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KATHY HILL
SKAGIT COUNTY AUDITOR

AFTER RECORDING MAIL TO: 9806080143

98 JUN -8 P3:42

Name METLIFE CAPITAL CORP.
Address 10900 N.E. 4TH STREET STE500
City/State BELLEVUE, WA. 98004

RECORDED _____ FILED _____
REQUEST OF _____

Document Title(s): (or transactions contained therein)

- 1. DEED OF TRUST
- 2. ASSIGNMENT OF RENTS AND LEASES
- 3. SECURITY AGREEMENT
- 4. UCC FIXTURE FILING



First American Title Insurance Company

FIRST AMERICAN TITLE CO.
BS5006-2

(this space for title company use only)

Reference Number(s) of Documents assigned or released:

Additional numbers on page _____ of document

Grantor(s): (Last name first, then first name and initials)

- 1. MEDALIA, INC., A WA CORP
- 2.
- 3.
- 4.
- 5. Additional names on page _____ of document

Grantee(s): (Last name first, then first name and initials)

- 1. METLIFE CAPITAL CORPORATION
- 2. FIRST AMERICAN TITLE CO., TRUSTEE
- 3.
- 4.
- 5. Additional names on page _____ of document

Abbreviated Legal Description as follows: (i.e. lot/block/plat or section/township/range/quarter/quarter)
PORTION LOTS 3-6, ALL LOTS 7-10, BLOCK 9 BEHRENS & MOODY TO MOUNT VERNON

Complete legal description is on page _____ of document

Assessor's Property Tax Parcel / Account Number(s):
3703-009-006-0009 3703-009-010-0102

NOTE: The auditor/recorder will rely on the information on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

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**Recording Requested By And
When Recorded Mail To:
MetLife Capital Corporation
Franchise Finance Department
10900 N.E. 4th Street, Suite 500
Bellevue, Washington 98004
Loan No: 001-1218-001**

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT, AND UCC FIXTURE FILING
(Security For Construction Loan)**

Grantor (Borrower): MEDALIA, INC., a Washington corporation

Grantee (Lender): METLIFE CAPITAL CORPORATION

Grantee (Trustee): FIRST AMERICAN TITLE COMPANY OF SKAGIT COUNTY

**Legal Description (abbreviated): Portion Lots 3-6, and all Lots 7-10, Block 9;
"Behrens & Moody to Mount Vernon".**

Assessor's Tax Parcel ID# 3703-009-006-0009 (R52232); 3703-009-010-0102 (R52236).

Reference Nos. of Documents Released or Assigned: _____

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, AND SECURITY AGREEMENT (herein "Deed of Trust") is made and granted this 8th day of June, 1998, by Grantor, MEDALIA, INC., a Washington corporation ("Borrower"), whose mailing address is 200 West Mercer Street, Suite 101, Seattle, Washington 98119, to FIRST AMERICAN TITLE CO OF SKAGIT COUNTY ("Trustee"), whose mailing address is P.O. Box 1667, Mount Vernon, Washington, 98273 for the benefit of the Beneficiary, METLIFE CAPITAL CORPORATION whose mailing address is 10900 NE 4th Street, Suite 500, Bellevue, Washington 98804, Attention: Franchise Finance Department ("Lender"). For purpose of Article 9 of the Uniform Commercial Code (RCW 62A.9), the Borrower is the Debtor, Lender is the Secured Party and this Deed of Trust constitutes a Financing Statement.

In consideration of the Loan described below, Borrower hereby irrevocably GRANTS, TRANSFERS, CONVEYS and ASSIGNS to Trustee, IN TRUST, WITH POWER OF SALE, all of its present and future estate, rights, title, claim, interest and demand, either in law or in equity, of, in and to the following property:

- a. the real property located in Skagit County, Washington, and described on Exhibit A attached hereto and incorporated herein, including all heretofore or hereafter vacated alleys and streets abutting the property, and all easements, rights, appurtenances, tenements, hereditaments, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property (collectively "Premises");**
- b. all buildings, structures, improvements, parking areas, landscaping, equipment, fixtures, and articles of property now or hereafter erected on, attached to, or used or adapted for use in the operation of the Premises (all of the foregoing together with replacements and additions thereto are referred to herein as "Improvements");**

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- c. all the right, title and interest of Borrower in, to and under all written and oral leases and rental agreements (including extensions, renewals and subleases; all of the foregoing shall be referred to collectively herein as the "Leases") now or hereafter affecting the Premises and all rents, issues, profits and other revenues and income therefrom, and all guaranties of tenants' performance under the Leases;
 - d. all plans, specifications, warranties, guaranties, bonds, contracts and agreements relating to the design or construction of the Improvements; all landscaping and construction materials, supplies and equipment used or to be used or consumed in connection with the construction of the Improvements, whether stored on the Premises or at some other location;
 - e. all contracts, rights, claims or causes of action pertaining to or affecting the Premises or the Improvements, including, without limitation, all permits, licenses, franchises and certificates, and all compensation, awards, damages and proceeds payable as a result of any taking of the Premises or Improvements (or any sale in lieu thereof) or as a result of any damage to the Premises or the Improvements;
 - f. all books, records, surveys, reports and other documents related to the Premises, the Improvements, the Leases, or other items of collateral described herein;
 - g. all additions, accessions, replacements, substitutions, proceeds and products of the real and personal property, tangible and intangible, described herein;
 - h. all of Borrower's rights and interests under the contract between Borrower and Tausher Building Design ("Architect") as the same may be amended from time to time (the "Architect Contract"), together with all plans, specifications, drawings and other materials prepared or provided by Architect in connection with the construction of the Improvements (the "Plans"); and
 - i. all of Borrower's rights and interest under those certain Construction Contracts between Borrower and ASI Axthelm & Swett Construction and Pacific Environmental Services Company relating to the construction of the Improvements, as the same may be amended from time to time (the "Construction Contracts").

The Premises, the Improvements, the Leases and all of the rest of the foregoing property are herein referred to as the "Property."

TO SECURE TO METLIFE (a) the repayment of the indebtedness evidenced by Borrower's note dated of even date herewith in the principal sum of up to **ONE MILLION TWO HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$1,257,500.00)**, with interest thereon as set forth in the note, and all renewals, extensions and modifications thereof (herein the "Note"), and with a final maturity date of August 1, 2013; (b) the repayment of any future advances, with interest thereon, made by METLIFE to Borrower

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pursuant to Section 24 hereof (herein "Future Advances"); (c) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument or to fulfill any of Borrower's obligations hereunder or under any of the Loan Documents; (d) the performance of the covenants and agreements of Borrower contained herein or in the Loan Documents (as hereinafter defined); or (e) the repayment of all sums now or hereafter owing to METLIFE by Borrower pursuant to any instrument which recites that it is secured hereby. The indebtedness and obligations described in clauses (a)-(e) above are collectively referred to herein as the "Indebtedness." The Note, this Instrument, the Borrower's Certificate dated of even date herewith, the Loan Agreement dated of even date herewith and all other documents evidencing, securing or guarantying the Indebtedness (except the Certificate and Indemnity Agreement Regarding Hazardous Substances dated of even date herewith), as the same may be modified or amended from time to time, are referred to herein as the "Loan Documents." A true, correct and complete copy of the Note is attached hereto as Exhibit B and incorporated herein by reference. The terms of the Note secured hereby may provide that the interest rate or payment terms or balance due may be indexed, adjusted, renewed, or renegotiated from time to time, and this Instrument shall continue to secure the Note notwithstanding any such indexing, adjustment, renewal or renegotiation.

Borrower represents and warrants that Borrower has good, marketable and insurable title to, and has the right to grant, convey and assign an indefeasible fee simple estate in, the Premises, Improvements, and Leases, (or, if this Instrument is on a leasehold, good, marketable and insurable title to, and the right to convey the leasehold estate and that the ground lease is in full force and effect without modification except as noted above and without default on the part of either lessor or lessee thereunder), and the right to convey the other Property, that the Property is unencumbered except for the matters set forth on Exhibit C attached hereto, and that Borrower will warrant and forever defend unto Trustee the title to the Property against all claims and demands, subject only to the permitted exceptions set forth in Exhibit C attached hereto.

Borrower represents and warrants to METLIFE that (a) the Supply and Purchase Agreement dated _____, 1998, by and between Borrower and Northwest Fuel Co., Inc. (the "Franchise Agreement") with respect to the Property is in full force and effect; (b) the Architect Contract is in full force and effect and has not been modified or amended; and (c) the Construction Contracts are in full force and effect and have not been modified or amended.

Borrower represents, warrants, covenants and agrees for the benefit of METLIFE as follows:

1. **PAYMENT OF PRINCIPAL AND INTEREST.** Borrower shall promptly pay when due the principal of and interest on the Indebtedness, any prepayment and other charges provided in the Loan Documents and all other sums secured by this Instrument.
2. **FUNDS FOR TAXES, INSURANCE AND OTHER CHARGES.** Upon the occurrence of an Event of Default (hereinafter defined), METLIFE shall thereafter have the right to require Borrower to pay on or before the first day of each month, in addition to each monthly payment on the Note, one-twelfth of the annual real estate taxes, insurance

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premiums, assessments, water and sewer charges, ground rents and other charges (such as taxes, premiums, rents and other charges are collectively, the "Impositions") payable with respect to the Property (as estimated by METLIFE in its sole discretion), to be held by METLIFE, without interest to Borrower, for the payment of the Impositions. If at any time the amount of the Impositions held by METLIFE shall be less than the amount deemed necessary by METLIFE to pay the Impositions as they become due, Borrower shall pay to METLIFE any amount necessary to pay the deficiency in full within thirty (30) days after Borrower's receipt of a written request for payment of such deficiency from METLIFE.

3. **APPLICATION OF PAYMENTS.** Unless applicable law provides otherwise, each complete installment payment received by METLIFE from Borrower under the Note or this Instrument shall be applied by METLIFE first in payment of any amounts payable to METLIFE by Borrower under Section 2 hereof, then to late charges, post-maturity interest and any prepayment premium due, then to interest payable on the Note, then to principal of the Note, and then to interest and principal on any Future Advances in such order as METLIFE, at METLIFE's sole discretion, shall determine. After the occurrence of an Event of Default, METLIFE may apply any payments received by METLIFE and all or any portion of the Impositions held by METLIFE to the payment of such amounts and in such order as METLIFE may determine in METLIFE'S sole discretion. Any partial payment received by METLIFE on the Note shall, at METLIFE's option, be held in a non-interest bearing account until METLIFE receives funds sufficient to equal a complete installment payment.
4. **CHARGES. LIENS.**
- a. Borrower shall pay the Impositions attributable to the Property in the manner provided under Section 2 hereof or, if not paid pursuant to Section 2 of this Instrument, by Borrower making payment, when due, directly to the payee of each of the Impositions, or in such other manner as METLIFE may designate in writing. If requested by METLIFE, Borrower shall promptly furnish to METLIFE all bills for the Impositions which become due, and in the event Borrower shall make direct payment of any of the Impositions, Borrower shall promptly furnish to METLIFE receipts evidencing each such payment.
- b. Borrower shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without METLIFE's prior written consent, Borrower shall not allow any lien to be perfected against the Property. If any lien inferior to this Instrument is filed against the Property without METLIFE's prior written consent and without the consent of Borrower, Borrower shall, within thirty (30) days after receiving notice of the filing of such lien, either (i) cause such lien to be released of record and deliver evidence of such release to METLIFE or (ii) if Borrower elects to contest the validity of such lien, deliver to METLIFE such additional security as METLIFE shall deem appropriate to protect

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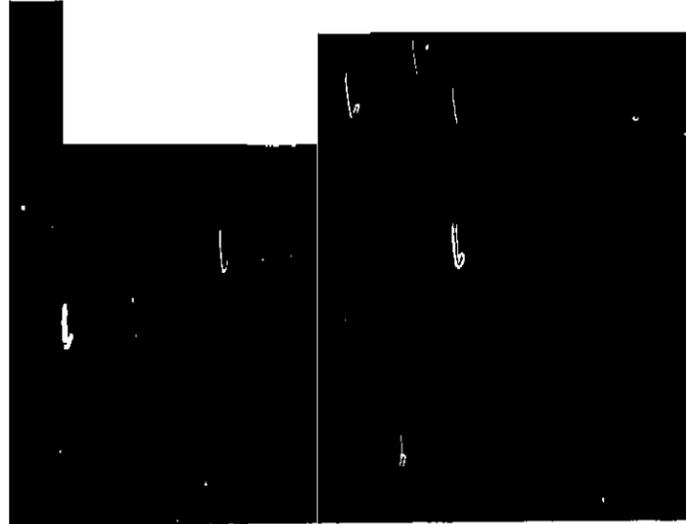
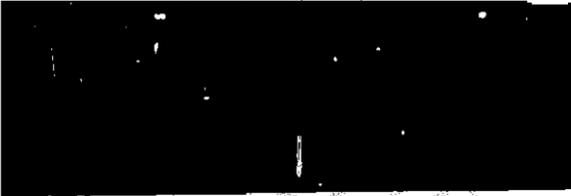
METLIFE and the Property from any adverse consequences arising from Borrower's election to contest such lien.

5. **INSURANCE.** Borrower shall obtain and maintain the following types of insurance upon and relating to the Property:
- a. "All Risk" property and fire insurance (with extended coverage endorsement including malicious mischief and vandalism) in an amount not less than the full replacement value of the Property (with a deductible not to exceed \$5,000 and with co-insurance limited to a maximum of 10% of the amount of the policy), naming METLIFE under a lender's loss payee endorsement (form 438BFU or equivalent) and including agreed amount, inflation guard, replacement cost and waiver of subrogation endorsements;
 - b. "Builder's Risk" insurance providing all risk coverage on the Improvements, including materials stored at the Premises, and containing such endorsements as may be required by METLIFE;
 - c. Comprehensive general liability insurance in an amount not less than \$2,000,000.00 insuring against personal injury, death and property damage and naming METLIFE as additional insured;
 - d. Business interruption insurance covering loss of rental or other income (including all expenses payable by tenants) for up to six (6) months; and
 - e. Such other types of insurance or endorsements to existing insurance as may reasonably be required from time to time by METLIFE.

Upon each reasonable request of METLIFE, Borrower shall increase the coverages under any of the insurance policies required to be maintained hereunder or otherwise modify such policies in accordance with METLIFE's request. All of the insurance policies required hereunder shall be issued by corporate insurers licensed to do business in the state in which the Property is located and rated A:X or better by A.M. Best Company, and shall be in form acceptable to METLIFE. If and to the extent that the Property is located within an area that has been or is hereafter designated or identified as an area having special flood hazards by the Department of Housing and Urban Development or such other official as shall from time to time be authorized by federal or state law to make such designation pursuant to any national or state program of flood insurance, Borrower shall carry flood insurance with respect to the Property in amounts not less than the maximum limit of coverage then available with respect to the Property or the amount of the Indebtedness, whichever is less. Certificates of all insurance required to be maintained hereunder shall be delivered to METLIFE, along with evidence of payment in full of all premiums required thereunder, contemporaneously with Borrower's execution of this Instrument. All such certificates shall be in form acceptable to METLIFE and shall require the insurance company to give to METLIFE at least thirty (30) days' prior written notice before canceling the policy for any reason or materially amending it. Certificates evidencing all renewal and substitute policies of insurance shall be delivered to METLIFE, along with evidence of the payment in full of all

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premiums required thereunder, at least thirty (30) days before termination of the policies being renewed or substituted. If any Loss shall occur at any time when Borrower shall be in default hereunder, METLIFE shall be entitled to the benefit of all insurance policies held or maintained by Borrower, to the same extent as if same had been made payable to METLIFE, and upon foreclosure hereunder, METLIFE shall become the owner thereof. METLIFE shall have the right, but not the obligation, to make premium payments, at Borrower's expense, to prevent any cancellation, endorsement, alteration or reissuance of any policy of insurance maintained by Borrower, and such payments shall be accepted by the insurer to prevent same.

If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) shall result in damage to or destruction of the Property (such event being called a "Loss"), Borrower will give prompt written notice thereof to METLIFE. All insurance proceeds paid or payable in connection with any Loss shall be paid to METLIFE. If (i) no Event of Default has occurred and is continuing hereunder, (ii) Borrower provides evidence satisfactory to METLIFE of its ability to pay all amounts becoming due under the Note during the pendency of any restoration or repairs to or replacement of the Property, (iii) the available insurance proceeds are, in METLIFE's judgment, sufficient to fully and completely restore, repair or replace the Property and (iv) Borrower provides evidence satisfactory to METLIFE that the Franchise Agreement will not be terminated as a result of either the Loss or the repairs to or replacement of the Property, Borrower shall have the right to apply all insurance proceeds received in connection with such Loss to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such Loss. If an Event of Default has occurred and is continuing hereunder at the time of Loss, if METLIFE determines that Borrower will be unable to pay all amounts becoming due under the Note during the pendency of any restoration or repairs to or replacement of the Property, if the available insurance proceeds are insufficient, in METLIFE's judgment, to fully and completely restore, repair or replace the Property or if METLIFE believes that the Franchise Agreement will be terminated as a result of either the Loss or the repairs to or replacement of the Property, then all of the insurance proceeds payable with respect to such Loss will be applied to the payment of the Indebtedness, or if so instructed by METLIFE, Borrower will promptly, at Borrower's sole cost and expense and regardless of whether sufficient insurance proceeds shall be available, commence to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition, character immediately prior to such Loss. Borrower shall diligently prosecute any restoration, repairs or replacement of the Property undertaken by or on behalf of Borrower pursuant to this Section 5. All such work shall be conducted pursuant to written contracts approved by METLIFE in writing. Notwithstanding anything contained herein to the contrary, in the event the insurance proceeds received by METLIFE following any Loss are insufficient in METLIFE's judgment to fully and completely restore, repair or replace the Property, and if Borrower has complied with all of the other conditions described in this Section 5, Borrower may elect to restore, repair or replace the Property if it first deposits with METLIFE such additional sums as METLIFE determines are necessary in order to fully and completely restore, repair or replace the Property. In the event any insurance proceeds remain following any restoration, repair or replacement of the Property, such proceeds shall be applied to the Indebtedness in such order as METLIFE may elect.

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6. PRESERVATION AND MAINTENANCE OF PROPERTY. Borrower (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as METLIFE may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (d) shall keep the Property, including all improvements, fixtures, equipment, machinery and appliances thereon, in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair, (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property (including, without limitation, all applicable zoning laws and ordinances), (f) if all or part of the Property is for rent or lease, then METLIFE, at its option after the occurrence of an Event of Default, may require Borrower to provide for professional management of the Property by a property manager satisfactory to METLIFE pursuant to a contract approved by METLIFE in writing, (g) shall comply with the terms of any restrictive covenants or other similar documents applicable to the Property, and (h) shall give notice in writing to METLIFE of and, unless otherwise directed in writing by METLIFE, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of METLIFE hereunder. Neither Borrower nor any tenant or other person, without the written approval of METLIFE, shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

7. USE OF PROPERTY. Borrower shall not, without METLIFE's prior written consent, (i) initiate or consent to a change in the zoning classification of the Property, (ii) file any subdivision or parcel map affecting the Property, (iii) amend, modify or consent to any easement or covenants, conditions and restrictions pertaining to the Property, or (iv) change the use of the Property from its use as of the date of this Instrument.

8. ADVANCES TO PROTECT METLIFE'S SECURITY.

a. If Borrower fails to perform any of the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of METLIFE therein, including, but not limited to, eminent domain, insolvency, code enforcement, or proceedings involving a bankrupt or decedent, then METLIFE at METLIFE's option may make such appearances, disburse such sums and take such action as METLIFE deems necessary, in its sole discretion, to protect METLIFE's interest, including, but not limited to, (i) disbursement of attorneys' fees, (ii) entry upon the Property to make repairs, and (iii) procurement of satisfactory insurance as provided in Section 5 hereof;

b. Borrower shall pay all costs and expenses advanced or incurred by METLIFE in enforcing its rights and taking any actions from time to time permitted by the terms of the Loan

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Documents including, without limitation, reasonable attorneys' fees and expenses, accountants' fees, and inspection and engineering fees.

- c. Any amounts advanced or incurred by METLIFE pursuant to this Section 8, with interest thereon, shall constitute advances to protect the Property, shall become additional indebtedness of Borrower secured by this Instrument and shall have the same priority as this Instrument. All such amounts shall be due and payable upon demand and shall bear interest from the date METLIFE notifies Borrower of the disbursement at the post-maturity rate of interest stated in the Note. Nothing contained in this Section 8 shall require METLIFE to incur any expense or take any action hereunder.
9. **INSPECTION.** METLIFE and its agents, contractors and employees may make or cause to be made reasonable entries upon the Property to inspect the interior and exterior thereof.
10. **FINANCIAL DATA.**
- a. Borrower will furnish to METLIFE, and will cause each guarantor of the Indebtedness to furnish to METLIFE on request, within ninety (90) days after the close of each calendar year, (i) annual balance sheet and profit and loss statements for the immediately preceding calendar year, prepared in accordance with generally accepted accounting principles and practices consistently applied and, if METLIFE so requires, accompanied by the annual audit report of any independent certified public accountant reasonably acceptable to METLIFE, (ii) an annual operating statement for the immediately preceding calendar year, together with a complete rent roll and other supporting data reflecting all material information with respect to the operation of the Property and Improvements during the period covered thereby, and (iii) all other financial information and reports that METLIFE may from time to time reasonably request, including, if METLIFE so requires, income tax returns of Borrower and any guarantor of the Indebtedness, and financial statements of any tenant of the Property designated by METLIFE.
- b. So long as the Indebtedness remains outstanding, Borrower's "Cash Flow" must equal or exceed 120% of the aggregate debt service (i.e., principal and interest) and capital lease payments paid by Borrower with respect to each calendar year. The term "Cash Flow" shall mean, with respect to each calendar year, the sum of Borrower's net operating income, plus interest expenses, plus Borrower's depreciation expenses and Borrower's amortization expenses for such year, plus or minus Borrower's other non-cash adjustments to net income, if any, less the amount of any increases in loans receivable of any officer, director, stockholder or partner of Borrower, less the amount of salaries, draws, dividends or distributions paid by Borrower to its officers, directors, stockholders or partners or not otherwise expensed on Borrower's income statement in such year.
- c. Except for trade payables incurred in the normal course of business, Borrower covenants and agrees that it shall not incur any additional indebtedness for a period of twelve (12) months after the date of this Instrument.

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11. **CONDEMNATION.** If the Property, or any part thereof, shall be condemned for any reason or otherwise taken for public or quasi-public use under the power of eminent domain, or be transferred in lieu thereof, all damages or other amounts awarded for the taking of, or injury to, the Property shall be paid to METLIFE who shall have the right, in its sole and absolute discretion, to apply the amounts so received against (a) the costs and expenses of METLIFE, including reasonable attorneys' fees incurred in connection with collection of such amounts, and (b) the balance against the Indebtedness; provided, however, that if (i) no Event of Default shall have occurred and be continuing hereunder, (ii) Borrower provides evidence satisfactory to METLIFE of its ability to pay all amounts becoming due under the Note during the pendency of any restoration or repairs to or replacement of the Property, (iii) METLIFE determines, in its sole discretion, that the proceeds of such award are sufficient to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such taking (or, if the proceeds of such award are insufficient for such purpose, if Borrower provides additional sums to METLIFE's satisfaction so that the aggregate of such sums and the proceeds of such award will be sufficient for such purpose), and (iv) Borrower provides evidence satisfactory to METLIFE that the Franchise Agreement will not be terminated as a result of either the condemnation or taking or the repairs to or replacement of the Property, the proceeds of such award, together with additional sums provided by Borrower, shall be placed in a separate account for the benefit of METLIFE and Borrower to be used to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such taking. All work to be performed in connection therewith shall be pursuant to a written contract therefor, which contract shall be subject to the prior approval of METLIFE. To the extent that any funds remain after the Property has been so restored and repaired, the same shall be applied against the Indebtedness in such order as METLIFE may elect. To enforce its rights hereunder, METLIFE shall be entitled to participate in and control any condemnation proceedings and to be represented therein by counsel of its own choice, and Borrower will deliver, or cause to be delivered to METLIFE such instruments as may be requested by it from time to time to permit such participation. In the event METLIFE, as a result of any such judgment, decree or award, reasonably believes that the payment or performance of any of the Indebtedness is impaired, METLIFE may declare all of the Indebtedness immediately due and payable.

12. **BORROWER AND LIEN NOT RELEASED.** From time to time, METLIFE may, at METLIFE's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lienholder or guarantors, without liability on METLIFE's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Instrument, extend the time for payment of the Indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of the Indebtedness, accept an extension or modification or renewal note or notes therefor, modify the terms and time of payment of the Indebtedness, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in

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writing with Borrower to modify the rate of interest or period of amortization of the Note or decrease the amount of the monthly installments payable thereunder. Any actions taken by METLIFE pursuant to the terms of this Section 12 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the Indebtedness, and shall not affect the lien or priority of the lien hereof on the Property.

13. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.** This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code in effect in the state in which the Property is located for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants and conveys to METLIFE a first and prior security interest in all of the Property that constitutes personalty, whether now owned or hereafter acquired. The respective addresses of Borrower and of METLIFE are as provided on page 1 of this Instrument. Borrower agrees that METLIFE may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to METLIFE, upon METLIFE's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as METLIFE may require to perfect a security interest with respect to the foregoing items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing statements METLIFE may require. Without the prior written consent of METLIFE, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon the occurrence of an Event of Default, METLIFE shall have the remedies of a secured party under the Uniform Commercial Code, and METLIFE may also invoke the remedies provided in Section 21 of this Instrument. In exercising any of said remedies METLIFE may proceed against the items of real property and any items of personal property specified above separately or together and in any order whatsoever, without in any way affecting the availability of METLIFE's remedies under the Uniform Commercial Code or of the remedies provided in Section 21 of this Instrument.

14. **LEASES OF THE PROPERTY.** Borrower shall comply with and observe all of Borrower's obligations as landlord under all of the Leases. Borrower shall not enter into any lease agreement covering any portion of the Property without METLIFE's prior written approval of the lease agreement and the proposed tenant, which approvals may be granted or withheld in METLIFE's sole discretion. In addition, Borrower shall not amend or modify any of the Leases without METLIFE's prior written approval, which approval may be granted or withheld in METLIFE's sole discretion. Borrower shall enforce the obligations of the tenants under the Leases and shall not waive any of the terms of the

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Leases without METLIFE's prior written approval. All of the Leases shall be subordinate to this Instrument unless METLIFE elects, pursuant to a written notice filed in the same public records as this Instrument, to subordinate this Instrument to any of the Leases specifically named in such notice. Borrower shall not, without METLIFE's prior written consent, request or consent to the subordination of any of the Leases to any lien subordinate to this Instrument. Borrower shall give METLIFE immediate written notice of the occurrence or alleged occurrence of any default under any of the Leases, whether by Borrower or the tenant. Upon METLIFE's receipt of notice of the occurrence of any default or violation by Borrower of any of its obligations under any of the Leases, METLIFE shall have the immediate right, but not the duty or obligation, without prior written notice to Borrower or to any third party, to enter upon the Property and to take such actions as METLIFE may deem necessary to cure the default or violation by Borrower under the Leases. METLIFE shall have no liability to Borrower or to any third party for any actions taken by METLIFE or not taken pursuant to this Section 14.

15. **TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER: ASSUMPTION.** METLIFE may, at its option, declare all sums secured by this Instrument to be immediately due and payable, and METLIFE may invoke any remedies permitted by Section 21 of this Instrument, if title to the Property is changed without the prior written consent of METLIFE, which consent shall be granted or withheld in METLIFE's sole discretion. Any transfer of any interest in the Property or in the income therefrom, by sale, lease (except for leases which are approved by METLIFE pursuant to Section 14 of this Instrument), contract, mortgage, deed of trust, further encumbrance or otherwise (including any liens as security interests granted to secure additional indebtedness), and any change in the ownership interests in Borrower (including any change in the ownership interests of any legal entities which comprise or control Borrower), except transfers and changes in ownership by devise or descent, shall be considered a change of title. METLIFE shall have the right to condition its consent to any proposed sale or transfer described in this Section 15 upon, among other things, METLIFE's approval of the transferee's creditworthiness and management ability, and the transferee's execution, prior to the sale or transfer, of a written assumption agreement containing such terms as METLIFE may require, including, if required by METLIFE, the imposition of an assumption fee of one percent (1%) of the then outstanding balance of the Indebtedness. Consent by METLIFE to one transfer of the Property shall not constitute consent to subsequent transfers or waiver of the provisions of this Section 15. No transfer by Borrower shall relieve Borrower of liability for payment of the Indebtedness.
16. **NOTICE.** Except for any notice required under applicable law to be given in another manner, any and all notices, elections, demands, or requests permitted or required to be made under this Instrument or under the Note shall be in writing, signed by the party giving such notice, election, demand or request, and shall be delivered personally, by telegram, or sent by registered or certified United States mail, postage prepaid, or by Federal Express or similar service for overnight, priority delivery, to the other party at the address stated above, or to such other party and at such other address within the United States of America as any party may designate in writing as provided herein. The date of

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receipt of such notice, election, demand or request shall be the earliest of (i) the date of actual receipt, (ii) three (3) days after the date of mailing by registered or certified mail, (iii) one (1) day after the date of delivery (for redelivery) to Federal Express or another similar service for overnight, priority delivery or (iv) the date of personal delivery (or refusal upon presentation for delivery).

17. **SUCCESSORS AND ASSIGNS BOUND: JOINT AND SEVERAL LIABILITY: AGENTS: CAPTIONS.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective heirs, successors and assigns of METLIFE and Borrower, subject to the provisions of Section 15 hereof. If Borrower is comprised of more than one person or entity, whether as individuals, partners, partnerships or corporations, each such person or entity shall be jointly and severally liable for Borrower's obligations hereunder. In exercising any rights hereunder or taking any actions provided for herein, METLIFE may act through its employees, agents or independent contractors as authorized by METLIFE. The captions and headings of the sections of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.
18. **HAZARDOUS WASTE.** Borrower has furnished to METLIFE a Report of Ground Water Sampling and Analysis dated February 26, 1997, prepared by W. D. Purnell and Associates, Inc., Report of Soil Excavation and Treatment dated December 18, 1997 prepared by BEK Purnell Engineering, Inc., and an Environmental Questionnaire dated May 18, 1998 (collectively, the "Report"). Except as disclosed to METLIFE in the Report, Borrower has received no notification of any kind suggesting that the Property, or any adjacent property, is or may be contaminated with any hazardous waste or materials or is or may be required to be cleaned up in accordance with any applicable law or regulation. Borrower represents and warrants that, except as previously disclosed to METLIFE in the Report, there are no hazardous waste or materials located in, on or under the Property or, to Borrower's knowledge, any adjacent property, or incorporated in any Improvements, nor has the Property or, to Borrower's knowledge, any adjacent property, ever been used as a landfill or a waste disposal site, or a manufacturing, handling, storage, distribution or disposal facility for hazardous waste or materials. As used herein, the term "hazardous waste or materials" includes any substance or material defined in or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any federal, state or local statute, regulation or ordinance now or hereafter in effect. Borrower shall comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, treatment, disposal, storage, control, removal or cleanup of hazardous waste or materials in, on or under the Property or any adjacent property (to the extent, with respect to any adjacent property, Borrower or the Property is liable or responsible for the hazardous waste or materials in, on or under such adjacent property), or incorporated in any Improvements, at Borrower's sole cost and expense. In the event that METLIFE at any time has a reasonable belief that the Property is not free of all hazardous waste or materials or that Borrower has violated any applicable environmental law with respect to the Property, then immediately, upon request by

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BK 1823 PG 0243

METLIFE, Borrower shall obtain and furnish to METLIFE, at Borrower's sole cost and expense, an environmental audit and inspection of the Property from an expert satisfactory to METLIFE. In the event that Borrower fails to deliver a report prepared by such expert and based upon such audit or inspection within thirty (30) days after any request therefor by METLIFE, METLIFE or its agents may perform or obtain such audit or inspection at Borrower's sole cost and expense, METLIFE may, but is not obligated to, enter upon the Property and take such actions and incur such costs and expenses to effect compliance with applicable environmental laws as it deems advisable; and Borrower shall reimburse METLIFE on demand for the full amount of all costs and expenses incurred by METLIFE pursuant to this Section 18. Neither this provision nor any of the other Loan Documents shall operate to put METLIFE in the position of an owner of the Property prior to any acquisition of the Property by METLIFE. The rights granted to METLIFE herein and in the other Loan Documents are granted solely for the protection of METLIFE's lien and security interest covering the Property, and do not grant to METLIFE the right to control Borrower's actions, decisions or policies regarding hazardous waste or materials.

19. ASSIGNMENT OF LEASES AND RENTS. Borrower, for good and valuable consideration, the receipt of which is hereby acknowledged, to secure the Indebtedness, does hereby absolutely and unconditionally grant, bargain, sell, transfer, assign, convey, set over and deliver unto METLIFE all right, title and interest of Borrower in, to and under the Leases, whether now in existence or hereafter entered into, and all guaranties, amendments, extensions and renewals of the Leases and any of them, and all rents, income and profits which may now or hereafter be or become due or owing under the Leases, and any of them, or on account of the use of the Property. This assignment is absolute, is effective immediately, and is irrevocable by Borrower so long as the Indebtedness remains outstanding. Notwithstanding the foregoing, until a Notice (as defined below) is sent to Borrower, Borrower may receive, collect and enjoy the rents, income and profits accruing from the Property. After the occurrence of an Event of Default, METLIFE may, at its option, after delivery of a written notice to Borrower of the exercise of its rights under this Section 19 (a "Notice"), receive and collect all rents, income and profits from the Property as they become due. Borrower hereby acknowledges that from and after the date a Notice is given to Borrower, METLIFE shall have the exclusive right to demand, collect, receive and give complete acquittances for any and all rents, income and profits accruing from the Property. All tenants of the Property are hereby expressly authorized and directed, following receipt of a Notice from METLIFE, to pay any and all amounts due Borrower pursuant to the Leases to METLIFE or such nominee as METLIFE may designate in a writing delivered to and received by such tenants, and the tenants of the Property are expressly relieved of any and all duty, liability or obligation to Borrower in respect of all payments so made to METLIFE or its nominee. After delivery to Borrower of a Notice, METLIFE is hereby vested with full power to use all measures, legal and equitable, deemed by it to be necessary or proper to enforce its rights under this Section 19 and to collect the rents, income and profits assigned hereunder. METLIFE shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the landlord under any of the Leases and METLIFE does not assume any of the liabilities or obligations of the landlord under the

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BK 1823 PG 0244

Leases. It is further understood that the assignment set forth in this Section 19 shall not operate to place responsibility for the control, care, management or repair of the Property, or any part thereof, upon METLIFE, nor shall it operate to make METLIFE liable for the performance of any of the terms and conditions of any of the Leases, or for any waste of the Property, or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee or stranger.

20. **DEFAULT.** The following shall each constitute an event of default ("Event of Default"):
- a. Failure of or refusal by Borrower to pay any portion of the sums secured by this Instrument when due, and such failure or refusal shall continue for a period of ten (10) days after written notice is given to Borrower by METLIFE specifying such failure; or
 - b. Failure of Borrower within the time required by this Instrument to make any payment of the Impositions, whether such payment is due to METLIFE or to the payee thereof; or
 - c. Failure by Borrower to observe or perform any of its obligations under any of the Leases; or
 - d. If Borrower violates Section 15 of this Instrument; or
 - e. The filing by Borrower of a voluntary petition in bankruptcy or filing by Borrower of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the seeking, consenting to, or acquiescing by Borrower in the appointment of any trustee, receiver, custodian, conservator or liquidator for Borrower, any part of the Property, or any of the income or rents of the Property, or the making by Borrower of any general assignment for the benefit of creditors, or the insolvency on a balance sheet basis of Borrower, or the making of a fraudulent transfer under applicable federal or state law, or concealment by Borrower of any of its property in fraud of creditors, or the giving of notice by Borrower to any governmental body of insolvency or suspension of operations; or
 - f. The filing of a petition against Borrower seeking any reorganization, arrangement, composition, readjustment, liquidation, or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debts, or the appointment of any trustee, receiver, custodian, conservator or liquidator of Borrower, of any part of the Property or of any of the income or rents of the Property, unless such petition shall be dismissed within sixty (60) days after such filing, but in any event prior to the entry of an order, judgment or decree approving such petition; or
 - g. The institution of any proceeding for the dissolution or termination of Borrower voluntarily, involuntarily, or by operation of law; or

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BK 1823 PG 0245

- h. If a material adverse change occurs in the assets, liabilities or net worth of BORROWER or any of the guarantors of the Indebtedness, from the assets, liabilities or net worth of Borrower or such guarantor as applicable, previously disclosed to METLIFE; or
- i. If any of the events described in subparagraphs e. - g. above occurs with respect to any guarantor of the Indebtedness;
- j. If any representation or warranty of Borrower under the Note, this Instrument, any of the other Loan Documents or the Certificate and Indemnity Agreement Regarding Hazardous Substances, shall prove to have been false or misleading in any material respect; or
- k. The failure of Borrower to observe or perform any other covenant, agreement or obligation under this Instrument if such failure shall continue for thirty (30) days after written notice is given to Borrower by METLIFE specifying such failure, or if such failure cannot be cured within such applicable cure period, if either (i) Borrower fails within such thirty (30) day period to commence curative action or (ii) Borrower fails at any time thereafter to continue with diligence all necessary curative actions. No notice of default from METLIFE shall be required and no opportunity to cure shall be given if during the prior twelve (12) months METLIFE has already sent a written notice to Borrower concerning default in performance of the same obligation; or
- l. The occurrence of any event of default under any of the Loan Documents other than this Instrument; or
- m. If the Franchise Agreement is terminated or is not renewed for any reason.

21. **RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of any Event of Default and at any time thereafter, METLIFE may exercise any one or more of the following rights and remedies:

- a. METLIFE may declare the entire Indebtedness, including the then unpaid principal balance on the Note, the accrued but unpaid interest thereon, court costs and attorney's fees hereunder immediately due and payable, without notice, presentment, protest, demand or action of any nature whatsoever (each of which hereby is expressly waived by Borrower), whereupon the same shall become immediately due and payable. Additionally, METLIFE shall not be required to make any further advances on the Note or other Loan Documents upon the occurrence of an Event of Default or an event which, with the giving of notice or passing of time, would constitute an Event of Default.
- b. METLIFE may enter upon the Property and take exclusive possession thereof and of all books, records and accounts relating thereto without notice and without being guilty of trespass, and hold, lease, manage, operate or otherwise use or permit the use of the Property, either itself or by other persons, firms or entities, in such manner, for such time and upon such other terms as METLIFE may deem to be prudent and reasonable under the

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circumstances (making such repairs, alterations, additions and improvements thereto and taking any and all other action with reference thereto, from time to time, as METLIFE shall deem necessary or desirable), and apply all rents and other amounts collected by METLIFE in connection therewith in accordance with the provisions of subsection h. of this Section 26. Borrower hereby irrevocably appoints METLIFE as the agent and attorney-in-fact of Borrower, with full power of substitution, and in the name of Borrower, if METLIFE elects to do so, to (i) endorse the name of Borrower on any checks or drafts representing proceeds of the insurance policies, or other checks or instruments payable to Borrower with respect to the Property, (ii) prosecute or defend any action or proceeding incident to the Property, and (iii) take any action with respect to the Property that METLIFE may at any time and from time to time deem necessary or appropriate. METLIFE shall have no obligation to undertake any of the foregoing actions, and if METLIFE should do so, it shall have no liability to Borrower for the sufficiency or adequacy of any such actions taken by METLIFE.

- c. Should METLIFE elect to foreclose by exercise of the power of sale herein contained, METLIFE shall notify Trustee and Trustee shall sell the Property, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. In case of a sale under this Instrument, the Property, including the fixtures and the Personal Property, may be sold in one parcel. Any person except Trustee may bid at the Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of sale, including a Trustee's fee and attorney's fee; (2) to interest due under this Instrument; (3) to principal due under this Instrument; (4) the surplus, if any, shall be distributed either to the persons entitled thereto or such surplus, less the clerk's filing fee, shall be deposited with the clerk of the Superior Court as provided by law. Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the Property which Borrower has or had the power to convey at the time of his execution of this Instrument, and such as Borrower may have acquired thereafter. The Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Instrument, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of a bona fide purchasers and encumbrancers for value. The power of sale conferred by this Instrument and by the Deed of Trust Act of the State of Washington is not an exclusive remedy and when not exercised, METLIFE may appoint in writing a successor trustee shall be vested with all powers of the original trustee. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Borrower, Trustee of METLIFE shall be a party unless such action or proceeding is brought by Trustee.
- d. After sale of the Property, or any portion thereof, Borrower will be divested of any and all interest and claim thereto, including any interest or claim to all insurance policies, bonds, loan commitments and other intangible property covered hereby. Additionally, Borrower will be considered a tenant at sufferance of the purchaser of the Property, and said purchaser shall be entitled to immediate possession thereof, and if Borrower shall fail to vacate the Property immediately, the purchaser may and shall have the right, without

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further notice to Borrower, to go into any justice court in any precinct or county in which the Property is located and file an action in forcible entry and detainer, which action shall lie against Borrower or its assigns or legal representatives, as a tenant at sufferance. This remedy is cumulative of any and all remedies the purchaser may have hereunder or otherwise.

e. (i) Upon, or at any time after, commencement of foreclosure of the lien and security interest provided for herein or any legal proceedings hereunder, METLIFE may make application to a court of competent jurisdiction, as a matter of strict right and without notice to Borrower or regard to the adequacy of the Property for the repayment of the Indebtedness, for appointment of a receiver of the Property, and Borrower does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of subsection h. of this Section 26.

(ii) METLIFE may exercise any and all other rights, remedies and recourses granted under the Loan Documents or now or hereafter existing in equity, at law, by virtue of statute or otherwise.

f. Trustee and METLIFE shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including specifically those granted by the Uniform Commercial Code in effect and applicable to the Property or any portion thereof) and the same (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively or concurrently against Borrower, any guarantor of the Indebtedness or others obligated under the Note, or against the Property, or against any one or more of them at the sole discretion of METLIFE; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise 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.

g. To the fullest extent permitted by law, Borrower hereby irrevocably and unconditionally waives and releases (i) all benefits that might accrue to Borrower by any present or future laws exempting the Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; (ii) all notices of any Event of Default (except as may be specifically provided for under the terms hereof), presentment, demand, notice of intent to accelerate, notice of acceleration and any other notice of METLIFE's or Trustee's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents; (iii) any right to appraisal or marshalling of assets or a sale in inverse order of alienation; (iv) the exemption of homestead; and (v) the administration of estates of decedents, or other matter to defeat, reduce or affect the right of METLIFE under the terms of this Instrument to sell the Property for the collection of the Indebtedness secured hereby (without any prior or different resort for collection) or the

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right of METLIFE, under the terms of this Instrument, to receive the payment of the Indebtedness out of the proceeds of sale of the Property in preference to every other person and claimant whatever (only reasonable expenses of such sale being first deducted). Borrower expressly waives and relinquishes any right or remedy which it may have or be able to assert by reason of any statute pertaining to the rights and remedies of sureties.

- h. The proceeds of any sale of, and the rents, profits and other income generated by the holding, leasing, operating or other use of the Property, shall be applied by METLIFE (or the receiver, if one is appointed) to the extent that funds are so available therefrom in the following orders of priority: (i) first, to the payment of the costs and expenses of taking possession of the Property and of holding, using, leasing, maintaining, repairing, improving and selling the same, including, without limitation, (A) receiver's fees; (B) costs of advertisement; (C) attorneys' and accountants' fees; and (D) court costs; if any; (ii) second, to the payment of all amounts, other than the principal amount and accrued but unpaid interest on the Note which may be due to METLIFE under the Loan Documents, including all Indebtedness, together with interest thereon as provided therein, in such order and manner as METLIFE may determine; (iii) third, to the payment of the principal amount outstanding on the Note in such order and manner as METLIFE may determine and all other Indebtedness; (iv) fourth, to the payment of all accrued but unpaid interest due on the Note in such order and manner as METLIFE may determine; and (v) fifth, to Borrower. Borrower, any guarantor of the Indebtedness and any other party liable on the Indebtedness shall be liable for any deficiency remaining in the Indebtedness subsequent to any sale referenced in this subsection h.
 - i. METLIFE shall have the right to become the purchaser at any sale of the Property hereunder and shall have the right to be credited on the amount of its bid therefor all of the Indebtedness due and owing as of the date of such sale.
 - j. If METLIFE shall accelerate the Indebtedness following the occurrence of an Event of Default, any payments received by METLIFE following such acceleration, whether as the result of voluntary payments made by Borrower or as a result of the sale of the Property by Trustee, shall be deemed voluntary prepayments of the Note and accordingly, the prepayment fee required under the Note shall also be payable, subject to the terms of the Note.
 - k. The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted, or rental, lease or other contract made in violation of any provisions of this Instrument and may take immediate possession of the Property free from, and despite the terms of, any such grant of easement, rental, lease or other contract.
22. **RECONVEYANCE.** Upon payment of all sums secured by this Instrument, METLIFE shall request Trustee to reconvey the Property and shall surrender this Instrument and all notes evidencing Indebtedness secured by this Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay Trustee's costs incurred in so reconveying the Property.

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23. **SUBSTITUTE TRUSTEE.** Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever. Trustee shall not be personally liable in case of entry by it or anyone acting by virtue of the powers herein granted it upon the Property for debts contracted or liability or damages incurred in the management or operation of the Property. All monies 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 monies (except to the extent required by law) and Trustee shall be under no liability for interest on any monies received by it hereunder.

Trustee may resign by giving of notice of such resignation in writing to METLIFE. If Trustee shall die, resign or become disqualified from acting, or shall fail or refuse to exercise its powers hereunder when requested by METLIFE so to do, or if for any reason and without cause METLIFE shall prefer to appoint a substitute trustee to act instead of the original Trustee named herein, or any prior successor or substitute trustee, METLIFE shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the aforementioned Trustee. Upon appointment by METLIFE, any new 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 predecessor in the rights hereunder with the same effect as if originally named as Trustee herein.

24. **USE OF PROPERTY.** The Property is not currently used for agricultural, farming, timber or grazing purposes. Borrower warrants that this Instrument is and will at all times constitute a commercial trust deed, as defined under appropriate state law.
25. **FUTURE ADVANCES.** Upon request of Borrower, METLIFE, at METLIFE's option so long as this Instrument secures Indebtedness held by METLIFE, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Instrument when evidenced by promissory notes stating that said notes are secured hereby.
26. **IMPOSITION OF TAX BY STATE.** In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of the Indebtedness or this Instrument or the manner of collecting taxes so as to adversely affect METLIFE (exclusive of any tax of METLIFE's net income), Borrower will promptly pay any such tax. If Borrower fails to make such prompt payment or if, in the opinion of METLIFE, any such state, federal, municipal or other governmental law, order, rule or regulation prohibits Borrower from making such payment or would penalize METLIFE if Borrower makes such payment or if, in the opinion of METLIFE, the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law (following application of all usury savings clauses), then the

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entire balance of the Indebtedness shall, at the option of METLIFE, become immediately due and payable.

27. **ATTORNEYS' FEES.** In the event suit or action is instituted to enforce or interpret any of the terms of this Instrument (including without limitation efforts to modify or vacate any automatic stay or injunction), the prevailing party shall be entitled to recover all expenses reasonably incurred at, before and after trial and on appeal whether or not taxable as costs, or in any bankruptcy proceeding including, without limitation, attorneys' fees, witness fees (expert and otherwise), deposition costs, copying charges and other expenses. Whether or not any court action is involved, all reasonable expenses, including but not limited to the costs of searching records, obtaining title reports, surveyor reports, title insurance, trustee fees, and other attorney fees, incurred by METLIFE that are necessary at any time in METLIFE's opinion for the protection of its interest or enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the interest rate as provided in the Note. The term "attorneys' fees" as used in the Loan Documents shall be deemed to mean such fees as are reasonable and are actually incurred.
28. **GOVERNING LAW; SEVERABILITY.** This Instrument shall be governed by the law of the State of Washington applicable to contracts made and to be performed therein (excluding choice-of-law principles). In the event that any provision or clause of this Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Instrument or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Instrument and the Note are declared to be severable.
29. **TIME OF ESSENCE.** Time is of the essence of this Instrument.
30. **CHANGES IN WRITING.** This Instrument and any of its terms may only be changed, waived, discharged or terminated by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement subsequently made by Borrower or METLIFE relating to this Instrument shall be superior to the rights of the holder of any intervening lien or encumbrance.
31. **NO OFFSET.** Borrower's obligation to make payments and perform all obligations, covenants and warranties under this Instrument and under the Note shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or other right that Borrower or any guarantor may have or claim against METLIFE or any entity participating in making the loan secured hereby. The foregoing provisions of this section, however, do not constitute a waiver of any claim or demand which Borrower or any guarantor may have in damages or otherwise against METLIFE or any other person, or preclude Borrower from maintaining a separate action thereon; provided, however, that Borrower waives any right it may have at law or in equity to consolidate such separate action with any action or proceeding brought by METLIFE.

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32. **SPECIAL COVENANTS.** Borrower hereby covenants and agrees with METLIFE as follows:

- a. Borrower shall not amend, modify or terminate the Architect Contract or the Construction Contracts without METLIFE's prior written consent;
- b. Borrower shall not amend or modify the plans without METLIFE's prior written consent;
- c. Borrower shall perform all of its obligations under the Architect Contract and the Construction Contracts in accordance with the respective terms thereof; and
- d. Borrower shall enforce the performance of each and every term and condition of the Architect Contract and the Construction Contracts.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

IN WITNESS WHEREOF, Borrower has executed this Instrument or has caused the same to be executed by its representatives thereunto duly authorized.

BORROWER:

MEDALIA, INC.,
a Washington corporation

Susan C. Medalia
Susan C. Medalia
Secretary

By: *Joseph M. Medalia*
Print: Joseph M. Medalia
Its: President

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EXHIBIT A

The land referred to herein is situated in the County of Skagit, State of Washington, and is described as follows:

PARCEL "A":

The North 100 feet of Lots 3, 4, 5 and 6, Block 9, "BEHRENS & MOODY'S ADDITION TO WEST MOUNT VERNON, SKAGIT COUNTY, WASHINGTON", as per plat recorded in Volume 2 of Plats, page 101, records of Skagit County, Washington. (Also known as Tract "A" of that certain Short Plat No. MV-27-76 recorded September 10, 1976 under Auditor's File No. 842405 in Volume 1 of Short Plats, page 166, records of Skagit County, Washington.

PARCEL "B":

Lots 7, 8, 9 and 10, Block 9, "BEHRENS & MOODY'S ADDITION TO WEST MOUNT VERNON, SKAGIT COUNTY, WASHINGTON", as per plat recorded in Volume 2 of Plats, page 101, records of Skagit County, Washington.

EXHIBIT B

PERMITTED EXCEPTIONS

NONE

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