneficiary, stating the unpaid balance of the Indebtedness and that there are no offsets or defenses against full payment of the Indebtedness and the terms hereof, or if there are any such offsets or defenses, specifying them.

4.16 EXPENSES. Subject to the provisions of Section 8.12 hereof, Grantor will pay on demand all reasonable and bona fide out-of-pocket costs, fees, and expenses and other expenditures, including, but not limited to, reasonable attorneys' fees and expenses, paid or incurred by Beneficiary or Trustee to third parties incident to this Deed of Trust or any other Loan Document

(including without limitation, reasonable attorneys' fees and expenses in connection with the negotiation, preparation, and execution hereof and of any other Loan Document and any amendment hereto or thereto, any release hereof, any consent, approval or waiver hereunder or under any other Loan Document, the making of any advance under the Note, and any suit to which Beneficiary or Trustee is a party involving this Deed of Trust or the Mortgaged Property) or incident to the enforcement of the Indebtedness or the Obligations or the exercise of any right or remedy of Beneficiary under any Loan Document.

4.17 ADDRESS. Grantor shall give written notice to Beneficiary and Trustee of any change of address of Grantor at least five (5) business days prior to the effective date of such change of address. Absent such official written notice of a change in address for Grantor, Beneficiary and Trustee shall be entitled for all purposes under the Loan Documents to rely upon Grantor's address as set forth in the initial paragraph of this Deed of Trust, as same may have been theretofore changed in accordance with the provisions hereof.

4.18 DISCLOSURES. If at any time Grantor shall become aware of the existence or occurrence of any financial or economic conditions or natural disasters which might have a Material Adverse Effect, Grantor shall promptly notify Beneficiary of the existence or occurrence thereof and of Grantor's opinion as to what effect such may have on the Mortgaged Property or Grantor. Grantor shall also give prompt notice to Beneficiary of (i) the serious illness or death of any principal or key employee of Grantor, (ii) any litigation or dispute, threatened or pending against or affecting Grantor, the Mortgaged Property or any Guarantor which could have a Material Adverse Effect, (iii) any Event of Default, (iv) any default by Grantor or any acceleration of any indebtedness owed by Grantor under any contract to which Grantor is a party, (v) any default by Guarantor or any acceleration of any indebtedness owed by any Guarantor under any contract to which Guarantor is a party, and (vi) any change in the character of Grantor's business as it existed on the date hereof.

4.19 ERISA. If and to the extent that Grantor is obligated under any plan governed by or subject to ERISA, Grantor shall fully discharge and satisfy all of its obligations and funding requirements under such plan, ERISA and the Tax Code. Furthermore, Grantor shall comply in all material respects with any and all applicable provisions of ERISA and the Tax Code and will not incur or permit to exist any unfunded liabilities to the Pension Benefit Guaranty Corporation ("**PBGC**") or to such plan under ERISA or the Tax Code. As soon as possible but in any event not later than 30 days after Grantor knows that any event which would constitute a reportable event under §4043(b) of Title IV of ERISA with respect to any "employee plan" subject to ERISA has occurred, or that the PBGC has instituted or will institute proceedings under ERISA to terminate that plan, Grantor will deliver to Beneficiary a certificate of a responsible officer of Grantor setting forth details as to such reportable event and the action which Grantor or an affiliate of Grantor (as defined under ERISA), as the case may be, proposes to take with respect to same, together with a copy of any notice of such reportable event that may be required to be filed with the PBGC, or any notice delivered by the PBGC evidencing its intent to institute those proceedings or any notice to the PBGC that the plan is to be terminated, as the case may be. For all purposes of this Section 4.19, Grantor is deemed to have all knowledge of all facts attributable to the plan administrator under ERISA.

4.20 DELIVERY OF CONTRACTS. Grantor will deliver to Beneficiary a true, correct and complete copy of each Contract promptly after the execution of same by all parties thereto. Within twenty (20) days after a request by Beneficiary, Grantor shall prepare and deliver to Beneficiary a complete listing of all Contracts, showing date, term, parties, subject matter, concessions, whether any defaults exist, and other information specified by Beneficiary, of or with respect to each of such Contracts, together with a true, correct and complete copy thereof (if so requested by Beneficiary).

4.21 ENVIRONMENTAL AND HAZARDOUS SUBSTANCES. Grantor will:

(a) not use, generate, manufacture, produce, store, release, discharge, treat, or dispose of on, in, under, from or about the Mortgaged Property or transport to or from the Mortgaged Property any Hazardous Substance or allow any other person or entity to do so;

(b) keep and maintain the Mortgaged Property in compliance with, and shall not cause or permit the Mortgaged Property to be in violation of, any Environmental Law;

(c) establish and maintain, at Grantor's sole expense, a system to assure and monitor continued compliance with Environmental Laws and the exclusion of Hazardous Substances from the Mortgaged Property, by any and all owners or operators of the Mortgaged Property, which system shall include annual reviews of such compliance by employees or agents of Grantor who are familiar with the requirements of the Environmental Laws and, at the request of Beneficiary no more than once each year, a detailed review of such compliance of the environmental condition of the Mortgaged Property (the "Environmental Report") in scope satisfactory to Beneficiary by an environmental consulting firm approved in advance by Beneficiary; provided, however, that if any Environmental Report indicates any violation of any Environmental Law or a need for Remedial Work, such system shall include at the request of Beneficiary a detailed review of the status of such violation (a "Supplemental Report") by such environmental consultant. Grantor shall furnish an Environmental Report or such Supplemental Report to Beneficiary within sixty (60) days after Beneficiary so requests, together with such additional information as Beneficiary may reasonably request;

(d) give prompt written notices to Beneficiary of: (i) any proceeding or inquiry by any governmental or nongovernmental entity or person with respect to the presence of any Hazardous Substance on, in, under, from or about the Mortgaged Property, the migration thereof from or to other property, the disposal, storage, or treatment of any Hazardous Substance generated or used on, under or about the Mortgaged Property, (ii) all claims made or threatened by any third party against Grantor or the Mortgaged Property or any other owner or operator of the Mortgaged Property relating to any loss or injury resulting from any Hazardous Substance, and (iii) Grantor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be subject to any investigation or cleanup of the Mortgaged Property pursuant to any Environmental Law;

(e) permit Beneficiary to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Mortgaged Property in connection with any

Environmental Law or Hazardous Substance, and Grantor shall pay all attorneys' fees incurred by Beneficiary in connection therewith;

(f) if any Remedial Work is reasonably necessary or desirable in the opinion of Beneficiary, Grantor shall commence and thereafter diligently prosecute to completion all such Remedial Work within thirty (30) days after written demand by Beneficiary for performance thereof (or such shorter period of time as may be required under any Legal Requirement). All Remedial Work shall be performed by contractors approved in advance by Beneficiary, and under the supervision of a consulting engineer approved by Beneficiary. All costs and expenses of such Remedial Work shall be paid by Grantor including, without limitation, Beneficiary's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work. If Grantor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Beneficiary may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall become part of the Indebtedness. **THE COVENANT CONTAINED IN THIS SECTION 4.21 SHALL SURVIVE THE RELEASE OF THE LIEN OF THIS DEED OF TRUST, OR THE EXTINGUISHMENT OF THE LIEN BY FORECLOSURE OR ACTION IN LIEU THEREOF.**

4.22 SOURCES AND USES OF FUNDS. Without limiting the requirements of Section 4.3 hereof, Grantor has taken, and shall continue to take until the Indebtedness is fully repaid and each and all of the Obligations are satisfied in full, such measures as are required by any and all Anti-Terrorism Laws to assure that the funds invested in Grantor and/or used to make payments on the Indebtedness or the Obligations are derived from (a) transactions and sources that do not violate any Anti-Terrorism Laws nor, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction from which they originated; and (b) permissible sources under Anti-Terrorism Laws or, to the extent such funds originate outside the United States, under the laws of the jurisdiction from which they originated. If Beneficiary reasonably believes that Grantor, Guarantor, any Constituent Party, or any affiliate of any such parties may have breached any of the representations, warranties or covenants set forth in this Deed of Trust or the other Loan Documents relating to any Anti-Terrorism Laws or the identity of any person or entity as a Prohibited Person, then, Beneficiary shall have the right, with or without notice to Grantor, to (1) notify the appropriate governmental authority and to take such action as such governmental authority or applicable Anti-Terrorism Laws may direct; (2) withhold Loan advances and segregate the assets constituting the Loan or any of Grantor's funds or assets deposited with or otherwise controlled by Beneficiary pursuant to the Loan Documents; (3) decline any payment (or deposit such payment with an appropriate United States governmental authority or court) or decline any prepayment or consent request; and/or (4) declare an Event of Default and immediately accelerate the Loan in connection therewith. Grantor agrees that none of Grantor, Guarantor nor any Constituent Party will assert any claim (and hereby waives, for itself and on behalf of such other parties, any claim that they may now or hereafter have) against Beneficiary or any of its affiliates, successors, assigns, representatives or agents for any form of damages as a result of any of the foregoing actions, regardless of whether or not Beneficiary's reasonable belief is ultimately demonstrated to be accurate.

ARTICLE V: NEGATIVE COVENANTS

Grantor hereby unconditionally covenants and agrees with Beneficiary until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged as follows:

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

5.2 WASTE; ALTERATIONS. Grantor will not commit or permit any waste or impairment of the Mortgaged Property and will not (subject to the provisions of Sections 4.3 and 4.6 hereof), without the prior written consent of Beneficiary, make or permit to be made any alterations or additions to the Mortgaged Property of a material nature.

5.3 REPLACEMENT OF FIXTURES AND PERSONALTY. Grantor will not, without the prior written consent of Beneficiary, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements unless the removed item is removed temporarily for purposes of maintenance and repair or, if removed permanently, is replaced by an article of equal suitability and value, owned by Grantor, free and clear of any lien or security interest except as may be approved in writing by Beneficiary.

5.4 CHANGE IN ZONING. Grantor will not (i) seek or acquiesce in a zoning reclassification, zoning variance or special exception to zoning of all or any portion of the Mortgaged Property, (ii) grant or consent to any easement, dedication, plat, or restriction (or allow any easement to become enforceable by prescription), (iii) seek or acquiesce to any imposition of any addition of a Legal Requirement or any amendment or modification thereof, covering all or any portion of the Mortgaged Property, without Beneficiary's prior written consent.

5.5 NO DRILLING. Grantor will not, without the prior written consent of Beneficiary, permit any drilling or exploration for or extraction, removal, or production of, any Minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof.

5.6 NO DISPOSITION. Grantor will not make a Disposition without obtaining Beneficiary's prior written consent to the Disposition.

5.7 NO SUBORDINATE MORTGAGES. Grantor will not create, place, or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain any Subordinate Mortgage regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents with respect to the Mortgaged Property, other than the Permitted Exceptions.

5.8 ADDITIONAL OBLIGATIONS. Grantor shall not guarantee, endorse or otherwise become contingently liable in connection with any obligations of any other person or entity, and shall not create or incur any additional liability, whether contingent or non-contingent, with respect to either Grantor or the Mortgaged Property, except as specifically allowed or contemplated pursuant to the Loan Documents.

5.9 BUSINESS CHANGE. Grantor shall not make or permit to occur or exist a material change in the character of its business activities as such existed on the date hereof, without Beneficiary's prior written consent.

ARTICLE VI: EVENTS OF DEFAULT

The term "Event of Default," as used herein and in the Loan Documents, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

6.1 PAYMENT OF INDEBTEDNESS. Grantor shall fail, refuse, or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Loan Documents, upon acceleration or otherwise.

6.2 PERFORMANCE OF OBLIGATIONS. Grantor shall fail, refuse or neglect or cause the failure, refusal, or neglect to comply with, perform and discharge fully and timely as and when required any of the Obligations.

6.3 FALSE REPRESENTATION. Any representation, warranty, or statement made by Grantor, Guarantor, or others under or pursuant to the Loan Documents or any affidavit or other instrument executed or delivered with respect to the Loan Documents or the Indebtedness is determined by Beneficiary to be false or misleading in any material respect as of the date hereof or when made.

6.4 DEFAULT UNDER OTHER LIEN DOCUMENT. Grantor shall default or commit an event of default under and pursuant to any other mortgage or security agreement which covers or affects any part of the Mortgaged Property.

6.5 INSOLVENCY; BANKRUPTCY. Grantor (i) shall execute an assignment for the benefit of creditors or an admission in writing by Grantor of Grantor's inability to pay, or Grantor's failure to pay, debts generally as the debts become due; or (ii) shall allow the levy against the Mortgaged Property or any part thereof, of any execution, attachment, sequestration or other writ which is not vacated within sixty (60) days after the levy; or (iii) shall allow the appointment of a receiver, Trustee or custodian of Grantor or of the Mortgaged Property or any part thereof, which receiver, Trustee or custodian is not discharged within sixty days after the appointment; or (iv) files as a debtor a petition, case, proceeding or other action pursuant to, or voluntarily seeks the benefit or benefits of any Debtor Relief Law, or takes any action in furtherance thereof; or (v) files either a petition, complaint, answer or other instrument which seeks to effect a suspension of, or which has the effect of suspending any of the rights or powers of Beneficiary or Trustee granted in the Note, herein or in any Loan Document; or (vi) allows the filing of a petition, case,

proceeding or other action against Grantor as a debtor under any Debtor Relief Law or seeks appointment of a receiver, Trustee, custodian or liquidator of Grantor or of the Mortgaged Property, or any part thereof, or of any significant portion of Grantor's other property; and (a) Grantor admits, acquiesces in or fails to contest diligently the material allegations thereof, or (b) the petition, case, proceeding or other action results in the entry of an order for relief or order granting the relief sought against Grantor, or (c) the petition, case, proceeding or other action is not permanently dismissed or discharged on or before the earlier of trial thereon or thirty (30) days next following the date of filing.

6.6 DISSOLUTION; DISABILITY. Grantor, any Constituent Party, or any Guarantor, shall die, dissolve, terminate or liquidate, or merge with or be consolidated into any other entity, or become permanently disabled.

6.7 NO FURTHER ENCUMBRANCES. Grantor creates, places, or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any Subordinate Mortgage, regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents, with respect to the Mortgaged Property, other than the Permitted Exceptions.

6.8 DISPOSITION OF MORTGAGED PROPERTY AND BENEFICIAL INTEREST IN GRANTOR. Grantor makes a Disposition, without the prior written consent of Beneficiary.

6.9 CONDEMNATION. Any condemnation proceeding is instituted or threatened which would, in Beneficiary's sole judgment, materially impair the use and enjoyment of the Mortgaged Property for its intended purposes.

6.10 DESTRUCTION OF IMPROVEMENTS. The Mortgaged Property is demolished, destroyed, or substantially damaged so that, in Beneficiary's sole judgment, it cannot be restored or rebuilt with available funds to the condition existing immediately prior to such demolition, destruction, or damage within a reasonable period of time.

6.11 MATERIAL ADVERSE CHANGE. Beneficiary reasonably determines that any event shall have occurred that could be expected to have a Material Adverse Effect.

6.12 ABANDONMENT. Grantor abandons or removes all or any portion of the Improvements, Personalty or Fixtures.

6.13 DISCONTINUANCE OF OPERATIONS. Grantor vacates, or discontinues operations of or from, any substantial portion of the Mortgaged Property.

6.14 GUARANTOR'S OR CONSTITUENT PARTY'S DEFAULT. The occurrence of any event referred to in Sections 6.5 and 6.11 hereof with respect to any Guarantor, Constituent Party or other person or entity obligated in any manner to pay or perform the Indebtedness or Obligations, respectively, or any part thereof (as if such Guarantor, Constituent Party or other person or entity were "*Grantor*" in such Sections).

6.15 EVENT OF DEFAULT IN LOAN DOCUMENTS. An Event of Default as defined in any of the Loan Documents.

ARTICLE VII: REMEDIES

7.1 BENEFICIARY'S REMEDIES UPON DEFAULT. Upon the occurrence of an Event of Default or any event or circumstance which, with the lapse of time, or the giving of notice, or both, would constitute an Event of Default, Beneficiary may, at Beneficiary's option, and by or through Trustee, by Beneficiary itself or otherwise, do any one or more of the following:

(a) Right to Perform Grantor's Covenants. If Grantor has failed to keep or perform any covenant whatsoever contained in this Deed of Trust or the other Loan Documents, Beneficiary may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be and become a part of the Indebtedness, and Grantor promises, upon demand, to pay to Beneficiary, at the place where the Note is payable, all sums so advanced or paid by Beneficiary, with interest from the date when paid or incurred by Beneficiary at the Default Rate. No such payment by Beneficiary shall constitute a waiver of any Event of Default. In addition to the liens and security interests hereof, Beneficiary shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for the payment of which Beneficiary may make an advance, or which Beneficiary may pay.

(b) Right of Entry. Beneficiary may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Mortgaged Property, or any part thereof, and take exclusive possession of the Mortgaged Property and of all books, records, and accounts relating thereto and to exercise without interference from Grantor any and all rights which Grantor has with respect to the management, possession, operation, protection, or preservation of the Mortgaged Property, including without limitation the right to rent the same for the account of Grantor and to apply such Rents as provided in Article IX hereof. All such costs, expenses, and liabilities incurred by Beneficiary in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property, if not paid out of Rents as hereinabove provided, shall constitute a demand obligation owing by Grantor and shall bear interest from the date of expenditure until paid at the Default Rate, all of which shall constitute a portion of the Indebtedness. If necessary to obtain the possession provided for above, Beneficiary may invoke any and all legal remedies to dispossess Grantor, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by Beneficiary pursuant to this subsection, Beneficiary shall not be liable for any loss sustained by Grantor resulting from any failure to let the Mortgaged Property, or any part thereof, or from any other act or omission of Beneficiary in managing the Mortgaged Property unless such loss is caused by the willful misconduct of Beneficiary, nor shall Beneficiary be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. **GRANTOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY BENEFICIARY FOR, AND TO HOLD BENEFICIARY HARMLESS FROM, ANY AND ALL LIABILITY, LOSS, OR DAMAGE, WHICH MAY OR MIGHT BE INCURRED BY BENEFICIARY UNDER**

ANY SUCH LEASE OR UNDER OR BY REASON HEREOF OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST BENEFICIARY BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY SUCH LEASE. Should Beneficiary incur any such liability, the amount thereof, including without limitation costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the Default Rate, shall be secured hereby, and Grantor shall reimburse Beneficiary therefor immediately upon demand. Nothing in this subsection shall impose any duty, obligation, or responsibility upon Beneficiary for the control, care, management, leasing, or repair of the Mortgaged Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make Beneficiary responsible or liable for any waste committed on the Mortgaged Property by the tenants or by any other parties, or for any Hazardous Substance in, on or under the Mortgaged Property, or for any dangerous or defective condition of the Mortgaged Property or for any negligence in the management, leasing, upkeep, repair, or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger. Grantor hereby assents to, ratifies, and confirms any and all actions of Beneficiary with respect to the Mortgaged Property taken under this subsection.

The remedies in this subsection are in addition to other remedies available to Beneficiary and the exercise of the remedies in this subsection shall not be deemed to be an election of nonjudicial or judicial remedies otherwise available to Beneficiary. The remedies in this Article VII are available under and governed by the real property laws of the state in which the Property is located, and are not governed by the personal property laws of such state, in accordance with the provisions of the Code, including, the power to dispose of personal property in a commercially reasonable manner under the Code or the application of proceeds under the Code. No action by Beneficiary taken pursuant to this subsection shall be deemed to be an acceptance of collateral in satisfaction of obligations under the Code. Any receipt of consideration received by Beneficiary pursuant to this subsection shall be immediately credited against the Indebtedness (in the inverse order of maturity) and the value of said consideration shall be treated like any other payment against the Indebtedness.

(c) Right to Accelerate. Beneficiary may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Grantor and all other parties obligated in any manner whatsoever on the Indebtedness, declare the entire unpaid balance of the Indebtedness immediately due and payable, and upon such declaration, the entire unpaid balance of the Indebtedness shall be immediately due and payable. The failure to exercise any remedy available to Beneficiary shall not be deemed to be a waiver of any rights or remedies of Beneficiary under the Loan Documents, at law or in equity.

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

(i) Public Sale. Trustee is hereby authorized and empowered, and it shall be Trustee's special duty, upon such request of Beneficiary, to sell the Mortgaged Property, or any part thereof, at public auction to the highest bidder for cash, with or without having taken possession of same. Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, provided for by the real property laws of the state in which the Property is located or, if and to the extent such a statute is not then in force, with the applicable requirements, at the time of the sale, of the successor statute or statutes, if any, governing sales of real property under powers of sale conferred by deeds of trust. If there is no statute in force at the time of the sale governing sales of real property under powers of sale conferred by deeds of trust, such sale shall comply with applicable law, at the time of the sale, governing sales of real property under powers of sale conferred by mortgages.

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

(iii) Sale Subject to Unmatured Indebtedness. In addition to the rights and powers of sale granted under the preceding provisions of this subsection, if default is made in the payment of any installment of the Indebtedness, Beneficiary may, at Beneficiary's option, at once or at any time thereafter while any matured installment remains unpaid, without declaring the entire Indebtedness to be due and payable, orally or in writing direct Trustee to enforce this trust and to sell the Mortgaged Property subject to such unmatured Indebtedness and to the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of such unmatured Indebtedness, in the same manner, all as provided in the preceding provisions of this subsection. Sales made without maturing the Indebtedness may be made hereunder whenever there is a default in the payment of any installment of the Indebtedness,

without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this subsection, the unmaturred balance of the Indebtedness or the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of the Indebtedness.

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

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

(e) Beneficiary's Judicial Remedies. Beneficiary, or Trustee, upon written request of Beneficiary, may proceed by suit or suits, at law or in equity, to enforce the payment of the Indebtedness and the performance and discharge of the Obligations in accordance with the terms hereof, of the Note, and the other Loan Documents, to foreclose the liens and security interests of this Deed of Trust as against all or any part of the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to Beneficiary with respect to the Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of Beneficiary.

(f) Beneficiary's Right to Appointment of Receiver. Beneficiary, as a matter of right and without regard to the sufficiency of the security for repayment of the Indebtedness and performance and discharge of the Obligations, without notice to Grantor and without any

showing of insolvency, fraud, or mismanagement on the part of Grantor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Mortgaged Property or any part thereof, and of the Rents, and Grantor hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(g) Beneficiary's Uniform Commercial Code Remedies. Beneficiary may exercise its rights of enforcement with respect to Fixtures and Personalty under the Code, and in conjunction with, in addition to or in substitution for the rights and remedies under the Code Beneficiary may and Grantor agrees as follows:

(i) without demand or notice to Grantor, enter upon the Mortgaged Property to take possession of, assemble, receive, and collect the Personalty, or any part thereof, or to render it unusable; and

(ii) Beneficiary may require Grantor to assemble the Personalty and make it available at a place Beneficiary designates which is mutually convenient to allow Beneficiary to take possession or dispose of the Personalty; and

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

(iv) any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the other Mortgaged Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Personalty hereunder as is required for such sale of the other Mortgaged Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under the Code; and

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

(vi) it shall not be necessary that Beneficiary take possession of the Personalty, or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Personalty or any part thereof be present at the location of such sale; and

(vii) prior to application of proceeds of disposition of the Personalty to the Indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like, and the reasonable attorneys' fees and legal expenses incurred by Beneficiary; and

(viii) after notification, if any, hereafter provided in this subsection, Beneficiary may sell, lease, or otherwise dispose of the Personalty, or any part thereof, in one or more parcels at public or private sale or sales, at Beneficiary's offices or elsewhere, for cash, on credit, or for future delivery. Upon the request of Beneficiary, Grantor shall assemble the Personalty and make it available to Beneficiary at any place designated by Beneficiary that is reasonably convenient to Grantor and Beneficiary. Grantor agrees that Beneficiary shall not be obligated to give more than ten (10) days' written notice of the time and place of any public sale or of the time after which any private sale may take place and that such notice shall constitute reasonable notice of such matters. Grantor shall be liable for all expenses of retaking, holding, preparing for sale, or the like, and all attorneys' fees, legal expenses, and all other costs and expenses incurred by Beneficiary in connection with the collection of the Indebtedness and the enforcement of Beneficiary's rights under the Loan Documents. Beneficiary shall apply the proceeds of the sale of the Personalty against the Indebtedness in accordance with the provisions of Section 7.4 of this Deed of Trust. Grantor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Personalty are insufficient to pay the Indebtedness in full. Grantor waives all rights of marshalling in respect of the Personalty; and

(ix) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder, the nonpayment of the Indebtedness, the occurrence of any Event of Default, Beneficiary having declared all or a portion of such Indebtedness to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other act or thing having been duly done by Beneficiary, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(x) Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of the sale, but in the name and on behalf of Beneficiary.

(h) Rights Relating to Rents. Grantor has, pursuant to Article IX of this Deed of Trust, assigned absolutely to Beneficiary all Rents under each of the Leases covering all or any portion of the Mortgaged Property. Beneficiary, or Trustee on Beneficiary's behalf, may at any time, and without notice, either in person, by agent, or by receiver to be appointed by a court, enter and take possession of the Mortgaged Property or any part thereof, and in its own name, sue for or otherwise collect the Rents. Grantor hereby agrees that Beneficiary shall upon the occurrence of an Event of Default, automatically, and without further action of any kind or nature by Beneficiary, terminate the License granted to Grantor in Section 9.2 hereof, and thereafter give the Lease Rent Notice to Lessees under the Leases, without any obligation on the part of Trustee or Beneficiary to determine whether an Event of Default does in fact exist or has in fact occurred. It shall never be necessary for Beneficiary to institute legal proceedings to enforce any provision of Article IX of this Deed of Trust. All Rents collected by Beneficiary, or Trustee acting on Beneficiary's behalf, shall be applied as provided for in Article IX of this Deed of Trust; provided, however, that if the costs, expenses, and attorneys' fees incurred in connection therewith shall exceed the amount of Rents so collected, the excess shall be added to the Indebtedness, shall bear interest at the Default Rate, and shall be immediately due and payable. The entering upon and taking possession of the Mortgaged Property, the collection of Rents, and

the application thereof as aforesaid shall not cure or waive any Event of Default or notice of Event of Default, if any, hereunder nor invalidate any act done pursuant to such notice, except to the extent any such Event of Default is fully cured. Failure or discontinuance by Beneficiary, or Trustee on Beneficiary's behalf, at any time or from time to time, to collect said Rents shall not in any manner impair the subsequent enforcement by Beneficiary, or Trustee on Beneficiary's behalf, of the right, power and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power, or authority herein granted to Beneficiary, or Trustee on Beneficiary's behalf, shall be, or shall be construed to be, an affirmation by it of any tenancy, lease, or option, nor an assumption of liability under, nor the subordination of, the lien or charge of this Deed of Trust, to any such tenancy, lease, or option, nor an election of judicial relief, if any such relief is requested or obtained as to Leases or Rents, with respect to the Mortgaged Property or any collateral given by Grantor to Beneficiary. In addition, Beneficiary may from time to time elect, and notice hereby is given to each lessee under each Lease, to subordinate the lien of this Deed of Trust to any Lease by unilaterally executing and recording an instrument of subordination, and upon such election the lien of this Deed of Trust shall be subordinate to the Lease identified in such instrument of subordination; provided, however, in each instance such subordination will not affect or be applicable to, and expressly excludes any lien, charge, encumbrance, security interest, claim, easement, restriction, option, covenant and other rights, titles, interests or estates of any nature whatsoever with respect to all or any portion of the Mortgaged Property to the extent that the same may have arisen or intervened during the period between the recordation of this Deed of Trust and the execution of the Lease identified in such instrument of subordination.

(i) Other Rights. Beneficiary (i) may surrender the insurance policies maintained pursuant to Section 4.7 hereof or any part thereof, and upon receipt shall apply the unearned premiums as a credit on the Indebtedness, in accordance with the provisions of Section 7.4 hereof, and, in connection therewith, Grantor hereby appoints Beneficiary as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Grantor to collect such premiums; and (ii) apply the reserve for Impositions and insurance premiums, if any, required by the provisions of this Deed of Trust, toward payment of the Indebtedness; and (iii) shall have and may exercise any and all other rights and remedies which Beneficiary may have at law or in equity, or by virtue of any Loan Document or under the Code, or otherwise.

(j) Beneficiary as Purchaser. Beneficiary may be the purchaser of the Mortgaged Property or any part thereof, at any sale thereof, whether such sale be under the power of sale herein vested in Trustee or upon any other foreclosure of the liens and security interests hereof, or otherwise, and Beneficiary shall, upon any such purchase, acquire good title to the Mortgaged Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmaturing portion of the Indebtedness. Beneficiary, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of Beneficiary's purchase shall be applied in accordance with Section 7.4 of this Deed of Trust.

7.2 OTHER RIGHTS OF BENEFICIARY. Should any part of the Mortgaged Property come into the possession of Beneficiary, whether before or after default, Beneficiary may (for itself or by or through other persons, firms, or entities) hold, lease, manage, use, or operate the Mortgaged Property for such time and upon such terms as Beneficiary may deem prudent under the

circumstances (making such repairs, alterations, additions, and improvements thereto and taking such other action as Beneficiary may from time to time deem necessary or desirable) for the purpose of preserving the Mortgaged Property or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Beneficiary in respect of the Mortgaged Property. Grantor covenants to promptly reimburse and pay to Beneficiary on demand, at the place where the Note is payable, the amount of all reasonable expenses (including without limitation the cost of any insurance, Impositions, or other charges) incurred by Beneficiary in connection with Beneficiary's custody, preservation, use, or operation of the Mortgaged Property, together with interest thereon from the date incurred by Beneficiary at the Default Rate; and all such expenses, costs, taxes, interest, and other charges shall be and become a part of the Indebtedness. It is agreed, however, that the risk of loss or damage to the Mortgaged Property is on Grantor, and Beneficiary shall have no liability whatsoever for decline in value of the Mortgaged Property, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured. Possession by Beneficiary shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Mortgaged Property or collateral not in Beneficiary's possession.

7.3 POSSESSION AFTER FORECLOSURE. If the liens or security interests hereof shall be foreclosed by power of sale granted herein, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Grantor or Grantor's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Grantor and Grantor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Mortgaged Property so occupied and sold to such purchaser), and anyone occupying such portion of the Mortgaged Property, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

7.4 APPLICATION OF PROCEEDS. The proceeds from any sale, lease, or other disposition made pursuant to this Article VII, or the proceeds from the surrender of any insurance policies pursuant hereto, or any Rents collected by Beneficiary from the Mortgaged Property (following any application of such Rents in accordance with Section 9.3 hereof), or the reserve for Impositions and insurance premiums, if any, required by the provisions of this Deed of Trust or sums received pursuant to Section 8.1 hereof, or proceeds from insurance which Beneficiary elects to apply to the Indebtedness pursuant to Section 8.2 hereof, shall be applied by Trustee, or by Beneficiary, as the case may be, to the Indebtedness in the following order and priority: (i) to the payment of all expenses of advertising, selling, and conveying the Mortgaged Property or part thereof, and/or prosecuting or otherwise collecting Rents, proceeds, premiums, or other sums including reasonable attorneys' fees and a reasonable fee or commission to Trustee, not to exceed five percent (5%) of the proceeds thereof or sums so received; (ii) to the remainder of the Indebtedness as follows: first, to the remaining accrued but unpaid interest, second, to the matured portion of principal of the Indebtedness, and third, to prepayment of the unmatured portion, if any, of principal of the Indebtedness applied to installments of principal in inverse order of maturity; (iii) the balance, if any and to the extent applicable, remaining after the full

and final payment of the Indebtedness and full performance and discharge of the Obligations to the holder or Beneficiary of any inferior liens covering the Mortgaged Property, if any, in order of the priority of such inferior liens (Trustee and Beneficiary shall hereby be entitled to rely exclusively upon a commitment for title insurance issued to determine such priority); and (iv) the cash balance, if any, to Grantor. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Indebtedness like any other payment. The balance of the Indebtedness remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note or the other Loan Documents.

7.5 ABANDONMENT OF SALE. In the event a foreclosure hereunder is commenced by Trustee in accordance with Subsection 7.1(d) hereof, at any time before the sale, Trustee may abandon the sale, and Beneficiary may then institute suit for the collection of the Indebtedness and for the foreclosure of the liens and security interests hereof and of the Loan Documents. If Beneficiary should institute a suit for the collection of the Indebtedness and for a foreclosure of the liens and security interests, Beneficiary may, at any time before the entry of a final judgment in said suit, dismiss the same and require Trustee to sell the Mortgaged Property or any part thereof in accordance with the provisions of this Deed of Trust.

7.6 PAYMENT OF FEES. If the Note or any other part of the Indebtedness shall be collected or if any of the Obligations shall be enforced by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by an option given to Beneficiary to mature same, or if Beneficiary becomes a party to any suit where this Deed of Trust or the Mortgaged Property or any part thereof is involved, Grantor agrees to pay Beneficiary's attorneys' fees and expenses incurred, and such fees shall be and become a part of the Indebtedness and shall bear interest from the date such costs are incurred at the Default Rate.

7.7 MISCELLANEOUS.

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

(b) **Other Remedies.** In addition to the remedies set forth in this Article, upon the occurrence of an Event of Default, Beneficiary and Trustee shall, in addition, have all other remedies available to them at law or in equity.

(c) **Remedies Cumulative; Non-Exclusive; Etc.** All rights, remedies, and recourses of Beneficiary granted in the Note, this Deed of Trust, the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Grantor, the Mortgaged Property, or any one or more of them, at the sole discretion of Beneficiary; (iii) may be exercised

as often as occasion therefor shall arise, it being agreed by Grantor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Beneficiary exercising or pursuing any remedy in relation to the Mortgaged Property prior to Beneficiary bringing suit to recover the Indebtedness or suit on the Obligations; and (vi) in the event Beneficiary elects to bring suit on the Indebtedness and/or the Obligations and obtains a judgment against Grantor prior to exercising any remedies in relation to the Mortgaged Property, all liens and security interests, including the lien of this Deed of Trust, shall remain in full force and effect and may be exercised at Beneficiary's option.

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

(e) Waiver and Release by Grantor. Grantor hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to Grantor by virtue of any present or future law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisalment, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment; (ii) all notices of any Event of Default or of Trustee's exercise of any right, remedy, or recourse provided for under the Loan Documents; and (iii) any right to a marshaling of assets or a sale in inverse order of alienation.

(f) No Implied Covenants. Grantor and Beneficiary mutually agree that there are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in this Deed of Trust and the other Loan Documents. All agreed contractual duties are set forth in this Deed of Trust, the Note, and the other Loan Documents.

(g) Real Property Laws Govern. The remedies in this Article VII shall be available under and governed by the real property laws of the in which the Land is located, and shall not be governed by the personal property laws of said state, including but not limited to, the power to dispose of personal property in a commercially reasonable manner under the Code, provided, Beneficiary elects to proceed as to the Fixtures and Personalty together with the other Mortgaged Property under and pursuant to the real property remedies of this Article VII.

7.8 WAIVER OF DEFICIENCY STATUTE.

(a) Waiver. In the event an interest in any of the Mortgaged Property is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale, Grantor agrees, to the extent permitted by law, that Beneficiary shall be entitled to seek a deficiency judgment from Grantor and any other party obligated on the Note equal to the difference between the amount owing on the Note and

the amount for which the Mortgaged Property was sold pursuant to judicial or nonjudicial foreclosure sale. Grantor expressly recognizes that this section may constitute a waiver of certain rights which may otherwise permit Grantor and other persons against whom recovery of deficiencies is sought or Guarantor independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Mortgaged Property as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Grantor further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Mortgaged Property for purposes of calculating deficiencies owed by Grantor, Guarantor, and others against whom recovery of a deficiency is sought.

(b) Alternative to Waiver. Alternatively, in the event the waiver provided for in subsection (a) above is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Mortgaged Property as of the date of the foreclosure sale: (i) the Mortgaged Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Mortgaged Property will be repaired or improved in any manner before a resale of the Mortgaged Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Mortgaged Property for cash promptly (but no later than 12 months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Mortgaged Property, including, without limitation, brokerage commissions, title insurance, a survey of the Mortgaged Property, tax prorations, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Mortgaged Property shall be further discounted to account for any estimated holding costs associated with maintaining the Mortgaged Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Mortgaged Property must be given by persons having at least five (5) years experience in appraising property similar to the Mortgaged Property and who have conducted and prepared a complete written appraisal of the Mortgaged Property taking into consideration the factors set forth above.

ARTICLE VIII: SPECIAL PROVISIONS

8.1 CONDEMNATION PROCEEDS. Beneficiary shall be entitled to receive any and all sums which may be awarded and become payable to Grantor for condemnation of the Mortgaged Property or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Grantor for damages caused by public works or construction on or near the Mortgaged Property. All such sums are hereby assigned to Beneficiary, and Grantor shall, upon request of Beneficiary, make, execute, acknowledge, and deliver any and all additional assignments and documents as may be necessary from time to time to enable Beneficiary to collect and receipt for any such sums. Beneficiary shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the

collection of, any of such sums. Any sums received by Beneficiary as a result of condemnation shall be applied to the Indebtedness in accordance with the provisions of Section 7.4 hereof.

8.2 INSURANCE PROCEEDS. The proceeds of any and all insurance upon the Mortgaged Property (other than proceeds of CGL insurance) shall be collected by Beneficiary, and Beneficiary shall have the option, in Beneficiary's sole discretion, to apply any proceeds so collected either to the restoration of the Mortgaged Property, in the amounts, manner, method and pursuant to such requirements and documents as Beneficiary may require, or to the liquidation of the Indebtedness in accordance with the provisions of Section 7.4 hereof.

8.3 RESERVED.

8.4 INDEMNITY. GRANTOR SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS BENEFICIARY AND TRUSTEE, THEIR RESPECTIVE PARENTS, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ANY AND ALL LIABILITY, DAMAGE, LOSS, COST, OR EXPENSE (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES), ACTION, PROCEEDING, CLAIM OR DISPUTE INCURRED OR SUFFERED BY THE FOREGOING PARTIES SO INDEMNIFIED WHETHER OR NOT AS THE RESULT OF THE NEGLIGENCE OF ANY PARTY SO INDEMNIFIED, WHETHER VOLUNTARILY OR INVOLUNTARILY INCURRED OR SUFFERED, IN RESPECT OF THE FOLLOWING:

(i) ANY LITIGATION CONCERNING THIS DEED OF TRUST, THE OTHER LOAN DOCUMENTS OR THE MORTGAGED PROPERTY, OR ANY INTEREST OF GRANTOR OR BENEFICIARY THEREIN, OR THE RIGHT OF OCCUPANCY THEREOF BY GRANTOR OR BENEFICIARY, WHETHER OR NOT ANY SUCH LITIGATION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT;

(ii) ANY DISPUTE, INCLUDING DISPUTES AS TO THE DISBURSEMENT OF PROCEEDS OF THE NOTE NOT YET DISBURSED, AMONG OR BETWEEN ANY OF THE CONSTITUENT PARTIES OR OTHER PARTNERS OR VENTURERS OF GRANTOR IF GRANTOR IS A GENERAL OR LIMITED PARTNERSHIP, OR AMONG OR BETWEEN ANY EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS OR MANAGERS OF GRANTOR IF GRANTOR IS A CORPORATION OR LIMITED LIABILITY COMPANY, OR AMONG OR BETWEEN ANY MEMBERS, TRUSTEES OR OTHER RESPONSIBLE PARTIES IF GRANTOR IS AN ASSOCIATION, TRUST OR OTHER ENTITY;

(iii) ANY ACTION TAKEN OR NOT TAKEN BY BENEFICIARY OR TRUSTEE WHICH IS ALLOWED OR PERMITTED UNDER THIS DEED OF TRUST OR ANY OF THE OTHER LOAN DOCUMENTS RELATING TO GRANTOR, THE MORTGAGED PROPERTY, ANY CONSTITUENT PARTIES OR OTHERWISE IN CONNECTION WITH THE LOAN DOCUMENTS, INCLUDING WITHOUT LIMITATION, THE PROTECTION OR ENFORCEMENT OF ANY LIEN, SECURITY INTEREST OR OTHER RIGHT, REMEDY OR RECOURSE CREATED OR AFFORDED BY THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS;

(iv) ANY ACTION BROUGHT BY BENEFICIARY OR TRUSTEE AGAINST GRANTOR UNDER THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS, WHETHER OR NOT SUCH ACTION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT; AND

(v) ANY AND ALL LOSS, DAMAGE, COSTS, EXPENSE, ACTION, CAUSES OF ACTION, OR LIABILITY (INCLUDING ATTORNEYS' FEES AND COSTS) DIRECTLY OR INDIRECTLY ARISING FROM OR ATTRIBUTABLE TO THE USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, OR PRESENCE OF A HAZARDOUS SUBSTANCE ON, IN, UNDER OR ABOUT THE MORTGAGED PROPERTY, WHETHER KNOWN OR UNKNOWN AT THE TIME OF THE EXECUTION HEREOF, INCLUDING WITHOUT LIMITATION (A) ALL FORESEEABLE CONSEQUENTIAL DAMAGES OF ANY SUCH USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, OR PRESENCE, AND (B) THE COSTS OF ANY REQUIRED OR NECESSARY ENVIRONMENTAL INVESTIGATION OR MONITORING, ANY REPAIR, CLEANUP, OR DETOXIFICATION OF THE MORTGAGED PROPERTY, AND THE PREPARATION AND IMPLEMENTATION OF ANY CLOSURE, REMEDIAL, OR OTHER REQUIRED PLANS.

BENEFICIARY AND/OR TRUSTEE MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTEST OR ENFORCE ITS RIGHTS, REMEDIES AND RECOURSES UNDER THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS, AND TO ADVISE AND DEFEND BENEFICIARY AND/OR TRUSTEE WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. GRANTOR SHALL REIMBURSE BENEFICIARY AND/OR TRUSTEE FOR THEIR RESPECTIVE ATTORNEYS' FEES AND EXPENSES (INCLUDING EXPENSES AND COSTS FOR EXPERTS) IMMEDIATELY UPON RECEIPT OF A WRITTEN DEMAND THEREFOR, WHETHER ON A MONTHLY OR OTHER TIME INTERVAL, AND WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED OR CONCLUDED. ALL OTHER REIMBURSEMENT AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BECOME DUE AND PAYABLE WHEN ACTUALLY INCURRED BY BENEFICIARY AND/OR TRUSTEE. ANY PAYMENTS NOT MADE WITHIN FIVE (5) DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS SECTION 8.4 SHALL SURVIVE REPAYMENT OF THE INDEBTEDNESS AND PERFORMANCE OF THE OBLIGATIONS, THE RELEASE OF THE LIEN OF THIS DEED OF TRUST, ANY FORECLOSURE (OR ACTION IN LIEU OF FORECLOSURE), THE TRANSFER BY GRANTOR OF ANY OR ALL OF ITS RIGHT, TITLE AND INTEREST IN OR TO THE PROPERTY AND THE EXERCISE BY BENEFICIARY OF ANY AND ALL REMEDIES SET FORTH HEREIN OR IN THE LOAN DOCUMENTS.

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

8.6 WAIVER OF SETOFF. The Indebtedness, or any part thereof, shall be paid by Grantor without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction by reason of: (i) any damage to, destruction of, or any condemnation or similar taking of the Mortgaged Property; (ii) any restriction or prevention of or interference with any use of the Mortgaged Property; (iii) any title defect or encumbrance or any eviction from the Mortgaged Property by superior title or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Trustee, Beneficiary, or Grantor, or any action taken with respect to this Deed of Trust by any Trustee or receiver of Beneficiary or Grantor, or by any court, in any such proceeding; (v) any claim which Grantor has or might have against Trustee or Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Grantor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Grantor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Grantor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of the Indebtedness.

8.7 SETOFF. Beneficiary shall be entitled to exercise both the rights of setoff and banker's lien, if applicable, against the interest of Grantor in and to each and every account and other property of Grantor which are in the possession of Beneficiary to the full extent of the outstanding balance of the Indebtedness.

8.8 CONSENT TO DISPOSITION. It is expressly agreed that Beneficiary may predicate Beneficiary's decision to grant or withhold consent to a Disposition on such terms and conditions as Beneficiary may require, in Beneficiary's sole discretion, including without limitation (i) consideration of the creditworthiness of the party to whom such Disposition will be made and its management ability with respect to the Mortgaged Property, (ii) consideration of whether the security for repayment of the Indebtedness and the performance and discharge of the Obligations, or Beneficiary's ability to enforce its rights, remedies, and recourses with respect to such security, will be impaired in any way by the proposed Disposition, (iii) an increase in the rate of interest payable under the Note or any other change in the terms and provisions of the

Note and other Loan Documents, (iv) reimbursement of Beneficiary for all costs and expenses incurred by Beneficiary in investigating the creditworthiness and management or consulting ability of the party to whom such Disposition will be made and in determining whether Beneficiary's security will be impaired by the proposed Disposition, (v) payment to Beneficiary of a transfer fee to cover the cost of documenting the Disposition in its records, (vi) payment of Beneficiary's reasonable attorneys' fees in connection with such Disposition, (vii) the express assumption of payment of the Indebtedness and performance and discharge of the Obligations by the party to whom such Disposition will be made (with or without the release of Grantor from liability for such Indebtedness and Obligations), (viii) the execution of assumption agreements, modification agreements, supplemental loan documents, and financing statements, satisfactory in form and substance to Beneficiary, (ix) endorsements (to the extent available under applicable law) to any existing mortgagee title insurance policies insuring Beneficiary's liens and security interests covering the Mortgaged Property, and (x) requiring additional security for the payment of the Indebtedness and performance and discharge of the Obligations.

8.9 CONSENT TO SUBORDINATE MORTGAGE. In the event of consent by Beneficiary to the granting of a Subordinate Mortgage, or in the event the right of Beneficiary to declare the Indebtedness to be immediately due and payable upon the granting of a Subordinate Mortgage without the prior written consent of Beneficiary is determined by a court of competent jurisdiction to be unenforceable under the provisions of any applicable law, Grantor will not execute or deliver any Subordinate Mortgage unless (i) it shall contain express covenants to the effect: (a) that the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien and security interest evidenced by this Deed of Trust and each term and provision hereof; (b) that if any action or proceeding shall be instituted to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Mortgaged Property will be named as a party defendant, nor will any action be taken with respect to the Mortgaged Property which would terminate any occupancy or tenancy of the Mortgaged Property without the prior written consent of Beneficiary; (c) that the rents and profits, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the Indebtedness, next to the payment of the Impositions, and then to the performance and discharge of the Obligations; and (d) that if any action or proceeding shall be brought to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), written notice of the commencement thereof will be given to Beneficiary contemporaneously with the commencement of such action or proceeding; and (ii) a copy thereof shall have been delivered to Beneficiary not less than ten (10) days prior to the date of the execution of such Subordinate Mortgage.

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

8.11 CONTEST OF CERTAIN CLAIMS. Notwithstanding the provisions of Sections 4.5 or 4.12 hereof, Grantor shall not be in default for failure to pay or discharge any Imposition or mechanic's or materialman's lien asserted against the Mortgaged Property if, and so long as, (a) Grantor shall have notified Beneficiary of same within five (5) days of obtaining knowledge thereof; (b) Grantor shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Mortgaged Property or any part thereof, to satisfy the same; (c) Grantor shall have furnished to Beneficiary a cash deposit, or an indemnity bond satisfactory to Beneficiary with a surety satisfactory to Beneficiary, in the amount of the Imposition or mechanic's or materialman's lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Mortgaged Property or any part thereof; (d) Grantor shall promptly upon final determination thereof pay the amount of any such Imposition or claim so determined, together with all costs, interest and penalties which may be payable in connection therewith; (e) the failure to pay the Imposition or mechanic's or materialman's lien claim does not constitute a default under any other Deed of Trust, mortgage or security interest covering or affecting any part of the Mortgaged Property; and (f) notwithstanding the foregoing, Grantor shall immediately upon request of Beneficiary pay (and if Grantor shall fail so to do, Beneficiary may, but shall not be required to, pay or cause to be discharged or bonded against) any such Imposition or claim notwithstanding such contest, if in the reasonable opinion of Beneficiary the Mortgaged Property shall be in jeopardy or in danger of being forfeited or foreclosed. Beneficiary may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Beneficiary, the entitlement of such claimant is established.

8.12 MAXIMUM INTEREST. It is expressly stipulated and agreed to be the intent of Grantor and Beneficiary at all times to comply strictly with the applicable Utah law governing the maximum non-usurious rate or non-usurious amount of interest payable on the Indebtedness (or applicable United States federal law to the extent that it permits Beneficiary to contract for, charge, take, reserve or receive a greater amount of interest than under Utah law). If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to the Note, any of the other Loan Documents or any other communication or writing by or between Grantor and Beneficiary related to the Indebtedness or to the transaction or transactions that are the subject matter of the Loan Documents, (ii) contracted for, charged, taken, reserved or received by reason of Beneficiary's exercise of the option to accelerate the maturity of the Note and/or any other portion of the Indebtedness, or (iii) Grantor will have paid or Beneficiary will have received by reason of any voluntary prepayment by Grantor of the Note and/or any other portion of the Indebtedness, then it is Grantor's and Beneficiary's express intent that all amounts charged in excess of the Maximum Lawful Rate shall be automatically canceled, *ab initio*, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Beneficiary shall be credited on the principal balance of the Note and/or any of the other Indebtedness (or, if the Note and all other Indebtedness have been or would thereby be paid in full, refunded to Grantor), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document,

so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if the Note has been paid in full before the end of the stated term of the Note, then Grantor and Beneficiary agree that Beneficiary shall, with reasonable promptness after Beneficiary discovers or is advised by Grantor that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to Grantor and/or credit such excess interest against any other Indebtedness then owing by Grantor to Beneficiary. Grantor hereby agrees that as a condition precedent to any claim seeking usury penalties or claims against Beneficiary, Grantor will provide written notice to Beneficiary, advising Beneficiary in reasonable detail of the nature and amount of the violation, and Beneficiary shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Grantor or crediting such excess interest against the Note and/or the other Indebtedness then owing by Grantor to Beneficiary. All sums contracted for, charged, taken, reserved or received by Beneficiary for the use, forbearance or detention of any of the Indebtedness, including any portion of the Indebtedness evidenced by the Note shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Note and/or the other Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Note and/or the other Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Note and/or the other Indebtedness for so long as any portion of the Indebtedness is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Beneficiary to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

ARTICLE IX: ASSIGNMENT OF RENTS

9.1 PRESENT ASSIGNMENT. In consideration of the Indebtedness and other good and valuable consideration, including the indebtedness evidenced by the Note, the receipt and sufficiency of which are hereby acknowledged and confessed, Grantor absolutely and unconditionally GRANTED, BARGAINED, SOLD, and CONVEYED, and by these presents does absolutely and unconditionally GRANT, BARGAIN, SELL, and CONVEY the Rents unto Beneficiary, in order to provide a source of future payment of the Indebtedness and the Obligations, subject only to the Permitted Exceptions applicable thereto and the License, it being the intention of Grantor and Beneficiary that this conveyance be presently and immediately effective; and is neither conditional nor security for the repayment of the Indebtedness and the Obligations, TO HAVE AND TO HOLD the Rents unto Beneficiary, forever, and Grantor does hereby bind itself, its successors, and assigns to warrant and forever defend the title to the Rents unto Beneficiary against every person whomsoever lawfully claiming or to claim the same or any part thereof.

9.2 LIMITED LICENSE. Beneficiary hereby grants to Grantor the License subject to termination of the License and the other terms and provisions of Section 7.1(h) hereof, to exercise and enjoy all incidences of the status of a lessor with respect to the Rents, including without limitation, the right to collect, demand, sue for, attach, levy, recover, and receive the Rents, and to give proper receipts, releases, and acquittances therefor. Grantor hereby agrees to receive all Rents and hold the same as Beneficiary's Agent to be applied, and to apply the Rents so collected, first to the

payment of the Indebtedness, next to the performance and discharge of the Obligations, and next to the payment of Operating Expenses. Thereafter, Grantor may use the balance of the Rents collected in any manner not inconsistent with the Loan Documents. Neither this Assignment nor the receipt of Rents by Beneficiary shall effect a *pro tanto* payment of the Indebtedness, and such Rents shall be applied as provided in this Section 9.2. Furthermore, and notwithstanding the provisions of this Section 9.2, no credit shall be given by Beneficiary for any Rents until the money constituting the Rents collected is actually received by Beneficiary at the following address: c/o Private Capital Group, Inc., at 160 W. Canyon Crest Road, Alpine, Utah 84004. Further, no such credit shall be given for any Rents collected or released after termination of the License, after foreclosure or other transfer of the Mortgaged Property (or part thereof from which Rents are derived pursuant to this Deed of Trust) to Beneficiary or any other third party.

9.3 RELIANCE UPON LEASE RENT NOTICE. Upon receipt from Beneficiary of a Lease Rent Notice (as defined in Section 7.1(h) hereof), each lessee under the Leases is hereby authorized and directed to pay directly to Beneficiary all Rents thereafter accruing and the receipt of Rents by Beneficiary shall be a release of such lessee to the extent of all amounts so paid. The receipt by a lessee under the Leases of a Lease Rent Notice shall be sufficient authorization for such lessee to make all future payments of Rents directly to Beneficiary and each such lessee shall be entitled to rely on such Lease Rent Notice and shall have no liability to Grantor for any Rents paid to Beneficiary after receipt of such Lease Rent Notice. Rents so received by Beneficiary for any period prior to foreclosure under this Deed of Trust or acceptance of a deed in lieu of such foreclosure shall be applied by Beneficiary to the payment of the following (in such order and priority as Beneficiary shall determine): (a) all Operating Expenses; (b) all expenses incident to taking and retaining possession of the Mortgaged Property and/or collecting Rent as it becomes due and payable; and (c) the Indebtedness. In no event will this Article IX reduce the Indebtedness except to the extent, if any, that Rents are actually received by Beneficiary and applied upon or after said receipt to such Indebtedness in accordance with the preceding sentence. Without impairing its rights hereunder, Beneficiary may, at its option, at any time and from time to time, release to Grantor, Rents so received by Beneficiary or any part thereof. As between Grantor and Beneficiary, and any person claiming through or under Grantor, other than any lessee under the Leases who has not received a Lease Rent Notice, this Assignment of Rents is intended to be absolute, unconditional and presently effective (and not an assignment for additional security), and the Lease Rent Notice hereof is intended solely for the benefit of each such lessee and shall never inure to the benefit of Grantor or any person claiming through or under Grantor, other than a lessee who has not received such Lease Rent Notice. It shall never be necessary for Beneficiary to institute legal proceedings of any kind whatsoever to enforce the provisions of this Deed of Trust with respect to Rents. **GRANTOR SHALL HAVE NO RIGHT OR CLAIM AGAINST ANY LESSEE FOR THE PAYMENT OF ANY RENTS TO BENEFICIARY HEREUNDER, AND GRANTOR HEREBY INDEMNIFIES AND AGREES TO HOLD FREE AND HARMLESS EACH LESSEE FROM AND AGAINST ALL LIABILITY, LOSS, COST, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY SUCH LESSEE BY REASON OF SUCH LESSEE'S COMPLIANCE WITH ANY DEMAND FOR PAYMENT OF RENTS MADE BY BENEFICIARY CONTEMPLATED BY THIS DEED OF TRUST.**

9.4 COLLECTION OF RENT. At any time during which Grantor is receiving Rents directly from any of the lessees under the Leases, Grantor shall, upon receipt of written direction from Beneficiary, make demand and/or sue for all Rents due and payable under one or more Leases, as directed by Beneficiary, as it becomes due and payable, including Rents which are past due and unpaid. If Grantor fails to timely take such action, or at any time during which Grantor is not receiving Rents directly from lessees under the Leases, Beneficiary shall have the right (but shall be under no duty or obligation) to demand, collect and sue for, in its own name or in the name of Grantor, all Rents due and payable under the Leases, as same becomes due and payable, including Rents which are past due and unpaid.

9.5 TERMINATION. Upon payment in full of the Indebtedness, the delivery and recording of a release, satisfaction or discharge of the Deed of Trust duly executed by Beneficiary and a re-assignment of the Rents to Grantor, the assignment in Section 9.1 of this Deed of Trust shall terminate, become null and void and shall be of no further force and effect.

ARTICLE X: SECURITY AGREEMENT

10.1 SECURITY INTEREST. This Deed of Trust (a) shall be construed as a Deed of Trust on real property, and (b) shall also constitute and serve as a "Security Agreement" on personal property within the meaning of, and shall constitute until the grant of this Deed of Trust shall terminate as provided in Article II hereof, a first and prior security interest under the Code as to property within the scope thereof and in the state where the Mortgaged Property is located with respect to the Personalty, Fixtures, Contracts and Leases. To this end, Grantor GRANTS to, has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED, and SET OVER, and by these presents does GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Trustee and Beneficiary, a security interest in all of Grantor's right, title and interest in, to, under and with respect to the Personalty, Fixtures, Contracts and Leases to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. It is the intent of Grantor, Beneficiary, and Trustee that this Deed of Trust encumber all Leases and that all items contained in the definition of "Leases" which are included within the Code be covered by the security interest granted in this Article X; and all items contained in the definition of "Leases" which are excluded from the Code be covered by the provisions of Article II hereof.

10.2 FINANCING STATEMENTS. Grantor hereby agrees with Beneficiary to execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such "Financing Statements" and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect, and preserve Beneficiary's security interest herein granted, and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect, and preserve such security interest. Without limiting the foregoing, Grantor hereby specifically authorizes Beneficiary to prepare, file of record or otherwise effectuate new financing statements, financing statement amendments, and financing statement continuations which describe all or any portion of the Mortgaged Property as collateral thereunder and Grantor specifically agrees that Beneficiary may cause same to be filed without any signature of a representative of the Grantor appearing thereon, where such filings are permitted by applicable law.

10.3 FIXTURE FILING. This Deed of Trust shall also constitute a "fixture filing" for the purposes of the Code. All or part of the Mortgaged Property are or are to become fixtures; information concerning the security interest herein granted may be obtained from either party at the address of such party set forth herein. For purposes of the security interest herein granted, the address of debtor (Grantor) is set forth in the first paragraph of this Deed of Trust and the address of the secured party (Beneficiary) is set forth in Article I hereof.

ARTICLE XI: CONCERNING THE TRUSTEE

11.1 NO REQUIRED ACTION. Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in Trustee's opinion, such action would be likely to involve Trustee in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Beneficiary.

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

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

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

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

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

11.7 NO REPRESENTATION BY TRUSTEE OR BENEFICIARY. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, including without limitation, any officer's certificate, balance sheet,

statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Beneficiary.

ARTICLE XII: MISCELLANEOUS

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

12.2 PERFORMANCE AT GRANTOR'S EXPENSE. Subject to the provisions of Section 8.12 hereof, Grantor shall (i) pay all legal fees incurred by Beneficiary in connection with the preparation of the Loan Documents (including any amendments thereto or consents, releases, or waivers granted thereunder); (ii) reimburse Beneficiary, promptly upon demand, for all amounts expended, advanced, or incurred by Beneficiary to satisfy any obligation of Grantor under the Loan Documents, which amounts shall include (without limitation) all court costs, attorneys' fees (including, without limitation, for trial, appeal, or other proceedings), fees of auditors and accountants and other investigation expenses reasonably incurred by Beneficiary in connection with any such matters; and (iii) any and all other costs and expenses of performing or complying with any and all of the Obligations. Except to the extent that costs and expenses are included within the definition of "Indebtedness," the payment of such costs and expenses shall not be credited, in any way and to any extent, against any installment on or portion of the Indebtedness.

12.3 SURVIVAL OF OBLIGATIONS. Each and all of the Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Indebtedness shall have been paid in full; provided, however, that nothing contained in this Section shall limit the obligations of Grantor as otherwise set forth herein.

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

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

providing for evidence of receipt at the office of the intended addressee, or (iv) by prepaid telegram, telex, or telefacsimile to the addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth herein; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth herein.

12.6 COVENANTS RUNNING WITH THE LAND. All Obligations contained in this Deed of Trust and the other Loan Documents are intended by Grantor, Beneficiary, and Trustee to be, and shall be construed as, covenants running with the Mortgaged Property until the lien of this Deed of Trust has been fully released by Beneficiary.

12.7 SUCCESSORS AND ASSIGNS. Subject to the provisions of Sections 6.7 and 6.8 hereof, all of the terms of the Loan Documents shall apply to, be binding upon, and inure to the benefit of the parties thereto, their successors, assigns, heirs, and legal representatives, and all other persons claiming by, through, or under them.

12.8 NO WAIVER; SEVERABILITY. Any failure by Trustee or Beneficiary to insist, or any election by Trustee or Beneficiary not to insist, upon strict performance by Grantor or others of any of the terms, provisions, or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other terms, provisions, or conditions thereof, and Trustee or Beneficiary shall have the right at any time or times thereafter to insist upon strict performance by Grantor or others of any and all of such terms, provisions, and conditions. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

12.9 COUNTERPARTS. To facilitate execution, this Deed of Trust may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Deed of Trust to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached

to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

12.10 WAIVER OF FRAUDULENT INDUCEMENT. Neither Beneficiary nor any affiliate of Beneficiary has made any representation, warranty or statement to Grantor in order to induce Grantor to execute this Deed of Trust. Grantor hereby expressly waives any claim of fraudulent inducement to execute this Deed of Trust and further disclaims any reliance or statements on or representations of Beneficiary in waiving such claim.

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

12.12 WAIVER OF CONSEQUENTIAL, PUNITIVE AND SPECULATIVE DAMAGES. Grantor and Beneficiary agree that, in connection with any action, suit or proceeding relating to or arising out of this Deed of Trust or any of the other Loan Documents, each mutually waives to the fullest extent permitted by applicable law any claim for consequential, punitive or speculative damages.

12.13 CONTROLLING AGREEMENT. In the event of any conflict between the provisions of this Deed of Trust and any of the other Loan Documents, it is the intent of the parties hereto that the provisions of this Deed of Trust shall control. The parties hereto acknowledge that they were

represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same.

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

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

12.16 PAYMENTS. Remittances in payment of any part of the Indebtedness other than in the required amount in funds immediately available at the place where the Note is payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Beneficiary in funds immediately available at the place where the Note is payable (or such other place as Beneficiary, in Beneficiary's sole discretion, may have established by delivery of written notice thereof to Grantor) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Beneficiary of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default.

12.17 EXCEPTIONS TO COVENANTS. Grantor shall not be deemed to be permitted to take any action or to fail to take any action with respect to any particular covenant or condition contained herein or in any of the Loan Documents if the action or omission would result in the breach of any other covenant or condition contained herein or in any of the Loan Documents which has not been specifically waived or consented to by Beneficiary, nor shall Beneficiary be deemed to have consented to any such act or omission if the same would provide cause for acceleration of the Indebtedness as a result of the breach of any other covenant or condition contained herein or

in any of the Loan Documents which has not been specifically waived or consented to by Beneficiary.

12.18 RELIANCE. Grantor recognizes and acknowledges that in entering into the loan transaction evidenced by the Loan Documents and accepting this Deed of Trust, Beneficiary is expressly and primarily relying on the truth and accuracy of the foregoing warranties and representations set forth in Article III hereof without any obligation to investigate the Mortgaged Property and notwithstanding any investigation of the Mortgaged Property by Beneficiary; that such reliance exists on the part of Beneficiary prior hereto; that such warranties and representations are a material inducement to Beneficiary in making the loan evidenced by the Loan Documents and the acceptance of this Deed of Trust; and that Beneficiary would not be willing to make the loan evidenced by the Loan Documents and accept this Deed of Trust in the absence of any of such warranties and representations.

12.19 CHANGE OF SECURITY. Any part of the Mortgaged Property may be released, regardless of consideration, by Beneficiary from time to time without impairing, subordinating, or affecting in any way the lien, security interest, and other rights hereof against the remainder. The lien, security interest, and other rights granted hereby shall not be affected by any other security taken for the Indebtedness or Obligations, or any part thereof. The taking of additional collateral, or the amendment, extension, renewal, or rearrangement of the Indebtedness or Obligations, or any part thereof, shall not release or impair the lien, security interest, and other rights granted hereby, or affect the liability of any endorser or guarantor or improve the right of any junior lienholder; and this Deed of Trust, as well as any instrument given to secure any amendment, extension, renewal, or rearrangement of the Indebtedness or Obligations, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the Indebtedness is fully paid and the Obligations are fully performed and discharged.

12.20 HEADINGS. The Article, Section, and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing the text of such Articles, Sections, or Subsections.

12.21 ENTIRE AGREEMENT; AMENDMENT. THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO. The provisions hereof and the other Loan Documents may be amended or waived only by an instrument in writing signed by Grantor and Beneficiary.

12.22 WAIVER OF RIGHT TO TRIAL BY JURY. GRANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF

ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY BENEFICIARY IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS.

12.23 RESERVED.

12.24 COUNTING OF DAYS. The term "days" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Land is located (whether legal or religious in nature), the period shall be deemed to end on the next succeeding business day. The term "business day" or "Business Day" when used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in Salt Lake City, Utah are authorized by law to be closed.

12.25 BENEFICIARY'S DISCRETION. Whenever pursuant to this Deed of Trust, Beneficiary exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Beneficiary, the decision of Beneficiary to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Beneficiary and shall be final and conclusive.

12.26 NO MERGER OF ESTATES. So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and unperformed or undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge but rather shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Beneficiary, any lessee, or any third party purchaser or otherwise.

12.27 SUBSEQUENT BANKRUPTCY. In the event of Grantor's subsequent default hereunder, Grantor hereby covenants not to impede Beneficiary's rightful exercise of its right under the Loan Documents by seeking protection under Title 11 of the United States Bankruptcy Code. Grantor hereby agrees that the negotiations leading up to the execution of the Loan Documents, including this Deed of Trust, have been the equivalent of a restructuring transaction under the protection of the bankruptcy stay, that it acknowledges that this has been an adequate opportunity for Grantor to achieve a restructuring of its debts and that it represents a fair resolution of all issues such that a subsequent bankruptcy proceeding would amount to a second bankruptcy proceeding. Therefore, Grantor agrees, that in consideration of the Loan Documents, including this Deed of Trust, Grantor will not seek protection under Title 11 of the United States Bankruptcy Code. Further, in the event that an order for relief pursuant to Title 11 of the United States Bankruptcy Code is entered against Grantor, Grantor hereby consents to relief from the automatic stay pursuant to 11 U.S.C. §362 and hereby irrevocably waives all defenses or objections thereto, in order to permit Beneficiary to pursue its right under general law.

12.28 NOTICE OF INDEMNIFICATION. Grantor hereby acknowledges and agrees that this Deed of Trust contains certain indemnification provisions (including, without limitation, those contained in sections 7.1(b) and 8.4 hereof) which, in certain circumstances, could include and indemnification by Grantor of Beneficiary from claims or losses arising as a result of Beneficiary's own negligence.

IN WITNESS WHEREOF, Grantor has executed and delivered this Deed of Trust as of the day and year first above written.

GRANTOR:
LITTLE MOUNTAIN RABBIT PATCH, LLC
a Utah limited liability company

Signature: *Richard C. Weeks*
By: Richard C. Weeks, its Manager
Office Address:
791 South 9300 West
Ogden, UT 84404

ACKNOWLEDGEMENT

STATE OF Utah }
COUNTY OF Utah }

On the 7th day of April in the year 2011 before me, the undersigned, personally appeared Richard C. Weeks, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signatures on the instrument, the individual(s), or the persons upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the State of Utah, County of Utah.

Leslie Peterson
Notary Public

My commission expires: 1-9-15

(SEAL)



EXHIBIT "A"

List of Beneficiaries

- i. Sunwest Trust as Custodian for Richard A. Schleicher IRA 201105900 with an undivided zero and seventy-four hundredths percent (0.74000000) interest;
- ii. Equity Trust Company Custodian FBO Thomas Duro IRA Acct. 116580 with an undivided one and zero percent (1.00000000) interest;
- iii. Equity Trust Company Custodian FBO Judith Duro IRA Acct. 116582 with an undivided one and one tenths percent (1.10000000) interest;
- iv. Equity Trust Company Custodian FBO Thomas Duro IRA Acct. 116581 with an undivided one and forty-five hundredths percent (1.45000000) interest;
- v. Equity Trust Company Custodian FBO Mark Dehaven IRA Acct. 115660 with an undivided one and five tenths percent (1.50000000) interest;
- vi. Equity Trust Company Custodian FBO Donald Paul IRA Acct. 116681 with an undivided one and nine tenths percent (1.90000000) interest;
- vii. Equity Trust Company Custodian FBO Scott Orf IRA Acct. 115580 with an undivided two and zero percent (2.00000000) interest;
- viii. Equity Trust Company Custodian FBO Claire B. Hawley IRA Acct. 115185 with an undivided two and three tenths percent (2.30000000) interest;
- ix. Scott Burgess with an undivided two and five tenths percent (2.50000000) interest;
- x. Equity Trust Company Custodian FBO Kenneth Irons IRA Acct. 116702 with an undivided two and five tenths percent (2.50000000) interest;
- xi. Equity Trust Company Custodian FBO Steven Ray IRA Acct. 116621 with an undivided two and eighty-six hundredths percent (2.86000000) interest;
- xii. Equity Trust Company Custodian FBO Shirley Karman IRA Acct. 111612 with an undivided three and zero percent (3.00000000) interest;
- xiii. Equity Trust Company Custodian FBO Glen Hughes IRA Acct. 114308 with an undivided three and two tenths percent (3.20000000) interest;
- xiv. Equity Trust Company Custodian FBO John B. Giacoma IRA Acct. 116675 with an undivided three and four tenths percent (3.40000000) interest;
- xv. Equity Trust Company Custodian FBO Gregory A. Hansen IRA Acct. 116052 with an undivided three and eighty-five hundredths percent (3.85000000) interest;
- xvi. Equity Trust Company Custodian FBO Mary Lear IRA Acct. 116988 with an undivided four and two tenths percent (4.20000000) interest;
- xvii. Sunwest Trust as Custodian for Patricia Werner IRA 201105891 with an undivided five and zero percent (5.00000000) interest;
- xviii. Equity Trust Company Custodian FBO Barry Snyder IRA Acct. 116506 with an undivided five and zero percent (5.00000000) interest;
- xix. Equity Trust Company Custodian FBO Diana Cone IRA Acct. 116493 with an undivided five and zero percent (5.00000000) interest;
- xx. Carolyn May with a undivided five and zero percent (5.00000000) interest;
- xxi. PENSICO Trust Company Custodian FBO David Greenlees IRA Acct. 20004341 with an undivided seven and five tenths percent (7.50000000) interest; and
- xxii. Equity Trust Company Custodian FBO John Schuch IRA Acct. 106751 with an undivided thirty five and zero percent (35.00000000) interest.

EXHIBIT B

DESCRIPTION OF THE PROPERTY

PARCEL NO. 1:

Part of the Southeast Quarter of Section 17, Township 6 North, Range 3 West, Salt Lake Base and Meridian, U.S. Survey: BEGINNING at a point in the center of Spur Rail said point being 24.85 feet North 89°50' East along the section line and 1181.94 feet North 0°02'24" East from the Southwest corner of said quarter section; Running THENCE North 0°02'24" East 255.62 feet along the centerline of said spur rail; THENCE North 89°45'54" East 268.03 feet to an existing fence line extended; THENCE South 01°16'45" West 255.71 feet along said fence and fence line extended; THENCE South 89°45'54" West 262.50 feet to THE POINT OF BEGINNING.

TAX ID No.: 10-038-0011 *pd*

PARCEL NO. 2:

Part of the Southeast Quarter of Section 17, Township 6 North, Range 3 West, Salt Lake Base and Meridian, U.S. Survey; BEGINNING at a point which is 25 feet North 89°50' East and North 0°02'24" East 50 feet from the intersection of the centerline of 900 South Street (being the South section of line of Section 17) and the West line of the East 1/2 of Section 17; Running THENCE North 89°50' East along the North line of 900 South Street 949.8 feet to the Westerly line of 9300 West Street; THENCE North 0°02'24" East along the Westerly line of 9300 West Street 2219.25 feet; THENCE South 89°50' West 949.80 feet to the centerline of easement as deeded in Book 1229, Page 641, Parcel 1, said point being on East line of the property deeded to the Western Zirconium Inc. in Book 1265, Page 698; thence South 0°02'24" West along said Easterly line 2219.25 feet to THE POINT OF BEGINNING.

EXCEPTING THEREFROM the following described parcel:

BEGINNING at a point in the center of Spur Rail said point being 24.85 feet North 89°50' East along the section line and 1181.94 feet North 0°02'24" East from the Southwest corner of said quarter section; Running THENCE North 0°02'24" East 255.62 feet along the centerline of said spur rail; THENCE North 89°45'54" East 268.03 feet to an existing fence line extended; THENCE South 01°16'45" West 255.71 feet along said fence and fence line extended; THENCE South 89°45'54" West 262.50 feet to THE POINT OF BEGINNING.

TAX ID No.: 10-038-0014 *pd*

PROPERTY ADDRESS: 791 South 9300 West, Ogden, UT 84404