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201 North Tryon Street (28202)
P. O. Box 31247
Charlotte, North Carolina 28231-1247

Attn: Elizabeth W. Goode, Esq.



200001140084

Kathy Hill, Skagit County Auditor

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ISLAND TITLE CO. *SB-15130V*

Document Title: LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT.

Grantor: MERIDIAN GRANITE COMPANY, a Delaware corporation fka Meridian Aggregates Company

Grantee (Beneficiary): BANK OF AMERICA, N.A., as Collateral Agent

Abbreviated Legal Description(s): The east 600 feet of the south 1150 of the W 1/2 of the SE 1/4 and the south 1700 feet of the E 1/2 of the SE 1/4 of Section 33, T 34 N, R 4 E, W.M., in Skagit County, Washington

Complete legal descriptions are contained on Schedule A1, which follows page 43 of this document.

Assessor's Property Tax Parcel(s) or Account Number(s): 340433-4-002-007⁰⁰⁰⁷

Reference Number(s) of Documents assigned or released: N/A

[Mt. Vernon (Skagit County) Washington]

LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS
AND LEASES AND SECURITY AGREEMENT

THIS LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT, executed as of January 10, 1999 with an effective date of January 10, 2000, is made by MERIDIAN GRANITE COMPANY, a Delaware corporation, formerly known as Meridian Aggregates Company ("Grantor"), whose address is 5575 DTC Parkway, Suite 325, Greenwood Village, Colorado 80111, to CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation ("Trustee"), whose address 1800 Columbia Center, 710 Fifth Avenue, Seattle, Washington 98104, for the use and benefit of BANK OF AMERICA, N.A., a national banking association organized and existing under the laws of the United States, whose address is 101 North Tryon Street, 15th Floor, NC1-001-15-04, Charlotte, North Carolina 28255, Attention: Agency Services in its capacity as collateral agent for itself and the other Secured Creditors as defined in the Deed of Trust (as defined below) (in such capacity, "Beneficiary"). References to this "Deed of Trust" shall mean this instrument and any and all renewals, modifications, amendments, supplements, extensions, consolidations, substitutions, spreaders and replacements of this instrument.

Background

A. Grantor is the owner of the leasehold estate in the parcel of real property described on Schedule A1 attached (the "Land") pursuant to that certain lease described on Schedule A2 attached (as the same may be amended, supplemented or otherwise modified from time to time, the "Mortgaged Lease"). The Land (including Grantor's leasehold estate), together with all of the buildings, improvements, structures and fixtures now or subsequently located thereon (the "Improvements") are collectively referred to as the "Real Estate."

B. Beneficiary and MAC Acquisitions, Inc., a Delaware corporation (the "Borrower") have entered into that certain Third Amended and Restated Credit Agreement between the Borrower, Beneficiary as the Collateral Agent, and the lenders from time to time party to the Third Amended and Restated Credit Agreement (collectively, the "Lenders") dated as of September 30, 1999 (as amended, modified, extended, renewed, restated and supplemented from time to time, the "Third Amended Credit Agreement") pursuant to which the Lenders have made available to the Borrower a revolving credit facility up to the amount of \$115,000,000 (the "Loan") (Beneficiary, the Lenders and Bank of America, and each of their respective successors and assigns are herein collectively defined as the "Secured Creditors").

C. Grantor is a related company of the Borrower and will benefit directly and indirectly from the agreement of the Lenders to make their Revolving Credit Commitments available on the terms and conditions therein provided.



D. Pursuant to and in accordance with the Third Amended Credit Agreement, (a) Grantor has executed and delivered to the Agent (as defined herein) that certain Consolidated, Amended and Restated Guaranty Agreement dated as of September 30, 1999 (as amended, modified or supplemented, the "Facility Guaranty"), and (b) Grantor has agreed to execute and deliver this Deed of Trust to Beneficiary (in its capacity as Collateral Agent) to secure for the benefit of the Secured Creditors (as defined herein), among other amounts, Grantor's obligations under the Facility Guaranty.

E. In order to satisfy the condition described in the immediately preceding recital, Grantor has agreed to execute and deliver this Deed of Trust to Beneficiary for the benefit of the Secured Creditors (as defined herein).

F. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Third Amended Credit Agreement. References in this Deed of Trust to the "Default Rate" shall mean the Default Rate provided with respect to Alternate Base Rate Loans as set forth in Third Amended Credit Agreement. The rules of interpretation contained in Sections 1.3(c) through 1.3(l) of the Third Amended Credit Agreement shall be applicable to this Deed of Trust and are hereby incorporated by reference therein.

Granting Clauses

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor agrees that to secure:

(a) the payment of all sums up to \$115,000,000 due under the Consolidated, Amended and Restated Guaranty Agreement (the "Facility Guaranty") executed and delivered by Grantor and others to Bank of America, N.A., as Administrative Agent (Bank of America in its capacity as Administrative Agent being hereinafter referred to as the "Agent") for the benefit of the Agent and the Lenders, as the same may be amended, modified or supplemented (the "Secured Indebtedness"); and

(b) performance and observance of each obligation, term, covenant, liability and condition to be performed or observed by Grantor to the Lenders (and any affiliate of any Lender party to a Swap Agreement), the Agent, the Collateral Agent, or Bank of America Securities LLC (collectively, the "Secured Creditors") hereunder, under the Facility Guaranty and any other Loan Documents or Swap Agreement to which the Grantor is a party and payment of all sums payable by Grantor to Beneficiary as provided in this Deed of Trust, including without limitation, the Secured Indebtedness (collectively, the "Guarantor's Obligations") (The term "Loan Documents" as used in this Deed of Trust shall be as defined in the Third Amended Credit Agreement);



GRANTOR HEREBY IRREVOCABLY GRANTS, TRANSFERS, CONVEYS AND ASSIGNS TO TRUSTEE, IN TRUST, WITH POWER OF SALE, the following:

(A) the leasehold estate created under and by virtue of the Mortgaged Lease, any interest in any fee, greater or lesser title to the Real Estate that Grantor may own or hereafter acquire (whether acquired pursuant to a right or option contained in the Mortgaged Lease or otherwise) and all credits, deposits, options, privileges and rights of Grantor under the Mortgaged Lease (including all rights of use, occupancy and enjoyment) and under any amendments, supplements, extensions, renewals, restatements, replacements and modifications thereof (including, without limitation, (i) the right to give consents, (ii) the right to receive moneys payable to Grantor, (iii) the right, if any, to renew or extend the Mortgaged Lease for a succeeding term or terms, (iv) the right, if any, to purchase the Real Estate and (v) the right to terminate or modify the Mortgaged Lease); all of Grantor's claims and rights to the payment of damages arising under the Bankruptcy Code (as determined below) from any rejection of the Mortgaged Lease by the lessor thereunder or any other party; provided, however, that no interest is granted in the Mortgaged Lease or in any right, title or interest appurtenant thereto if such grant would violate the express or implied terms, conditions or covenants of the Mortgaged Lease or by the express or implied terms of the Mortgaged Lease subject the lessee thereunder to any penalty or payment to the lessor thereunder as a result thereof, including without limitation the termination or surrender of the Mortgaged Lease.

(B) all right, title and interest Grantor now has or may hereafter acquire in and to the Improvements or any part thereof (whether owned in fee by Grantor or held pursuant to the Mortgaged Lease or otherwise) and all the estate, right, title, claim or demand whatsoever of Grantor, in possession or expectancy, in and to the Real Estate or any part thereof;

(C) the lands, premises, mineral dispositions, surface leases and rights, profits-a-prendre, mining claims and all privileges flowing therefrom, concessions, rights, licenses, permits and claims, rights of way, enurements, and other chattel and real property rights and interests now owned or hereafter acquired by Grantor and used in or pertaining to Grantor's mining facility and operations located on the Real Estate;

(D) all right, title and interest of Grantor in, to and under all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water and riparian rights, development rights, air rights, minerals and mineral rights, sand, rock, gravel, granite, ballast, clay, limestone, aggregate, sandstone, dolomite, and related materials, and all estates, rights, titles, interests, privileges, licenses, tenements, hereditaments and appurtenances belonging, relating or appertaining to the Real Estate, and any reversions, remainders, rents, issues, profits and revenue thereof and all land lying in the bed of any street, road or avenue, in front of or adjoining the Real Estate to the center line thereof;



(E) all of the fixtures, chattels, business machines, machinery, apparatus, equipment, furnishings, fittings and articles of personal property of every kind and nature whatsoever, and all appurtenances and additions thereto and substitutions or replacements thereof (together with, in each case, attachments, components, parts and accessories) currently owned or subsequently acquired by Grantor and now or subsequently attached to, or contained in or used or usable in any way in connection with any operation or letting of the Real Estate, including but without limiting the generality of the foregoing, all (i) mining, quarrying, milling, processing, service, storage and other related infrastructure and all underground facilities and other assets used in conjunction with any mine or quarry operations located on, under, near or adjacent to the Real Estate and the extracting, processing and refining of granite, ballast, limestone, sand, clay, aggregate, rock, sandstone, dolomite, gravel and related materials and minerals and (ii) screens, awnings, shades, blinds, curtains, draperies, artwork, carpets, rugs, storm doors and windows, furniture and furnishings, heating, electrical, and mechanical equipment, lighting, switchboards, plumbing, ventilating, air conditioning and air-cooling apparatus, refrigerating, and incinerating equipment, escalators, elevators, loading and unloading equipment and systems, stoves, ranges, laundry equipment, cleaning systems (including window cleaning apparatus), telephones, communication systems (including satellite dishes and antennae), televisions, computers, sprinkler systems and other fire prevention and extinguishing apparatus and materials, security systems, motors, engines, machinery, pipes, pumps, tanks, conduits, appliances, fittings and fixtures of every kind and description (all of the foregoing in this paragraph (E) being referred to as the "Equipment");

(F) all right, title and interest of Grantor in and to all substitutes and replacements of, and all additions and improvements to, the Real Estate and the Equipment, subsequently acquired by or leased to Grantor or constructed, assembled or placed by Grantor on the Real Estate, immediately upon such acquisition, lease, construction, assembling or placement, including, without limitation, any and all building materials whether stored at the Real Estate or offsite, and, in each such case, without any further mortgage, conveyance, assignment or other act by Grantor;

(G) all right, title and interest of Grantor, as lessor, landlord or the equivalent thereof, in, to and under all leases, subleases, underlettings, concession agreements, management agreements, licenses and other agreements relating to the use or occupancy of the Real Estate or the Equipment or any part thereof, now existing or subsequently entered into by Grantor and whether written or oral and all guarantees of any of the foregoing (collectively, as any of the foregoing may be amended, restated, extended, renewed or modified from time to time, the "Leases"), and all rights of Grantor in respect of cash and securities deposited thereunder and the right to receive and collect the revenues, income, royalties, rents, issues and profits thereof, together with all other rents, royalties, issues, profits, revenue, income and other benefits arising from the use and enjoyment of the Trust Property (as defined below) (collectively, the "Rents");



(H) all Grantor's right, title and interest in, to and under all trade names, trade marks, logos, copyrights, good will and books and records relating to or used in connection with the operation of the Real Estate or the Equipment or any part thereof; all general intangibles related to the operation of the Improvements now existing or hereafter arising;

(I) all unearned premiums under insurance policies now or subsequently obtained by Grantor relating to the Real Estate or Equipment and Grantor's interest in and to all proceeds of any such insurance policies (including title insurance policies) including the right to collect and receive such proceeds, subject to the provisions relating to insurance generally set forth below; and all awards and other compensation, including the interest payable thereon and the right to collect and receive the same, made to the present or any subsequent owner of the Real Estate or Equipment for the taking by eminent domain, condemnation or otherwise, of all or any part of the Real Estate or any easement or other right therein;

(J) all right, title and interest of Grantor in and to (i) all contracts from time to time executed by Grantor or any manager or agent on its behalf relating to the ownership, construction, maintenance, repair, operation, occupancy, sale or financing of the Real Estate or Equipment or any part thereof and all agreements relating to the purchase or lease of any portion of the Real Estate or any property which is adjacent or peripheral to the Real Estate, together with the right to exercise such options and all leases of Equipment, (ii) all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Real Estate or any part thereof and (iii) all drawings, plans, specifications and similar or related items relating to the Real Estate;

(K) any and all monies now or subsequently on deposit for the payment of real estate taxes or special assessments against the Real Estate or for the payment of premiums on insurance policies covering the foregoing property or otherwise on deposit with or held by Beneficiary as provided in this Deed of Trust; all capital, operating, reserve or similar accounts held by or on behalf of Grantor and related to the operation of the Trust Property, whether now existing or hereafter arising and all monies held in any of the foregoing accounts and any certificates or instruments related to or evidencing such accounts;

(L) all accounts and revenues arising from the operation of the Improvements including, without limitation, (i) any right to payment now existing or hereafter arising for rental of space or for goods sold or leased or for services rendered, whether or not yet earned by performance, arising from the operation of the Improvements or any other facility on the Trust Property and (ii) all rights to payment from any consumer credit-charge card organization or entity including, without limitation, payments arising from the use of the American Express Card, the Visa Card,



the Carte Blanche Card, the Mastercard or any other credit card, including those now existing or hereafter created, substitutions therefor, proceeds thereof (whether cash or non-cash, movable or immovable, tangible or intangible) received upon the sale, exchange, transfer, collection or other disposition or substitution thereof and any and all of the foregoing and proceeds therefrom; and

(M) all proceeds, both cash and noncash, of the foregoing;

(All of the foregoing property and rights and interests now owned or held or subsequently acquired by Grantor and described in the foregoing clauses (A) through (F) are collectively referred to as the "Premises", and those described in the foregoing clauses (A) through (M) are collectively referred to as the "Trust Property").

TO HAVE AND TO HOLD the Trust Property and the rights and privileges hereby granted unto Trustee, its successors and assigns for the uses and purposes set forth, until the Secured Indebtedness is fully paid and the Guarantor's Obligations fully paid and performed.

Terms and Conditions

Grantor further represents, warrants, covenants and agrees with Trustee and Beneficiary as follows:

1. Warranty of Title. Grantor represents and warrants that: (i) Grantor has title to the leasehold estate in the Real Estate pursuant to the Mortgaged Lease; (ii) such leasehold estate and the Real Estate are not subject to any leases or liens or to any other encumbrances, defects or other matters other than the Mortgaged Lease, this Deed of Trust, the matters that are set forth in Schedule B of the title insurance policy being issued to Beneficiary to insure the lien of this Deed of Trust (the "Permitted Exceptions") and the Liens permitted under subsection 10.3(b), (c) and (e) of the Third Amended Credit Agreement (the "Permitted Encumbrances"); (iii) Grantor shall warrant, defend and preserve such title and the lien of this Deed of Trust thereon granted against all claims of all persons and entities; (iv) the Mortgaged Lease is in full force and effect and Grantor is the holder of the lessee's or tenant's interest thereunder; (v) no Mortgaged Lease has not been amended, supplemented or otherwise modified, except as may be specifically described in Schedule A2 attached to this Deed of Trust; and (vi) Grantor has paid all rents and other charges to the extent due and payable under the Mortgaged Lease, is not in default under the Mortgaged Lease, has received no notice of default from the lessor thereunder and knows of no material default by the lessor thereunder.

2. Payment of Indebtedness. Grantor shall pay the Secured Indebtedness at the times and places and in the manner specified in the Facility Guaranty and shall pay and perform all the Guarantor's Obligations as provided in the Loan Documents and the Swap Agreements.



3. **Requirements.** (a) Grantor shall promptly comply with, or cause to be complied with, and conform to all present and future laws, statutes, codes, ordinances, orders, judgments, decrees, rules, regulations and requirements, and irrespective of the nature of the work to be done, of each of the United States of America, any State and any municipality, local government or other political subdivision thereof and any agency, department, bureau, board, commission or other instrumentality of any of them, now existing or subsequently created (collectively, "Governmental Authority") which has jurisdiction over the Trust Property and all covenants, restrictions and conditions now or later of record which may be applicable to any of the Trust Property, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of any of the Trust Property, except to the extent that the failure to comply therewith could not, individually, or in the aggregate, reasonably be expected to have a Material Adverse Effect. All present and future laws, statutes, codes, ordinances, orders, judgments, decrees, rules, regulations and requirements of every Governmental Authority applicable to Grantor or to any of the Trust Property and all covenants, restrictions, and conditions which now or later may be applicable to any of the Trust Property are collectively referred to as the "Legal Requirements".

(b) If the Real Estate is a single zoning lot, Grantor shall not by act or omission impair the integrity of any of the Real Estate as a single zoning lot separate and apart from all other premises. Grantor represents that, to the best of Grantor's knowledge, each parcel of the Real Estate constitutes or, is part of, a legally subdivided lot, in compliance with all subdivision laws, if any, and similar Legal Requirements, unless failure to so comply would not have a Material Adverse Effect.

4. **Payment of Taxes and Other Impositions.**

(a) Promptly when due, Grantor shall pay, or cause to be paid, and discharge, or cause to be discharged, all taxes of every kind and nature (including, without limitation, all real and personal property, income, franchise, withholding, transfer, gains, profits and gross receipts taxes), all charges for any easement or agreement maintained for the benefit of any of the Trust Property, all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges and all other public charges even if unforeseen or extraordinary, imposed upon or assessed against or which may become a lien on any of the Trust Property, or arising in respect of the occupancy, use or possession thereof, together with any penalties or interest on any of the foregoing (all of the foregoing are collectively referred to as the "Impositions"). Upon request by Beneficiary, Grantor shall deliver to Beneficiary (i) original or copies of receipted bills and cancelled checks evidencing payment of such Imposition if it is a real estate tax or other public charge and (ii) evidence acceptable to Beneficiary showing the payment of any other such Imposition. If by law any Imposition, at Grantor's option, may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Grantor may elect to pay such Imposition in such installments and shall be responsible for the payment of such installments with interest, if any.



(b) Nothing herein shall affect any right or remedy of Trustee or Beneficiary under this Deed of Trust or otherwise, without notice or demand to Grantor, to pay any Imposition after the date such Imposition shall have become due (to the extent the same is not prohibited under the terms of the Mortgaged Lease), and to add to the Secured Indebtedness and other Guarantor's Obligations the amount so paid, together with interest from the time of payment at the default rate provided with respect to Alternate Base Rate Loans as set forth in the Third Amended Credit Agreement (the "Default Rate"). Any sums paid by Trustee or Beneficiary in discharge of any Impositions shall be (i) a charge on the Premises secured hereby prior to any right or title to, interest in, or claim upon the Premises subordinate to the lien of this Deed of Trust, and (ii) payable on demand by Grantor to Trustee or Beneficiary, as the case may be, together with interest at the Default Rate as set forth above.

(c) Grantor shall not claim, demand or be entitled to receive any credit or credits toward the satisfaction of this Deed of Trust or on any interest payable thereon for any taxes assessed against the Trust Property or any part thereof, and shall not claim any deduction from the taxable value of the Trust Property by reason of this Deed of Trust.

(d) Grantor shall have the right before any delinquency occurs to contest or object in good faith to the amount or validity of any Imposition in accordance with Section 9.4 of the Third Amended Credit Agreement.

(e) Upon written notice to Grantor, Beneficiary after an Event of Default (as defined below) shall be entitled to require Grantor to pay monthly in advance to Beneficiary the equivalent of 1/12th of the estimated annual Impositions. Beneficiary may commingle such funds with its own funds and Grantor shall not be entitled to interest thereon.

5. **Insurance.** (a) Grantor will maintain or cause to be maintained upon and relating to the Trust Property policies of liability and casualty insurance in amounts and otherwise in accordance with Section 9.5 of the Third Amended Credit Agreement and this Section 5. In addition to the policies referred to above, Grantor will maintain the following policies:

(i) Prior to construction of any improvements on the Trust Property which cost in the aggregate \$500,000 or more, an "all-risk", completed value, non-reporting builder's risk insurance policy or policies that provide coverage similar to the foregoing must be submitted to the Beneficiary. This policy must be from a company and in an amount reasonably satisfactory to the Beneficiary, must have a vandalism and malicious mischief endorsement and must be sufficient to avoid the application of any co-insurance provisions, must include provisions for a minimum 30-day advance written notice of any intended policy cancellation or non-renewal, and must designate the Beneficiary as mortgagee and loss payee in a standard mortgagee endorsement



Address: Bank of America, N.A., as Collateral Agent
101 North Tryon Street
NC1-001-15-04
Charlotte, North Carolina 28255
Attention: Agency Services

(ii) The Grantor covenants to maintain or cause to be maintained, by the Grantor and, during the construction of any improvements on the Trust Property which cost in the aggregate \$500,000 or more, the general contractor, general accident and public liability insurance against all claims for bodily injury, death or property damage occurring upon, in or about any part of the Trust Property. The policies must be from companies and in amounts reasonably satisfactory to the Beneficiary. The contractor's policy must include worker's compensation coverage in an amount sufficient to satisfy statutory requirements.

(iii) An "all-risk" permanent insurance policy must be in effect, and an original certificate from the issuing insurance company evidencing that the policy is in full force and effect must be submitted to the Beneficiary. The policy must be from a company satisfactory to the Beneficiary, must be in an amount reasonably satisfactory to the Beneficiary, must eliminate all co-insurance provisions, must include, to the extent contained in the policies approved as of the date hereof, a Replacement Cost and Agreed Amount/Stipulated Value Endorsement, must include a Sinkhole Endorsement, if appropriate, must include provisions for a minimum 30-day advance written notice to the Beneficiary of any intended policy cancellation or non-renewal, and must designate the Beneficiary as mortgagee and loss payee in a standard mortgagee endorsement, as its interest may appear.

(iv) If, and to the extent that, the Trust Property is located within an area that has been or is hereafter designated or identified as an area having special flood hazards as defined in the Federal Flood Disaster Protection Act of 1973, as such act may from time to time be amended and in effect, or pursuant to any other national or state program of flood insurance, the Grantor shall, to the extent required by the Beneficiary, carry flood insurance with respect to the Trust Property in an amount not less than the maximum amount available under the Flood Disaster Protection Act of 1973 and the regulations issued pursuant thereto, as amended from time to time, in form complying with the "insurance purchase" requirement of that Act.

(b) (i) Each such liability insurance policy required herein shall name Beneficiary as an additional insured party with respect to the Trust Property, and each such casualty insurance policy shall name Beneficiary as a loss payee, and shall provide by way of endorsements, riders or otherwise that (A) proceeds will



be payable to Beneficiary as its interest may appear; (B) Beneficiary will be loss payee for all proceeds payable if the proceeds payable are equal to or greater than \$1,000,000 in amount on a per occurrence or claim basis; (C) such insurance policy shall be renewed, if renewal is available, and shall not be canceled and further, shall not be endorsed, altered or reissued to effect a change in coverage in any manner materially adverse to the Beneficiary, for any reason and to any extent whatsoever unless such insurer shall have first given Beneficiary thirty (30) days' prior written notice thereof; (D) such insurance policy shall not be impaired by any act or neglect of Grantor or any use of the Trust Property for purposes more hazardous than are permitted by such policy; and (E) Beneficiary may, but shall not be obliged to, make premium payments to prevent any nonrenewal, cancellation, endorsement, alteration or reissuance and such payments shall be accepted by the insurer to prevent same.

(ii) Beneficiary shall be furnished with the original of each such initial policy or a certificate with, if requested by Beneficiary, a duplicate of such original policy coincident with the execution of this Deed of Trust and satisfactory evidence of renewal thereof not less than thirty (30) days prior to the expiration of the initial or each preceding renewal policy together with receipts or other evidence that the premiums thereon have been paid, with the original of each renewal policy or a certificate with a duplicate of such renewal policy to follow as soon as available or, in any such case, an appropriate broker's certificate in respect thereto. Upon request by Beneficiary, Grantor shall furnish to Beneficiary a statement certified by Grantor or a duly authorized officer of Grantor of the amounts of insurance maintained in compliance with this Section 5, a general description of the risks covered by such insurance and of the insurance company or companies which carry such insurance. In addition, Grantor will promptly comply with any and all requirements of any insurer of any portion of the Trust Property and any and all rules and regulations of any insurance commission or board of fire underwriters having jurisdiction over the Trust Property.

(c) If Grantor is in default of its obligations to insure or deliver any such prepaid policy or policies, then Beneficiary, at its option and without notice, may effect such insurance from year to year, and pay the premium or premiums therefor, and Grantor shall pay to Beneficiary on demand such premium or premiums so paid by Beneficiary with interest from the time of payment at the Default Rate and the same shall be deemed to be secured by this Deed of Trust and shall be collectible in the same manner as the Secured Indebtedness secured by this Deed of Trust.

(d) Grantor promptly shall comply with and conform to (i) all provisions of each such insurance policy, and (ii) all requirements of the insurers applicable to Grantor or to any of the Trust Property or to the use, manner of use, occupancy, possession, operation, maintenance, alteration or repair of any of the Trust Property. Grantor shall not use or permit



the use of the Trust Property in any manner which would permit any insurer to cancel any insurance policy or void coverage required to be maintained by this Deed of Trust.

(e) (i) If any acts or occurrences of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, shall result in damage to or loss or destruction of the Trust Property, Grantor will give prompt notice thereof to Beneficiary. If (a) there are sufficient insurance proceeds or sufficient other amounts available to Grantor to fully pay for the restoration, repair or replacement (hereinafter called "Work") of the Trust Property, (b) no Event of Default shall have occurred and be continuing, (c) all parties having material operating, management or franchise interests in, and arrangements concerning, the Trust Property agree that they will continue their interests and arrangements for the contract terms then in effect following the restoration or repair, (d) the Grantor presents sufficient evidence to the Beneficiary that the damaged property will be restored as promptly as reasonably practicable and in any event within 365 days of the damage or destruction, and (e) the Beneficiary will not incur any liability to any other person as a result of such use or release of insurance proceeds, then (as to (a), (b), (c) and (d) above) Grantor will so certify to Beneficiary, and will certify that it will, and shall, within 60 days following reaching an agreement with the insurer under the casualty insurance policy relating thereto with regard to the disbursement of insurance proceeds commence and thereafter continue diligently to completion, to restore, repair, replace and rebuild such Trust Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction with such alterations, modifications and/or betterments reasonably deemed necessary or desirable by Grantor in its business judgment, provided in any event such restoration, repair, replacement and rebuilding shall be completed within 365 days of such damage or destruction. If the conditions set forth in the certificate of Grantor described in the immediately preceding sentence are not satisfied with respect to a casualty, or if Grantor fails to deliver such a certificate to Beneficiary within 45 days following the casualty, or if Grantor shall otherwise fail, in any material respect, to restore, repair, replace or rebuild such Trust Property as provided herein, the insurance proceeds related thereto shall be promptly paid to Beneficiary and applied to the reduction of the Total Revolving Credit Commitment with the amount of such proceeds and related payment to reduce the outstanding balance of the Obligations (as defined in the Third Amended Credit Agreement) as provided in the Third Amended Credit Agreement.

(ii) Insurance proceeds to be used for Work, which proceeds are equal to or greater than \$1,000,000 on a per occurrence or claim basis, initially shall be paid to Beneficiary, and shall be paid out by Beneficiary to Grantor from time to time as the Work progresses, subject to the conditions set forth in Section 10. Insurance proceeds to be used for Work, which proceeds are less



than \$1,000,000 on a per occurrence or claim basis, initially shall be paid to Grantor and shall be used by Grantor to perform such Work in accordance with its certificate delivered pursuant to Section 5(e)(i) with any excess thereof used to repay the Obligations (as defined in the Third Amended Credit Agreement) in accordance with Section 5(e)(i). In the event Grantor elects to restore, repair, replace or rebuild the Trust Property and subsequently fails to comply, in any material respect, with any of the conditions set forth herein to disbursement of insurance proceeds, any proceeds remaining to be disbursed, whether held by Grantor, Beneficiary or an insurance company, shall be paid to Beneficiary and, at its option, applied to the reduction of the Total Revolving Credit Commitment with the amount of such proceeds and the related payment to reduce the outstanding balance of the Obligations (as defined in the Third Amended Credit Agreement) as provided in the Third Amended Credit Agreement.

(iii) If the Trust Property is damaged by fire or other casualty, and the cost to repair such damage exceeds \$500,000, then the Beneficiary shall have the right to approve the settlement of the insurance claim with the insurance company, such approval not to be unreasonably withheld or delayed. If an Event of Default shall have occurred and be continuing, then Grantor authorizes and empowers Beneficiary, at Beneficiary's option, and in Beneficiary's sole discretion, as attorney-in-fact for Grantor, to make proof of loss, to adjust and compromise any claim under any insurance policy, to appear in and prosecute any action arising from any policy, to collect and receive insurance proceeds and to deduct therefrom Beneficiary's expenses incurred in the collection process. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary.

(f) In the event of foreclosure of this Deed of Trust or other transfer of title to the Trust Property in extinguishment of the Secured Indebtedness, all right, title and interest of Grantor in and to any insurance policies then in force shall pass to the purchaser or grantee and Grantor hereby appoints Beneficiary its attorney-in-fact, in Grantor's name, to assign and transfer all such policies and proceeds to such purchaser or grantee.

(g) Upon written notice to Grantor, Beneficiary after an Event of Default shall be entitled to require Grantor to pay monthly in advance to Beneficiary the equivalent of 1/12th of the estimated annual premiums due on such insurance. Beneficiary may commingle such funds with its own funds and Grantor shall not be entitled to interest thereon.

(h) Grantor may maintain insurance required under this Deed of Trust by means of one or more blanket insurance policies maintained by Grantor; provided, however, that (A) any such policy shall specify, or Grantor shall furnish to Beneficiary a written statement from the insurer so specifying, the maximum amount of the total insurance afforded by such blanket policy that is allocated to the Premises and the other Trust Property and any sublimits in such blanket policy applicable to the Premises and the other Trust Property, (B)



each such blanket policy shall include an endorsement providing that, in the event of a loss resulting from an insured peril, insurance proceeds shall be allocated to the Trust Property in an amount equal to the coverages required to be maintained by Grantor as provided above and (C) the protection afforded under any such blanket policy shall be no less than that which would have been afforded under a separate policy or policies relating only to the Trust Property.

6. Restrictions on Liens and Encumbrances. Except for the lien of this Deed of Trust, the Permitted Exceptions and the Permitted Encumbrances, Grantor shall not further mortgage, nor otherwise encumber the Trust Property nor create or suffer to exist any lien, charge or encumbrance on the Trust Property, or any part thereof, whether superior or subordinate to this Deed of Trust and whether recourse or non-recourse.

7. Due on Sale and Other Transfer Restrictions. Except as permitted by Section 10.5 of the Third Amended Credit Agreement, Grantor shall not, directly or indirectly, sell, transfer, convey or assign all or any portion of, or any interest in, the Trust Property, whether legal or equitable, by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest, lease option, contract or any other method or conveyance of real property interests. Further, except as provided in Sections 10.7 and 10.14 of the Third Amended Credit Agreement, without the prior written consent of Beneficiary in its sole discretion, the ultimate beneficial ownership of Grantor shall not be changed or altered, by sale, assignment, transfer, pledge foreclosure or otherwise, from the ultimate beneficial ownership on the date hereof.

8. Maintenance; No Alteration; Inspection; Utilities. (a) Grantor shall maintain or cause to be maintained all the Improvements in good condition and repair and shall not commit or suffer any waste of the Improvements, except to the extent that failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as permitted under the Third Amended Credit Agreement, the Improvements shall not be demolished or materially altered, nor any material additions built, without the prior written consent of Beneficiary.

(b) Grantor shall pay or cause to be paid when due all utility charges which are incurred for gas, electricity, water or sewer services furnished to the Premises and all other assessments or charges of a similar nature, whether public or private, affecting the Premises or any portion thereof, whether or not such assessments or charges are liens thereon.

9. Condemnation/Eminent Domain.

(i) Promptly following the date on which an executive officer of Grantor obtains knowledge of the institution or the threatened institution of any proceeding for the condemnation of all or any portion of the Trust Property, Grantor shall notify Beneficiary of such fact. Grantor shall then, unless Beneficiary waives this requirement, file or defend its claim in respect of such proceeding and prosecute same with due diligence to its final disposition. Grantor may be the nominal party in such



proceeding but Beneficiary shall be entitled to participate in same and to be represented therein by counsel of its own choice, and Grantor will deliver or cause to be delivered to Beneficiary such instruments as may be reasonably requested by it from time to time to permit such participation. Subject to the provisions of subsection 9(ii) below, all proceeds received from any condemnation proceeding shall be paid to Beneficiary and applied to the reduction of the Total Revolving Credit Commitment and related payment to reduce the outstanding balance of the Obligations (as defined in the Third Amended Credit Agreement).

(ii) Rebuilding, Restoration and Repair: In the event (a) no Event of Default shall have occurred and be continuing, (b) only a portion of the Trust Property is taken, (c) Grantor elects to rebuild, restore or repair the remaining portion of the Trust Property, (d) the cost of the rebuilding, restoration or repair reasonably estimated by Beneficiary shall not exceed \$1,000,000, (e) there are sufficient proceeds or other amounts available to Grantor to fully pay for the rebuilding, restoration or repair of the Trust Property, (f) all parties having material operating, management or franchise interests in, and arrangements concerning, the Trust Property agree that they will continue their interests and arrangements for the contract terms then in effect following the restoration, (g) the Grantor presents sufficient evidence to the Beneficiary that the Trust Property will be restored to an architectural whole as promptly as practicable and in any event within 365 days of the condemnation, and (h) the Beneficiary will not incur any liability to any other person as a result of such use or release of proceeds, the Grantor will (as to (a) through (g) above) so certify to Beneficiary, and will certify that it will and shall continue diligently to completion to restore, repair, replace and rebuild such Trust Property as nearly as possible to its value, condition and character immediately prior to such condemnation with such alterations, modifications and/or betterments reasonably deemed necessary or desirable by Grantor in its business judgment. With the certification described in the preceding sentence, the Grantor shall deliver to Beneficiary plans and specifications for such rebuilding, restoration or repair; and Grantor shall thereafter commence the rebuilding, restoration or repair in accordance with the plans and specifications required pursuant to the preceding provisions within sixty (60) days after the date of the disbursement of the award or settlement, and complete same to the satisfaction of the Beneficiary within a reasonable time thereafter, but in any event not to exceed 365 days after the occurrence of the condemnation. In the event each of the conditions set forth above in the first sentence of this Section are satisfied except that the cost of rebuilding, restoration or repair is in excess of \$1,000,000, the above provisions shall apply except that the proceeds shall be paid to Beneficiary and disbursed in accordance with Section 10. Upon completion of such rebuilding, restoration and repair in accordance with the preceding provisions, Grantor may apply such amount or settlement to the costs of such rebuilding, restoration or repair. If (i) there is a total condemnation of the Trust Property, or (ii) if the cost of rebuilding, restoration or repair is reasonably estimated to be in excess of \$1,500,000, or (iii) if Grantor elects not to rebuild, restore or repair as specified above, or (iv) the requirements set forth above for rebuilding, restoration or repair after a partial



condemnation are not met to Beneficiary's reasonable satisfaction, then Grantor shall pay to Beneficiary such award or settlement to be applied to reduction of the Total Revolving Credit Commitment with the amount of such award or settlement and related payment to reduce the outstanding balance of the Obligations (as defined in the Third Amended Credit Agreement) as provided in the Third Amended Credit Agreement.

10. **Restoration.** If funds are to be used for restoration of any of the Trust Property, then such restoration shall be performed only in accordance with the following conditions:

(i) prior to the commencement of any restoration, the plans and specifications for such restoration, and the budgeted costs, shall be submitted to and approved by Beneficiary (which approval shall not be unreasonably withheld);

(ii) prior to making any advance of restoration funds, Beneficiary shall be satisfied that the remaining restoration funds (together with any additional funds of Grantor that will be applied by Grantor to such restoration of the Trust Property) are sufficient to complete the restoration and to pay all related expenses, including interest on the Obligations (as defined in the Third Amended Credit Agreement) and real estate taxes on the Premises, during restoration;

(iii) at the time of any disbursement of the restoration funds, (A) no Event of Default shall then exist, (B) no mechanics' or materialmen's liens shall have been filed and remain undischarged, except those discharged by the disbursement of the requested restoration funds and (C) a satisfactory bring-down or continuation of title insurance on the Premises shall be delivered to Beneficiary;

(iv) disbursements shall be made from time to time in an amount not exceeding the cost of the work completed since the last disbursement, upon receipt of satisfactory evidence of the stage of completion and of performance of the work in a good and workmanlike manner and in accordance with the contracts, plans and specifications acceptable to Beneficiary;

(v) with respect to each advance of restoration funds, Beneficiary may retain 10% of the amount of such advance as a holdback until the restoration is fully completed;

(vi) the restoration funds shall bear interest and may be commingled with Beneficiary's other funds;

(vii) Beneficiary may impose such other conditions as are customarily imposed by construction lenders; and



(viii) any restoration funds remaining shall be retained by Beneficiary and applied to reduction of the Total Revolving Credit Commitment in the amount of such remaining funds and related payment to reduce the outstanding balance of the Obligations (as defined in the Third Amended Credit Agreement) as provided in the Third Amended Credit Agreement.

11. Further Assurances. To further assure Beneficiary's and Trustee's rights under this Deed of Trust, Grantor agrees upon demand of Beneficiary or Trustee to do any act or execute any additional documents (including, but not limited to, security agreements on any personalty included or to be included in the Trust Property and a separate assignment of each Lease in recordable form) as may be reasonably required by Beneficiary or Trustee to confirm the rights or benefits conferred on Beneficiary or Trustee by this Deed of Trust.

12. Leases. (a) Grantor shall not execute an assignment or pledge of any Lease relating to all or any portion of the Trust Property other than in favor of Beneficiary.

(b) As to any Lease, Grantor shall:

(i) promptly perform all of the provisions of the Lease on the part of the lessor thereunder to be performed;

(ii) promptly enforce all of the provisions of the Lease on the part of the lessee thereunder to be performed, unless failure to so enforce would have a Material Adverse Effect;

(iii) appear in and defend any action or proceeding arising under or in any manner connected with the Lease or the obligations of Grantor as lessor or of the lessee thereunder in the event such action or proceeding would affect Grantor's interest in the Trust Property;

(iv) promptly deliver to Beneficiary copies of any notices of default which Grantor may at any time receive from the lessee.

(c) All Leases entered into by Grantor after the date hereof, if any, and all rights of any lessees thereunder shall be subject and subordinate in all respects to the lien and provisions of this Deed of Trust unless Beneficiary shall otherwise elect in writing.

(d) As to any Lease now in existence or subsequently consented to by Beneficiary, Grantor shall not accept a surrender or terminate, cancel, rescind, supplement, alter, revise, modify or amend such Lease or permit any such action to be taken other than in the ordinary course of Grantor's business.



(e) In the event of the enforcement by Beneficiary of any remedy under this Deed of Trust, the lessee under each Lease shall, if requested by Beneficiary or any other person succeeding to the interest of Beneficiary as a result of such enforcement, attorn to Beneficiary or to such person and shall recognize Beneficiary or such successor in interest as lessor under the Lease without change in the provisions thereof; provided however, that Beneficiary or such successor in interest shall not be: (i) bound by any amendment or modification to the Lease not made in accordance with this Deed of Trust; (ii) liable for any previous act or omission of Grantor (or its predecessors in interest) if Beneficiary has not been notified of such act or omission; or (iii) responsible for any monies owing by Grantor to the credit of such lessee or subject to any credits, offsets, claims, counterclaims, demands or defenses which the lessee may have against Grantor (or its predecessors in interest) if Grantor has not been given notice of such credits, offsets, claims or defenses.

13. Beneficiary's Right to Perform. If Grantor fails to perform any of the covenants or agreements of Grantor, Beneficiary or Trustee, without waiving or releasing Grantor from any obligation or default under this Deed of Trust, may, at any time (but shall be under no obligation to) pay or perform the same, and the amount or cost thereof, with interest at the Default Rate, shall immediately be due from Grantor to Beneficiary or Trustee (as the case may be) and the same shall be secured by this Deed of Trust and shall be an encumbrance on the Trust Property prior to any right, title to, interest in or claim upon the Trust Property attaching subsequent to the date of this Deed of Trust. No payment or advance of money by Beneficiary or Trustee under this Section shall be deemed or construed to cure Grantor's default or waive any right or remedy of Beneficiary or Trustee.

14. Grantor's Existence, etc. Grantor shall do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the state in which it was formed and its right to own property and transact business in each state in which the Real Estate is located. Grantor represents and warrants that Grantor is a duly organized and validly existing corporation in good standing, and this Deed of Trust has been executed by a duly authorized officer thereof. This Deed of Trust constitutes the legal, valid and binding obligation of Grantor, enforceable against Grantor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally.

15. Financial Statements; Certificates; Other Information. Grantor shall deliver or cause to be delivered to Beneficiary the financial statements, certificates and other information required under the Third Amended Credit Agreement at all times specified therein.

16. Notice of Certain Occurrences. Grantor shall give notice to Beneficiary as provided in Article IX of the Third Amended Credit Agreement.



17. Environmental Matters; Environmental Laws. The representations and warranties concerning Environmental Laws set forth in Section 8.18 of the Third Amended Credit Agreement and the covenants concerning notices, environmental compliance and indemnification set forth in Sections 9.14, 9.15 and 9.16 of the Third Amended Credit Agreement are hereby incorporated into this Deed of Trust and made a part hereof as if set forth in their entirety herein.

18. Events of Default. In addition to any other "Event of Default" referred to in this Deed of Trust, the occurrence of any one or more of the following events shall constitute an event of default ("Event of Default") hereunder:

(a) if Grantor shall fail to pay when due any amount required to be paid by Grantor under the Facility Guaranty; or

(b) upon failure to comply promptly with any Legal Requirement or order or notice of violation of law or ordinance issued by any Governmental Authority having jurisdiction over the Premises, which failure could reasonably be expected to have a Material Adverse Effect; or

(c) if any of the Trust Property is damaged or destroyed by an uninsured casualty and Grantor does not immediately provide funds for the restoration of the damage caused by such casualty and the result of such would have a Material Adverse Effect; or

(d) if Grantor shall permit any additional lien, mortgage or deed of trust to encumber the Trust Property (whether superior or subordinate, recourse or non-recourse) and any default shall occur in connection with such lien, mortgage or deed of trust; or

(e) a failure of Grantor to duly perform and observe, or a violation or breach of, any other terms, covenants, provisions or conditions of this Deed of Trust or the Facility Guaranty and the continuation thereof for a period of 30 days after the earlier of (i) the date upon which an Executive Officer of Grantor knew or should have known of such failure and (ii) the date upon which Grantor notifies Beneficiary of such failure; or

(f) the occurrence of an Event of Default (as defined in the Third Amended Credit Agreement).

19. Remedies. (a) Upon the occurrence and during the continuance of any Event of Default, in addition to any other rights and remedies Beneficiary may have pursuant to the Loan Documents, or as provided by law, and without limitation, (x) if such event is an Event of Default specified in Sections 11.1(g) or (h) of the Third Amended Credit Agreement, automatically the Secured Indebtedness, the Guarantor's Obligations and the Obligations (as defined in the Third Amended Credit Agreement) immediately shall become due and payable,



and (y) if such event is any other Event of Default, by notice to Grantor, Beneficiary may declare the Secured Indebtedness, the Guarantor's Obligations and the Obligations (as defined in the Third Amended Credit Agreement) (together with accrued interest thereon) to be immediately due and payable. Except as expressly provided above in this Section, presentment, demand, protest and all other notices of any kind are hereby expressly waived. In addition, upon the occurrence and during the continuance of any Event of Default, Beneficiary may immediately take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Grantor and in and to the Trust Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such manner as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Beneficiary:

(i) With or without taking possession of the Trust Property, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including reasonable attorneys' fees, upon the Secured Indebtedness and other Guarantor's Obligations, all in such order as Beneficiary may reasonably determine. The entering upon and taking possession of the Trust Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Trust Property or the collection, receipt and application of rents, issues or profits, Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law.

(ii) Bring an action(s) in any court of competent jurisdiction to foreclose this Deed of Trust or to enforce any of the covenants, terms or conditions hereof and Beneficiary shall have the right to specific performance, injunction and any other equitable right or remedy as though other remedies were not provided in this Deed of Trust.

(iii) Elect to cause the Trust Property or any part thereof to be sold as follows, Grantor hereby expressly waiving any right which it may have to direct the order in which any of the Trust Property may be sold:

(a) Beneficiary may proceed as if all of the Trust Property were real property, in accordance with subparagraph (c) below, or Beneficiary may elect to treat any of the Trust Property which consists of personal property, in accordance with Section 27 below, separate and apart from the sale of real property, the remainder of the Trust Property being treated as real property;

(b) Beneficiary may cause any such sale or other disposition to be conducted immediately following the expiration of any grace period, if any, herein provided or Beneficiary may delay any such sale or other disposition for



such period of time as Beneficiary deems to be in its best interest. Should Beneficiary desire that more than one such sale or other disposition be conducted, Beneficiary may, at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Beneficiary may deem to be in its best interest;

(c) Should Beneficiary elect to sell the Trust Property upon which Beneficiary elects to proceed under the laws governing foreclosure of or sales pursuant to Deeds of Trust, Beneficiary or Trustee shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, Trustee, at the time and place specified by the notice of sale, shall sell such Trust Property, or any portion thereof specified by Beneficiary, at public auction to the highest bidder for cash in lawful money of the United States, subject, however, to the provisions of Section 24 hereof. Trustee may, and upon request of Beneficiary shall, from time to time, postpone the sale by public announcement thereof at the time and place noticed therefor. If the Trust Property consists of several lots or parcels, Beneficiary may elect to sell the Trust Property either as a whole or in separate lots or parcels. If Beneficiary elects to sell in separate lots or parcels Beneficiary may designate the order in which such lots or parcels shall be offered for sale or sold. Any person, including Grantor or Beneficiary, may purchase at the sale. Upon any sale, Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied;

(d) In the event of a sale or other disposition of any such property, or any part thereof, and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts, such as an Event of Default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchase, payments of purchase money, and any other fact affecting the regularity or validity of such sale or disposition shall be conclusive proof of the truth of such facts; and any such deed or conveyance shall be conclusive against all persons as to such facts recited therein;

(e) Beneficiary and/or Trustee shall apply the proceeds of any sale or disposition hereunder in the order as provided in Section 20 of this Deed of Trust; and

(iv) Exercise all other rights and remedies provided herein, in the other Loan Documents or otherwise available at law of equity.



20. Sale of the Properties; Application of Proceeds. Subject to the requirements of applicable law, the proceeds or avails of any foreclosure sale and all moneys received by Beneficiary pursuant to any right given or action taken under the provisions of this Deed of Trust shall be applied as follows:

First: To the payment of the costs and expenses of any such sale or other enforcement proceedings in accordance with the terms hereof and of any judicial proceeding wherein the same may be made, and in addition thereto, reasonable compensation to Beneficiary, its agents and counsel, and all actual out of pocket expenses, advances, liabilities and sums made or furnished or incurred by Beneficiary, the Secured Creditors, any other evidence of the Secured Indebtedness and other Guarantor's Obligations and this Deed of Trust under this Deed of Trust and the other Loan Documents, together with interest at the Default Rate (or such lesser amount as may be the maximum amount permitted by law), and all taxes, assessments or other charges, except any taxes, assessments or other charges subject to which the Trust Property shall have been sold;

Second: To the payment of the whole amount when due, owing and unpaid (whether by acceleration or otherwise) of the Secured Indebtedness and other Guarantor's Obligations.

Third: To the payment of any other sums required to be paid by Grantor pursuant to any provision of this Deed of Trust, or any other Loan Document.

Fourth: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

21. Trustee's Powers and Liabilities. (a) Powers of Trustee. At any time or from time to time, without liability therefor and without notice, upon the written request of Beneficiary and Grantor and presentation of the evidence of the Secured Indebtedness and the other Guarantor's Obligations and this Deed of Trust for endorsement, without affecting the personal liability of any person for the payment of the indebtedness secured hereby, and without affecting the lien of this Deed of Trust upon the Trust Property for the full amount of all amounts secured hereby, Trustee may (i) reconvey all or any part of the Trust Property, (ii) consent to the making of any map or plat thereof, (iii) join in granting any easement thereon or in creating any covenants or conditions restricting use or occupancy thereof, or (iv) join in any extension agreement or in any agreement subordinating the lien or charge hereof.

(b) Reconveyance. Upon written request of Beneficiary, and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder or such part as Beneficiary may designate. The recitals in any such reconveyance or partial reconveyance of any matters or facts shall be conclusive proof of the truth thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."



(c) Trustee Notice. Trustee is not obligated to notify any party hereto of any pending sale under any other deed of trust or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be a party, unless brought by Trustee.

(d) Compensation and Indemnification of Trustee. Trustee shall be entitled to reasonable compensation for all services rendered or expenses incurred in the administration or execution of the trusts hereby created and Grantor hereby agrees to pay the same. Trustee shall be indemnified, held harmless and reimbursed by Grantor for any liability, damage or expense, including reasonable attorneys' fees and amounts paid in settlement, which Trustee may incur or sustain in connection with this Deed of Trust or in the doing of any act which Trustee is required or permitted to do by the terms hereof or by law.

(e) Substitute Trustees. Beneficiary may substitute the Trustee hereunder in any manner now or hereafter provided by law, or in lieu thereof, Beneficiary may from time to time, by an instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the recorder of the county or counties where the Trust Property is situated and a copy thereof delivered to Grantor, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall thereupon, and without conveyance from the predecessor Trustee, succeed to all its title, estate, rights, powers and duties. Such instrument must contain the name of the original Grantor, Trustee and Beneficiary hereunder, the recording number under which this Deed of Trust is recorded, the legal description of the Land and the name and address of the new Trustee.

(f) Acceptance by Trustee. The acceptance by Trustee of this trust shall be evidenced when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

(g) Trust Irrevocable; No Offset. The trust created hereby is irrevocable by Grantor. No offset or claim that Grantor now or may in the future have against Beneficiary shall relieve Grantor from paying installments or performing any other obligation herein or secured hereby.

(h) Corrections. Grantor will, upon request of Beneficiary or Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in the execution or acknowledgment hereof, and will execute, acknowledge and deliver such further instruments and do such further acts as may be reasonably necessary or as may be reasonably requested by Beneficiary or Trustee to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interests hereby created any of Grantor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.



22. Request for Notice. A request is hereby made by Grantor that a copy of any notice of default and a copy of any notice of sale under this Deed of Trust be mailed to Grantor at Grantor's address set forth in the first paragraph of this Deed of Trust.

23. Successor Grantor. In the event ownership of the Trust Property or any portion thereof becomes vested in a person other than the Grantor herein named, Beneficiary may, without notice to the Grantor herein named, whether or not Beneficiary has given written consent to such change in ownership, deal with such successor or successors in interest with reference to this Deed of Trust and the Secured Indebtedness and the Guarantor's Obligations, and in the same manner as with the Grantor herein named, without in any way vitiating or discharging Grantor's liability hereunder or under the Secured Indebtedness and the Guarantor's Obligations.

24. Right of Beneficiary to Credit Sale. Upon the occurrence of any sale made under this Deed of Trust, whether made under the power of sale or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Beneficiary may bid for and acquire the Trust Property or any part thereof. In lieu of paying cash therefor, Beneficiary may make settlement for the purchase price by crediting upon the Secured Indebtedness, the Guarantor's Obligations or other sums secured by this Deed of Trust the net sales price after deducting therefrom the expenses of sale and the cost of the action and any other sums which Beneficiary is authorized to deduct under this Deed of Trust. In such event, this Deed of Trust, the Facility Guaranty, and any other evidence of the Secured Indebtedness or the other Guarantor's Obligations and documents evidencing expenditures secured hereby may be presented to the person or persons conducting the sale in order that the amount so used or applied may be credited upon the Secured Indebtedness and the other Guarantor's Obligations as having been paid.

25. Appointment of Receiver. If an Event of Default shall have occurred and be continuing, Beneficiary as a matter of right and without notice to Grantor, unless otherwise required by applicable law, and without regard to the adequacy or inadequacy of the Trust Property or any other collateral as security for the Secured Indebtedness and the Guarantor's Obligations or the interest of Grantor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers for the purpose of collecting rent or any other lawful purpose, without requiring the posting of a surety bond and without reference to the adequacy or inadequacy of the value of the Trust Property or the solvency or insolvency of Grantor or any other party obligated for payment of all or any part of the Secured Indebtedness and the other Guarantor's Obligations, and whether or not waste has occurred with respect to the Trust Property. Grantor hereby irrevocably consents to such appointment and waives notice of any application therefor (except as may be required by law). Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases.

26. Extension, Release, etc. (a) Without affecting the lien or charge of this Deed of Trust upon any portion of the Trust Property not then or theretofore released as security for the full amount of the Secured Indebtedness and the other Guarantor's Obligations,



Beneficiary may, from time to time and without notice, agree to (i) release any person liable for the Obligations (as defined in the Third Amended Credit Agreement), whether directly or indirectly, (ii) extend the maturity or alter any of the terms of the Secured Indebtedness, the Guarantor's Obligations or the Obligations (as defined in the Third Amended Credit Agreement), or any other guaranty thereof, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed at any time at Beneficiary's option any parcel, portion or all of the Trust Property, (v) take or release any other or additional security for any obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto. If at any time this Deed of Trust shall secure less than all of the Secured Indebtedness and the Guarantor's Obligations, it is expressly agreed that any repayments of the Secured Indebtedness and the Guarantor's Obligations shall not reduce the amount of the lien of this Deed of Trust until the lien amount shall equal the principal amount of the Obligations (as defined in the Third Amended Credit Agreement) outstanding; provided that, notwithstanding the foregoing, the amount of the lien of this Deed of Trust shall increase by the amount, among others, that the principal amount of the Obligations (as defined in the Third Amended Credit Agreement) increases as a result of borrowings or reborrowings by the Borrower or otherwise; provided, further, that the principal amount secured hereby shall in no event exceed the amount, if any, set forth herein as the maximum principal amount.

(b) No recovery of any judgment by Beneficiary and no levy of an execution under any judgment upon the Trust Property or upon any other property of Grantor shall affect the encumbrance of this Deed of Trust or any liens, rights, powers or remedies of Beneficiary or Trustee hereunder, and such liens, rights, powers and remedies shall continue unimpaired.

(c) If Beneficiary shall have the right to foreclose this Deed of Trust or to direct the Trustee to exercise its power of sale, Grantor authorizes Beneficiary at its option to foreclose the lien of this Deed of Trust (or direct the Trustee to sell the Trust Property, as the case may be) subject to the rights of any tenants of the Trust Property. The failure to make any such tenants parties defendant to any such foreclosure proceeding and to foreclose their rights, or to provide notice to such tenants as required in any statutory procedure governing a sale of the Trust Property by Trustee, or to terminate such tenant's rights in such sale will not be asserted by Grantor as a defense to any proceeding instituted by Beneficiary to collect the Secured Indebtedness and the Guarantor's Obligations or to foreclose this Deed of Trust.

(d) Unless expressly provided otherwise, in the event that Beneficiary's interest in this Deed of Trust and title to the Trust Property or any estate therein shall become vested in the same person or entity, this Deed of Trust shall not merge in such title but shall continue as a valid charge on the Trust Property for the amount secured hereby.

27. Security Agreement under Uniform Commercial Code. (a) It is the intention of the parties hereto that this Deed of Trust shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the State in which the Trust Property is located. If an Event of Default shall occur and be continuing under this Deed of Trust, then in addition to having any other right or remedy available at law or in equity,



Beneficiary shall have the option of either (i) proceeding under the Code and exercising such rights and remedies as may be provided to a secured party by the Code with respect to all or any portion of the Trust Property which is personal property (including, without limitation, taking possession of and selling such property) or (ii) treating such property as real property and proceeding with respect to both the real and personal property constituting the Trust Property in accordance with Beneficiary's rights, powers and remedies with respect to the real property (in which event the default provisions of the Code shall not apply). If Beneficiary shall elect to proceed under the Code, then ten days' notice of sale of the personal property shall be deemed reasonable notice and the reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Beneficiary shall include, but not be limited to, reasonable attorneys' fees and legal expenses. At Beneficiary's request, Grantor shall assemble the personal property and make it available to Beneficiary at a place designated by Beneficiary which is reasonably convenient to both parties.

(b) Grantor and Beneficiary agree, to the extent permitted by law, that: (i) all of the goods described within the definition of the word "Equipment" are or are to become fixtures on the Real Estate; (ii) this Deed of Trust upon recording or registration in the real estate records of the proper office shall constitute a financing statement filed as a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Code; and (iii) the addresses of Grantor and Beneficiary are as set forth on the first page of this Deed of Trust.

(c) Grantor, upon request by Beneficiary from time to time, shall execute, acknowledge and deliver to Beneficiary one or more separate security agreements, in form satisfactory to Beneficiary, covering all or any part of the Trust Property and will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Beneficiary may request in order to perfect, preserve, maintain, continue or extend the security interest under and the priority of this Deed of Trust and such security instrument. Grantor further agrees to pay to Beneficiary on demand all reasonable costs and expenses incurred by Beneficiary in connection with the preparation, execution, recording, filing and re-filing of any such document and all reasonable costs and expenses of any record searches for financing statements Beneficiary shall reasonably require. If Grantor shall fail to furnish any financing or continuation statement within 10 days after request by Beneficiary, then pursuant to the provisions of the Code, Grantor hereby authorizes Beneficiary, without the signature of Grantor, to execute and file any such financing and continuation statements. The filing of any financing or continuation statements in the records relating to personal property or chattels shall not be construed as in any way impairing the right of Beneficiary to proceed against any personal property encumbered by this Deed of Trust as real property, as set forth above.

28. Assignment of Rents. Grantor hereby absolutely and unconditionally assigns, transfers, conveys and sets over to Beneficiary, the Rents as further security for the payment of the Secured Indebtedness and the Guarantor's Obligations and performance of the Guarantor's Obligations, and Grantor grants to Beneficiary the right to enter the Trust Property for the purpose of collecting the same and to let the Trust Property or any part thereof, and to



apply the Rents on account of the Secured Indebtedness and the Guarantor's Obligations. The foregoing assignment and grant is present and absolute and shall continue in effect until the Secured Indebtedness and the Guarantor's Obligations are paid in full, but Beneficiary and Trustee hereby waive the right to enter the Trust Property for the purpose of collecting the Rents and Grantor shall be entitled to collect, receive, use and retain the Rents until the occurrence of an Event of Default under this Deed of Trust; such right of Grantor to collect, receive, use and retain the Rents may be revoked by Beneficiary upon the occurrence and during the continuance of any Event of Default under this Deed of Trust by giving not less than ten days' written notice of such revocation to Grantor; in the event such notice is given, Grantor shall pay over to Beneficiary, or to any receiver appointed to collect the Rents, any lease security deposits, and shall pay monthly in advance to Beneficiary, or to any such receiver, the fair and reasonable rental value as determined by Beneficiary for the use and occupancy of the Trust Property or of such part thereof as may be in the possession of Grantor or any affiliate of Grantor, and upon default in any such payment Grantor and any such affiliate will vacate and surrender the possession of the Trust Property to Beneficiary or to such receiver, and in default thereof may be evicted by summary proceedings or otherwise.

29. Additional Rights. The holder of any subordinate lien or subordinate deed of trust on the Trust Property shall have no right to terminate any Lease whether or not such Lease is subordinate to this Deed of Trust nor shall any holder of any subordinate lien or subordinate deed of trust join any tenant under any Lease in any trustee's sale or action to foreclose the lien or modify, interfere with, disturb or terminate the rights of any tenant under any Lease. By recordation of this Deed of Trust all subordinate lienholders, and the trustees and beneficiaries under subordinate deeds of trust are subject to and notified of this provision, and any action taken by any such lienholder or trustee or beneficiary contrary to this provision shall be null and void. Upon the occurrence and during the continuance of any Event of Default, Beneficiary may, in its sole discretion and without regard to the adequacy of its security under this Deed of Trust, apply all or any part of any amounts on deposit with Beneficiary under this Deed of Trust against all or any part of the Obligations (as defined in the Third Amended Credit Agreement). Any such application shall not be construed to cure or waive any Default or Event of Default or invalidate any act taken by Beneficiary on account of such Default or Event of Default.

30. Changes in Method of Taxation. In the event of the passage after the date hereof of any law of any Governmental Authority deducting from the value of the Premises for the purposes of taxation any lien or deed of trust thereon, or changing in any way the laws for the taxation of mortgages or deeds of trust or debts secured thereby for federal, state or local purposes, or the manner of collection of any such taxes, and imposing a tax, either directly or indirectly, on mortgages or deeds of trust or debts secured thereby, the holder of this Deed of Trust shall have the right to declare the Obligations (as defined in the Third Amended Credit Agreement) due on a date to be specified by not less than 30 days' written notice to be given to Grantor unless within such 30-day period Grantor shall assume as an Obligation hereunder the payment of any tax so imposed until full payment of the Obligations (as defined in the Third Amended Credit Agreement) and such assumption shall be permitted by law.



31. Notices. All notices, requests, demands and other communications shall be given in accordance with Section 13.2 of the Third Amended Credit Agreement.

32. No Oral Modification. This Deed of Trust may not be changed or terminated orally. Any agreement made by Grantor And Beneficiary after the date of this Deed of Trust relating to this Deed of Trust shall be superior to the rights of the holder of any intervening or subordinate deed of trust, lien or encumbrance. Trustee's execution of any written agreement between Grantor and Beneficiary shall not be required for the effectiveness thereof as between Grantor and Beneficiary.

33. Partial Invalidity. In the event any one or more of the provisions contained in this Deed of Trust shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included. Notwithstanding anything to the contrary contained in this Deed of Trust or in any provisions of the other Loan Documents, the obligations of Grantor and of any other obligor under the Loan Documents shall be subject to the limitation that Beneficiary shall not charge, take or receive, nor shall Grantor or any other obligor be obligated to pay to Beneficiary, any amounts constituting interest in excess of the maximum rate permitted by law to be charged by Beneficiary.

34. Grantor's Waiver of Rights. To the fullest extent permitted by law, Grantor waives the benefit of all laws now existing or that may subsequently be enacted providing for (a) any appraisal before sale of any portion of the Trust Property, (b) any extension of the time for the enforcement of the collection of the Obligations (as defined in the Third Amended Credit Agreement), Secured Indebtedness or Guarantor's Obligations or the creation or extension of a period of redemption from any sale made in collecting such debt and (c) exemption of the Trust Property from attachment, levy or sale under execution or exemption from civil process. To the full extent Grantor may do so, Grantor agrees that Grantor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, exemption, extension or redemption, or requiring foreclosure of this Deed of Trust before exercising any other remedy granted hereunder and Grantor, for Grantor and its successors and assigns, and for any and all persons ever claiming any interest in the Trust Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of exercise by Trustee or Beneficiary of the power of sale or other rights hereby created.

35. Remedies Not Exclusive. Beneficiary and Trustee shall be entitled to enforce payment of the Secured Indebtedness and performance of the Guarantor's Obligations and to exercise all rights and powers under this Deed of Trust or under any of the other Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the Obligations (as defined in the Third Amended Credit Agreement), Secured



Indebtedness and Guarantor's Obligations may now or hereafter be otherwise secured, whether by deed of trust, mortgage, security agreement, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, shall prejudice or in any manner affect Beneficiary's or Trustee's right to realize upon or enforce any other security now or hereafter held by Beneficiary or Trustee, it being agreed that Beneficiary and Trustee shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as Beneficiary may determine in its absolute discretion. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Beneficiary or Trustee or to which either may otherwise be entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Beneficiary or Trustee, as the case may be. In no event shall Beneficiary or Trustee, in the exercise of the remedies provided in this Deed of Trust (including, without limitation, in connection with the assignment of Rents, or the appointment of a receiver and the entry of such receiver on to all or any part of the Trust Property), be deemed a "mortgagee in possession," and neither Beneficiary nor Trustee shall in any way be made liable for any act, either of commission or omission, in connection with the exercise of such remedies.

36. **Multiple Security.** If (a) the Land shall consist of one or more parcels, whether or not contiguous and whether or not located in the same county, or (b) in addition to this Deed of Trust, Beneficiary shall now or hereafter hold or be the beneficiary of one or more additional mortgages, liens, deeds of trust or other security (directly or indirectly) for the Obligations (as defined in the Third Amended Credit Agreement) upon other property in Washington, or (c) both the circumstances described in clauses (a) and (b) shall be true, then to the fullest extent permitted by law, Beneficiary may, at its election, commence or consolidate in a single trustee's sale or foreclosure action all trustee's sale or foreclosure proceedings against all such collateral (the "Collateral") securing the Obligations (as defined in the Third Amended Credit Agreement) (including the Trust Property), which action may be brought or consolidated in the courts of, or trustee's sale conducted in, any county in which any of the Collateral is located. Grantor acknowledges that the right to maintain a consolidated trustee's sale or foreclosure action is a specific inducement to Beneficiary to extend the Obligations (as defined in the Third Amended Credit Agreement), and Grantor expressly and irrevocably waives any objections to the commencement or consolidation of the foreclosure proceedings in a single action and any objections to the laying of venue or based on the grounds of forum non conveniens which it may now or hereafter have. Grantor acknowledges and agrees that the Obligations (as defined in the Third Amended Credit Agreement), Secured Indebtedness and other Guarantor's Obligations are also secured by collateral in other states and that upon the occurrence of an Event of Default, Beneficiary may, in its discretion, choose to proceed against, and realize upon, all or part of the collateral in other states at the same time that it takes recourse against the Collateral in the state of Washington. Such concurrent realization proceedings in different states are beneficial to Grantor and Beneficiary by avoiding unnecessary delay and expense. Accordingly, it is agreed that the foreclosure and realization



statutes of Washington (including, without limitation, RCW Chapters 61.12 and 61.24) shall apply only to collateral in the state of Washington and shall not be understood to have application to any actions or proceedings in other jurisdictions, nor shall such extraterritorial actions or proceedings limit, bar or prejudice Beneficiary's right to realize upon the Collateral in Washington. By way of example and not limitation, RCW 61.12.120 and 61.24.030(4) do not bar foreclosure in Washington because of the pendency of any actions or proceedings in other states, and RCW 61.24.100 shall not in any way limit Beneficiary's rights with respect to the collection of the Obligations (as defined in the Third Amended Credit Agreement), Secured Indebtedness and other Guarantor's Obligations or the realization upon Collateral in other states. It is expressly understood and agreed that to the fullest extent permitted by law, Beneficiary may, at its election, cause the sale of all Collateral at either a single trustee's or sheriff's sale or at multiple sales conducted simultaneously or sequentially, and it may, in its discretion, take such other measures as are appropriate in order to realize upon and administer all collateral in the most economical and least time-consuming manner.

37. **Expenses; Indemnification.** (a) Grantor shall pay or reimburse Trustee and Beneficiary for all reasonable expenses incurred by Beneficiary or Trustee before and after the date of this Deed of Trust with respect to any and all transactions contemplated by this Deed of Trust including without limitation, the preparation of any document reasonably required hereunder or any amendment, modification, restatement or supplement to this Deed of Trust, the delivery of any consent, non-disturbance agreement or similar document in connection with this Deed of Trust, or the enforcement of any of Beneficiary's or Trustee's rights. Such expenses shall include, without limitation, all title and conveyancing charges, recording and filing fees and taxes, mortgage taxes, intangible personal property taxes, escrow fees, revenue and tax stamp expenses, insurance premiums (including title insurance premiums), title search and title rundown charges, brokerage commissions, finders' fees, placement fees, court costs, surveyors', photographers', appraisers', architects', engineers', consulting professionals', accountants' and reasonable attorneys' fees and disbursements. Grantor acknowledges that from time to time Grantor may receive statements for such expenses, including without limitation reasonable attorneys' fees and disbursements. Grantor shall pay such statements promptly upon receipt.

(b) If (i) any sale (or any prerequisite to a sale), action or proceeding shall be commenced by Beneficiary or Trustee (including but not limited to any sale of the Trust Property, or any action to foreclose this Deed of Trust or to collect the Secured Indebtedness or other Guarantor's Obligations), or any action or proceeding is commenced to which Beneficiary or Trustee is made a party, or in which it becomes necessary to defend or uphold the rights granted by this Deed of Trust (including, without limitation, any proceeding or other action relating to the bankruptcy, insolvency or reorganization of the Borrower or any Subsidiary), or in which Beneficiary or Trustee is served with any legal process, discovery notice or subpoena and (ii) in each of the foregoing instances such action or proceeding in any manner relates to or arises out of this Deed of Trust or Beneficiary's lending to Grantor or acceptance of a guaranty from a Guarantor of the Obligations (as defined in the Third Amended Credit Agreement) or of any of the Guarantor's Obligations or any of the transactions contemplated by this Deed of



Trust, then Grantor will immediately reimburse or pay to Beneficiary and Trustee all of the expenses which have been or may be incurred by Beneficiary and Trustee, respectively, with respect to the foregoing (including reasonable counsel fees and disbursements), together with interest thereon at the Default Rate, and any such sum and the interest thereon shall be included in the Secured Indebtedness or other Guarantor's Obligations and have the full benefit of this Deed of Trust, prior to any right, or title to, interest in or claim upon the Trust Property attaching or accruing to this Deed of Trust, and shall be deemed to be secured by this Deed of Trust. In any action or proceeding to sell the Trust Property, to foreclose this Deed of Trust, or to recover or collect the Secured Indebtedness or other Guarantor's Obligations, the provisions of law respecting the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

(c) Grantor shall indemnify and hold harmless each of Beneficiary and Trustee and each of their respective affiliates, and the respective directors, officers, agents and employees of each of Beneficiary and Trustee and each of their respective affiliates from and against all claims, damages, losses and liabilities (including, without limitation, reasonable attorneys' fees and expenses) arising out of or based upon any matter related to this Deed of Trust, the Trust Property or the occupancy, ownership, maintenance or management of the Trust Property by Grantor, including, without limitation, any claims based on the alleged acts or omissions of any employee or agent of Grantor, provided that the foregoing indemnity shall survive conveyance of the Trust Property to Trustee or Beneficiary or the taking of possession of the Trust Property by Beneficiary or Trustee only with respect to events, acts, conditions and liabilities which occurred, existed or are attributable to the time period prior to such conveyance or taking, as the case may be. This indemnification shall be in addition to any other liability which Grantor may otherwise have to Beneficiary or Trustee.

38. Successors and Assigns. All covenants of Grantor contained in this Deed of Trust are imposed solely and exclusively for the benefit of Beneficiary and Trustee and their respective successors and assigns, and no other person or entity shall have standing to require compliance with such covenants or be deemed, under any circumstances, to be a beneficiary of such covenants, any or all of which may be freely waived in whole or in part by Beneficiary or Trustee at any time if in the sole discretion of either of them such waiver is deemed advisable. All such covenants of Grantor shall run with the land and bind Grantor, the successors and assigns of Grantor (and each of them) and all subsequent owners, encumbrancers and tenants of the Trust Property, and shall inure to the benefit of Beneficiary, Trustee and their respective successors and assigns. Without limiting the generality of the foregoing, any successor to Trustee appointed by Beneficiary shall succeed to all rights of Trustee as if such successor had been originally named as Trustee hereunder. The word "Grantor" shall be construed as if it read "Grantors" whenever the sense of this Deed of Trust so requires and if there shall be more than one Grantor, the obligations of the Grantors shall be joint and several.

39. No Waivers, etc. Any failure by Beneficiary to insist upon the strict performance by Grantor of any of the terms and provisions of this Deed of Trust shall not be deemed to be a waiver of any of the terms and provisions hereof, and Beneficiary or Trustee,



notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Grantor of any and all of the terms and provisions of this Deed of Trust to be performed by Grantor. Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the beneficiary of any subordinate deed of trust or the holder of any subordinate lien on the Trust Property, any part of the security held for the obligations secured by this Deed of Trust without, as to the remainder of the security, in any wise impairing or affecting this Deed of Trust or the priority of this Deed of Trust over any subordinate lien or deed of trust.

40. Governing Law, etc. This Deed of Trust shall be governed by and construed in accordance with the laws of the State in which the Premises are located, except that Grantor expressly acknowledges that by its terms the Notes, the Facility Guaranty and the Third Amended Credit Agreement shall be governed and construed in accordance with the laws of the State of New York, without regard to principles of conflict of law, and for purposes of consistency, Grantor agrees that in any in personam proceeding related to this Deed of Trust the rights of the parties to this Deed of Trust shall also be governed by and construed in accordance with the laws of the State of New York governing contracts made and to be performed in that State, without regard to principles of conflict of law.

41. Waiver of Trial by Jury. Grantor, Trustee and Beneficiary each hereby irrevocably and unconditionally waive trial by jury in any action, claim, suit or proceeding relating to this Deed of Trust and for any counterclaim brought therein. Grantor hereby waives all rights to interpose any counterclaim in any suit brought by Beneficiary or Trustee hereunder and all rights to have any such suit consolidated with any separate suit, action or proceeding.

42. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Deed of Trust shall be used interchangeably in singular or plural form and the word "Grantor" shall mean "each Grantor or any subsequent owner or owners of the Trust Property or any part thereof or interest therein," the word "Beneficiary" shall mean "Beneficiary or any subsequent collateral agent for the Secured Creditors," the word "Trustee" shall mean "Trustee and any successor trustee hereunder," the word "person" shall include any individual, corporation, partnership, trust, unincorporated association, government, governmental authority, or other entity, and the words "Trust Property" shall include any portion of the Trust Property or interest therein. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. The captions in this Deed of Trust are for convenience or reference only and in no way limit or amplify the provisions hereof.

43. Receipt of Copy. Grantor acknowledges that it has received a true copy of this Deed of Trust.

44. Property Not Used for Farming. The property which is the subject of this Deed of Trust is not used principally or primarily for agricultural or farming purposes.



45. Mortgaged Lease Provisions. (a) Grantor shall pay or cause to be paid all rent, royalties and other charges required under the Mortgaged Lease as and when the same are due and shall promptly and faithfully perform or cause to be performed all other material terms, obligations, covenants, conditions, agreements, indemnities, representations, warranties or liabilities of the lessee under the Mortgaged Lease. Grantor shall not (i) in any manner, cancel, terminate or surrender, or permit the cancellation, termination or surrender (any of the foregoing, a "Cancellation") of the Mortgaged Lease, in whole or in part if any such Cancellation, individually, or together with the Cancellation(s), in whole or in part, of any other lease(s), rock removal agreement(s), materials agreement(s) or other similar agreement(s) (collectively, "Other Leases") will have a Material Adverse Effect, (ii) either orally or in writing, modify, amend or permit any modification or amendment (either of the foregoing, a "Modification") of any of the terms of the Mortgaged Lease in any material respect if any such Modification, individually, or together with (x) any other Modification(s) of the Mortgaged Lease, of any Other Lease(s) and/or (y) the Cancellation(s), in whole or in part, of any other Lease(s), will have a Material Adverse Effect or (iii) permit the subordination of any Mortgaged Lease to any mortgage and any attempt to do any of the foregoing shall be null and void and of no effect and shall constitute an Event of Default hereunder.

(b) Grantor shall do, or cause to be done, all things necessary to preserve and keep unimpaired all material rights of Grantor as lessee under the Mortgaged Lease, and to prevent any default under the Mortgaged Lease, or any termination, surrender, cancellation, forfeiture, subordination or impairment thereof. Grantor does hereby authorize and irrevocably appoint and constitute Beneficiary as its true and lawful attorney-in-fact, which appointment is coupled with an interest, in its name, place and stead, to take any and all actions deemed necessary or desirable by Beneficiary to perform and comply with all the obligations of Grantor under the Mortgaged Lease, and to do and take, but without any obligation so to do, any action which Beneficiary deems necessary or desirable to prevent or cure any default by Grantor under the Mortgaged Lease, to enter into and upon the Premises or any part thereof to such extent and as often as Beneficiary, in its sole discretion, deems necessary or desirable in order to prevent or cure any default of Grantor pursuant thereto, to the end that the rights of Grantor in and to the leasehold estate created by the Mortgaged Lease shall be kept unimpaired and free from default. All sums so expended by Beneficiary, with interest thereon at the Default Rate from the date of each such expenditure, shall be paid by Grantor to Beneficiary promptly upon demand by Beneficiary. Grantor shall, within five (5) business days after written request by Beneficiary, execute and deliver to Beneficiary, or to any person designated by Beneficiary, such further instruments, agreements, powers, assignments, conveyances or the like as may be necessary to complete or perfect the interest, rights or powers of Beneficiary pursuant to this paragraph.

(c) Grantor shall use its best efforts to enforce the obligations of the lessor under the Mortgaged Lease and shall promptly notify Beneficiary in writing of any material default by either the lessor or Grantor in the performance or observance of any of the terms, covenants and conditions contained in the Mortgaged Lease. Grantor shall deliver to



Beneficiary, within ten (10) business days after receipt, a copy of any material notice, demand, complaint or request for compliance made by the lessor under the Mortgaged Lease. If the lessor shall deliver to Beneficiary a copy of any notice of default given to Grantor, such notice shall constitute full authority and protection to Beneficiary for any actions taken or omitted to be taken in good faith by Beneficiary on such notice.

(d) If any action or proceeding shall be instituted to evict Grantor or to recover possession of the Trust Property from Grantor or any part thereof or interest therein or any action or proceeding otherwise affecting the Mortgaged Lease or this Deed of Trust shall be instituted, then Grantor shall, immediately after receipt deliver to Beneficiary a true and complete copy of each petition, summons, complaint, notice of motion, order to show cause and all other pleadings and papers, however designated, served in any such action or proceeding.

(e) Grantor covenants and agrees that the fee title to the Real Estate and the leasehold estate created under the Mortgaged Lease shall not merge but shall always remain separate and distinct, notwithstanding the union of said estates either in Grantor or a third party by purchase or otherwise; and in case Grantor acquires the fee title or any other estate, title or interest in and to the Real Estate, the lien of this Deed of Trust shall, without further conveyance, simultaneously with such acquisition, be spread to cover and attach to such acquired estate and as so spread and attached shall be prior to the lien of any mortgage placed on the acquired estate after the date of this Deed of Trust.

(f) No release or forbearance of any of Grantor's obligations under the Mortgaged Lease, pursuant to the Mortgaged Lease or otherwise, shall release Grantor from any of its obligations under this Deed of Trust, including its obligations to pay all rent, royalties and other charges and to perform all of the terms, provisions, covenants, conditions and agreements of the lessee under the Mortgaged Lease, unless such obligation to pay or perform was so released or forborne.

(g) Except as required below with respect to renewals and extensions of the Mortgaged Lease, Grantor shall not make any election or give any consent or approval under the Mortgaged Lease unless the same shall not have a Material Adverse Effect. Upon the occurrence and during the continuance of any Event of Default hereunder, all such rights, together with the right to terminate or to modify the Mortgaged Lease, which have been assigned for collateral purposes to Beneficiary, shall automatically vest exclusively in and be exercisable solely by Beneficiary.

(h) Grantor will give Beneficiary prompt written notice of the commencement of any arbitration or appraisal proceeding under and pursuant to the provisions of the Mortgaged Lease involving amounts in excess of \$100,000 on a present value basis. So long as no Event of Default shall have occurred and be continuing hereunder, Grantor may conduct such proceeding provided that (i) Beneficiary shall have the right to intervene and participate in any such proceeding, (ii) Grantor shall confer with Beneficiary, (iii) Grantor shall exercise all rights of arbitration conferred upon it by the Mortgaged Lease and (iv) Grantor's



selection of an arbitrator or appraiser shall be subject to prior written approval by Beneficiary; provided, however, that automatically upon the occurrence of an Event of Default and for so long as it shall be continuing Beneficiary shall have the sole authority to conduct the proceeding and Grantor hereby irrevocably appoints and constitutes Beneficiary as its true and lawful attorney-in-fact, which appointment is coupled with an interest, in its name, place and stead, to exercise, at the expense of Grantor, all right, title and interest of Grantor in connection with such proceeding, including the right to appoint arbitrators and to conduct arbitration proceedings on behalf of Grantor, following an Event of Default. Nothing contained herein shall obligate Beneficiary to participate in such proceeding.

(i) Unless Beneficiary shall otherwise direct in writing, Grantor shall exercise any option or right to renew or extend the term of the Mortgaged Lease, and shall take whatever action is necessary for Grantor to take in order to renew or extend the term of the Mortgaged Lease pursuant to its terms, not less than 30 days before the expiration of the exercise right unless failure to do so would not have a Material Adverse Effect. Grantor shall give Beneficiary simultaneous written notice of any such exercise together with a copy of the notice or other document given to the lessor, and any other evidence of such exercise requested by Beneficiary, and Grantor shall promptly deliver to Beneficiary a copy of any acknowledgment by such lessor of the exercise of such option or right. In the event that Grantor fails to so exercise any such option or right by the date 15 days prior to the date of expiration of the exercise right, Beneficiary may act in its stead and Grantor hereby irrevocably authorizes and appoints Beneficiary as its true and lawful attorney-in-fact, which appointment is coupled with an interest, in its name, place and stead, to execute and deliver, for and in the name of Grantor, all of the instruments and agreements necessary under the Mortgaged Lease or otherwise to cause any extension of the term thereof. Nothing contained herein shall affect or limit any rights of Grantor or Beneficiary granted under the Mortgaged Lease.

(j) Grantor shall, within ten (10) days after written demand from Beneficiary, deliver to Beneficiary proof of payment of all items that are required to be paid by Grantor under the Mortgaged Lease, including, without limitation, rent, taxes, operating expenses and other charges.

(k) (i) The lien of this Deed of Trust shall attach to all of Grantor's rights and remedies at any time arising under or pursuant to Subsection 365(h) of the Bankruptcy Code, 11 U.S.C. § 365(h), as the same may hereafter be amended (the "Bankruptcy Code"), including, without limitation, all of Grantor's rights to remain in possession of the Real Estate. Grantor shall not, without Beneficiary's prior written consent, elect to treat the Mortgaged Lease as terminated under Subsection 365(h)(1) of the Bankruptcy Code. Any such election made without Beneficiary's consent shall be void.

(ii) Beneficiary shall have the right to proceed in its own name or in the name of Grantor in respect of any claim, suit, action or proceeding relating to the rejection of the Mortgaged Lease by the lessor or any other party, including,



without limitation, the right to file and prosecute under the Bankruptcy Code, without joining or the joinder of Grantor, any proofs of claim, complaints, motions, applications, notices and other documents. Any amounts received by Beneficiary as damages arising out of the rejection of the Mortgaged Lease as aforesaid shall be applied first to all costs and expenses of Beneficiary (including, without limitation, attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this paragraph. Grantor acknowledges that the assignment of all claims and rights to the payment of damages from the rejection of the Mortgaged Lease made under the granting clauses of this Deed of Trust constitutes a present irreversible and unconditional assignment and Grantor shall, at the request of Beneficiary, promptly make, execute, acknowledge and deliver, in form and substance satisfactory to Beneficiary, a UCC Financing Statement (Form UCC-1) and all such additional instruments, agreements and other documents, as may at any time hereafter be required by Beneficiary to carry out such assignment.

(iii) If pursuant to Subsection 365(h)(1) of the Bankruptcy Code, Grantor shall seek to offset against the rent reserved in the Mortgaged Lease the amount of any damages caused by the nonperformance by the lessor or any other party of any of their respective obligations under such Mortgaged Lease after the rejection by the lessor or such other party of such Mortgaged Lease under the Bankruptcy Code, then Grantor shall, prior to effecting such offset, notify Beneficiary of its intent to do so, setting forth the amount proposed to be so offset and the basis therefor. Beneficiary shall have the right to object to all or any part of such offset that, in the reasonable judgment of Beneficiary, would constitute a breach of such Mortgaged Lease, and in the event of such objection, Grantor shall not effect any offset of the amounts found objectionable by Beneficiary. Neither Beneficiary's failure to object as aforesaid nor any objection relating to such offset shall constitute an approval of any such offset by Beneficiary.

(iv) If any action, proceeding, motion or notice shall be commenced or filed in respect of the lessor under the Mortgaged Lease or any other party or in respect of the Mortgaged Lease in connection with any case under the Bankruptcy Code, then Beneficiary shall have the option, exercisable upon notice from Beneficiary to Grantor, to conduct and control any such litigation with counsel of Beneficiary's choice. Beneficiary may proceed in its own name or in the name of Grantor in connection with any such litigation, and Grantor agrees to execute any and all powers, authorizations, consents or other documents required by Beneficiary in connection therewith. Grantor shall, upon demand, pay to Beneficiary all costs and expenses (including attorneys' fees) paid or incurred by Beneficiary in connection with the prosecution or conduct of any such proceedings. Grantor shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of any Mortgaged



Lease in any such case under the Bankruptcy Code without the prior written consent of Beneficiary.

(v) Grantor shall, after obtaining knowledge thereof, promptly notify Beneficiary of any filing by or against the lessor under the Mortgaged Lease or other party with an interest in the Real Estate of a petition under the Bankruptcy Code. Grantor shall promptly deliver to Beneficiary, following receipt, copies of any and all notices, summonses, pleadings, applications and other documents received by Grantor in connection with any such petition and any proceedings relating thereto.

(vi) If there shall be filed by or against Grantor a petition under the Bankruptcy Code and Grantor, as lessee under the Mortgaged Lease, shall determine to reject the Mortgaged Lease pursuant to Section 365(a) of the Bankruptcy Code, then Grantor shall give Beneficiary not less than twenty (20) days' prior notice of the date on which Grantor shall apply to the Bankruptcy Court for authority to reject the Mortgaged Lease. Beneficiary shall have the right, but not the obligation, to serve upon Grantor within such twenty (20) day period a notice stating that Beneficiary demands that Grantor assume and assign the Mortgaged Lease to Beneficiary pursuant to Section 365 of the Bankruptcy Code. If Beneficiary shall serve upon Grantor the notice described in the preceding sentence, Grantor shall not seek to reject such Mortgaged Lease and shall comply with the demand provided for in the preceding sentence. In addition, effective upon the entry of an order for relief with respect to Grantor under the Bankruptcy Code, Grantor hereby assigns and transfers to Beneficiary a non-exclusive right to apply to the Bankruptcy Court under subsection 365(d)(4) of the Bankruptcy Code for an order extending the period during which the Mortgaged Lease may be rejected or assumed.

(1) Grantor shall request and use its best efforts to furnish to Beneficiary, from time to time upon receipt of reasonable notice from Beneficiary, in form and substance reasonably satisfactory to Beneficiary, (i) a non-disturbance agreement from the holder of each mortgage encumbering the fee estate in the Real Estate and (ii) an estoppel certificate from the lessor under the Mortgaged Lease with respect to such Mortgaged Lease.

(m) If the Mortgaged Lease shall be terminated prior to the natural expiration of its term, and if, pursuant to any provision of the Mortgaged Lease or otherwise, Beneficiary or its designee shall acquire from the lessor under such Mortgaged Lease a new lease of the Real Estate or any part thereof, Grantor shall have no right, title or interest in or to such new lease or the leasehold estate created thereby, or renewal privileges therein contained.

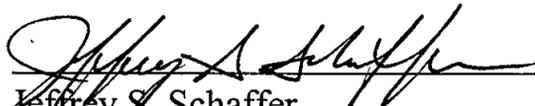
46. Conflict. In the event of any inconsistency between the terms or provisions hereof and the terms or provisions of the Third Amended Credit Agreement, the terms of the Third Amended Credit Agreement shall control.



This Deed of Trust has been duly executed by Grantor on the date first above written.

**MERIDIAN GRANITE COMPANY, a
Delaware corporation, formerly known as
Meridian Aggregates Company**

Signed, Sealed and Delivered in our
Presence:

By: 
Name: Jeffrey S. Schaffer
Title: Vice President

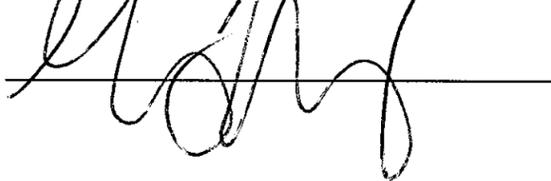

Laurie L. Kelly

Accepted and Agreed to:

**BANK OF AMERICA, N.A., AS
COLLATERAL AGENT**

By: 
Name: Kathryn W. Robinson
Title: Managing Director

Signed, Sealed and Delivered in our
Presence:

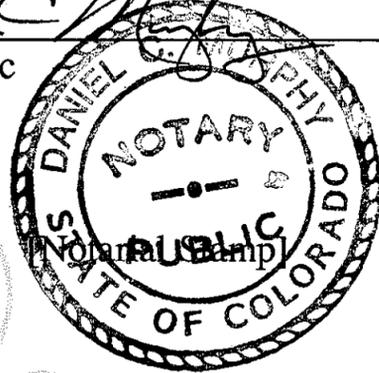


STATE OF COLORADO)
COUNTY OF ARAPAHOE)

On this 4 day of January in the year ~~1999~~²⁰⁰⁰ before me, Daniel C. Murphy
Notary Public of said State, duly commissioned and sworn, personally appeared Jeffrey S.
Schaffer, personally known to me (or proved to me on the basis of satisfactory evidence) to be
the person who executed the within instrument as Vice President of MERIDIAN GRANITE
COMPANY and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand the day and year in this certificate
first above written.

Daniel C. Murphy
Notary Public



My Commission Expires:

Feb. 13, 2002



STATE OF Georgia)
)
COUNTY OF Fulton)

On this 10th day of January in the year 2000 before me,
Barbara A. Pollock a Notary Public of said State, duly commissioned and sworn,
personally appeared Kathy W. Robinson, personally known to me (or proved to me on the basis
of satisfactory evidence) to be the person who executed the within instrument as Managing
Director of BANK OF AMERICA, N.A. and acknowledged to me that such bank executed the
same.

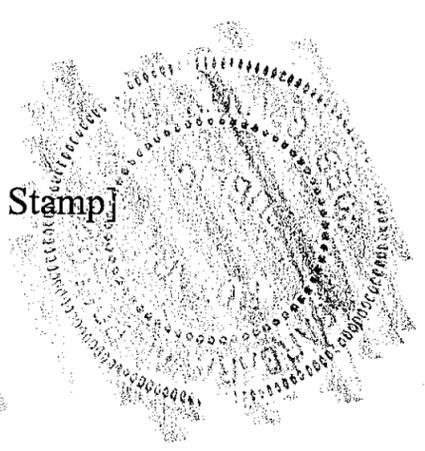
In Witness Whereof, I have hereunto set my hand the day and year in this certificate
first above written.

Barbara Pollock
Notary Public

My Commission Expires:

BARBARA A. POLLOCK
Cobb County, State of Georgia
My Commission Expires June 17, 2002

[Notarial Stamp]



Schedule A1

Land

1. Leased Land/Mt. Vernon Lease

The following real property situated in Skagit County, Washington:

The East 600 feet of the South 1150 feet of the West half of the Southeast quarter and the South 1700 feet of the East half of the Southeast quarter of Section 33, Township 34 North, Range 4 East, Willamette Meridian.



Schedule A2

Mortgaged Leases

Mt. Vernon Lease

1. Lease of Real Property dated March 15, 1994 by and between City of Mount Vernon, a municipal corporation, as lessor, and Meridian Aggregates Company, a Montana corporation (now known as Meridian Granite Company, a Delaware corporation), as lessee, a Memorandum of which is recorded under Recording No. 9404040079 in the Skagit County Recorder's Office, which Lease by its terms terminated the Lease dated December 4, 1979 executed by the City of Mt. Vernon to Pacific Quarries, Inc.

