

WHEN RECORDED RETURN TO:

Laurie N. Ragen
Dorsey & Whitney LLP
1420 Fifth Avenue, Suite 3400
Seattle, WA 98101



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Skagit County Auditor

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CHICAGO TITLE CO. 1030329

**LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING
WITH ASSIGNMENT OF LEASES AND RENTS**

Grantor: CC BEVERAGE (U.S.) CORPORATION, a Washington corporation

Grantee: CHICAGO TITLE COMPANY, as Trustee; and
QUEST CAPITAL CORP., a British Columbia company,
as Beneficiary

Abbreviated Legal Description: LOT 21, "HOPPER ROAD BUSINESS PARK"

Assessor's Property Tax Parcel Account Numbers: P116594; P115481

Reference Numbers of Documents Assigned or Released:

**LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING
WITH ASSIGNMENT OF LEASES AND RENTS**

THIS LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING WITH ASSIGNMENT OF LEASES AND RENTS ("*Deed of Trust*") is made as of April ____ 2004, by CC BEVERAGE (U.S.) CORPORATION., a Washington corporation (herein, together with its permitted successors and assigns, the "*Grantor*"), in favor of CHICAGO TITLE COMPANY, as trustee ("*Trustee*") and QUEST CAPITAL CORP., a British Columbia corporation, as beneficiary ("*Beneficiary*").

RECITALS:

A. Clearly Canadian Beverage Corporation, a British Columbia corporation (the "*Borrower*") is the Borrower under that certain Loan Agreement, dated March 4, 2004 (as amended by the terms of a Loan Amendment Agreement, dated March 19, 2004), with Beneficiary as "*Lender*" (said Loan Agreement, as it may hereafter be amended, modified, supplemented, extended, renewed or replaced from time to time, being the "*Loan Agreement*").

B. The Grantor is the guarantor pursuant to an Unconditional Guaranty, dated March 4, 2004, in favor of the Beneficiary (the "*Guaranty*"), wherein the Grantor guarantees the obligations of the Borrower under the Loan Agreement. The Grantor is a wholly owned subsidiary of the Borrower, and Grantor hereby acknowledges and agrees that it will benefit, directly or indirectly, from the Loan Agreement and from granting the leasehold deed of trust and security interests to the Beneficiary as contemplated in this Agreement.

C. Pursuant to the Loan Agreement and subject to the terms and conditions therein, Lender has agreed to make loans and advances and to extend other financial credit and accommodations to or for the account of the Borrower for the purposes set forth in the Loan Agreement.

D. The aggregate maximum principal amount of the loans, advances and other financial credit and accommodations secured hereby is One Million Three Hundred Fifty Thousand Canadian Dollars (Cdn\$1,350,000), excluding advances made to protect the lien and security of this Deed of Trust.

E. To evidence and secure such indebtedness, the Borrower has executed and delivered the Loan Agreement, and the Borrower has or hereafter may make certain promissory notes payable to Beneficiary under the Loan Agreement. Such promissory notes include, without limitation, the Note, as defined in the Loan Agreement, and as the same may from time to time be supplemented, modified, amended, renewed, extended or refinanced (all such



promissory notes, as may have been or may hereafter be executed by the Borrower, shall be referred to herein individually as the "Note" and collectively as the "Notes").

F. Lender and the Borrower have agreed that as a condition precedent to the making of advances and loans or the extension of other financial credit and accommodations, Grantor shall have executed and delivered this Deed of Trust to Beneficiary to secure Grantor's and Borrower's payment and performance of all Secured Obligations (defined below).

G. As used in this Deed of Trust, the term, "Secured Obligations" means and includes all of the following:

1. the performance and payment obligations of the Grantor under or in connection with the Guaranty and this Deed of Trust;

2. all performance and payment obligations of the Borrower under or in connection with the Loan Agreement, the Notes and all of the other documents executed in connection with the Loan Agreement (together with the Guaranty, the "Other Loan Documents"); and

3. all other debts, liabilities and obligations of every type and description which Grantor may now or anytime hereafter owe to Beneficiary, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, or now existing or hereafter created or incurred, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, sole, joint, several or joint and several, when evidenced by a writing stating the same to be secured hereby, including, without limitation, the following: (a) those obligations arising out of or in connection with the Loan Agreement, the Notes, this Deed of Trust or any of the Other Loan Documents, including, without limitation, any and all advances, reasonable costs or expenses paid or incurred by the Beneficiary to protect any or all of the Collateral (hereinafter defined), to perform any obligation of the Grantor hereunder or under any of the Other Loan Documents or to collect any amount owing to the Beneficiary which is secured hereby or under any of the Other Loan Documents; (b) interest on all of the foregoing; and (c) all reasonable costs of enforcement and collection of this Deed of Trust, the Notes, the Other Loan Documents, and the Secured Obligations.

H. For purposes of this Deed of Trust, the term "Collateral" means and includes all rights, titles, and interests (including without limitation, and to the maximum extent provided or allowed by law, all proceeds therefrom and all future rights, titles, and interests therein) of the Grantor in and to all of the following:

1. All of Grantor's rights, titles and interests in that certain lease agreement dated February 1, 1999, and recorded June 17, 1999, under Skagit County Auditor's File



No. 9906170089, amended by First Amendment to Lease, dated May 10, 2000 and recorded under Skagit County Auditor's No. 200005100049, and the Second Amendment to Lease Agreement dated February 26, 2002 and recorded under Skagit County Auditor's No. 200202260119 (the lease and amendments are collectively referred to herein as the "Facility Lease") with respect to that certain real property (the "Real Estate") situated in Skagit County, Washington, and legally described on Exhibit A attached hereto and by this reference incorporated herein (as such Facility Lease may be amended, renewed and extended from time to time), together with any new lease or leases and any new sublease or subleases of any of the Real Estate or Improvements (hereinafter defined) entered into by the Grantor in replacement, extension or renewal of or substitution thereof, and all present and future rights, titles, and interests of the Grantor, as lessee, sublessee, or otherwise in and to the Real Estate, the Improvements (hereinafter defined), the Goods (hereinafter defined), and any other real or personal property which is subject to the Facility Lease or which is created under or pursuant to the Facility Lease (collectively, the "Leased Property"), and all present and future amendments, renewals and supplements thereto, including all of Grantor's unexpired estate, title, interest and term of years in the Leased Property by virtue of the Facility Lease and any and all credits, deposits, options to renew or extend, options to purchase, rights of first refusal, and any other rights and privileges of the Grantor thereunder (collectively the foregoing are herein referred to as the "Leasehold Estate");

2. All of Grantor's rights, title and interest in the buildings, structures, replacements, furnishings, fixtures, fittings and other improvements and property of every kind and character now or hereafter located or erected on the Real Estate, together with all building or construction materials, equipment, appliances, machinery, fittings, apparatus, fixtures and other articles of any kind or nature whatsoever now or hereafter found on, affixed to or attached to the Real Estate and owned or purported to be owned by the Grantor, including (without limitation) all trees, shrubs and landscaping materials, reels, and all heating, venting, electrical, lighting, power, plumbing, air conditioning, and ventilation equipment (all of the foregoing is herein referred to collectively as the "Improvements");

3. All of Grantor's rights, titles, and interests in and to all furniture, furnishings, equipment (including, without limitation, telephone and other communications equipment, office and record keeping equipment, window cleaning, building cleaning, signs, monitoring, garbage, air conditioning, computers, point of sale devices, drive-through equipment and other equipment), inventory and goods and all other tangible property of any kind or character now or hereafter owned or purported to be owned by the Grantor and used or useful in connection with the Leasehold Estate regardless of whether located on the Real Estate or located elsewhere, including, without limitation, as and to the extent assignable, all rights of the Grantor under any lease to equipment,



furniture, furnishings, fixtures and other items of personal property at any time during the term of such lease (all of the foregoing is herein referred to collectively as the "Goods");

4. All goodwill, trademarks, trade names, franchise rights, franchise agreements, option rights, purchase contracts, condemnation claims, demands, awards and settlement payments, insurance contracts, insurance payments and proceeds, unearned insurance premiums, warranties and guarantees, as and to the extent assignable, utility deposits, books and records and general intangibles of the Grantor relating to the Leasehold Estate or the Improvements and all accounts, contract rights, instruments, chattel paper and other rights of the Grantor for payment of money to it for property sold or lent by it, for services rendered by it, for money lent by it, or for advances or deposits made by it (including, without limitation, any prepaid rents and security deposits paid to the lessor under the Facility Lease), and any other intangible property of the Grantor related to the Leasehold Estate or the Improvements (all of the foregoing is herein referred to collectively as the "Intangibles");

5. All rents, issues, profits, royalties, avails, income and other benefits derived or owned by the Grantor directly or indirectly from the Leasehold Estate or the Improvements (all of the foregoing is herein collectively called the "Rents");

6. All rights of the Grantor under all leases, subleases, licenses, occupancy agreements, concessions or other arrangements, whether written or oral, whether now existing or entered into at any time hereafter, whereby any Person agrees to pay money to the Grantor or any consideration for the use, possession or occupancy of, or any estate in, the Leasehold Estate, or the Improvements or any part thereof, and all rents, income, profits, benefits, avails, advantages and claims against guarantors under any thereof (all of the foregoing is herein referred to collectively as the "Leases");

7. All rights of the Grantor, if any, to all plans and specifications, designs, drawings and other matters prepared in connection with the Leasehold Estate or the Improvements (all of the foregoing is herein called the "Plans");

8. All rights of the Grantor in any permits, approvals, consents and other authorizations in connection with the Real Estate, the Leasehold Estate or the Improvements (all of the foregoing is herein referred to collectively as the "Permits");

9. All rights of the Grantor and the Grantor's bankruptcy trustee to deal with the Facility Lease, which rights may arise as a result of the commencement of a case under the federal bankruptcy laws by or against (i) the Grantor or (ii) the lessor ("Lessor") under the Facility Lease, including, without limitation, the right to assume or reject, or compel the assumption or rejection of such Facility Lease pursuant to 11 U.S.C. § 101 *et seq.*, or any successor law (the "Bankruptcy Code"), the right to seek and obtain



extensions of time to assume or reject the Facility Lease, and the right to elect whether to treat the Facility Lease as terminated by the Lessor's rejection of the Facility Lease or to remain in possession of the Collateral and offset damages pursuant to Section 365(h)(1) of the Bankruptcy Code; and

10. As and to the extent assignable, all other property or rights of the Grantor of any kind or character related to the Leasehold Estate or the Improvements, all substitutions, replacements and additions thereto, whether now existing or hereafter acquired, and all proceeds (including insurance and condemnation proceeds) and products of any of the foregoing (all of the foregoing is herein collectively referred to as the "*Premises*").

I. This Deed of Trust is intended to be a first priority Deed of Trust, and to create a first priority lien on and a first priority security interest in the Collateral, subject only to the encumbrances set forth in any title insurance policy insuring the lien of this Deed of Trust in favor of the Beneficiary or any encumbrances approved by Beneficiary in writing (the "*Permitted Exceptions*").

J. For purposes of this Deed of Trust, "*Person*" means an individual, corporation, general partnership, limited partnership, limited liability partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

K. For purposes of this Deed of Trust, all capitalized terms not specifically herein defined shall be as defined in the Loan Agreement unless the context in which they are used clearly requires otherwise.

GRANT:

NOW, THEREFORE, in consideration of Beneficiary agreeing to make loans and advances and to extend other financial credit and accommodations to and for the account of Borrower for the purposes set forth in the Loan Agreement, including sums advanced and credit extended under the Loan Agreement, the Notes, this Deed of Trust and the Other Loan Documents, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Grantor, and in order to secure the full, timely and proper payment and performance of each and every one of the Secured Obligations, Grantor hereby grants, bargains, sells, conveys, mortgages, chattel mortgages, alienates, releases and confirms unto Trustee, in trust, with power of sale and right of entry and possession, for the benefit of Beneficiary, its successors and assigns, a security interest in the Collateral.

TO HAVE AND TO HOLD the Real Estate, the Leasehold Estate and the Improvements unto the Trustee, its successors and assigns, forever, IN TRUST, WITH POWER OF SALE



AND RIGHT OF ENTRY AND POSSESSION; provided, nevertheless, that this Deed of Trust is upon the express condition that if the Grantor shall pay to the Beneficiary as and when due and payable the principal of and interest on the Notes, and all other Secured Obligations, and shall also keep and perform each and every covenant and agreement of the Grantor under this Deed of Trust and all of the Other Loan Documents, then, this Deed of Trust and the estate hereby granted shall cease and be and become void and shall be released and reconveyed of record at the expense of the Grantor; otherwise this Deed of Trust shall be and remain in full force and effect.

ARTICLE 1 COVENANTS AND AGREEMENTS

Further to secure the payment and performance by the Borrower and the Grantor of the Secured Obligations, the Grantor hereby covenants, warrants, and agrees with the Beneficiary, for the benefit of the Beneficiary and its successors and assigns, as follows:

1.1 Rights in the Collateral. The Grantor hereby covenants with and warrants to the Beneficiary, for the benefit of itself and its successors and assigns, and the purchasers at any foreclosure sale or trustee's sale: That at the execution and delivery hereof it is well seized of the Leasehold Estate, the Improvements and the Goods, and that it has rights in the other Collateral; that the Collateral is free from all encumbrances whatsoever (and any claim of any other Person thereto) other than the Permitted Exceptions and the interests granted to the Beneficiary herein and pursuant to the Other Loan Documents; that the Facility Lease is in full force and effect and has not been terminated, modified, except as otherwise disclosed by the Grantor to the Beneficiary prior hereto in writing; that the Grantor is not in default under the Facility Lease; that it has good and lawful right to sell, mortgage and convey the Leasehold Estate and other Collateral; and that it and its successors and assigns will forever warrant and defend the Collateral against all claims and demands whatsoever with the exception of the Permitted Exceptions. Notwithstanding anything contained herein which may be construed to the contrary, this Deed of Trust is not intended to and does not secure the Grantor's obligations under that certain Environmental Indemnity Agreement dated of even date herewith in favor of Beneficiary.

1.2 Payment of Secured Obligations. The Grantor agrees that the Borrower will perform and pay, timely and in the manner required in the appropriate documents or instruments, all of the Secured Obligations (including payment of fees and charges). All sums payable by the Grantor and the Borrower hereunder shall be paid without demand, counterclaim, offset, deduction or defense. The Grantor waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim, offset, deduction or defense.

1.3 Non-Agricultural Use; Commercial Loan. Grantor represents and warrants to Beneficiary that (a) none of the Real Estate, Leasehold Estate, Improvements or any other real



property conveyed hereunder is used principally for agricultural purposes; and (b) the loan secured by this Deed of Trust is not made primarily for personal, family or household purposes.

1.4 Payment of Taxes. Subject to Section 1.26 regarding Permitted Contests, the Grantor will pay or cause to be paid when due all taxes and assessments, general or special, and any and all levies, claims, charges, expenses and liens, ordinary or extraordinary, governmental or non-governmental, statutory or otherwise, due or to become due, that may be levied, assessed, made, imposed or charged on or against the Collateral or any property used in connection therewith, and will pay when due any tax or other charge on the interest or estate in property created or represented by this Deed of Trust, whether levied against the Grantor or the Beneficiary, or otherwise, and will submit to the Beneficiary all receipts showing payment of all of such taxes, assessments and charges.

1.5 Maintenance and Repair. The Grantor will (a) not abandon the Collateral; (b) not do or suffer anything to be done which would depreciate or impair the use, operation or value of the Collateral or the security of this Deed of Trust; (c) not remove or demolish any of the Improvements; (d) pay promptly for all labor and materials for all construction, repairs and improvements to or on the Leasehold Estate, the Improvements and the Goods; (e) not make any material changes, additions or alterations to the Leasehold Estate, the Improvements and the Goods except (i) as required by any applicable governmental requirement, or (ii) as otherwise approved in writing by the Beneficiary, which approval shall not be unreasonably withheld; (f) maintain, preserve and keep the Leasehold Estate, the Improvements and the Goods in good, safe and insurable condition and repair and promptly make any necessary and proper repairs, replacements, renewals, additions or substitutions required by wear, damage, obsolescence or destruction, all as promptly as possible under the circumstances, but in all cases in compliance with any time period provided under applicable requirements of governmental authorities and insurers; (g) not commit, suffer, or permit waste of any part of the Leasehold Estate, the Improvements and the Goods; and (h) maintain all grounds in good and neat order and repair.

1.6 Sales; Liens. Except as expressly permitted under the terms of the Loan Agreement, Grantor will not sell, contract to sell, assign, transfer or convey, or permit to be transferred or conveyed, the Leasehold Estate, the Improvements, the Goods or any of the other Collateral, or any part thereof or any interest or estate in any thereof (including any conveyance into a trust or any conveyance of the beneficial interest in any trust that may be holding title to the Leasehold Estate, the Improvements or any of the other Collateral), or remove any of the other Collateral from the Real Estate; or create, suffer or permit to be created or to exist any mortgage, lien, claim, security interest, charge, encumbrance or other right or claim of any kind whatsoever upon the Collateral or any part thereof, except those of current taxes not then due and payable, and the Permitted Exceptions.

1.7 Access by Beneficiary. The Grantor will at all times deliver to the Beneficiary either all of its executed originals (in the case of chattel paper or instruments) or (in all other



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cases), if requested by Beneficiary, certified copies of the Facility Lease, all other leases, subleases of the Leasehold Estate, the Improvements or the Goods, agreements creating or evidencing Intangibles, Plans, Permits, all amendments and supplements thereto, and any other document which is, or which evidences, governs, or creates, Collateral; permit access at all times during ordinary business hours to the Grantor's books and records, permit the Beneficiary to inspect at all times during ordinary business hours construction progress reports, tenant registers, sales records, insurance policies and other papers for examination and the making of copies and extracts; prepare such schedules, summaries, reports and progress schedules as the Beneficiary may reasonably request; and permit the Beneficiary and its agents and designees to inspect the Premises at all times during ordinary business hours. Beneficiary shall use reasonable efforts to minimize any interruption of business operations on the Premises caused by Beneficiary while conducting any inspection permitted under this Section 1.7.

1.8 Stamp and Other Taxes. If the federal, or any state, county, local, municipal or other, government or any subdivision of any thereof having jurisdiction, shall levy, assess or charge any tax (excepting therefrom any income tax or other tax on the receipt of interest payments on the principal portion of the Notes), assessment or imposition upon this Deed of Trust, the Notes, any of the Secured Obligations, or any of the Other Loan Documents, the interest of the Beneficiary, or any of the foregoing, or upon the Beneficiary by reason of or as holder of any of the foregoing, or shall at any time or times require revenue stamps to be affixed to this Deed of Trust, the Notes, or any of the Other Loan Documents, the Grantor shall pay all such taxes and stamps to or for the Beneficiary as they become due and payable. If any law or regulation is enacted or adopted permitting, authorizing or requiring any tax, assessment or imposition to be levied, assessed or charged, which law or regulation prohibits the Grantor from paying the tax, assessment, stamp, or imposition to or of the Beneficiary, then all sums hereby secured shall become immediately due and payable at the option of the Beneficiary.

1.9 Insurance.

(a) The Grantor will at all times maintain or cause to be maintained on the Leasehold Estate, the Improvements, the Goods and all other Collateral all insurance required at any time or from time to time by the Beneficiary and in any event special form property insurance (so-called "all-risk" insurance) covering, without limitation, flood, fire, extended coverage, vandalism and malicious mischief, in an amount which is not less than 100% of the replacement cost of the Leasehold Estate, Improvements and the Goods without consideration for depreciation, with an inflation guard endorsement, insurance against business interruption and loss of rentals for such occurrences and in such amounts as the Beneficiary may reasonably require, and comprehensive general public liability insurance, protecting the Grantor in an amount acceptable to the Beneficiary, and all other insurance commonly or, in the judgment of the Beneficiary, prudently maintained by those whose business, improvements to, and use of real estate is similar to that of the Grantor, all in amounts satisfactory to the Beneficiary, and all of such insurance to be maintained in such form and with such companies as shall be approved by



the Beneficiary, and to deliver to and keep deposited with the Beneficiary original certificates and certified copies of all policies of such insurance and renewals thereof, with premiums prepaid, and with standard non-contributory mortgagee and lender loss payable clauses satisfactory to the Beneficiary, and clauses providing for not less than thirty (30) days' prior written notice to the Beneficiary of cancellation, non-renewal or material modification of such policies attached thereto in favor of the Beneficiary and successors and assigns of each. All of the above-mentioned original insurance policies or certified copies of such policies and certificates of such insurance satisfactory to the Beneficiary, together with receipts for the payment of premiums thereon, shall be delivered to and held by the Beneficiary, which delivery shall constitute an assignment to the Beneficiary of all return premiums to be held as additional security hereunder. The liability insurance policies required hereunder shall name as an additional insured without liability for premiums and loss payee the Beneficiary, and its successors and assigns. All renewal and replacement policies shall be delivered to the Beneficiary at least thirty (30) days before the expiration of the expiring policies.

(b) The Grantor agrees that it will give the Beneficiary prompt notice of any material damage to or destruction of any of the Collateral. As long as no Event of Default exists, and subject to the terms of the Facility Lease, the Grantor may itself adjust and collect for all losses arising out of said casualty, and may, at its election, apply any and all insurance proceeds received in such manner either (i) to the repair or restoration of the damage to or destruction of the Collateral, in which case Grantor shall proceed diligently with the repair or restoration of the Collateral, or (ii) to prepayment of the Notes or any of the Secured Obligations, subject to any prepayment fee as may be due pursuant to the terms of the Other Loan Documents. If an Event of Default exists and is continuing, the Grantor hereby empowers the Beneficiary, in its discretion after reasonable consultation with Grantor, to settle, compromise and adjust any and all claims or rights under any insurance policy maintained by the Grantor relating to the Collateral, and the Grantor hereby constitutes and appoints the Beneficiary as its true and lawful attorney-in-fact for such purposes, and for purposes of receiving all proceeds therefrom and payments on account thereof, the authority hereby conferred being coupled with an interest and irrevocable. If an Event of Default exists and is continuing, subject to the terms of the Facility Lease, any loss paid to the Beneficiary under any of such policies shall be applied, at the option of the Beneficiary, toward prepayment of the Notes or any of the Secured Obligations, or to the rebuilding or restoring of the damaged or destroyed Collateral, as the Beneficiary in its sole and unreviewable discretion may elect; provided, however, that any application of insurance proceeds toward prepayment of the Notes or Secured Obligations upon the Beneficiary's exercise of its option hereunder shall not result in any prepayment fee on the proceeds so applied, and that any proceeds of insurance made available for the rebuilding or restoring of the damaged or destroyed Collateral shall be subject to the Beneficiary's construction lending conditions, and to such other conditions as the Beneficiary may in its discretion impose; and provided further that no election made by Beneficiary under this section shall relieve Grantor of the duty to repair and restore.



(c) In the event of foreclosure of this Deed of Trust, transfer of title to the Leasehold Estate, the Improvements or any other Collateral by trustee's sale, deed in lieu of foreclosure, or any other transfer of title to the Leasehold Estate, the Improvements or any other Collateral in extinguishment, in whole or in part, of the Secured Obligations all right, title and interest of the Grantor in and to any insurance policies then in force shall pass to the purchaser or grantee. Nothing contained in this Deed of Trust shall create any responsibility or obligation on the Beneficiary to collect any amounts owing on any insurance policy or resulting from any condemnation, to rebuild or replace any damaged or destroyed Collateral or to perform any other act hereunder. The Beneficiary shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and the Grantor hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

1.10 Eminent Domain. The Grantor shall promptly notify the Beneficiary of the commencement of any proceedings in which any of the Collateral, or any part or interest in any thereof, may be taken by eminent domain or condemnation. As long as no Event of Default exists, and subject to the terms of the Facility Lease, the Grantor shall take all action required in order to protect Grantor's and Beneficiary's rights with respect to any such taking, including the commencement of, appearance in or prosecution of any appropriate action or proceeding, to collect and receive all compensation and awards of any kind whatsoever (referred to collectively herein as "*Condemnation Awards*") which may be paid for any property taken or for damages to any property not taken (all of which the Grantor hereby assigns to the Beneficiary), and may, at its election, apply any and all Condemnation Awards received either (a) to the repair or restoration of the damage to or destruction of the Collateral, in which case Grantor shall proceed diligently with the repair or restoration of the Collateral, or (b) to prepayment of the Notes or any of the Secured Obligations, subject to any prepayment fee as may be due pursuant to the terms of the Loan Agreement. If an Event of Default exists and is continuing, the Grantor hereby assigns to Beneficiary the Condemnation Awards and empowers the Beneficiary, in its discretion after reasonable consultation with Grantor, to settle, compromise, adjust and collect and receive all Condemnation Awards, and, subject to the terms of the Facility Lease, all Condemnation Awards so received shall be paid directly to Beneficiary and be applied by the Beneficiary, as it may elect in its sole and unreviewable discretion, to the prepayment of the Notes or any of the other Secured Obligations or, at the option of the Beneficiary, may be held by the Beneficiary as additional security for the Secured Obligations, or may be applied to the repair and restoration of any property not so taken or damaged, provided, however, that any application of any Condemnation Awards toward prepayment of the Notes or Secured Obligations upon the Beneficiary's exercise of its option hereunder shall not result in any prepayment fee on the Condemnation Award so applied, and that any Condemnation Awards made available for the rebuilding or restoring of the damaged or destroyed Collateral shall be subject to the Beneficiary's construction lending conditions, and to such other conditions as the Beneficiary



may in its discretion impose; and provided further that no election made by Beneficiary under this section shall relieve Grantor of the duty to repair and restore as and to the extent possible.

1.11 Governmental Requirements. Subject to Section 1.26 regarding Permitted Contests, the Grantor will at all times fully comply in all material respects with, and cause the Collateral and the use and condition thereof fully to comply in all material respects with, all federal, state, county, municipal, local and other governmental statutes, ordinances, requirements, regulations, rules, orders and decrees of any kind whatsoever that apply or relate to the Grantor or the Collateral or the use thereof (including, without limitation, those relating to land use and development, construction, access, water rights and use, noise, environmental pollution and hazardous waste and substances), and will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions (including, without limitation, those relating to land use and development, construction, access, water rights and use, noise, environmental pollution and hazardous waste and substances) which are applicable to the Grantor or have been granted for the Collateral or the use thereof. Unless required by applicable law, or unless Beneficiary has otherwise first agreed in writing, the Grantor shall not make or allow any changes to be made in the nature of the occupancy or use of the Leasehold Estate, or the Improvements or any of the other Collateral, or any portion thereof for which they (or any portion thereof) were intended at the time this Deed of Trust was delivered. The Grantor shall not initiate or acquiesce in any change in any zoning or other land use classification now or hereafter in effect and adversely affecting the Leasehold Estate, or the Improvements or any of the other Collateral, or any part thereof without in each case obtaining the Beneficiary's prior written consent.

1.12 Liens. Subject to Section 1.26 regarding Permitted Contests, the Grantor shall pay and discharge all construction, mechanic's, laborer's or materialmen's liens created or remaining outstanding upon the Leasehold Estate, the Improvements, or any other Collateral, within twenty (20) days after receiving notice thereof. The Grantor agrees to promptly deliver to the Beneficiary a copy of any notices that the Grantor receives with respect to any pending or threatened lien or the foreclosure thereof.

1.13 Continuing Priority. The Grantor will pay such fees, taxes and charges, execute and record or file (at the Grantor's expense) such deeds, conveyances, mortgages and financing statements, obtain such title opinions, title insurance policy endorsements, acknowledgments or consents, notify such obligors or providers of services and materials, and do all such other acts and things as the Beneficiary may from time to time request to establish and maintain a valid and perfected lien on and security interest in the Collateral (subject only to the Permitted Exceptions); maintain its office and principal place of business at all times at the address shown below, and keep all of its books and records relating to the Collateral at such address; and keep all tangible Collateral located on the Leasehold Estate, except as the Beneficiary may otherwise consent in writing.



1.14 Utilities. The Grantor will pay or cause to be paid all utility charges incurred in connection with the Collateral promptly when due and maintain all utility services necessary to operate its business on the Leasehold Estate.

1.15 Third-Party Agreements. The Grantor will, for the benefit of the Beneficiary, fully and promptly keep, observe, perform and satisfy each material obligation, condition, covenant, and restriction of the Grantor affecting the Collateral or imposed on it under any agreement between Grantor and a third party relating to the Collateral or the Secured Obligations, including, without limitation, the Facility Lease and the Intangibles (collectively, the "*Third-Party Agreements*"), so that there will be no material default thereunder and so that the Persons (other than the Grantor) obligated thereon shall be and remain at all times obligated to perform for the benefit of the Beneficiary; and the Grantor will not permit to exist any condition, event or fact which could allow or serve as a basis or justification for any such Person to avoid such performance. Without the prior written consent of the Beneficiary, the Grantor shall not (a) make or permit any termination, modification or amendment which materially adversely affects the rights of Grantor under the Facility Lease; or (b) make or permit any termination, modification or amendment to any Third-Party Agreement that would in any manner materially adversely affect Grantor's rights to the Collateral. The Grantor shall promptly deliver to the Beneficiary copies of any demands or notices of default received by the Grantor in connection with any material Third-Party Agreement and allow the Beneficiary the right, but not the obligation, to cure any such default if the Grantor fails to do so within a reasonable time.

1.16 No Assignments; Future Leases. The Grantor will not cause or permit the Facility Lease or other contracts relating to the Leasehold Estate or the Improvements to be assigned, transferred, conveyed, pledged or disposed of to any party other than the Beneficiary without first obtaining the express written consent of the Beneficiary to any such assignment, or permit any such assignment to occur by operation of law. In addition, the Grantor shall not cause or permit all or any portion of or interest in the Leasehold Estate or the Improvements to be leased directly or indirectly to any Person.

1.17 The Beneficiary's Performance. After the occurrence of an Event of Default and upon reasonable advance notice to the Grantor the Beneficiary may (but need not), as agent or attorney-in-fact of the Grantor, make any payment or perform (or cause to be performed) any obligation of the Grantor hereunder, in any form and manner deemed expedient by the Beneficiary, and any amount so paid or expended (plus reasonable compensation to the Beneficiary for its out-of-pocket and other expenses for each matter for which it acts under this Deed of Trust), with interest thereon at the rate of interest specified in the Loan Agreement, shall be added to the principal debt hereby secured and shall be repaid to the Beneficiary upon demand. By way of illustration and not in limitation of the foregoing, the Beneficiary may (but need not) do all or any of the following: (a) make payments of principal or interest or other amounts on any lien, encumbrance or charge on any of the Collateral; (b) complete construction, make repairs, collect rents, prosecute collection of the Collateral or proceeds thereof; (c) obtain



insurance and pay premiums therefor; (d) purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding, title or claim thereof; (e) contest any tax or assessment; and (f) redeem from any tax sale or forfeiture affecting the Collateral. In making any payment or securing any performance relating to any obligation of the Grantor hereunder, the Beneficiary shall be the sole judge of the legality, validity and amount of any lien or encumbrance and of all other matters necessary to be determined in satisfaction thereof. No such action of the Beneficiary shall ever be considered as a waiver of any right accruing to it on account of the occurrence of any matter which constitutes a Default or an Event of Default.

1.18 Subrogation. To the extent that the Beneficiary, on or after the date hereof, pays any sum under any provision of law or any instrument or document creating any lien or other interest prior or superior to the lien of this Deed of Trust, or the Grantor or any other Person pays any such sum with the proceeds of the loan secured hereby, the Beneficiary shall have and be entitled to a lien or other interest on the Collateral equal in priority to the lien or other interest discharged and the Beneficiary shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit the Beneficiary in securing the Secured Obligations.

1.19 Reserve for Taxes, Assessments and Insurance.

(a) After occurrence of an Event of Default and during the continuance thereof, and upon request by the Beneficiary, the Grantor covenants and agrees to pay to the Beneficiary (or the Beneficiary's agent) monthly until the Notes and all of the other Secured Obligations have been paid in full, a sum equal to the real estate taxes and assessments and the insurance premiums next due upon the Collateral (all as reasonably estimated by the Beneficiary or its agent) divided by the number of months to elapse before one month prior to the date when such taxes, assessments, and insurance premiums will become due and payable, such sums to be held by the Beneficiary without interest accruing thereon (except to the extent, if any, required by applicable law), to pay each of the said items.

(b) All payments described above in this Section shall be paid by the Grantor each month in a single payment to be applied by the Beneficiary (or its agent) to the foregoing items in such order as the Beneficiary shall elect in its sole but reasonable discretion. The Grantor shall also pay to the Beneficiary, at least thirty (30) days prior to the due date of any taxes, and assessments levied on, against or with respect to the Collateral, or any insurance premium due with respect to the Collateral, such additional amount as may be necessary to provide the Beneficiary (or its agent) with sufficient funds to pay any such tax, assessment, and insurance premiums under this Section 1.19 at least thirty (30) days in advance of the due date thereof.

(c) The Beneficiary (or its agent) shall, within twenty (20) days of receipt from the Grantor of a written request therefor together with such supporting documentation as



the Beneficiary (or its agent) may reasonably require (including, without limitation, official tax bills or, as applicable, statements for insurance premiums), cause proper amounts to be withdrawn from such account and paid directly to the appropriate tax collecting authority or insurer. Even though the Grantor may have made all appropriate payments to the Beneficiary (or its agent) as required by this Deed of Trust, the Grantor shall nevertheless have full and sole responsibility at all times to cause all taxes, assessments and insurance premiums to be fully and timely paid, and the Beneficiary (or its agent) shall have no responsibility or obligation of any kind with respect thereto except with respect to payments required to be made by the Grantor hereunder for which the Beneficiary (or its agent) has received funds to cover such payments in full and all statements, invoices, reports or other materials necessary to make such payments, all not less than thirty (30) days prior to the deadline for any such payment. If at any time the funds so held by the Beneficiary (or its agent) shall be insufficient to cover the full amount of all taxes, assessments and insurance premiums then accrued (as estimated by the Beneficiary or its agent) with respect to the then current twelve-month period, the Grantor shall, within ten days after receipt of notice thereof from the Beneficiary (or its agent) deposit with the Beneficiary (or its agent) such additional funds as may be necessary to remove the deficiency. Any excess funds shall carry over and be applied to the succeeding years expenses. If the Collateral (or any portion thereof) is sold under foreclosure or is otherwise acquired by the Beneficiary, accumulations under this Section 1.19 may be applied to the Secured Obligations in such order of application as the Beneficiary may elect in its sole discretion.

1.20 Covenants Regarding Facility Lease. The provisions of this Section 1.20 shall apply in the event that, and so long as, any portion of the Collateral consists of Grantor's interest as "Lessee" under the Facility Lease. Unless otherwise expressly provided, the lien of this Deed of Trust shall encumber all of the Grantor's rights, titles, and interests under and in connection with the Facility Lease, including without limitation any renewal and extension rights, options to expand, and purchase options.

(a) The Facility Lease is a valid and subsisting lease, is in full force and effect in accordance with the terms thereof, and has not been modified except as disclosed to the Beneficiary in writing prior hereto. All of the rents and other charges payable under the Facility Lease prior to the execution hereof have been paid, all of the terms, conditions, and agreements contained in the Facility Lease have been performed and no material default exists under the Facility Lease. This Deed of Trust is lawfully executed and delivered in conformity with the Facility Lease and is, and will be kept, a valid lien on the interests of the Grantor therein.

(b) Subject to Section 1.26 regarding Permitted Contests, the Grantor will promptly pay, or cause to be paid, all rents, charges and other sums or amounts required to be paid by the Grantor under the terms of the Facility Lease, will further timely and fully keep and perform all of the covenants, terms, conditions and provisions of the Facility Lease required to be performed and complied with by the Grantor thereunder, and will not do or suffer to be done



anything the doing of which, or refrain from doing anything the omission of which, will materially impair the security of this Deed of Trust.

(c) The Grantor also covenants that it will not modify, extend, supplement, or in any way alter the material terms of the Facility Lease or cancel or surrender the Facility Lease, or waive, excuse, condone or in any way release or discharge the Lessor thereunder of or from any obligations, covenants, conditions, and agreements by Lessor to be done and performed, without the Beneficiary's prior written consent. If there is an Event of Default and for so long as it is continuing, the Grantor does by these presents expressly release, relinquish and surrender unto the Beneficiary all its right, power and authority to cancel, surrender, amend, modify, supplement, or alter in any way the terms and provisions of the Facility Lease and any attempt on the part of the Grantor to exercise any such right without the prior written consent of the Beneficiary thereto shall constitute a default under the terms hereof. The Grantor also covenants that it will promptly notify the Beneficiary of any material breach by "Lessor" under the Facility Lease, and of any inability of Lessor to perform its obligations under the Facility Lease and will enforce the obligations of the Lessor under the Facility Lease, to the end that Grantor may enjoy all of the rights granted to it as Lessee under the Facility Lease. The Grantor assigns to the Beneficiary the proceeds of any claim the Grantor may have against Lessor for such breach or inability. If there is an Event of Default and for so long as it is continuing, the Beneficiary shall have the sole right to choose either (i) to proceed against Lessor as if the Beneficiary were the named Lessee thereunder, in the Grantor's name or in the Beneficiary's name as agent for the Grantor, and the Grantor agrees to cooperate with the Beneficiary in such action and to execute all documents required by the Beneficiary in furtherance of such action, or (ii) to have the Grantor proceed on its and the Beneficiary's behalf, in which event the Beneficiary may participate in such proceedings, and the Grantor will deliver to the Beneficiary all documents required by the Beneficiary for such participation. If the Grantor prosecutes such proceedings, it shall do so diligently, at its own expense, with counsel acceptable to the Beneficiary in the Beneficiary's sole discretion, shall deliver to the Beneficiary copies of all papers served in connection therewith and shall consult and cooperate with the Beneficiary and its attorneys and agents; provided that no settlement of such proceedings may be made by the Grantor without the Beneficiary's prior written consent, which consent shall not be unreasonably withheld.

(d) The Grantor shall give the Beneficiary immediate notice of any material default by the Grantor under the Facility Lease or of the receipt by it of any notice of default from the Lessor or notice of termination of the Facility Lease pursuant to the provisions thereof and shall furnish to the Beneficiary immediately any and all information which the Beneficiary may reasonably request concerning the performance by the Grantor of the covenants of the Facility Lease or of this Deed of Trust. The Grantor shall permit forthwith the Beneficiary or its representatives at all reasonable times to make investigation or examination concerning the performance by the Grantor of the covenants of the Facility Lease or of this Deed of Trust.



(e) After the date hereof, the Grantor shall not subordinate the Facility Lease or Leasehold Estate to any encumbrance of, or lien upon, any interest in the Leasehold Estate subject thereto, unless required by the Facility Lease to do so, without the prior written consent of the Beneficiary. Any such subordination for which the Beneficiary's written consent hereunder is required but not obtained, shall be void.

1.21 Bankruptcy Rights and Remedies. As and to the maximum extent permitted by applicable law, the lien of this Deed of Trust attaches to all of Grantor's rights and remedies at any time arising under or pursuant to Section 365 of the Bankruptcy Code, including, without limitation, all of Grantor's rights to remain in possession of the Collateral, and the following rights:

(a) If the Facility Lease is rejected or disaffirmed by the Lessor pursuant to Section 365(a) of the Bankruptcy Code, and if an Event of Default exists, the Grantor covenants that it will not elect to treat the Facility Lease as terminated under Section 365(h) of the Bankruptcy Code, and hereby assigns to the Beneficiary the sole and exclusive right to make or refrain from making such election.

(b) If the Lessor rejects or disaffirms the Facility Lease pursuant to the Bankruptcy Code and an election is made by the Grantor (or by the Beneficiary as provided herein if there is an Event of Default) that the Grantor will remain in possession under any legal right Grantor may have to occupy the Leasehold Estate or the Improvements, then: (i) Grantor shall remain in such possession and shall perform all acts necessary for Grantor to retain its right to remain in such possession for the unexpired term of the Facility Lease (including all renewals thereof), whether such acts are required under the then existing terms and provisions of the Facility Lease or otherwise and (ii) all of the terms and provisions of this Deed of Trust and the lien created thereby shall remain in full force and effect and shall be extended automatically to such possession, occupancy and interest of the Grantor.

(c) If, pursuant to Subsection 365(h)(1)(B) of the Bankruptcy Code, the Grantor seeks to offset against the rent reserved in the Facility Lease the amount of any damages caused by the non-performance by Lessor of any of the obligations of Lessor under the Facility Lease after the rejection by the Lessor of the Facility Lease under the Bankruptcy Code, the Grantor shall, prior to effecting such offset, notify the Beneficiary of its intent so to do, setting forth the amount proposed to be so offset, and if there is an Event of Default and the Beneficiary objects to the offset, the Grantor shall not effect any offset of the amount so objected to by the Beneficiary. If the Beneficiary has failed to object as aforesaid within twenty (20) days after notice from the Grantor in accordance with the first sentence of this paragraph, the Grantor may proceed to effect such offset in the amounts set forth in the Grantor's notice. Neither the failure to object as aforesaid nor any objection or other communication between the Beneficiary and the Grantor relating to such offset shall constitute an approval of any such offset by the Beneficiary. The Grantor shall indemnify and save the Beneficiary harmless from and against any and all



claims, demands, actions, suits, proceedings, damages, losses, costs and expenses of every nature whatsoever (including, without limitation, attorneys' fees) arising from or relating to any offset by the Grantor against the rent reserved in the Facility Lease.

(d) The Grantor hereby unconditionally assigns, transfers and sets over to the Beneficiary all of the Grantor's claims and rights to the payment of damages arising from any rejection by Lessor of the Facility Lease under the Bankruptcy Code. If there is an Event of Default, the Beneficiary shall have the right to proceed in its own name or in the name of the Grantor in respect of any claim, suit, action or proceeding relating to the rejection of the Facility Lease, including, without limitation, the right to file and prosecute, to the exclusion of the Grantor, any proofs of claim, complaints, motions, applications, notices and other documents under the Bankruptcy Code, with respect to the Facility Lease. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Secured Obligations shall have been satisfied and discharged in full. Any amounts received by the Beneficiary as damages arising out of the rejection of the Facility Lease as aforesaid shall be applied first to all costs and expenses of the Beneficiary (including, without limitation, attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this paragraph.

(e) If any action, proceeding, motion or notice shall be commenced or filed with respect to the Facility Lease or any of the Collateral in connection with any case under the Bankruptcy Code, if an Event of Default exists the Beneficiary shall have the option, to the exclusion of the Grantor, to proceed with and conduct and control any such litigation with counsel of the Beneficiary's choice, and the Grantor agrees to execute any and all powers, authorizations, consents or other documents required by the Beneficiary in connection therewith. The Grantor shall, upon demand, pay to the Beneficiary all costs and expenses (including attorneys' fees) paid or incurred by the Beneficiary in connection with the prosecution or conduct of any such proceedings. Any such costs or expenses not paid by the Grantor as aforesaid shall be secured by the lien of this Deed of Trust and shall be added to the principal amount of the Secured Obligations. The Grantor shall not commence any action, suit, proceeding or case, or file any application or make any motion, with respect to the Facility Lease in any such case under the Bankruptcy Code without the prior written consent of the Beneficiary, which written consent shall not be withheld unreasonably.

(f) The Grantor shall promptly, after obtaining knowledge thereof, notify the Beneficiary orally of any filing of a petition under the Bankruptcy Code by or against Lessor under the Facility Lease. The Grantor shall thereafter forthwith give written notice of such filing to the Beneficiary, setting forth any information available to the Grantor as to the date of such filing, the court in which such petition was filed and the relief sought therein. The Grantor shall promptly deliver to the Beneficiary, following receipt, any and all notices, summons, pleadings, applications and other documents received by the Grantor in connection with any such petition and any proceedings relating thereto.



(g) If there shall be filed by or against the Grantor a petition under the Bankruptcy Code, and the Grantor, as Lessee under the Facility Lease, shall determine to reject the Facility Lease pursuant to Section 365(a) of the Bankruptcy Code, the Grantor shall give the Beneficiary not less than twenty (20) days' prior notice of the date on which the Grantor shall apply to the bankruptcy court for authority to reject the Facility Lease. In the alternative, should the Grantor determine not to assume the Facility Lease pursuant to Section 365(a) of the Bankruptcy Code, the Grantor shall give the Beneficiary written notice thereof not less than twenty (20) days before the Facility Lease will be deemed rejected under Section 365(d)(4) of the Bankruptcy Code. The Beneficiary shall have the right, but not the obligation, to serve upon the Grantor within such twenty (20) day period a notice stating that (i) the Beneficiary demands that the Grantor assume and assign the Facility Lease to the Beneficiary pursuant to Section 365 of the Bankruptcy Code, and (ii) the Beneficiary covenants to cure or provide adequate assurance of prompt cure of all defaults and provide adequate assurance of future performance under the Facility Lease. If the Beneficiary serves upon the Grantor the notice described in the preceding sentence, the Grantor shall not seek to reject the Facility Lease and shall assume and assign the Facility Lease to the Beneficiary prior to the date it would be deemed rejected pursuant to Section 365(d)(4) of the Bankruptcy Code, subject to the performance by the Beneficiary of the covenant set forth in clause (ii) of the preceding sentence.

(h) Effective upon the entry of an order for relief in respect of the Grantor under Chapter 7 of the Bankruptcy Code, the Grantor hereby assigns and transfers to the Beneficiary a non-exclusive right to apply to the bankruptcy court under Subsection 365(d)(1) of the Bankruptcy Code for an order extending the period during which the Facility Lease may be rejected or assumed.

(i) All references to particular sections or subsections of the Bankruptcy Code shall be deemed to include any and all successor or replacement sections or subsections thereto.

1.22 Beneficiary's Lease. Notwithstanding the foregoing provisions of the foregoing paragraphs regarding termination of any Facility Lease, upon a termination or rejection of a Facility Lease, the Grantor acknowledges that the Beneficiary may, but shall not be obligated to, enter into (1) an instrument recognizing, confirming and giving legal effect to the continued existence of the Facility Lease in favor of the Beneficiary or its designee, or (2) a new lease in favor of the Beneficiary or designee (in either event the "Beneficiary's Lease") for the Collateral pursuant to the terms of the Facility Lease, or the provisions of a separate agreement between the Beneficiary and Lessor, under the following terms and conditions:

(a) The Beneficiary's Lease shall be encumbered by the lien and security interest of this Deed of Trust which shall constitute the first and senior lien on the Beneficiary's Lease.



(b) The Beneficiary's execution of the Beneficiary's Lease shall not be deemed to be in satisfaction in whole or in part of the Secured Obligations and all of the other terms, covenants and conditions contained in this Deed of Trust shall remain as a lien on the Collateral.

(c) The Grantor hereby releases, remises, and quitclaims to the Beneficiary any interest Grantor may have in the Beneficiary's Lease and further agrees and acknowledges that the Beneficiary may assign the Beneficiary's Lease without notice, consent or joinder of the Grantor. The Grantor further waives any right the Grantor may have to challenge the adequacy of any consideration received therefor provided that in the event of an assignment of the Beneficiary's Lease, the proceeds thereof, if any, less costs and fees, including, but not limited to, customary closing costs and reasonable attorneys' fees, shall be applied to reduce the Secured Obligations.

(d) The Beneficiary or its designee shall pay or cause to be paid to the Lessor at the time of the execution and delivery of such Beneficiary's Lease, any and all sums which are at the time of execution and delivery of the Beneficiary's Lease due under the Facility Lease and in addition, all reasonable expenses, including reasonable attorneys' fees which the Lessor shall have incurred by reason of the actual or deemed rejection of the Facility Lease and the execution and delivery of the Beneficiary's Lease, as and to the extent necessary for the protection of the Collateral. Such payments by the Beneficiary to the Lessor shall be deemed to have been made for the protection of the Grantor and shall constitute part of the Secured Obligations.

1.23 Periodic Appraisals. If at anytime the Beneficiary shall determine in good faith that as a result of either: (a) any law, regulation, guideline, or any change or interpretation thereof; or (b) any central bank or other fiscal, monetary or other governmental authority having jurisdiction over the Beneficiary or the activities of the Beneficiary requesting, directing or imposing a condition upon the Beneficiary (whether such request, direction, or condition shall have the force of law); the Beneficiary may require an update or supplement to the previously furnished appraisal for the Collateral indicating the appraised fair market value of the Collateral, the Grantor shall provide at the Grantor's sole cost and expense, within forty-five (45) days after the Beneficiary's request (but not more than once prior to the full and final payment and satisfaction of the Secured Obligations), the update or supplement to the previously furnished appraisal for the Collateral indicating the present appraised fair market value of the Collateral.

1.24 Indemnity Clause. Without limiting any other rights hereunder or under applicable law, the Grantor does and shall indemnify the Beneficiary and its successors and assigns (collectively the "*Indemnified Parties*"), and hold them harmless from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including without limitation all reasonable attorneys' fees and expenses (except for any of the foregoing that would be governed by the Environmental Indemnity Agreement of even date



herewith, which obligations are not secured by this Deed of Trust), arising directly or indirectly in whole or in part, out of any actions or omissions by Grantor in connection with the Leasehold Estate, the Improvements or any of the other Collateral, whether prior to or during the term of the indebtedness secured hereby, and whether by the Grantor or any predecessor in title or any employees, agents, contractors, or subcontractors of the Grantor or any predecessors in title, or any third persons at any time occupying or present on the Leasehold Estate or the Improvements, except to the extent resulting from the gross negligence or willful misconduct of the Beneficiary, or its employees, agents, contractors, or subcontractors. Provided, however, that with regard to any claims or legal action involving the Leasehold Estate, the Improvements or any of the other Collateral to which none of the Indemnified Parties have been made parties, the Grantor shall be given the opportunity to defend against such claims with attorneys and other professionals approved by the Indemnified Parties. In the event of any foreclosure of this Deed of Trust or any deed in lieu of foreclosure, this indemnity shall not extend to any Persons purchasing any part of the Collateral at a foreclosure sale, or to any Persons purchasing any of the Collateral following its conveyance by a deed in lieu of foreclosure, except for the Grantor and any Person who had any interest, directly or indirectly, in the Secured Obligations immediately prior to or at the time of the foreclosure or the deed in lieu of foreclosure.

1.25 Attorneys' Fees. The Grantor shall, upon demand, pay to the Beneficiary the amount of any and all reasonable expenses, including the reasonable fees and disbursements of its counsel and of any experts and agents, which the Beneficiary may incur in connection with (i) the administration of this Deed of Trust, (ii) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any of the Collateral, (iii) the exercise or enforcement of any of the rights of the Beneficiary hereunder or under applicable law, including the exercise of rights on appeal or in bankruptcy or insolvency proceedings involving the Grantor or the Collateral and/or other reasonable participation in such bankruptcy or insolvency proceedings to insure that Beneficiary's rights are not infringed or (iv) the failure by the Grantor to perform or observe any of the provisions hereof.

1.26 Permitted Contests. As long as there is no Event of Default which is continuing, Grantor shall not be required to pay or discharge any taxes, assessments or governmental charges levied or imposed upon any Collateral, any claims for materials or labors that are or that may become liens against any Collateral, or claims made by the Lessor under the Facility Lease, or comply with any governmental regulations that apply or relate to the Grantor or the Collateral or the use thereof, if (a) the amount, applicability, or validity of the charges or claims, or the applicability of regulations, is being contested in good faith by appropriate actions or proceedings which will prevent the forfeiture or sale of the Collateral, and which will prevent any material interference with the use thereof by the Grantor for the duration of such action or proceeding; (b) the Grantor has established adequate reserves with respect thereto in accordance with generally accepted accounting principles; and (c) otherwise provision has been made to the satisfaction of the Beneficiary for the payment thereof in full, or for compliance therewith, by the Grantor if required upon completion of the actions or proceedings (a "Permitted Contest").



**ARTICLE 2
ASSIGNMENT OF LEASES AND RENTS**

2.1 Assignment. GRANTOR HEREBY PLEDGES, GRANTS, SELLS, ASSIGNS, CONVEYS, DELIVERS, TRANSFERS, TRANSFERS AND SETS OVER TO BENEFICIARY, AND ITS SUCCESSORS AND ASSIGNS, FOREVER, ALL OF THE GRANTOR'S RIGHT, TITLE, AND INTEREST, NOW EXISTING OR HEREAFTER ACQUIRED, IN AND TO ANY AND ALL EXISTING LEASES AND ANY LEASES OR SUBLEASES (the "Leases") THAT MAY BE HEREAFTER ENTERED BY THE GRANTOR AS THE "LANDLORD," AND ANY MODIFICATIONS, RENEWALS, EXTENSIONS, OR REPLACEMENTS THEREOF, AND ANY GUARANTIES OF THE TENANT'S OBLIGATIONS UNDER ANY LEASE (EACH SUCH GUARANTY A "GUARANTY" AND, COLLECTIVELY, THE "GUARANTEES") INCLUDING BUT NOT LIMITED TO, ALL CLAIMS, RIGHTS, AND DEMANDS TO RECEIVE, COLLECT, AND RETAIN ALL RENTS AND OTHER AMOUNTS DUE THEREUNDER AND UNDER ANY MODIFICATIONS, RENEWALS, OR EXTENSIONS THEREOF, INCLUDING BUT NOT LIMITED TO:

(a) the immediate and continuing right to receive and collect all amounts payable to the Grantor by all tenants, subtenants or other parties pursuant to the Leases, and Guarantees, including, without limitation, (i) all rents (including, without limitation, all amounts payable to the Grantor on account of maintenance, repairs, taxes, insurance proceeds, condemnation; awards and other payments, tenders and security payable to or receivable by such Grantor under the Leases, or the Guarantees, whether now due, past due, or to become due, and including all prepaid rents and security deposits, and all other amounts due or becoming due with respect to the Collateral, (ii) all damages or other amounts payable in the event of any disposition, expiration or termination of any Lease or pursuant to the terms thereof, by operation of law or otherwise, (iii) any indemnification against, or reimbursement for, sums paid and costs and expenses incurred by such Grantor under any Lease or otherwise, (iv) any award in the event of the bankruptcy of any Tenant or guarantor of a Lease, and (v) any security deposits, other security instruments, other deposits or prepayments with respect to any such Lease;

(b) all claims, rights, powers, privileges and remedies of the Grantor, whether provided for in any Lease, or Guaranty or arising by statute or at law or in equity or otherwise, consequent on any failure on the part of any tenant to perform or comply with any term of any Lease or any counterparty to comply with any Guaranty;

(c) all right to take all action upon the happening of a default under any Lease or Guaranty as shall be permitted thereunder or by law, including, without limitation, the commencement, conduct and consummation of proceedings at law or in equity; and the full power and authority, in the name of Grantor or otherwise, to enforce, collect, receive and make



receipt for any and all of the foregoing and to do any and all other acts and things whatsoever that Grantor is or may be entitled to do under any Lease, or Guaranty.

The Grantor represents and warrants to the Beneficiary and covenants with Beneficiary that except as expressly provided for in any Lease, Grantor has not accepted and shall not accept rent under any such Lease for more than one month in advance, except prepayments in the nature of security for the performance by the Tenant thereunder, and that Grantor has not performed, and will not perform, any acts, and has not executed, and will not execute, any instrument that would prevent Beneficiary from exercising its rights under this Deed of Trust.

2.2 Application of Funds. Except as otherwise required by applicable law, any funds received by Beneficiary under this Deed of Trust shall be paid for or applied toward any tenant security deposits as may be required by the law of the jurisdiction where the respective Leasehold Estate and the Improvements are located; payment when due of prior or current real estate taxes or special assessments with respect to the Leasehold Estate and the Improvements, or any periodic escrow for the payment of the taxes or special assessments; payment when due of the premiums for insurance of the type required by the Deed of Trust, or any periodic escrow for the payment of the premiums; keeping the covenants of habitability required of a lessor or licensor by applicable law with regard to property of the same nature or type as the Leasehold Estate or the Improvements; and then shall be paid for or applied toward payment of all expenses of managing and securing the Leasehold Estate and the Improvements, including, without limitation, the salaries, fees and wages of a managing agent and such other employees or agents as Beneficiary may deem necessary or desirable; all expenses of operating and maintaining the Leasehold Estate and the Improvements, including, without limitation, all taxes not previously herein referenced, charges, claims, assessments not previously herein referenced, water charges, sewer rents and any other liens, and premiums for insurance that the Beneficiary may deem necessary or desirable in addition to that required by the Deed of Trust; and the cost of all commercially reasonable alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of a portion or all of the Leasehold Estate and the Improvements. Thereafter, any excess funds shall be applied to the payment of all amounts then due and payable under the Deed of Trust and the Other Loan Documents (other than the Notes). Provided, however, that in the event any receiver is appointed as provided in this Deed of Trust, then and in such event the receiver's reasonable fees and charges shall be paid prior to the payment of any of the foregoing. Beneficiary shall be accountable to Grantor only for monies actually received by Beneficiary pursuant to the granting clause hereof. Neither the collection of said funds and the application thereof as aforesaid, nor any act done or omitted pursuant to the power and rights granted to Beneficiary hereunder, shall cure or waive any Event of Default or waive, modify or affect any notice of Event of Default or invalidate any act done pursuant to such notice, nor shall the same be deemed a waiver of any of Beneficiary's rights and remedies under the Notes, this Deed of Trust or the Other Loan Documents, and this assignment is made and accepted without prejudice to any of such rights and remedies.



2.3 License. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing, Grantor shall have a license to collect, receive and retain from the tenants rent and all other sums payable under the Leases, to enforce the obligations of tenants under the Leases, and to exercise all the rights and remedies of the landlord under the Leases, subject, however, to compliance with the provisions of this Deed of Trust. The portion of all sums received by Grantor under the license granted hereby equal to the Secured Obligations then due and owing shall be held in trust for the benefit of Beneficiary and used to pay the Secured Obligations then due and owing.

2.4 Revocation of License. If any Event of Default shall have occurred and be continuing, the license granted in this assignment shall immediately cease and terminate, without waiver of such Event of Default, with or without notice, any action or proceeding or the intervention of a receiver appointed by a court, and the Beneficiary or an agent or receiver appointed by the Beneficiary may, to the fullest extent permitted by the Leases and applicable law and in addition to and without limiting any of Beneficiary's rights and remedies under any of the Other Loan Documents or otherwise available at law or in equity, do any or all of the following:

(a) exercise any of the rights of the Grantor under the Leases and Guarantees, including notifying tenants to pay rent to an account or location selected by the Beneficiary;

(b) enforce the Lease and Guarantees;

(c) demand, collect, sue for, attach, levy, recover, receive, compromise and adjust, and make, execute and deliver receipts and releases for all rents or other payments that may then be or, may become due, owing or payable to Grantor with respect to the Leases and Guarantees;

(d) demand that any sums held by Grantor with respect to any Lease or Guarantee (including, but not limited to, any security deposits, other deposits or prepayments) be immediately remitted to the Beneficiary; and

(e) generally, do, execute or perform any other act, deed, matter or thing whatsoever that ought to be done, executed or performed in and about any portion of the Leasehold Estate or the Improvements or with respect to the Leases and Guarantees as fully as allowed or authorized by this Deed of Trust.

The Beneficiary in respect of the Leases, Guarantees and Rents shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as in effect in the State of Washington, to the extent of such rights thereunder, and additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted.



2.5 Payment Notice. The Grantor hereby irrevocably authorizes and directs each tenant under a Lease and each other party under a Guaranty, upon receipt of notice from the Beneficiary that an Event of Default has occurred and is continuing, to pay directly to, or as directed by, the Beneficiary all rents, issues, profits and other payments accruing or due under such tenant's Lease or such other party's Guaranty from and after the receipt of such notice without any further proof of such Grantor's default. Grantor agrees that any tenant and any other party under a Guaranty shall have the right to rely upon the notice from the Beneficiary, and shall pay such rents, issues, profits and other payments to or as directed by the Beneficiary without any obligation to inquire into the actual existence of any Event of Default claimed by the Beneficiary, and notwithstanding any notice from or contrary claim by any Grantor, and the Grantor shall not have any right or claim against any such tenant or guarantor under a Guaranty for any rents, issues or profits so paid to the Beneficiary. Such rents, issues and profits shall continue to be paid to the Beneficiary unless and until the Event of Default which gave rise to the termination of Grantor's license under this assignment is, and any intervening Events of Default have been, cured to the satisfaction of the Beneficiary (and so long as no amount shall then be due and payable under the Notes, whether at maturity, by declaration of acceleration or otherwise, and such acceleration has not been rescinded). In the event each such Event of Default has been cured as aforesaid (or, if the provisions set forth in the parenthetical in the immediately preceding sentence are applicable, upon completion of foreclosure or comparable remedies resulting in a disposition of the Collateral), the Beneficiary shall direct each tenant and each other party under a Guaranty by written notice to resume the payment of all rents, issues or profits accruing or due under its respective Lease or Guaranty in accordance with the provisions of Section 2.3 hereof (or, if the immediately preceding parenthetical is applicable, to the then-owner of the applicable Leasehold Estate or the Improvements) from and after receipt of such notice from the Beneficiary.

The Beneficiary shall have the right to assign the Beneficiary's right, title and interest in any Leases to any subsequent holder of this Deed of Trust or any participating interest therein or to any Person acquiring title to all or any part of the Collateral through foreclosure or otherwise. Any subsequent assignee shall have all the rights and powers herein provided to the Beneficiary. Upon the occurrence of any Event of Default which is continuing, the Beneficiary shall have the right to execute new Leases of any part of the Collateral, including Leases that extend beyond the term of this Deed of Trust. Upon the occurrence of an Event of Default which is continuing, the Beneficiary shall have the authority, as the Grantor's attorney-in-fact, such authority being coupled with an interest and irrevocable, to sign the name of the Grantor and to bind the Grantor on all papers and documents relating to the operation, leasing and maintenance of the Collateral.



ARTICLE 3
DEFAULT AND REMEDIES

3.1 Event of Default. The occurrence of an event of default under the terms and provisions of the Loan Agreement, the Other Loan Documents, this Deed of Trust, or any of the documents evidencing the Secured Obligations shall constitute an Event of Default or Default, respectively, under this Deed of Trust. Without limiting the foregoing, Grantor shall be in default upon the occurrence of any one or more of any of the following events (each an "Event of Default"; a "Default" being any event which, with the lapse of time, the giving of notice, or both, would be an Event of Default):

(a) Default in the punctual payment of any amount due under the Facility Lease, the Notes, the Loan Agreement, or this Deed of Trust, or any of the Other Loan Documents when the same becomes due and payable; or

(b) Any warranty or representation made by the Grantor in this Deed of Trust or in any other document or certificate, instrument, or statement contemplated by or made or delivered pursuant to or in connection with any of the Other Loan Documents, or by the Grantor in any financial statements or reports, or in any other documentation submitted to Beneficiary to induce it to enter the Loan Documents, shall prove to be incorrect, false or misleading in any material respect at the time made or deemed made; or

(c) The Collateral, or any portion thereof, is transferred in any manner other than that expressly permitted hereby or in the Loan Agreement; or

(d) Grantor shall fail to comply with any other agreement, covenant, condition, provision or term contained in the Facility Lease, the Loan Agreement, this Deed of Trust or any of the Other Loan Documents (other than those set forth in Sub-sections 3.1 (a), (b), and (c) above), and such failure to comply shall continue for five (5) business days after the date Beneficiary gives notice of such failure to Grantor; or

(e) Grantor disaffirms, repudiates, purports to revoke, terminate, or otherwise not be bound by, or fails to perform any of its obligations under the Facility Lease, the Loan Agreement, or this Deed of Trust or any of the Other Loan Documents; or

(f) This Deed of Trust, or any other documents evidencing or in any way securing performance of the Secured Obligations, shall cease or fail to create a valid perfected security interest in the Collateral subject only to the Permitted Exceptions, other than as a result of any act or omission on the part of the Beneficiary; or

(g) Grantor further encumbers the Collateral without the prior written consent of Beneficiary, except only as expressly permitted hereby or by the Loan Agreement; or



(h) Any Event of Default occurs under the Loan Agreement, or any other or additional mortgages, deed of trust, security agreement, guaranty, pledge, collateral assignment, or other security given to secure any of the Secured Obligations, whether at the time this Deed of Trust is executed, or at any time hereafter.

3.2 Remedies. Upon the occurrence of any Event of Default and at any time thereafter, Beneficiary may, at its option and without notice to or demand upon Grantor, exercise any one or more of the following rights and remedies:

- (a) Declare all of the Secured Obligations immediately due and payable; or
- (b) Bring a court action to enforce the provisions of this Deed of Trust or any of the Other Loan Documents; or
- (c) Foreclose this Deed of Trust as a mortgage; or
- (d) With respect to all or any part of the Collateral, foreclose by judicial foreclosure in accordance with applicable law; or
- (e) Cause any or all of the Collateral to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law; or
- (f) Obtain a deficiency judgment if the net sales proceeds of any sale of the Collateral are insufficient to pay in full all of the Secured Obligations; or
- (g) Elect to exercise its rights with respect to the Leases and the Rents; or
- (h) Any other right or remedy provided in this Deed of Trust, the Loan Agreement, any Other Loan Document or under applicable law.

3.3 Remedies Cumulative. No remedy or right of the Beneficiary hereunder, or otherwise, or available under applicable law or in equity, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under any such document or under applicable law or in equity. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any Event of Default shall impair any such remedy or right or be construed to be a waiver of any such Event of Default or an acquiescence therein, nor shall it affect any subsequent Event of Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by the Beneficiary. All obligations of the Grantor, and all rights, powers and remedies of the Beneficiary, expressed herein shall be in addition to, and not in limitation of, those provided by law or in equity or in the Other Loan Documents, or any other written agreement or instrument relating to any of the Secured Obligations or any security therefor.



3.4 Further Advances. Upon the occurrence of a Event of Default, the Beneficiary may, at its option, suspend or terminate any further obligation to make further advances under the Loan Agreement, and declare immediately due performance of all the Secured Obligations, including without limitation payment of all indebtedness constituting all or any part of the Secured Obligations, and all sums advanced hereunder, and the same shall thereupon be immediately due and payable.

3.5 Foreclosure. Upon the occurrence of any Event of Default, the Beneficiary, or the representatives or assigns of the Beneficiary, may either: (a) institute a proceeding or proceedings for the complete foreclosure of this Deed of Trust under any applicable provision of law; or (b) institute a proceeding or proceedings for the partial foreclosure of this Deed of Trust under any applicable provision of law for the portion of the indebtedness and obligations secured hereby then due and payable, subject to the lien of this Deed of Trust continuing unimpaired and without loss of priority so as to secure the balance of the indebtedness and obligations secured hereby not then due and payable.

3.6 Trustee's Sale. Upon the occurrence of an Event of Default, Trustee may act hereunder and may sell and convey all or any portion of the Collateral, at Trustee's sole discretion, under the power of sale granted by this instrument. The following provisions will apply to any sale or sales of the Collateral under or by virtue of this Section 3.6, whether made under the power of sale granted in this Deed of Trust or by virtue of judicial proceedings, or of a judgment or decree of foreclosure and sale:

(a) Beneficiary or Trustee may conduct any number of sales from time to time and may sell the Collateral, whether real property, personal property or mixed, in one parcel or in separate parcels. The power of sale set forth herein will not be exhausted by any one or more such sales as to any part of the Collateral which shall not have been sold, nor by any sale which is not completed or is defective in the opinion of Trustee or Beneficiary, until the indebtedness and obligations secured hereby shall have been paid in full.

(b) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice.

(c) After each sale, Beneficiary, Trustee or an officer of any court empowered to do so, will execute and deliver to the purchaser or purchasers at such sale a good and sufficient instrument or instruments granting, conveying, assigning and transferring all right, title and interest of Grantor in and to the property and rights sold and will receive the proceeds of said sale or sales and apply the same as provided in this Deed of Trust. Trustee and Beneficiary are each hereby appointed the true and lawful attorney-in-fact of Grantor, which appointment is irrevocable and will be deemed to be coupled with an interest, in Grantor's name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the property and rights



so sold, and for that purpose Trustee or Beneficiary may execute all necessary instruments of conveyance, assignment, transfer and delivery, and may substitute one or more persons with like power, Grantor hereby ratifying and confirming all that said attorney or such substitute or substitutes will lawfully do by virtue thereof. Nevertheless, Grantor, if requested by Trustee or Beneficiary, will ratify and confirm such sale or sales by executing and delivering to Trustee or such purchaser or purchasers all such instruments as may be advisable, in the judgment of Trustee or Beneficiary, for the purposes designated in such request.

(d) Any and all statements of fact or other recitals above given by Trustee or Beneficiary as to nonpayment of the Secured Obligations, or as to the occurrence of any Event of Default, or as to Beneficiary having declared all or any of the indebtedness or obligations secured hereby to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and of the property or rights to be sold having been duly given, or as to the refusal, failure or inability to act of Trustee, or as to the appointment of any substitute or successor Trustee, or as to any other act or thing having been duly done by Trustee or Beneficiary, will be taken as prima facie evidence of the truth of the facts so stated and recited. Trustee or Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale so held, including the posting of notices and the conduct of sale.

(e) The receipt of Trustee or Beneficiary for the purchase money paid at any such sale, or the receipt of any other person authorized to give the same, will be sufficient discharge therefor to any purchaser of any property or rights sold as aforesaid, and no such purchaser, or its representatives, grantees or assigns, after paying such purchase price and receiving such receipt, will be bound to see to the application of such purchase price or any part thereof upon or for any trust or purpose of this Deed of Trust or, in any manner whatsoever, be answerable for any loss, misapplication or nonapplication of any such purchase money, or part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(f) Any such sale or sales will operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Grantor in and to the properties and rights so sold, and will be a perpetual bar both at law and in equity against Grantor and any and all persons claiming or who may claim the same, or any part thereof, by, through or under Grantor to the fullest extent permitted by applicable law.

(g) In the event that Grantor, or any person claiming by, through or under Grantor, transfers or refuses or fails to surrender possession of the Collateral after any sale of such Collateral, then Grantor or such person will be deemed a tenant at sufferance of the purchaser at such sale, subject to eviction by means of forcible entry and detainer proceedings, or subject to any other right or remedy available under this Deed of Trust or under applicable law.



(h) Upon any such sale, Trustee, Beneficiary or any public officer acting under execution or order of court will not be required to have present or constructively in its possession any or all of the Collateral.

(i) In the event of any sale referred to in this Section 3.6, all of the indebtedness evidenced by the Notes and all other Secured Obligations, if not previously due and payable, immediately thereupon will become due and payable, notwithstanding anything to the contrary contained in this Deed of Trust, the Loan Agreement or the Notes.

(j) In the event a foreclosure by Trustee's sale under this Deed of Trust is commenced by Trustee, Trustee or Beneficiary may, at any time before the sale of the Collateral, abandon or direct Trustee to abandon the sale, and may institute suit for the collection of the indebtedness and obligations secured hereby and for the foreclosure of this Deed of Trust, or in the event that Trustee or Beneficiary should institute a suit for collection of indebtedness and obligations secured hereby, and for the foreclosure of this Deed of Trust, Beneficiary may at any time before the entry of final judgment in said suit dismiss the same and require Trustee to sell the Collateral in accordance with the provisions of this Deed of Trust.

3.7 Purchase by Beneficiary. In case of any sale of any of the Collateral pursuant to any judgment or decree of any court or trustee's sale or otherwise in connection with the enforcement of any of the terms of this Deed of Trust, Beneficiary, its successors or assigns, may become the purchaser, and, for the purpose of making settlement for or payment of the purchase price, shall be entitled to turn in and use all or any portion of the indebtedness owing under the Notes, this Deed of Trust, the Loan Agreement or any Other Loan Document, and any claims for interest accrued and unpaid thereon, and late payment charges, if any, in order that there may be credited as paid on the purchase price, at Beneficiary's option, all or any portion of any sum then due hereunder and/or under the Notes and the Loan Agreement, including principal and interest thereon, late payment charges, reinvestment charges and any accrued additions to the Deed of Trust debt and interest thereon.

3.8 Appointment of Receiver.

(a) Upon application of the Beneficiary following an Event of Default which is continuing, or at any time thereafter, either before or after any foreclosure sale, and as and to the maximum extent provided or allowed by applicable law, without notice to the Grantor or to any party claiming under the Grantor, without regard to the solvency or insolvency at the time of such application of any Person then liable for the payment of any of the Secured Obligations, without regard to the then value of the Collateral or whether the same shall then be occupied, in whole or in part, as a homestead, by the owner of the Collateral or any equity of redemption, and without regard to any bond from the complainant in such proceedings, a court of competent jurisdiction shall appoint a receiver for the benefit of the Beneficiary, with power to take possession, charge, and control of the Collateral, or any portion thereof, to lease the same, to



keep the Improvements thereon and all the Goods insured and in good repair, and to collect all Rents and profits generated by or resulting from the Collateral, before or during the pendency of any proceedings to foreclose this Deed of Trust (judicially, or otherwise), and, in case of any foreclosure sale, during any period of redemption that has not been effectively waived or released hereby.

(b) The receiver shall be authorized to pay or apply the net amounts remaining in its hand, after deducting reasonable compensation for the receiver and its counsel as allowed by applicable law, toward (i) any tenant security deposits as may be required by the law of the jurisdiction where the respective Collateral is located; (ii) payment when due of prior or current real estate taxes or serial assessments with respect to the respective Collateral, or any periodic escrow for the payment of the taxes or special assessments; (iii) payment when due of premiums for insurance of the type required by the Deed of Trust, or any periodic escrow for the payment of the premiums; (iv) keeping the covenants of habitability required of a lessor or licensor with regard to property of the same nature or type as the particular Collateral by applicable law; (v) payment of all expenses of managing and securing the Collateral, including, without limitation, the salaries, fees and wages of a managing agent and such other employees or agents as the Beneficiary may deem necessary or desirable; (vi) all expenses of operating and maintaining the Collateral, including, without limitation, all taxes not previously herein referenced, charges, claims, assessments not previously herein referenced, water charges, sewer rents and any other liens, and premiums for insurance that the Beneficiary may deem necessary or desirable in addition to that required by the Deed of Trust; (vii) the cost of all commercially reasonable alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of a portion or all of the Collateral; (viii) insurance premiums, repairs, taxes, special assessments, water charges and interest, penalties and costs, in connection with the Collateral; (ix) any other lien or charge upon the Collateral that may be or become superior to the lien of this Deed of Trust, or any decree foreclosing the same; and (x) all moneys advanced by the Beneficiary to cure or attempt to cure any Default by the Grantor in the performance of any obligation or condition contained in any of the Other Loan Documents, or otherwise, to protect the security hereof provided herein, or in any of the Other Loan Documents, with interest on such advances at the rate of interest provided in the Loan Agreement. Thereafter, any excess funds shall be applied first to payment of all amounts then due and payable under the Deed of Trust and the Other Loan Documents (other than the Notes), and second to payment of all amounts then due and payable under Notes. In the event the receivership terminates as a result of the reinstatement of the Secured Obligations (if and as provided by law), or by redemption by the Grantor (if and as provided by law), the surplus, if any, shall then be paid to applied to the reinstatement or redemption (as is applicable), or paid to the Grantor; in the event the receivership terminates at or upon completion of a foreclosure sale that is not followed by rights of redemption, or as a result of the expiration of the redemption rights provided by law without redemption by the Grantor or any other party having redemption rights provided by law, the surplus, if any, shall be paid to the holder of the certificate of sale issued to the purchaser at any foreclosure sale, or the equivalent thereof as provided and allowed by law.



3.9 Possession of the Premises: Remedies for Leases and Rents.

(a) To the fullest extent allowed or permitted by applicable law, the Grantor hereby waives all right to the possession, income, and rents of the Collateral from and after the occurrence of any Event of Default which is continuing, and the Beneficiary is hereby expressly authorized and empowered, at and following any such occurrence, to enter into and upon and take possession of the Collateral or any part thereof, either with or without the appointment of a receiver therefor. If any Event of Default shall occur, then, whether before or after commencement of proceedings to foreclose the lien of this Deed of Trust or before or the sale thereunder, the Beneficiary shall be entitled, in its sole discretion, to do all or any of the following: (i) enter and take actual possession of the Leasehold Estate, the Improvements, the Rents, the Leases and other Collateral relating thereto or any part thereof personally, or by its agents or attorneys, and exclude the Grantor therefrom; (ii) with or without process of law, enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of the Grantor relating thereto; (iii) as attorney-in-fact or agent of the Grantor, or in its own name as mortgagee and under the powers herein granted, hold, operate, manage and control the Leasehold Estate, the Improvements, the Rents, the Leases and other Collateral relating thereto and conduct the business, if any, thereof either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its sole discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the Rents, the Leases and other Collateral relating thereto (including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent); (iv) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle the Grantor to cancel the same; (v) elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof; (vi) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements to the Leasehold Estate or the Improvements that, in its discretion, may seem appropriate; (vii) insure and reinsure the Collateral for all risks incidental to the Beneficiary's possession, operation and management thereof; and (viii) receive all such Rents and proceeds, and perform such other acts in connection with the management and operation of the Collateral, as the Beneficiary in its discretion may deem proper, the Grantor hereby granting the Beneficiary full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times after any Event of Default without notice to the Grantor or any other Person.

(b) The Beneficiary, in the exercise of the rights and powers conferred upon it pursuant to this Section 3.9, shall have full power to use and apply the Rents to the payment, in such order as Beneficiary may determine, of or on account of any one or more of the following: (i) to the payment of the operating expenses of the Leasehold Estate or the Improvements, including the cost of management and leasing thereof (which shall include reasonable compensation to the Beneficiary and its agents or contractors, if management be delegated to agents or contractors, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for



damages, if any, and premiums on insurance hereinabove authorized; (ii) to the payment of taxes, charges and special assessments, the costs of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Collateral, including the cost from time to time of installing, replacing or repairing the Collateral, and of placing the Collateral in such condition as will, in the judgment of the Beneficiary, make it readily rentable; and (iii) to the payment of any Secured Obligation. The entering upon and taking possession of the Premises, or any part thereof; and the collection of any Rents and the application thereof as aforesaid shall not cure or waive any Event of Default theretofore or thereafter occurring or affect any notice of Default hereunder or invalidate any act done pursuant to any such Event of Default or notice, and, notwithstanding continuance in possession of the Leasehold Estate, the Improvements or other Collateral, or any part thereof by the Beneficiary or a receiver and the collection, receipt and application of the Rents, the Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law or in equity upon or after the occurrence of an Event of Default. Any of the actions referred to in this Section 3.9 may be taken by the Beneficiary irrespective of whether any notice of Default has been given hereunder and without regard to the adequacy of the security for the indebtedness hereby secured.

3.10 Personal Property. If any Event of Default shall occur, the Beneficiary may exercise from time to time any rights and remedies available to it under the Other Loan Documents or applicable law upon default in payment of indebtedness, including, without limitation, those available to a secured party under the Uniform Commercial Code of the state where the Collateral is located. The Grantor shall, promptly upon request by the Beneficiary, assemble the Collateral and make it available to the Beneficiary at such place or places, reasonably convenient for both the Beneficiary and the Grantor, as the Beneficiary shall designate. If any notification of intended disposition of any of the Collateral is required by law, such notification shall be deemed reasonably and properly given if given in accordance with the notice provisions of the Loan Agreement, or if mailed by registered or certified mail, return receipt requested, at least ten (10) business days before such disposition, postage prepaid, addressed to the Grantor either at the address shown below or at any other address of the Grantor appearing on the records of the Beneficiary. Without limiting the generality of the foregoing, whenever there exists an Event of Default hereunder, the Beneficiary may, with respect to so much of the Collateral as is personal property under applicable law, to the fullest extent permitted by applicable law, without further notice, advertisement, hearing or process of law of any kind, (i) notify any Person obligated on the Collateral to perform directly for the Beneficiary its obligations thereunder, (ii) enforce collection of any of the Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto, (iii) endorse any checks, drafts or other writings in the name of the Grantor to allow collection of the Collateral, (iv) take control of any proceeds of the Collateral, (v) enter upon any premises where any of the Collateral may be located and take possession of and remove such Collateral and render all or any part of the Collateral unusable, all without being responsible for loss or damage except when resulting from the gross negligence or the willful



misconduct of the Beneficiary, (vi) sell any or all of the Collateral, free of all rights and claims of the Grantor therein and thereto, at any lawful public or private sale and on such terms as the Beneficiary deems advisable and (vii) bid for and purchase any or all of the Collateral at any such public or private sale. Any proceeds of any disposition by the Beneficiary of any of the Collateral may be applied by the Beneficiary to the payment of expenses in connection with the Collateral, including attorneys' fees and legal expenses, and any balance of such proceeds shall be applied by the Beneficiary toward the payment of such of the Secured Obligations and in such order of application as the Beneficiary may from time to time elect. Without limiting the foregoing, the Beneficiary may exercise from time to time any rights and remedies available to it under the Uniform Commercial Code or other applicable law as in effect from time to time or otherwise available to it under applicable law. The Grantor hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Notes and, to the fullest extent permitted by applicable law, any and all other notices, demands, advertisements, hearings or process of law in connection with the exercise by the Beneficiary of any of its rights and remedies hereunder. The Grantor hereby constitutes the Beneficiary its attorney-in-fact with full power of substitution to take possession of the Collateral upon any Event of Default and, as the Beneficiary in its sole discretion deems necessary or proper, to execute and deliver all instruments required by the Beneficiary to accomplish the disposition of the Collateral; this power of attorney is a power coupled with an interest and is irrevocable while any of the Secured Obligations are outstanding. The Grantor shall remain liable for any deficiency resulting from the sale of the Collateral and shall pay such deficiency forthwith upon demand, and the Beneficiary's right to recover such deficiency shall not be impaired by the sale or other disposition of Collateral without required notice. Expenses of retaking, holding, preparing for sale, selling or the like will first be paid from the proceeds before the balance will be applied toward any Secured Obligations.

3.11 No Liability on Beneficiary. Notwithstanding anything contained herein, the Beneficiary shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of the Grantor, whether hereunder, under any of the Third-Party Agreements or otherwise. The Beneficiary shall not have responsibility for the control, care, management or repair of the Leasehold Estate, Improvements or Goods (including but not limited to use, storage, manufacture, discharge or transportation of hazardous waste or substances) or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Leasehold Estate, Improvements or Goods resulting in loss, injury or death to any tenant, licensee, employee, stranger or other Person, except to the extent resulting from its gross negligence or willful misconduct. No liability shall be enforced or asserted against the Beneficiary in its exercise of the powers granted to it under this Deed of Trust, except to the extent resulting from its gross negligence or willful misconduct, and the Grantor expressly waives and releases any such liability. Should the Beneficiary incur any such liability, loss or damage under any of the Third-Party Agreements or under or by reason hereof, or in the defense of any claims or demands, the Grantor agrees to reimburse the Beneficiary



immediately upon demand for the full amount thereof, including costs, expenses and attorneys' fees, except to the extent resulting from its gross negligence or willful misconduct.

3.12 Transfer of Premises by Grantor. To induce the Beneficiary to extend credit under the Loan Agreement, the Grantor agrees that in the event of any transfer (by sale, lease, operation of law or otherwise) of any interest in the Leasehold Estate, Improvements or any other Collateral by the Grantor, without the prior written consent of the Beneficiary, the Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Any transfer consented to by the Beneficiary shall be made subject to this Deed of Trust, and any such transferee shall assume the obligations of the Grantor hereunder, without releasing Grantor therefrom.

ARTICLE 4 SECURITY AGREEMENT; FIXTURE FILING

4.1 Security Agreement; Fixture Filing. This Deed of Trust, to the extent that it conveys or otherwise deals with personal property or with items of personal property which are or may become fixtures, shall also be construed as a security agreement under the Uniform Commercial Code in effect in the State of Washington, and this Deed of Trust constitutes a financing statement filed as a fixture filing in the official records of the Skagit County, Washington, Auditor's Office with respect to any and all fixtures included within the term "*Collateral*" as used herein and with respect to any Goods or other personal property that may now be or hereafter become such fixtures and all products and proceeds thereof. For these purposes, the following information is set forth herein:

Name, address, and Federal Tax
Identification Number of debtor:

CC Beverage (U.S.) Corporation
c/o Clearly Canadian Beverage
Corporation
2489 Bellevue Avenue
West Vancouver, B.C. V7V 1E1
Canada
Attn: Douglas L. Mason
Tax ID # 91-1462485

Name and address of
secured party:

Quest Capital Corp.
Suite 300, 570 Granville Street
Vancouver, B.C. V6C 3P1
Canada



Attn: Michael Atkinson

Description of types of property covered by this Fixture Filing and Financing Statement:

See above, and all products and proceeds thereof.

Description of real estate to which all or a part of the collateral is attached or upon which it is located:

See Exhibit A attached hereto.

Record owner of real estate:

The Port of Skagit County, a Washington municipal corporation.

If any item of Collateral hereunder also constitutes collateral granted to the Beneficiary under any other mortgage, agreement, document, or instrument, in the event of any conflict between the provisions of this Deed of Trust and the provisions of such other mortgage, agreement, document, or instrument relating to the Collateral, the provision or provisions selected by the Beneficiary shall control with respect to the Collateral.

4.2 Future Advances. This Deed of Trust is granted to secure, among other Secured Obligations, future advances and loans (whether obligatory, made at the option of Beneficiary or otherwise) from the Beneficiary to or for the benefit of the Grantor, or its respective successors or assigns, as provided in the Loan Agreement, and the costs and expenses of enforcing the Grantor's obligations under this Deed of Trust, the Loan Agreement and the Other Loan Documents. All advances, disbursements or other payments required by the Loan Agreement are obligatory advances up to the credit limits established therein and shall, to the fullest extent permitted by law, have priority over any and all construction and mechanics' liens and other liens and encumbrances arising after the date this Deed of Trust is recorded.

4.3 Collateral Covered by Loan Agreement. Any Collateral covered by the foregoing Loan Agreement is in addition to, and is in no way a limitation on, the Collateral covered by this Deed of Trust and all other mortgages.

ARTICLE 5 GENERAL PROVISIONS

5.1 Permitted Acts. The Grantor agrees that, without affecting or diminishing in any way the liability of the Grantor or any other Person, except any Person expressly released in writing by the Beneficiary (with the consent of any pledgee of the Secured Obligations), for the



payment or performance of any of the Secured Obligations or for the performance of any obligation contained herein or affecting the lien hereof upon the Collateral or any part thereof, the Beneficiary may at any time and from time to time, without notice to or the consent of any Person, release any Person liable for the payment or performance of the Notes or any of the other Secured Obligations or any guaranty given in connection therewith; extend the time for, or agree to alter the terms of payment of, any indebtedness under the Notes or any of the other Secured Obligations or any guaranty given in connection therewith; modify or waive any obligation; subordinate, modify or otherwise deal with the lien hereof; accept additional security of any kind for repayment of the Notes or the other Secured Obligations or any guaranty given in connection therewith; release any Collateral or other property securing any or all of the Notes or the other Secured Obligations or any guaranty given in connection therewith; make releases of any portion of the Leasehold Estate, the Improvements, or other Collateral; consent to the making of any map or plat of the Leasehold Estate or the Improvements; the creation of any easements on the Leasehold Estate or the Improvements, or of any covenants restricting the use or occupancy thereof; or exercise or refrain from exercising, of waive, any right the Beneficiary may have.

5.2 Release/Satisfaction. Upon full payment of all indebtedness secured hereby and satisfaction of all the Secured Obligations in accordance with their respective terms and at the time and in the manner provided, and when the Beneficiary has no further obligation to make any advance, or extend any credit hereunder, under the Notes, or any of the Other Loan Documents, this conveyance shall be null and void, and thereafter, upon demand therefor, the Beneficiary shall promptly execute and deliver an appropriate release or satisfaction to the Grantor, at the expense of the Grantor.

5.3 Legal Expenses. The Grantor agrees to indemnify the Beneficiary from all loss, damage and expense, including (without limitation) reasonable attorneys' fees, incurred in connection with any suit or proceeding in or to which the Beneficiary may be made or become a party for the purpose of protecting the lien or priority of this Deed of Trust.

5.4 Notices. All notices, demands and other communications provided for hereunder shall be given in accordance with the notice provisions of the Loan Agreement to the parties hereto at the addresses set forth on the signature page hereof.

5.5 Successors. All provisions hereof shall bind the Grantor and the Beneficiary and their respective successors, vendees and assigns and shall inure to the benefit of the Beneficiary, its successors and assigns, and the Grantor and its permitted successors and assigns. THE GRANTOR CONSENTS TO THE ASSIGNMENT BY BENEFICIARY OF ALL OR ANY PORTION OF ITS RIGHTS UNDER THIS DEED OF TRUST. THE GRANTOR ACKNOWLEDGES AND AGREES THAT ANY AND ALL RIGHTS OF BENEFICIARY THIS DEED OF TRUST MAY BE EXERCISED FROM TIME TO TIME BY ANY ASSIGNEE OR SUCCESSOR OF BENEFICIARY. The Grantor shall not have any right to assign any of its rights hereunder.



5.6 Construction; Severability. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. Whenever possible, each provision of this Deed of Trust shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Deed of Trust shall be prohibited by or invalid under the applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity only, without invalidating the remainder of such provision or the remaining provisions of this Deed of Trust, it being the parties' intention that this Deed of Trust and each provision hereof be effective and enforced to the fullest extent permitted by applicable law.

5.7 Care by the Beneficiary. The Beneficiary shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral assigned by the Grantor to the Beneficiary or in the Beneficiary's possession if it takes such action for that purpose as the Grantor requests in writing, but failure of the Beneficiary to comply with any such request shall not be deemed to be (or to be evidence of) a failure to exercise reasonable care, and no failure of the Beneficiary to preserve or protect any rights with respect to such Collateral against prior parties, or to do any act with respect to the preservation of such Collateral not so requested by the Grantor, shall be deemed a failure to exercise reasonable care in the custody or preservation of such Collateral.

5.8 No Waiver; Writing. No delay on the part of the Beneficiary in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Beneficiary of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. The granting or withholding of consent by Beneficiary to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions.

5.9 Governing Law. All matters relating to the creation, perfection and procedures for foreclosure of the liens created by this Deed of Trust shall be governed by the laws of the State of Washington.

5.10 Waiver. The Grantor, on behalf of itself and all Persons now or hereafter interested in the Leasehold Estate, the Improvements, or the other Collateral, to the fullest extent permitted by applicable law hereby waives all rights under all appraisement, homestead, moratorium, valuation, exemption, laws or equities now or hereafter existing, and the Grantor agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Deed of Trust or any of the Collateral. The Grantor, for itself and for all Persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Deed of Trust, hereby expressly waives and releases all rights to direct the order in which any of the Collateral shall be sold in the event of any sale or sales pursuant hereto and to have any of the Collateral and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby



marshaled upon any foreclosure of this Deed of Trust or of any other security for any of said indebtedness.

5.11 WAIVER OF RIGHT TO JURY TRIAL. THE GRANTOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS DEED OF TRUST OR ANY LOAN DOCUMENT, OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS DEED OF TRUST OR ANY RELATED DOCUMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

5.12 Time of Essence. Time is declared to be of the essence in this Deed of Trust.

5.13 Matters to Be in Writing. This Deed of Trust cannot be altered, amended, modified, terminated, waived, released or discharged except in a writing signed by the party against whom enforcement is sought.

5.14 Sole Discretion of Beneficiary. Whenever Beneficiary's judgment, consent or approval is required hereunder for any matter, or Beneficiary shall have an option or election hereunder, such judgment, the decision as to whether or not to consent to or approve the same or the exercise of such option or election shall be in the sole discretion of Beneficiary.

5.15 Conflicting Terms. The terms and provisions of the Loan Agreement shall control and supersede any conflicting terms and/or provisions contained in this Deed of Trust.

5.16 Certain Obligations Unsecured. Notwithstanding anything to the contrary set forth herein or in any of the Other Loan Documents, this Deed of Trust shall not secure the following obligations (the "Unsecured Obligations"): (a) any obligations evidenced by or arising under the Environmental Indemnity Agreement of even date herewith between Grantor and Beneficiary ("Indemnity Agreement"), and (b) any other obligations in this Deed of Trust or in any of the Other Loan Documents to the extent that such other obligations relate specifically to the presence on the Leasehold Estate or the Improvements of Hazardous Materials (as that term is defined in the Indemnity Agreement) and are the same or have the same effect as any of the obligations evidenced by or arising under the Indemnity Agreement. Any breach or default with respect to the Unsecured Obligations shall constitute an Event of Default hereunder, notwithstanding the fact that such Unsecured Obligations are not secured by this Deed of Trust. Nothing in this section shall, in itself, impair or limit Beneficiary's right to obtain a judgment in accordance with applicable law after foreclosure for any deficiency in recovery of all obligations that are secured by this Deed of Trust following foreclosure.



**ORAL AGREEMENTS OR ORAL COMMITMENTS TO
LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR
FROM ENFORCING REPAYMENT OF A DEBT ARE NOT
ENFORCEABLE UNDER WASHINGTON LAW.**

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

CC BEVERAGE (U.S.) CORPORATION., a
Washington corporation

By: 

Name: Bruce E. Morley

Title: Secretary

Address:

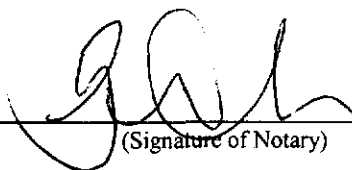
CC Beverage (U.S.) Corporation
c/o Clearly Canadian Beverage Corporation
2489 Bellevue Avenue
West Vancouver, B.C. V7V 1E1
Canada
Attn: Douglas L. Mason
Fax No: (604) 922-8195



PROVINCE OF BRITISH COLUMBIA)
) ss.
COUNTY OF VANCOUVER)

I certify that I know or have satisfactory evidence that Bruce Morley is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Secretary of CC BEVERAGE (U.S.) CORPORATION to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: April 7, 2004



(Signature of Notary)

(Name legibly printed or stamped)
Notary Public in and for the Province of British
Columbia, residing at _____
My appointment ~~is~~ ^{does} not expire.

GILLIAN E. CASE
Barrister & Solicitor
1100 - 888 DUNSMUIR STREET
VANCOUVER, B.C.
V6C 3K4



EXHIBIT A

Legal Description:

Lot 21, "HOPPER ROAD BUSINESS PARK REVISED BINDING SITE PLAN", recorded January 30, 2003 under Auditor's File No. 200301300162, records of Skagit County, Washington being more particularly described as follows:

That portion of the Northeast Quarter of the Northwest Quarter and that portion of the Southeast Quarter of the Northwest Quarter all in Section 8, Township 34 North, Range 4 East of Willamette Meridian, described as follows:

Commencing at the Southeast corner of said Northeast Quarter of the Northwest Quarter; Thence North $88^{\circ}50'04''$ West (called North $89^{\circ}48'02''$ West in previous descriptions), along the South line of said Northeast Quarter of the Northwest Quarter 484.15 feet to the true point of beginning.

Thence North $1^{\circ}02'43''$ West (called $2^{\circ}00'30''$ West in previous descriptions) parallel with the East line of said Northeast Quarter of the Northwest Quarter, 195.50 feet to the Southeast corner of a tract shown on record of Survey filed in Volume 7 of Surveys, page 199, records of Skagit County, Washington;

Thence North $88^{\circ}50'04''$ West, along the South line of said Survey (called North $89^{\circ}48'02''$ West on said survey), 175.94 feet;

Thence South $1^{\circ}02'43''$ East, parallel with said East line, 195.50 feet to said South line of the Northeast Quarter of the Northwest Quarter;

Thence North $88^{\circ}50'04''$ West, along said South line 3.14 feet to a point on a curve;

Thence Southwesterly along the arc of said curve to the right having a radius of 530.00 feet and an initial tangent bearing of South $2^{\circ}02'11''$ West, through a central angle of $15^{\circ}18'40''$, an arc distance of 141.63 feet;

Thence South $88^{\circ}50'04''$ East, parallel with said South line 554.98 feet to the Westerly margin of the Burlington Northern Railway right-of-way;

Thence North $7^{\circ}50'01''$ West, along said Westerly margin 141.39 feet to said South line;

Thence North $88^{\circ}50'04''$ West, along said South line, 332.85 feet (called 332.74 in previous descriptions) to the true point of beginning.

Situated in Skagit County, Washington



200404130100
Skagit County Auditor