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Skagit County Auditor

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AFTER RECORDING RETURN TO:

BANK OF AMERICA, N.A.
CLIENT CREDIT SERVICES
WA1-501-13-30
800 FIFTH AVENUE, 13TH FLOOR
SEATTLE, WA 98104
ATTENTION: ANTHONY BREWSTER
(Skagit County)

CHICAGO TITLE IC32863 ✓

GRANTOR: COUNTRY CLASS ASSETS, L.L.C. (BORROWER)

GRANTEE: BANK OF AMERICA, N.A. (BENEFICIARY)
PRLAP, Inc. (TRUSTEE)ABBREVIATED LEGAL
DESCRIPTION: PTN NW/4 SW/4 NE/4 27-35-04

[FULL LEGAL DESCRIPTION: SEE EXHIBIT A ATTACHED]

ASSESSOR'S TAX PARCEL NOS.: 350427-1-014-0014; 350427-1-014-0400

This Document Serves as a Fixture Filing Under the Washington Uniform Commercial Code.

Borrower's Organizational Identification Number: 602-438-069

Bank of America.**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

This Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (this "Deed of Trust") is made as of November 1, 2004, by **COUNTRY CLASS ASSETS, L.L.C.**, a Washington limited liability company ("Borrower"), the address of which is 909 S. 336th Street, Suite 200, Federal Way, WA 98003, as grantor, in favor of **PRLAP, Inc.**, a Washington corporation ("Trustee"), the address of which is 10850 White Rock Road, Suite 201, Rancho Cordova, CA 95670, as trustee, for the benefit of **BANK OF AMERICA, N.A.**, a national banking association (hereafter the "Beneficiary"), the address of which is Middle Market Banking, 800 Fifth Avenue, 36th Floor, Seattle, WA 98104, as beneficiary.

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

NOV 23 2004

Amount Paid
Skagit Co. Treasurer
By

ARTICLE 1

Definitions; Granting Clauses; Secured Indebtedness

Section 1.1 Secured Indebtedness. This Deed of Trust is made to secure the obligations of Borrower under the Loan Documents and all other matters and indebtedness defined below as Secured Indebtedness, which indebtedness includes the Borrower's reimbursement obligations with regard to an irrevocable Letter of Credit in the original stated amount of \$12,738,083.00 (the "Letter of Credit").

Section 1.2 Definitions.

(a) In addition to other terms defined herein, each of the following terms shall have the meaning assigned to it, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

"Beneficiary": As defined in the introductory paragraph of this Deed of Trust.

"Bonds": The \$12,600,000 Country Class Assets, L.L.C. Variable/Fixed Rate Demand Bonds, Series 2004A.

"Borrower": Unless the context clearly indicates otherwise, the Borrower(s) named in the introductory paragraph hereof, together with all heirs, devisees, representatives, successors and assigns of such Borrower(s) pursuant to Section 6.18 below, or any of them.

"Claim": Any controversy or claim between Borrower and Beneficiary, whether arising in contract or tort or by statute, that arises out of or relates to (i) this Deed of Trust (including any renewals, extensions or modifications hereof), or (ii) any of the other Loan Documents.

"Collateral": All of the Property constituting personal property or fixtures in which Borrower is granting Beneficiary a security interest under this Deed of Trust, together with all proceeds and products thereof and all supporting obligations ancillary thereto or arising in any way in connection therewith.

"Credit Facility": The facility provided by Beneficiary, evidenced by the Reimbursement Agreement, for issuance of the Letter of Credit, to support issuance by Borrower of the Bonds.

"Debtor Relief Law": Any federal, state or local law, domestic or foreign, as now or hereafter in effect relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension or adjustment of debts, or any similar law affecting the rights of creditors.

"Default": Any of the events described in Section 4.1 of this Deed of Trust.

"Environmental Agreement": The Environmental Indemnity Agreement dated of even date herewith executed by Borrower in favor of Beneficiary and certain other parties. The Environmental Agreement is not a Loan Document and the obligations under the Environmental Agreement are not secured by this Deed of Trust.

"Indemnified Matters": Any and all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including reasonable fees and expenses of attorneys and other professional



consultants and experts, and of the investigation and defense of any claim, whether or not such claim is ultimately defeated, and the settlement of any claim or judgment including all value paid or given in settlement) of every kind, known or unknown, foreseeable or unforeseeable, which may be imposed upon, asserted against or incurred or paid by any Indemnified Party at any time and from time to time, whenever imposed, asserted or incurred, because of, resulting from, in connection with, or arising out of any transaction, act, omission, event or circumstance in any way connected with the Property or with this Deed of Trust or any other Loan Document, including any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever at any time, any act performed or omitted to be performed hereunder or under any other Loan Document, any breach by Borrower of any representation, warranty, covenant, agreement or condition contained in this Deed of Trust or in any other Loan Document, any Default, or any claim under or with respect to any Lease.

"Indemnified Party": Each of the following persons and entities: (i) Beneficiary; (ii) Trustee; (iii) any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with Beneficiary and/or Trustee; (iv) any participants and co-lenders in the Credit Facility; (v) the directors, officers, partners, employees, attorneys, agents and representatives of each of the foregoing persons and entities; and (vi) the heirs, personal representatives, successors and assigns of each of the foregoing persons and entities.

"Law": Any federal, state or local law, statute, ordinance, code, rule, regulation, license, permit, authorization, decision, order, injunction or decree, domestic or foreign.

"Lease": Each existing or future lease, sublease (to the extent of Borrower's rights thereunder) or other agreement under the terms of which any person has or acquires any right to occupy or use the Property or any part thereof or interest therein, and each existing or future guaranty of payment or performance thereunder, and any and all existing or future security therefor and letter-of-credit-rights with respect thereto, whether or not the letter of credit is evidenced by a writing.

"Legal Requirement": Any law, agreement, covenant, restriction, easement or condition (including, without limitation of the foregoing, any condition or requirement imposed by any insurance or surety company), as any of the same now exists or may be changed or amended or come into effect in the future.

"Letter of Credit": As defined in Section 1.1 of this Deed of Trust.

"Loan Documents": The Reimbursement Agreement, this Deed of Trust, and any other document now or hereafter evidencing, governing, securing or otherwise executed in connection with the Credit Facility, including any Swap Contract or other agreement between Borrower and Beneficiary and any other party or parties, pertaining to the repayment or use of the Bond proceeds, as such documents or any of them may have been or may be from time to time renewed, extended, supplemented, increased, restated or modified; provided, however, that the Loan Documents do not include the Environmental Agreement.

"Permitted Encumbrances": (i) Any matters set forth in any loan policy of title insurance issued to Beneficiary which are acceptable to Beneficiary as of the date hereof, (ii) the liens and security interests evidenced by this Deed of Trust, (iii) statutory liens for real estate taxes and assessments on the Property which are not yet delinquent, (iv) other liens and security interests (if any) in favor of Beneficiary, (v) the rights of tenants in possession as of the date hereof, if any, pursuant to Leases approved by Beneficiary and the rights of future tenants under any Leases made in accordance with the Loan Documents, and the assignment of such Leases pursuant to this Deed of Trust, and (vi) any matters arising after the date hereof which may be acceptable to Beneficiary in its



sole and absolute discretion, which Permitted Encumbrances in the aggregate do not materially adversely affect the value or use of the Property or Borrower's ability to repay the Secured Indebtedness.

"Reimbursement Agreement": The Reimbursement Agreement dated of even date herewith evidencing and governing the Credit Facility, executed by and between Borrower and Beneficiary, as it may from time to time be amended, modified, restated, replaced or supplemented.

"Reimbursement Obligations": All "Obligations," as such term is defined in the Reimbursement Agreement.

"Rents": All of the rents, revenue, accounts, deposit accounts, payment intangibles, commercial tort claims, income, profits and proceeds derived and to be derived from the Property or arising from the use or enjoyment of any portion thereof or from any Lease, including the proceeds from any negotiated lease termination or buyout of such Lease, liquidated damages following default under any such Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the Property, all of Borrower's rights to recover monetary amounts from any tenant in bankruptcy, including rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejections, under any applicable Debtor Relief Law, together with any sums of money that may now or at any time hereafter be or become due and payable to Borrower by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and future oil, gas, mineral and mining leases covering the Property or any part thereof, and all proceeds and other amounts paid or owing to Borrower under or pursuant to any and all contracts and bonds relating to the construction or renovation of the Property.

"Secured Indebtedness": The following obligations, indebtedness, duties and liabilities and all renewals, extensions, supplements, amendments, restatements, increases and modifications thereof and thereto, in whole or in part, from time to time:

(i) The Reimbursement Agreement and the "Obligations" thereunder, including but not limited to Swap Obligations under Swap Contracts, as each such term is defined in the Reimbursement Agreement;

(ii) All indebtedness, liabilities, duties, covenants, promises and other obligations owed by Borrower to Beneficiary pursuant to the other Loan Documents, expressly excluding, however, the Environmental Agreement (which is not a Loan Document) and also excluding any guaranty executed by a third party, whether now existing or hereafter arising, and whether joint or several, direct or indirect, primary or secondary, fixed or contingent, liquidated or unliquidated, and the cost of collection of all such amounts; and

(iii) All amounts that Beneficiary may from time to time advance pursuant to the terms and conditions of this Deed of Trust with respect to an obligation secured by a lien or encumbrance prior to the lien of this Deed of Trust or for the protection of this Deed of Trust, together with interest thereon; and

"Transfer": Any sale, lease, conveyance, assignment, pledge, encumbrance or transfer, whether voluntary, involuntary, by operation of law or otherwise.

"Trustee": The trustee identified in the introductory paragraph of this Deed of Trust, and any successor or substitute appointed and designated as herein provided, from time to time acting hereunder.



(b) Any term used or defined in the Washington Uniform Commercial Code, as in effect from time to time, which is not defined in this Deed of Trust has the meaning given to that term in the Washington Uniform Commercial Code, as in effect from time to time, when used in this Deed of Trust.

Section 1.3 Granting Clause. For good and valuable consideration, the receipt and sufficiency of which are acknowledged by Borrower, to secure the obligations of Borrower under the Loan Documents and all other matters and indebtedness constituting the Secured Indebtedness, Borrower hereby BARGAINS, SELLS, GRANTS, TRANSFERS, CONVEYS and ASSIGNS to Trustee, in trust for the benefit of Beneficiary, **with power of sale** and right of entry and possession, all estate, right, title and interest which Borrower now has or may hereafter acquire in and to the following Premises, Accessories and other rights, interests and properties, and all rights, estates, powers and privileges appurtenant thereto (collectively, the **"Property"**):

(a) A leasehold interest in the real property described in Exhibit A which is attached hereto and incorporated herein by reference (the **"Land"**), under and pursuant to that certain Ground Lease Agreement dated November 15, 1991, from Public Hospital District 304, Skagit County, Washington as lessor (together with all subsequent modifications and assignments thereof, the **"Ground Lease"**), as evidenced by Memorandum of Lease dated January 6, 1993, recorded on February 5, 1993, under Skagit County recording number 9302050096, the tenant's interest under which is now held, through subsequent assignments and mergers, by Borrower, together with: (i) any and all buildings, structures, improvements, alterations or appurtenances now or hereafter situated or to be situated on the Land (collectively, the **"Improvements"**); and (ii) all right, title and interest of Borrower, now owned or hereafter acquired, in and to (A) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the Land or the Improvements; (B) any strips or gores between the Land and abutting or adjacent properties; (C) all options to purchase the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements; (D) all water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, timber, crops and mineral interests on or pertaining to the Land; and (E) all development rights and credits and air rights (the Land, Improvements and other rights, titles and interests referred to in this clause (a) being herein sometimes collectively called the **"Premises"**);

BORROWER REPRESENTS AND WARRANTS THAT THE REAL PROPERTY CONVEYED BY THIS DEED OF TRUST IS NOT USED PRINCIPALLY FOR AGRICULTURAL PURPOSES.

(b) All fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies, and other articles of personal property, of every kind and character, tangible and intangible (including software imbedded therein), now owned or hereafter acquired by Borrower, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing (the properties referred to in this clause (b) being herein sometimes collectively called the **"Accessories"**, all of which are hereby declared to be permanent accessions to the Land);

(c) All (i) plans and specifications for the Improvements, (ii) Borrower's rights, but not liability for any breach by Borrower, under all commitments (including any commitments for financing to pay any of the Secured Indebtedness), insurance policies (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government-sponsored program or entity), Swap Transactions,



contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including payment intangibles and any trademarks, trade names, goodwill, software and symbols) related to the Premises or the Accessories or the operation thereof, (iii) any account or deposit account from which Borrower may from time to time authorize Beneficiary to debit and/or credit payments due with respect to the Credit Facility or any Swap Transaction, all rights to the payment of money from Beneficiary under any Swap Transaction, and all accounts, deposit accounts and general intangibles, including payment intangibles, described in any Swap Transaction, (iv) deposits and deposit accounts arising from or relating to any transactions related to the Premises or the Accessories (including Borrower's rights in tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits, deposit accounts or reserves hereunder or under any other Loan Documents for taxes, insurance or otherwise), (v) rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts (including deposit accounts), instruments, documents, promissory notes and chattel paper (whether tangible or electronic) arising from or by virtue of any transactions related to the Premises or the Accessories, (vi) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories, (vii) Leases, Rents and other benefits of the Premises and the Accessories (without derogation of Article 3 hereof), (viii) as-extracted collateral produced from or allocated to the Land, including oil, gas and other hydrocarbons and other minerals and all products processed or obtained therefrom and the proceeds thereof, and (ix) engineering, accounting, title, legal, and other technical or business data concerning the Property, including software, which are in the possession of Borrower or in which Borrower can otherwise grant a security interest;

(d) All (i) accounts and proceeds (whether cash or non-cash and including payment intangibles), of or arising from the properties, rights, titles and interests referred to above in this Section 1.3, including the proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance, present and future (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government-sponsored program or entity), payable because of loss sustained to all or part of the Property (including premium refunds), whether or not such insurance policies are required by Beneficiary, proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, proceeds arising out of any damage thereto, including any and all commercial tort claims, (ii) all letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3, (iii) all commercial tort claims Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3, and (iv) other interests of every kind and character which Borrower now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in this Section 1.3 and all property used or useful in connection therewith, including rights of ingress and egress and remainders, reversions and reversionary rights or interests;

(e) If the estate of Borrower in any of the property referred to above in this Section 1.3 is a leasehold estate, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by Borrower in or to the property demised under the lease creating the leasehold estate; and

(f) All proceeds and products of, additions and accretions to, substitutions and replacements for, and changes in any of the property referred to above in this Section 1.3.



Section 1.4 Security Interest. To secure the obligations of Borrower under the Loan Documents and all other matters and indebtedness constituting the Secured Indebtedness, Borrower hereby grants to Beneficiary a security interest in all of the Collateral, including the products and proceeds thereof and all supporting obligations ancillary thereto or arising in any way in connection therewith. In addition to its rights hereunder or otherwise, Beneficiary shall have all of the rights of a secured party under the Washington Uniform Commercial Code, as in effect from time to time, or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable law. If the Secured Indebtedness includes a revolving line of credit, then it is the express intent of Borrower and Beneficiary that this Deed of Trust and the estate held by the Trustee hereunder shall continue in effect notwithstanding that from time to time no Secured Indebtedness under the line of credit may exist, and shall survive as security for all new or additional Secured Indebtedness from time to time arising.

ARTICLE 2

Representations, Warranties and Covenants

Section 2.1 Borrower represents, warrants and covenants as follows:

(a) **Payment and Performance.** Borrower will make due and punctual payment of the Secured Indebtedness. Borrower will timely and properly perform and comply with all of the covenants, agreements and conditions imposed upon it by this Deed of Trust and the other Loan Documents and will not permit a Default to occur hereunder or thereunder. Time shall be of the essence in this Deed of Trust.

(b) **Title and Permitted Encumbrances.** Borrower has in Borrower's own right, and Borrower covenants to maintain, lawful, good and marketable title to the Property, is lawfully seized and possessed of a leasehold interest in the Property and every part thereof under the Ground Lease, and has the right to convey the same, free and clear of all liens, charges, claims, security interests, and encumbrances except for the Permitted Encumbrances. Borrower will warrant generally and forever defend title to the Property, subject as aforesaid to the Permitted Encumbrances, to Trustee and Beneficiary and their respective successors or substitutes and assigns, against the claims and demands of all persons claiming or to claim the same or any part thereof. Borrower will punctually pay, perform, observe and keep all covenants, obligations and conditions in or pursuant to the Ground Lease and to any Permitted Encumbrance and will not modify or permit modification of the Ground Lease or any Permitted Encumbrance without the prior written consent of Beneficiary. Inclusion of any matter as a Permitted Encumbrance does not constitute approval or waiver by Beneficiary of any existing or future violation or other breach thereof by Borrower, the Property or otherwise. No part of the Property constitutes all or any part of the principal residence of Borrower if Borrower is an individual. If any right or interest of Beneficiary in the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly, Trustee and Beneficiary, or either of them (whether or not named as parties to legal proceedings with respect thereto), are hereby authorized and empowered to take such steps as in their discretion may be proper for the defense of any such legal proceedings or the protection of such right or interest of Beneficiary, including the employment of independent counsel, the prosecution or defense of litigation, and the compromise or discharge of adverse claims. All expenditures so made of every kind and character shall be a demand obligation (which obligation Borrower hereby promises to pay) owing by Borrower to Beneficiary or Trustee (as the case may be), and the party (Beneficiary or Trustee, as the case may be) making such expenditures shall be subrogated to all rights of the person receiving such payment.



(c) **Taxes and Other Impositions.** Borrower will pay or cause to be paid all taxes, assessments and other charges or levies imposed upon or against or with respect to the Property or the ownership, use, occupancy or enjoyment of any portion thereof, or any utility service thereto, as the same become due and payable, including all real estate taxes assessed against the Property or any part thereof, and shall deliver promptly to Beneficiary such evidence of the payment thereof as Beneficiary may require.

(d) **Insurance Coverage.** Borrower shall obtain and maintain at Borrower's sole expense: (i) property insurance with respect to all insurable Property, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such additional hazards as are presently included in Special Form (also known as "all-risk") coverage and against such other insurable hazards as Beneficiary may require, in an amount not less than 100% of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent Borrower and Beneficiary from becoming a coinsurer, such insurance to be in "builder's risk" completed value (non-reporting) form during and with respect to any construction on the Premises; (ii) if and to the extent any portion of the Improvements is, under the Flood Disaster Protection Act of 1973 ("FDPA"), as it may be amended from time to time, in a Special Flood Hazard Area, within a Flood Zone designated A or V in a participating community, a flood insurance policy in an amount required by Beneficiary, but in no event less than the amount sufficient to meet the requirements of applicable law and the FDPA, as such requirements may from time to time be in effect; (iii) general liability insurance, including bodily injury, death or property damage liability, for the benefit of Borrower as named insured and Beneficiary as additional insured; (iv) statutory workers' compensation insurance with respect to any work on or about the Premises (including employer's liability insurance, if required by Beneficiary), covering all employees of Borrower and any contractor; (v) if there is a general contractor, commercial general liability insurance, including products and completed operations coverage, and in other respects similar to that described in clause (iii) above, for the benefit of the general contractor as named insured and Borrower and Beneficiary as additional insureds, in addition to statutory workers' compensation insurance with respect to any work on or about the Premises (including employer's liability insurance, if required by Beneficiary), covering all employees of the general contractor and any contractor; and (vi) such other insurance on the Property and endorsements as may from time to time be required by Beneficiary (including soft cost coverage, automobile liability insurance, business interruption insurance or delayed rental income insurance, wind insurance, boiler and machinery insurance, earthquake insurance, sinkhole coverage, and/or permit to occupy endorsement) and against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height, type, construction, location, use and occupancy of buildings and improvements.

(e) **Insurance Policy Requirements.** All insurance policies shall be issued and maintained by insurers, in amounts, with deductibles, limits and retentions and in forms satisfactory to Beneficiary. All insurance policies shall require at least ten (10) days' prior written notice to Beneficiary of any cancellation for nonpayment of premiums and at least thirty (30) days' prior written notice to Beneficiary of any other cancellation or any change of coverage. All insurance companies must be licensed to do business in the state in which the Property is located and must have A. M. Best Company financial and performance ratings of A-IX or better. All insurance policies maintained, or caused to be maintained, by Borrower with respect to the Property, except for general liability insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by Borrower or Beneficiary and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. If any insurer which has issued a policy of hazard, liability or other insurance required pursuant to this Deed of Trust or any other Loan Document becomes insolvent or the subject of any petition, case, proceeding or other action pursuant to any Debtor Relief Law or if in Beneficiary's reasonable opinion the financial responsibility of such insurer is or becomes inadequate,



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Borrower shall, upon its discovery thereof or upon request by Beneficiary therefor, promptly obtain and deliver to Beneficiary, at Borrower's expense in each instance, a like policy (or, if and to the extent permitted by Beneficiary, acceptable evidence of insurance) issued by another insurer, which insurer and policy meet the requirements of this Deed of Trust or such other Loan Document, as the case may be. Without limiting the discretion of Beneficiary with respect to required endorsements to insurance policies, all such policies for loss of or damage to the Property shall contain a standard mortgagee clause (without contribution) naming Beneficiary as mortgagee with loss proceeds payable to Beneficiary notwithstanding (i) any act, failure to act or negligence of or violation of any warranty, declaration or condition contained in any such policy by any named or additional insured, (ii) the occupation or use of the Property for purposes more hazardous than permitted by the terms of any such policy, (iii) any foreclosure or other action by Beneficiary under the Loan Documents, or (iv) any change in title to or ownership of the Property or any portion thereof, such proceeds to be held for application as provided in the Loan Documents. The originals of each initial insurance policy (or to the extent permitted by Beneficiary, a copy of the original policy and such evidence of insurance as may be acceptable to Beneficiary) shall be delivered to Beneficiary at the time of execution of this Deed of Trust, with all premiums fully paid current, and each renewal or substitute policy (or evidence of insurance) shall be delivered to Beneficiary, with all premiums fully paid current, at least ten (10) days before the termination of the policy it renews or replaces. Borrower shall pay all premiums on policies required hereunder as they become due and payable and promptly deliver to Beneficiary evidence satisfactory to Beneficiary of the timely payment thereof.

(f) **Insurance Proceeds.** If any loss occurs at any time when Borrower has failed to perform Borrower's covenants and agreements with respect to any insurance payable because of loss sustained to any part of the Property, whether or not such insurance is required by Beneficiary, Beneficiary shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for Borrower, to the same extent as if it had been made payable to Beneficiary. Upon any foreclosure hereof or transfer of title to the Property in extinguishment of the whole or any part of the Secured Indebtedness, all of Borrower's right, title and interest in and to the insurance policies referred to in this clause (f) (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferee, to the extent permissible under such policies. Beneficiary shall have the right (but not the obligation) to make proof of loss for, settle and adjust any claim under, and receive the proceeds of, all insurance for loss of or damage to the Property, regardless of whether or not such insurance policies are required by Beneficiary, and the expenses incurred by Beneficiary in the adjustment and collection of insurance proceeds shall be a part of the Secured Indebtedness and shall be due and payable to Beneficiary on demand. Beneficiary shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the collection of any of such proceeds or for the obtaining, maintaining or adequacy of any insurance or for failure to see to the proper application of any amount paid over to Borrower. Borrower shall at all times comply with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting the Property.

(g) **Reserve for Insurance, Taxes and Assessments.** Upon request of Beneficiary, to secure the payment and performance of the Secured Indebtedness, but not in lieu of such payment and performance, Borrower will deposit with Beneficiary a sum equal to real estate taxes, assessments and charges (which charges for the purposes of this clause (g) shall include any recurring charge which could result in a lien against the Property) against the Property for the current year and the premiums for such policies of insurance for the current year, all as estimated by Beneficiary and prorated to the end of the calendar month following the month during which Beneficiary's request is made, and thereafter will deposit with Beneficiary, on each date when an installment of principal and/or interest is due on the Reimbursement Obligations, sufficient funds (as estimated from time to time by Beneficiary) to permit Beneficiary to pay at least fifteen (15) days prior



to the due date thereof, the next maturing real estate taxes, assessments and charges and premiums for such policies of insurance. Beneficiary shall have the right to rely upon tax information furnished by applicable taxing authorities in the payment of such taxes or assessments and shall have no obligation to make any protest of any such taxes or assessments. Any excess over the amounts required for such purposes shall be held by Beneficiary for future use, applied to any Secured Indebtedness or refunded to Borrower, at Beneficiary's option, and any deficiency in such funds so deposited shall be made up by Borrower upon demand of Beneficiary. All such funds so deposited shall bear no interest, may be commingled with the general funds of Beneficiary and shall be applied by Beneficiary toward the payment of such taxes, assessments, charges and premiums when statements therefor are presented to Beneficiary by Borrower (which statements shall be presented by Borrower to Beneficiary a reasonable time before the applicable amount is due); provided, however, that, if a Default shall have occurred hereunder, such funds may at Beneficiary's option be applied to the payment of the Secured Indebtedness in the order determined by Beneficiary in its sole discretion, and that Beneficiary may (but shall have no obligation) at any time, in its discretion, apply all or any part of such funds toward the payment of any such taxes, assessments, charges or premiums which are past due, together with any penalties or late charges with respect thereto. The conveyance or transfer of Borrower's interest in the Property for any reason (including the foreclosure of a subordinate lien or security interest or a transfer by operation of law) shall constitute an assignment or transfer of Borrower's interest in and rights to such funds held by Beneficiary under this clause (g) but subject to the rights of Beneficiary hereunder.

(h) **Condemnation.** Borrower shall notify Beneficiary immediately of any threatened or pending proceeding for condemnation affecting the Property or arising out of damage to the Property, and Borrower shall, at Borrower's expense, diligently prosecute any such proceedings. Beneficiary shall have the right (but not the obligation) to participate in any such proceeding and to be represented by counsel of its own choice. Beneficiary shall be entitled to receive all sums which may be awarded or become payable to Borrower for the condemnation of the Property, or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Borrower for injury or damage to the Property. Borrower shall, promptly upon request of Beneficiary, execute such additional assignments and other documents as may be necessary from time to time to permit such participation and to enable Beneficiary to collect and receipt for any such sums. Beneficiary shall not be, under any circumstances, liable or responsible for failure to collect or to exercise diligence in the collection of any such sum or for failure to see to the proper application of any amount paid over to Borrower. Beneficiary is hereby authorized, in its own name or in Borrower's name, to settle or compromise any condemnation claim or cause of action, and to execute and deliver valid acquittances for, and to appeal from, any award, judgment or decree arising from any such claim or cause of action. All costs and expenses (including attorneys' fees) incurred by Beneficiary in connection with any condemnation shall be a demand obligation owing by Borrower (which Borrower hereby promises to pay) to Beneficiary pursuant to this Deed of Trust.

(i) **Damages and Insurance and Condemnation Proceeds.** Borrower hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payor to pay to Beneficiary or any other Beneficiary, the following claims, causes of action, awards, payments and rights to payment (collectively, "Claims"): all awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking which affects any part of the Property; all awards and other Claims arising out of any warranty affecting any part of the Property or for damage or injury to any part of the Property; all proceeds of any insurance policies payable because of loss sustained to any part of the Property, whether or not such insurance policies are required by Beneficiary, and all interest that may accrue on any of the foregoing. All proceeds of Claims described in this clause (i) shall be payable to Beneficiary and shall be applied first to reimburse Beneficiary for its costs and expenses of recovering such proceeds, including attorneys' fees. Upon satisfaction of each of the following conditions, provided that no Default exists, Borrower



shall be permitted to use the balance of the proceeds ("Net Claims Proceeds") to pay the costs of repairing or reconstructing the Property:

(i) Beneficiary shall have approved the plans and specifications, construction budget, construction schedule, contractor, architect, engineer and payment and performance bond (if required by Beneficiary);

(ii) Borrower shall have presented sufficient evidence to Beneficiary that after the repair or reconstruction, the Property will be completely restored to its use, value and condition immediately prior to the occurrence of the damage or condemnation;

(iii) Beneficiary shall have determined that the Net Claims Proceeds are sufficient to pay the total cost of the repair or reconstruction, including all development costs and interest due on the Secured Indebtedness until the work is complete, or Borrower must provide (or deposit with Beneficiary) its own funds equal to the difference between the Net Claims Proceeds and the total cost of the work, as estimated by Borrower and approved by Beneficiary;

(iv) All parties having operating, management or franchise interests in and arrangements concerning the Property shall have agreed that they will continue their interests and arrangements for the contract terms then in effect following the repair or reconstruction;

(v) Borrower shall have presented sufficient evidence to Beneficiary that all necessary governmental approvals and permits can be obtained to allow the rebuilding and reoccupancy of the Property;

(vi) Borrower shall have presented sufficient evidence to Beneficiary that the Improvements will take no more than 24 months to reconstruct and that such reconstruction will be completed prior to the stated expiration of the Letter of Credit.

If the foregoing conditions are met to Beneficiary's reasonable satisfaction, Beneficiary shall hold the Net Claims Proceeds and any funds that Borrower is required to provide in an interest-bearing account and shall disburse them to Borrower to pay the costs of the work on the terms and subject to the conditions of the provisions of a construction disbursement agreement in form satisfactory to Beneficiary. Interest on the funds shall accrue at the rate of interest then being paid by Beneficiary to regular savings account customers and shall be credited to Borrower. Borrower shall provide evidence acceptable to Beneficiary that all work has been completed lien-free, in a workmanlike manner and in accordance with all Legal Requirements. Borrower agrees that the conditions described above are reasonable. If the foregoing conditions are not satisfied, or if a Default occurs after Beneficiary's receipt of the Net Claims Proceeds, Beneficiary may, at Beneficiary's absolute discretion and regardless of whether Beneficiary's security is impaired, instruct Borrower to initiate an optional redemption of Bonds equal to the amount of the Net Claims Proceeds (subject to any minimum Bond increment) and apply such Net Claims Proceeds to the resulting Reimbursement Obligation. Following the application of any Net Claims Proceeds as contemplated by this clause (i), the unpaid portion of the Secured Indebtedness shall remain in full force and effect and the payment thereof shall not be excused.

(j) **Compliance with Legal Requirements.** The Property and the use, operation and maintenance thereof and all activities thereon do and shall at all times comply with all applicable Legal Requirements. The Property is not, and shall not be, dependent on any other property or premises or any interest therein other than the Property to fulfill any requirement of any Legal Requirement. Borrower shall not, by act or omission, permit any building or other improvement not subject to the lien of this Deed of Trust to rely on the Property or any interest therein to fulfill any requirement of any



Legal Requirement. No improvement upon or use of any part of the Property constitutes a nonconforming use under any zoning law or similar law or ordinance. Borrower has obtained and shall preserve in force all requisite zoning, utility, building, health, environmental and operating permits from the governmental authorities having jurisdiction over the Property. If Borrower receives a notice or claim from any person that the Property, or any use, activity, operation or maintenance thereof or thereon, is not in compliance with any Legal Requirement, Borrower will promptly furnish a copy of such notice or claim to Beneficiary. Borrower has received no notice and has no knowledge of any such noncompliance.

(k) **Maintenance, Repair and Restoration.** Borrower will keep the Property in first class order, repair, operating condition and appearance, causing all necessary repairs, renewals, replacements, additions and improvements to be promptly made, and will not allow any of the Property to be misused, abused or wasted or to deteriorate. Notwithstanding the foregoing, Borrower will not, without the prior written consent of Beneficiary, (i) remove from the Property any fixtures or personal property covered by this Deed of Trust except such as is replaced by Borrower by an article of equal suitability and value, owned by Borrower, free and clear of any lien or security interest (except that created by this Deed of Trust), or (ii) make any structural alteration to the Property or any other alteration thereto which impairs the value thereof. If any act or occurrence of any kind or nature (including any condemnation or any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Property, Borrower shall give prompt notice thereof to Beneficiary and Borrower shall promptly, at Borrower's sole cost and expense and regardless of whether insurance or condemnation proceeds (if any) shall be available or sufficient for the purpose, secure the Property as necessary and commence and continue diligently to completion to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to the damage, loss or destruction.

(l) **No Other Liens.** Borrower will not, without the prior written consent of Beneficiary, except as permitted under Section 8.2 of the Reimbursement Agreement, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual, security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Deed of Trust, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of Beneficiary, Borrower will cause the same to be promptly discharged and released. Borrower will own all parts of the Property and will not acquire any fixtures, equipment or other property (including software embedded therein) forming a part of the Property pursuant to a lease, license, security agreement or similar agreement, whereby any party has or may obtain the right to repossess or remove same, without the prior written consent of Beneficiary. If Beneficiary consents to the voluntary grant by Borrower of any deed of trust, lien, security interest, or other encumbrance (hereinafter called "**Subordinate Lien**") covering any of the Property or if the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable as to a Subordinate Lien, any such Subordinate Lien shall contain express covenants to the effect that: (i) the Subordinate Lien is unconditionally subordinate to this Deed of Trust and all Leases; (ii) if any action (whether judicial or pursuant to a power of sale) shall be instituted to foreclose or otherwise enforce the Subordinate Lien, no tenant of any of the Leases shall be named as a party defendant, and no action shall be taken that would terminate any occupancy or tenancy without the prior written consent of Beneficiary; (iii) Rents, if collected by or for the holder of the Subordinate Lien, shall be applied first to the payment of the Secured Indebtedness then due and expenses incurred in the ownership, operation and maintenance of the Property in such order as Beneficiary may determine, prior to being applied to any indebtedness secured by the Subordinate Lien; (iv) written notice of default under the Subordinate Lien and written



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notice of the commencement of any action (whether judicial or pursuant to a power of sale) to foreclose or otherwise enforce the Subordinate Lien or to seek the appointment of a receiver for all or any part of the Property shall be given to Beneficiary with or immediately after the occurrence of any such default or commencement; and (v) neither the holder of the Subordinate Lien, nor any purchaser at foreclosure thereunder, nor anyone claiming by, through or under any of them shall succeed to any of Borrower's rights hereunder without the prior written consent of Beneficiary.

(m) **Operation of Property.** Borrower or a lessee acceptable to Beneficiary (either, the "Operator") will operate the Property in a good and workmanlike manner and in accordance with all Legal Requirements and will pay all fees or charges of any kind in connection therewith. Operator will keep the Property occupied so as not to impair the insurance carried thereon. Operator will not use or occupy or conduct any activity on, or allow the use or occupancy of or the conduct of any activity on, the Property in any manner which violates any Legal Requirement or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. Neither Borrower nor Operator will initiate or permit any zoning reclassification of the Property or seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other Legal Requirement. Neither Borrower nor Operator will impose any easement, restrictive covenant or encumbrance upon the Property, execute or file any subdivision plat or condominium declaration affecting the Property or consent to the annexation of the Property to any municipality, without the prior written consent of Beneficiary. Neither Borrower nor Operator will do or suffer to be done any act whereby the value of any part of the Property may be lessened. Borrower and Operator will preserve, protect, renew, extend and retain all material rights and privileges granted for or applicable to the Property. Without the prior written consent of Beneficiary, there shall be no drilling or exploration for or extraction, removal or production of any mineral, hydrocarbon, gas, natural element, compound or substance (including sand and gravel) from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof. Borrower will cause all debts and liabilities of any character (including all debts and liabilities for labor, material and equipment (including software embedded therein) and all debts and charges for utilities servicing the Property) incurred in the construction, maintenance, operation and development of the Property to be promptly paid.

(n) **Further Assurances.** Borrower will, promptly on request of Beneficiary, (i) correct any defect, error or omission which may be discovered in the contents, execution or acknowledgment of this Deed of Trust or any other Loan Document; (ii) execute, acknowledge, deliver, procure and record and/or file such further documents (including further deeds of trust, security agreements, financing statements, financing statement amendments, continuation statements and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Deed of Trust and the other Loan Documents, to more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property) or as deemed advisable by Beneficiary to protect the lien or the security interest hereunder against the rights or interests of third persons; and (iii) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of Beneficiary to enable Beneficiary to comply with the requirements or requests of any agency having jurisdiction over Beneficiary or any examiners of such agencies with respect to the indebtedness secured hereby, Borrower or the Property. Borrower shall pay all costs connected with any of the foregoing, which shall be a demand obligation owing by Borrower (which Borrower hereby promises to pay) to Beneficiary pursuant to this Deed of Trust.



(o) **Fees and Expenses.** Without limitation of any other provision of this Deed of Trust or of any other Loan Document and to the extent not prohibited by applicable law, Borrower will pay, and will reimburse to Beneficiary and/or Trustee on demand to the extent paid by Beneficiary and/or Trustee: (i) costs of appraisals obtained in connection with the origination of the Credit Facility and after the occurrence of a Default; (ii) all filing, registration and recording fees, recordation, transfer and other taxes, brokerage fees and commissions, abstract fees, title search or examination fees, title policy and endorsement premiums and fees, Uniform Commercial Code search fees, judgment and tax lien search fees, escrow fees, reasonable attorneys' fees, reasonable architect's fees, reasonable engineering fees, reasonable construction consultant fees, reasonable environmental inspection fees, survey fees, and all other costs and expenses of every character incurred by Borrower or Beneficiary and/or Trustee in connection with the preparation of the Loan Documents, the evaluation and closing of the Credit Facility, including issuance of the Letter of Credit, and any and all amendments and supplements to this Deed of Trust, the Reimbursement Agreement or any other Loan Documents or any approval, consent, waiver, release or other matter requested or required hereunder or thereunder, or otherwise attributable or chargeable to Borrower as owner of the Property; and (iii) all costs and expenses, including reasonable attorneys' fees and expenses (including the reasonably allocated cost of services provided by in-house counsel), incurred or expended in connection with the exercise of any right or remedy, or the defense of any right or remedy or the enforcement of any obligation of Borrower, hereunder or under any other Loan Document.

(p) **Indemnification.** Borrower will indemnify and hold harmless each and every Indemnified Party from and against, and reimburse them on demand for, any and all Indemnified Matters. Without limitation, the foregoing indemnity shall apply to each Indemnified Party with respect to matters which in whole or in part are caused by or arise out of the negligence of such (and/or any other) Indemnified Party. However, such indemnity shall not apply to a particular Indemnified Party to the extent that the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of that Indemnified Party. Any amount to be paid under this clause (p) by Borrower to any Indemnified Party shall be a demand obligation owing by Borrower (which Borrower hereby promises to pay) to such Indemnified Party pursuant to this Deed of Trust. The indemnity in this clause (p) shall not terminate upon the release, foreclosure or other termination of this Deed of Trust but will survive the enforcement of any remedy provided in any Loan Document including the foreclosure of this Deed of Trust or conveyance in lieu of foreclosure, the repayment of the Secured Indebtedness, the discharge and release of this Deed of Trust and the other Loan Documents, any bankruptcy or other proceeding under any Debtor Relief Law, and any other event whatsoever. The rights of Indemnified Parties under this clause (p) shall be in addition to all other rights that Indemnified Parties or any of them may have under this Deed of Trust, any other Loan Document, or the Environmental Agreement. Nothing in this clause (p) or elsewhere in this Deed of Trust or in the Environmental Agreement shall limit or impair any rights or remedies that any Indemnified Party may have (including any rights of contribution or indemnification) against Borrower or any other person under any other provision of this Deed of Trust, any other Loan Document, any other agreement including the Environmental Agreement, or any applicable Legal Requirement.

(q) **Taxes on Reimbursement Agreement or Deed of Trust.** Borrower will promptly pay all income, franchise and other taxes owing by Borrower and any stamp, documentary, recordation and transfer taxes or other taxes (unless such payment by Borrower is prohibited by law) which may be required to be paid with respect to the Reimbursement Agreement, this Deed of Trust or any other instrument evidencing or securing any of the Secured Indebtedness. In the event of the enactment after this date of any law of any governmental entity applicable to Beneficiary, the Reimbursement Agreement, the Letter of Credit, the Property or this Deed of Trust deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Beneficiary the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of



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deeds of trust or mortgages or security agreements or debts secured by deeds of trust or mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Deed of Trust or the Secured Indebtedness or Beneficiary, then, and in any such event, Borrower, upon demand by Beneficiary, shall pay such taxes, assessments, charges or liens, or reimburse Beneficiary therefor; provided, however, that if in the opinion of counsel for Beneficiary (i) it might be unlawful to require Borrower to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Beneficiary may elect, by notice in writing given to Borrower, to declare all of the Secured Indebtedness to be and become due and payable sixty (60) days from the giving of such notice.

(r) **Statement Concerning Reimbursement Agreement or Deed of Trust.** Borrower shall at any time and from time to time furnish within seven (7) days of request by Beneficiary a written statement in such form as may be required by Beneficiary stating that (i) the Reimbursement Agreement, this Deed of Trust and the other Loan Documents are valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms; (ii) the unpaid principal balance of the Reimbursement Obligations; (iii) the date to which interest on the Reimbursement Obligations is paid; (iv) the Reimbursement Agreement, this Deed of Trust and the other Loan Documents have not been released, subordinated or modified; and (v) there are no offsets or defenses against the enforcement of the Reimbursement Agreement, this Deed of Trust or any other Loan Document. Alternatively, if any of the foregoing statements in clauses (i), (iv) and (v) are untrue, Borrower shall specify the reasons therefor.

(s) **Letter-of-Credit Rights.** If Borrower is at any time a beneficiary under a letter of credit relating to the properties, rights, titles and interests referred to in Section 1.3 of this Deed of Trust now or hereafter issued in favor of Borrower, Borrower shall promptly notify Beneficiary thereof and, at the request and option of Beneficiary, Borrower shall, pursuant to an agreement in form and substance satisfactory to Beneficiary, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Beneficiary of the proceeds of any drawings under the letter of credit, or (ii) arrange for Beneficiary to become the transferee beneficiary of the letter of credit, with Beneficiary agreeing, in each case, that the proceeds of any drawing under the letter of credit are to be applied as provided in Section 5.2 of this Deed of Trust.

(t) **Status of Borrower.** If Borrower is a corporation, partnership, limited liability company or other legal entity, Borrower is and will continue to be (i) duly organized and validly existing under the laws of its state of organization, (ii) authorized to do business in and in good standing in each state in which the Property is located, and (iii) possessed of all requisite power and authority to carry on its business and to own and operate the Property. Borrower's exact legal name is correctly set forth at the end of this Deed of Trust. If Borrower is not an individual, Borrower is an organization of the type specified in the introductory paragraph of this Deed of Trust. If Borrower is a registered entity, Borrower is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Deed of Trust. If Borrower is an unregistered entity (including a general partnership), it is organized under the laws of the state specified in the introductory paragraph of this Deed of Trust. Borrower will not cause or permit any change to be made in its name, identity or corporate or partnership structure unless the Borrower shall have notified Beneficiary in writing of such change at least 30 days prior to the effective date of such change, and shall have first taken all action required by Beneficiary for the purpose of further perfecting or protecting the lien and security interest of Beneficiary in the Property. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its book and records, including recorded data of any kind or nature, regardless of the medium of recording, including software, writing, plans, specifications and schematics concerning the Property, has been for the preceding four months (or less if for the entire existence of Borrower) and will continue to be the address of Borrower set forth in the first paragraph



of this Deed of Trust (unless Borrower notifies Beneficiary of any change in writing at least 30 days prior to the date of such change). If Borrower is an individual, Borrower's principal residence has been for the preceding four months and will continue to be the address of the principal residence of Borrower set forth at the end of this Deed of Trust (unless Borrower notifies Beneficiary of any change in writing at least 30 days prior to the date of such change). Borrower's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the first page of this Deed of Trust. Borrower shall promptly notify Beneficiary of any change of its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, Borrower shall promptly notify Beneficiary of such organizational identification number.

Section 2.2 Performance by Beneficiary on Borrower's Behalf. Borrower agrees that if Borrower fails to perform any act or to take any action which under any Loan Document Borrower is required to perform or take, or to pay any money which under any Loan Document Borrower is required to pay, and whether or not the failure then constitutes a Default, and whether or not there has occurred any Default or the Secured Indebtedness has been accelerated, Beneficiary, in Borrower's name or its own name, may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Beneficiary and any money so paid by Beneficiary shall be a demand obligation owing by Borrower to Beneficiary (which obligation Borrower hereby promises to pay), shall be a part of the Secured Indebtedness, and Beneficiary, upon making such payment, shall be subrogated to all of the rights of the person, entity or body politic receiving such payment. Beneficiary and its designees shall have the right to enter upon the Property at any time and from time to time for any such purposes. No such payment or performance by Beneficiary shall waive or cure any Default or waive any right, remedy or recourse of Beneficiary. Any such payment may be made by Beneficiary in reliance on any statement, invoice or claim without inquiry into the validity or accuracy thereof. Each amount due and owing by Borrower to Beneficiary pursuant to this Deed of Trust shall bear interest, from the date such amount becomes due until paid, at the rate per annum provided in the Reimbursement Agreement for interest on past due principal owed on the Reimbursement Obligations but never in excess of the maximum nonusurious amount permitted by applicable law, which interest shall be payable to Beneficiary on demand; and all such amounts, together with such interest thereon, shall automatically and without notice be a part of the Secured Indebtedness. The amount and nature of any expense by Beneficiary hereunder and the time when paid shall be fully established by the certificate of Beneficiary or any of Beneficiary's officers or agents.

Section 2.3 Absence of Obligations of Beneficiary with Respect to Property. Notwithstanding anything in this Deed of Trust to the contrary, including the definition of "Property" and/or the provisions of Article 3 hereof, (i) to the extent permitted by applicable law, the Property is composed of Borrower's rights, title and interests therein but not Borrower's obligations, duties or liabilities pertaining thereto, (ii) Beneficiary neither assumes nor shall have any obligations, duties or liabilities in connection with any portion of the items described in the definition of "Property" herein, either prior to or after obtaining title to such Property, whether by foreclosure sale, the granting of a deed in lieu of foreclosure or otherwise, and (iii) Beneficiary may, at any time prior to or after the acquisition of title to any portion of the Property as above described, advise any party in writing as to the extent of Beneficiary's interest therein and/or expressly disaffirm in writing any rights, interests, obligations, duties and/or liabilities with respect to such Property or matters related thereto. Without limiting the generality of the foregoing, it is understood and agreed that Beneficiary shall have no obligations, duties or liabilities prior to or after acquisition of title to any portion of the Property, as lessee under any lease or purchaser or seller under any contract or option unless Beneficiary elects otherwise by written notification.

Section 2.4. Authorization to File Financing Statements; Power of Attorney. Borrower hereby authorizes Beneficiary at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without signature of Borrower as authorized by applicable law, as applicable to the Collateral. For purposes of such filings, Borrower agrees to furnish any information requested by Beneficiary promptly upon request by Beneficiary. Borrower also ratifies its authorization for Beneficiary to have filed any like initial financing statements, amendments thereto or continuation statements if filed prior to the date of this Deed of Trust. Borrower hereby irrevocably constitutes and appoints Beneficiary and any officer or agent of Beneficiary, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Borrower of in Borrower's own name to execute in Borrower's name any such document and to otherwise carry out the purposes of this Section 2.4, to the extent that Borrower's authorization above is not sufficient. To the extent permitted by law, Borrower hereby ratifies and affirms all acts said attorneys-in-fact have lawfully done or caused to be done in the past or shall lawfully do or cause to be done in the future by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable.

ARTICLE 3

Assignment of Rents and Leases

Section 3.1 Assignment. To secure the obligations of Borrower under the Loan Documents and all matters and indebtedness constituting the Secured Indebtedness, Borrower hereby assigns to Beneficiary all Rents and all of Borrower's rights in and under all Leases. Upon the occurrence and during the continuation of any Default, Beneficiary and any other Beneficiary shall have the right, power and authority to collect any and all Rents. While any Default is continuing, all Rents shall be paid directly to Beneficiary and not through Borrower, all without the necessity of any further action by Beneficiary, including any action to obtain possession of the Land, Improvements or any other portion of the Property or any action for the appointment of a receiver. Borrower hereby authorizes and directs the tenants under the Leases to pay Rents to Beneficiary upon written demand by Beneficiary, without further consent of Borrower, without any obligation of such tenants to determine whether a Default has in fact occurred and regardless of whether Beneficiary has taken possession of any portion of the Property, and the tenants may rely upon any written statement delivered by Beneficiary to the tenants. Any such payments to Beneficiary shall constitute payments to Borrower under the Leases, and Borrower hereby irrevocably appoints Beneficiary as its attorney-in-fact, which power of attorney is with full power of substitution and coupled with an interest, to do all things during the continuance of a Default, which Borrower might otherwise do with respect to the Property and the Leases thereon, including: (a) demanding, receiving and enforcing payment of any and all Rents; (b) giving receipts, releases and satisfactions for any and all Rents; (c) suing either in the name of Borrower or in the name of Beneficiary for any and all Rents; (d) applying the net proceeds of any and all Rents collected by Beneficiary, after deducting all expenses of collection, including attorneys' fees and expenses, to the Secured Indebtedness in such order and manner as Beneficiary may elect and/or to the operation and management of the Property, including the payment of management, brokerage and attorneys' fees and expenses (including reasonable reserves for anticipated expenses), or at the option of Beneficiary, holding the same as security for the payment of the Secured Indebtedness; (e) leasing, in the name of Borrower, the whole or any part of the Property which may become vacant; (f) employing agents for such leasing and paying such agents reasonable compensation for their services; and (g) requiring Borrower to deliver to Beneficiary all security deposits and executed originals of all Leases and copies of all records relating thereto. Beneficiary may take any or all of the foregoing actions with or without taking possession of any portion of the

Property or taking any action with respect to such possession. The assignment contained in this Section 3.1 shall become null and void upon the full reconveyance of this Deed of Trust.

Section 3.2 Covenants, Representations and Warranties Concerning Leases and Rents.

Borrower covenants, represents and warrants that:

(a) Borrower has good title to, and is the owner of the entire landlord's interest in, the Leases and Rents hereby assigned and has authority to assign them;

(b) All Leases are valid and enforceable, and in full force and effect, and are unmodified except as stated therein;

(c) Borrower is not in default under its Lease (and no event has occurred which with the passage of time or notice or both would result in a default under its Lease) and is not the subject of any petition, case, proceeding or other action pursuant to any Debtor Relief Law;

(d) To Borrower's knowledge, no tenant in the Property is in default under its Lease (and no event has occurred which with the passage of time or notice or both would result in a default under its Lease) or is the subject of any petition, case, proceeding or other action pursuant to any Debtor Relief Law;

(e) Unless otherwise stated in a Permitted Encumbrance, no Rents or Leases have been or will be assigned, mortgaged, pledged or otherwise encumbered and no other person has acquired or will acquire any right, title or interest in such Rents or Leases;

(f) No Rents have been waived, released, discounted, set off or compromised;

(g) Except as stated in the Leases, Borrower has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents;

(h) Borrower shall perform all of its obligations under the Leases and enforce the tenants' obligations under the Leases to the extent enforcement is prudent under the circumstances;

(i) Borrower will not, without the prior written consent of Beneficiary, waive, release, discount, set off, compromise, reduce or defer any Rent, receive or collect Rents more than one (1) month in advance, grant any rent-free period to any tenant, reduce any Lease term or waive, release or otherwise modify any other material obligation under any Lease, renew or extend any Lease except in accordance with a right of the tenant thereto in such Lease, approve or consent to an assignment of a Lease or a subletting of any part of the premises covered by a Lease, or settle or compromise any claim against a tenant under a Lease in bankruptcy, in any other proceeding pursuant to any Debtor Relief Law or otherwise;

(j) Borrower will not, without the prior written consent of Beneficiary, terminate or consent to the cancellation or surrender of any Lease having an unexpired term of one (1) year or more;

(k) Borrower will not execute any Lease except in accordance with the Loan Documents and for actual occupancy by the tenant thereunder;



(l) Borrower shall give prompt notice to Beneficiary, as soon as Borrower first obtains notice, of any claim, or the commencement of any action, by any tenant or subtenant under or with respect to a Lease regarding any claimed damage, default, diminution of or offset against Rent, cancellation of the Lease, or constructive eviction, excluding, however, notices of default under residential Leases, and Borrower shall defend, at Borrower's expense, any proceeding pertaining to any Lease, including, if Beneficiary so requests, any such proceeding to which Beneficiary is a party;

(m) Promptly upon request by Beneficiary, Borrower shall deliver to Beneficiary all security deposits and executed originals of all Leases and copies of all records relating thereto;

(n) There shall be no merger of the leasehold estates created by the Leases, with the fee estate of the Land without the prior written consent of Beneficiary; and

(o) Beneficiary may at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Deed of Trust to any Lease, without joinder or consent of or notice to Borrower, any tenant or any other person, and notice is hereby given to each tenant under a Lease of such right to subordinate. No such subordination shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder, and nothing herein shall be construed as subordinating this Deed of Trust to any Lease.

Section 3.3 No Liability of Beneficiary. Beneficiary neither has nor assumes any obligations as lessor or landlord with respect to any Lease. Beneficiary's acceptance of this assignment shall not be deemed to constitute Beneficiary or any Beneficiary a "mortgagee in possession," nor shall such acceptance obligate Beneficiary to appear in or defend any proceeding relating to any Lease or to the Property, or to take any action hereunder, expend any money, incur any expenses, perform any obligation or liability under any Lease, or assume any obligation for any deposit delivered to Borrower by any tenant and not as such delivered to and accepted by Beneficiary. Beneficiary shall not be liable for any injury or damage to person or property in or about the Property, or for Beneficiary's failure to collect or to exercise diligence in collecting Rents, but shall be accountable only for Rents that it shall actually receive. Neither the assignment of Leases and Rents, nor enforcement of Beneficiary's rights regarding Leases and Rents (including collection of Rents), nor possession of the Property by Beneficiary, nor Beneficiary's consent to or approval of any Lease (nor all of the same), shall render Beneficiary liable on any obligation under or with respect to any Lease or constitute affirmation of, or any subordination to, any Lease, occupancy, use or option.

Section 3.4 Rights Cumulative. The powers and rights of Beneficiary under this Article 3 shall be cumulative of all other powers and rights of Beneficiary under the Loan Documents or otherwise. Such powers and rights granted in this Article 3 shall be in addition to the other remedies provided for in this Deed of Trust upon the occurrence of a Default and may be exercised independently of or concurrently with any of said remedies. If Beneficiary seeks or obtains any judicial relief regarding Rents or Leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall the same constitute an election of judicial relief for any foreclosure or any other purpose.



ARTICLE 4

Default

Section 4.1 Events of Default. The occurrence of any one of the following shall be a default under this Deed of Trust ("Default"):

(a) **Nonperformance of Covenants.** Any covenant, agreement or condition of this Deed of Trust (other than covenants otherwise addressed in another clause of this Section 4.1) is not fully and timely performed, observed or kept, and such failure is not cured within the applicable notice and cure period (if any) provided for herein.

(b) **Default under other Loan Documents.** A Default occurs under any other Loan Document, or under any Swap Obligation, as such term is defined in the Reimbursement Agreement.

(c) **Transfer of the Property.** Any Transfer occurs with respect to all or any part of the Property or any interest therein, except for: (i) sales or transfers of items of the Accessories which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes owned by Borrower, having a value equal to or greater than the replaced items when new; and (ii) the grant, in the ordinary course of business, of a leasehold interest in a part of the Improvements to a tenant for occupancy, not containing a right or option to purchase and not in contravention of any provision of this Deed of Trust or of any other Loan Document. Beneficiary may, in its sole discretion, waive a Default under this clause (c), but it shall have no obligation to do so. Any waiver will be conditioned upon the grantee's integrity, reputation, character, creditworthiness and management ability being satisfactory to Beneficiary in its sole judgment, and may also be conditioned upon such one or more of the following, if any, that Beneficiary may require: the execution by the grantee of a written assumption agreement prior to such Transfer containing such terms as Beneficiary may require; the optional redemption of Bonds; the receipt by Beneficiary of an assumption fee; the reimbursement of all of Beneficiary's expenses incurred in connection with such Transfer, including attorneys' fees; and any modification of the Loan Documents as Beneficiary may require, including an increase in the rate of interest payable under the Reimbursement Agreement and/or a modification of the terms of the Credit Facility. NOTICE - THE SECURED INDEBTEDNESS IS SUBJECT TO ACCELERATION IN THE EVENT OF A TRANSFER WHICH IS PROHIBITED UNDER THIS CLAUSE (c).

(d) **Transfer of Interests in Borrower.** (i) If Borrower is a corporation, a Transfer occurs with respect to shares possessing, in the aggregate, more than fifty percent (50%) of the voting power without the prior written consent of Beneficiary; (ii) if Borrower is a partnership or joint venture, a Transfer occurs with respect to more than fifty percent (50%) of the partnership or joint venture interests in the aggregate, or any general partner or joint venturer withdraws or is removed or admitted without the prior written consent of Beneficiary; or (iii) if Borrower is a limited liability company, a Transfer occurs with respect to more than fifty percent (50%) of the voting power or ownership interests, in either case in the aggregate, or any managing member withdraws or is removed or admitted without the prior written consent of Beneficiary. NOTICE - THE SECURED INDEBTEDNESS IS SUBJECT TO ACCELERATION IN THE EVENT OF A TRANSFER WHICH IS PROHIBITED UNDER THIS CLAUSE (d).

(e) **Grant of Easement, Etc.** Without the prior written consent of Beneficiary, Borrower grants any easement or dedication, or files any plat, condominium declaration or restriction, or



otherwise encumbers the Property, or seeks or permits any zoning reclassification or variance, unless such action is expressly permitted by the Loan Documents or does not affect the Property.

(f) **Abandonment.** The owner of the Property abandons any of the Property.

(g) **Default Under Other Lien.** A default or event of default occurs under any lien, security interest or assignment covering the Property or any part thereof (whether or not Beneficiary has consented, and without hereby implying Beneficiary's consent, to any such lien, security interest or assignment not created hereunder), or the holder of any such lien, security interest or assignment declares a default or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(h) **Destruction.** The Property is so demolished, destroyed or damaged that in the reasonable opinion of Beneficiary, it cannot be restored or rebuilt with available funds to a profitable condition within a reasonable period of time and in any event prior to the final maturity date of the Reimbursement Obligations and as a result of such demolition, destruction or damage will cause Borrower to be in default of any of its obligations under the Loan Documents.

(i) **Condemnation.** (i) Any governmental authority requires or commences any proceeding for the demolition of any building or structure comprising a part of the Premises, or (ii) there is commenced any proceeding to condemn or otherwise take pursuant to the power of eminent domain, or a contract for sale or a conveyance in lieu of such a taking is executed which provides for the transfer of, a material portion of the Premises, including the taking (or transfer in lieu thereof) of any portion which would result in the blockage or substantial impairment of access or utility service to the Improvements or which would cause the Premises to fail to comply with any Legal Requirement and as a result of such condemnation will cause Borrower to be in default of any of its obligations under the Loan Documents.

Section 4.2 Notice and Cure. If any provision of this Deed of Trust or any other Loan Document provides for Beneficiary to give to Borrower any notice regarding a default or incipient default, then if Beneficiary shall fail to give such notice to Borrower as provided, the sole and exclusive remedy of Borrower for such failure shall be to seek appropriate equitable relief to enforce the agreement to give such notice and to have any acceleration of the maturity of the Secured Indebtedness postponed or revoked and foreclosure proceedings in connection therewith delayed or terminated pending or upon the curing of such default in the manner and during the period of time permitted by such agreement, if any, and Borrower shall have no right to damages or any other type of relief not herein specifically set out against Beneficiary, all of which damages or other relief are hereby waived by Borrower. Nothing herein or in any other Loan Document shall operate or be construed to add on or make cumulative any cure or grace periods specified in any of the Loan Documents.

ARTICLE 5

Remedies

Section 5.1 Certain Remedies. If a Default shall occur, Beneficiary may (but shall have no obligation to) exercise any one or more of the following remedies, without notice (unless notice is required by applicable statute):

(a) **Acceleration.** Beneficiary may at any time and from time to time declare any or all of the Secured Indebtedness immediately due and payable and such Secured Indebtedness shall



thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, notice of acceleration or of intention to accelerate or any other notice or declaration of any kind, all of which are hereby expressly waived by Borrower.

(b) **Enforcement of Assignment of Rents.** Beneficiary may take any of the actions described in Article 3 with or without taking possession of any portion of the Property or taking any action with respect to such possession.

(c) **Trustee's Sale.**

(i) Beneficiary may direct the Trustee to foreclose this Deed of Trust non-judicially pursuant to the power of sale and applicable law. Any sale of the Property by the Trustee may be made either as a whole or in separate parcels and in such order as Beneficiary may direct (Borrower waiving any right to direct the order of sale), at public auction to the highest bidder for cash in lawful money of the United States (or cash equivalents acceptable to Trustee to the extent permitted by applicable law), payable at the time of sale. Trustee may postpone the sale of all or any part of the Property by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser at such sale its deed conveying the property so sold, but without any covenant or warranty, express or implied, and the recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee or Beneficiary, may purchase at such sale, and any bid by Beneficiary may be, in whole or in part, in the form of cancellation of all or any part of the Secured Indebtedness.

(ii) The sale by Trustee of less than the whole of the Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sales under such power until the whole of the Property shall be sold. In the event any sale hereunder is not completed or is defective in the opinion of Beneficiary, such sale shall not exhaust the power of sale hereunder and Beneficiary shall have the right to cause a subsequent sale or sales to be made hereunder. If the proceeds of any sale of less than the whole of the Property shall be less than the aggregate of the Secured Indebtedness and the expense of executing this trust as provided herein, this Deed of Trust and the lien hereof shall remain in full force and effect as to the unsold portion of the Property just as though no sale had been made; provided, however, that Borrower shall never have any right to require the sale of less than the whole of the Property but Beneficiary shall have the right, at its sole election, to request Trustee to sell less than the whole of the Property.

(iii) Trustee may, after any request or direction by Beneficiary, sell not only the real property but also the Collateral and other interests which are a part of the Property, or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Property separately from the remainder of the Property. It shall not be necessary for Trustee to have taken possession of any part of the Property or to have present or to exhibit at any sale any of the Collateral.

(iv) After each sale, Trustee shall receive the proceeds of said sale and apply the same as herein provided. Payment of the purchase price to Trustee shall satisfy the obligation of purchaser at such sale therefor, and such purchaser shall not be responsible for the application thereof.

(v) Trustee or its successor or substitute may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Trustee, including the posting of notices and the conduct of sale, but in the name and on behalf of Trustee, its successor or substitute. If Trustee or its successor or substitute shall have given notice of sale hereunder, any successor or substitute Trustee thereafter appointed may complete the sale and the



conveyance of the property pursuant thereto as if such notice had been given by the successor or substitute Trustee conducting the sale.

(d) **Uniform Commercial Code.** Without limitation of Beneficiary's rights of enforcement with respect to the Collateral or any part thereof in accordance with the procedures for foreclosure of real estate, Beneficiary may exercise its rights of enforcement with respect to the Collateral or any part thereof under the Washington Uniform Commercial Code as in effect from time to time (or under the Uniform Commercial Code in force, from time to time, in any other state to the extent the same is applicable law) and in conjunction with, in addition to or in substitution for those rights and remedies: (i) Beneficiary may enter upon Borrower's premises to take possession of, assemble and collect the Collateral or, to the extent and for those items of the Collateral permitted under applicable law, to render it unusable; (ii) Beneficiary may require Borrower to assemble the Collateral and make it available at a place Beneficiary designates which is mutually convenient to allow Beneficiary to take possession or dispose of the Collateral; (iii) written notice mailed to Borrower as provided herein at least ten (10) days prior to the date of public sale of the Collateral or prior to the date on which private sale of the Collateral will be made shall constitute reasonable notice; provided that, if Beneficiary fails to comply with this clause (iii) in any respect, its liability for such failure shall be limited to the liability (if any) imposed on it as a matter of law under the Washington Uniform Commercial Code, as in effect from time to time (or under the Uniform Commercial Code, in force from time to time, in any other state to the extent the same is applicable law); (iv) any sale made pursuant to the provisions of this clause (d) shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Property under power of sale as provided in clause (c) above in this Section 5.1; (v) in the event of a foreclosure sale, whether made by Trustee under the terms hereof, or under judgment of a court, the Collateral and the other Property may, at the option of Beneficiary, be sold as a whole; (vi) it shall not be necessary for Beneficiary to take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this clause (d) is conducted and it shall not be necessary for the Collateral or any part thereof to be present at the location of such sale; (vii) with respect to application of proceeds from disposition of the Collateral under Section 5.2 hereof, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Beneficiary (including the allocated cost of services provided by in-house counsel); (viii) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Secured Indebtedness or as to the occurrence of any Default, or as to Beneficiary having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Beneficiary, shall be taken as prima facie evidence of the truth of the facts so stated and recited; (ix) Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of the sale, but in the name and on behalf of Beneficiary; (x) Beneficiary may comply with any applicable state or federal law or regulatory requirements in connection with the disposition of the Collateral, and such compliance will not be considered to affect adversely the commercial reasonableness of any sale of the Collateral; (xi) Beneficiary may sell the Collateral without giving any warranties as to the Collateral, and may specifically disclaim any warranties of title, merchantability, fitness for a specific purpose or the like, and this procedure will not be considered to affect adversely the commercial reasonableness of any sale of the Collateral; (xii) Borrower acknowledges that a private sale of the Collateral may result in less proceeds than a public sale; and (xiii) Borrower acknowledges that the Collateral may be sold at a loss to Borrower, and that in such event Beneficiary shall have no liability or responsibility to Borrower for such loss.



(e) **Judicial Action.** Beneficiary may bring an action in any court of competent jurisdiction to foreclose this instrument or to obtain specific performance of any of the covenants or agreements of this Deed of Trust.

(f) **Entry on Property.** Beneficiary is authorized, prior or subsequent to the institution of any foreclosure proceedings, to the fullest extent permitted by applicable law, to enter upon the Property or any part thereof, and to take possession of the Property and all books and records, and all recording data of any kind or nature, regardless of the medium of recording, including all software, writings, plans, specifications and schematics relating thereto, and to exercise without interference from Borrower any and all rights which Borrower has with respect to the management, possession, operation, protection or preservation of the Property. Beneficiary shall not be deemed to have taken possession of the Property or any part thereof except upon the exercise of its right to do so, and then only to the extent evidenced by its demand and overt act specifically for such purpose. All costs, expenses and liabilities of every character incurred by Beneficiary in managing, operating, maintaining, protecting or preserving the Property shall constitute a demand obligation of Borrower (which obligation Borrower hereby promises to pay) to Beneficiary pursuant to this Deed of Trust. If necessary to obtain the possession provided for above, Beneficiary may invoke any and all legal remedies to dispossess Borrower. In connection with any action taken by Beneficiary pursuant to this clause (f), Beneficiary shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property or any part thereof, or from any act or omission of Beneficiary in managing the Property unless such loss is caused by the willful misconduct and bad faith of Beneficiary, nor shall Beneficiary be obligated to perform or discharge any obligation, duty or liability of Borrower arising under any lease or other agreement relating to the Property or arising under any Permitted Encumbrance or otherwise arising. Borrower hereby assents to, ratifies and confirms any and all actions of Beneficiary with respect to the Property taken under this clause (f).

(g) **Receiver.** Beneficiary shall as a matter of right be entitled to the appointment of a receiver or receivers for all or any part of the Property, whether such receivership is incident to a proposed sale (or sales) of such property or otherwise, and without regard to the value of the Property or the solvency of any person or persons liable for the payment of the Secured Indebtedness, and Borrower does hereby irrevocably consent to the appointment of such receiver or receivers, waives notice of such appointment, of any request therefor or hearing in connection therewith, and any and all defenses to such appointment, agrees not to oppose any application therefor by Beneficiary, and agrees that such appointment shall in no manner impair, prejudice or otherwise affect the rights of Beneficiary to application of Rents as provided in this Deed of Trust. Nothing herein is to be construed to deprive Beneficiary of any other right, remedy or privilege it may have under the law to have a receiver appointed. Any money advanced by Beneficiary in connection with any such receivership shall be a demand obligation (which obligation Borrower hereby promises to pay) owing by Borrower to Beneficiary pursuant to this Deed of Trust.

(h) **Powers of Beneficiary.** Beneficiary may, either directly or through an agent or court-appointed receiver, and without regard to the adequacy of any security for the Secured Indebtedness:

(i) enter, take possession of, manage, operate, protect, preserve and maintain, and exercise any other rights of an owner of, the Property, and use any other properties or facilities of Borrower relating to the Property, all without payment of rent or other compensation to Borrower;

(ii) enter into such contracts and take such other action as Beneficiary deems appropriate to complete all or any part of the Improvements or any other construction on the Land, subject to such modifications and other changes in the Improvements or the plan of development as Beneficiary may deem appropriate;



(iii) make, cancel, enforce or modify leases, obtain and evict tenants, fix or modify rents and, in its own name or in the name of Borrower, otherwise conduct any business of Borrower in relation to the Property and deal with Borrower's creditors, debtors, tenants, agents and employees and any other persons having any relationship with Borrower in relation to the Property, and amend any contracts between them, in any manner Beneficiary may determine;

(iv) either with or without taking possession of the Property, notify obligors on any contracts that all payments and other performance are to be made and rendered directly and exclusively to Beneficiary, and in its own name supplement, modify, amend, renew, extend, accelerate, accept partial payments or performance on, make allowances and adjustments and issue credits with respect to, give approvals, waivers and consents under, release, settle, compromise, compound, sue for, collect or otherwise liquidate, enforce or deal with any contracts or other rights, including collection of amounts past due and unpaid (Borrower agreeing not to take any such action after the occurrence of a Default without prior written authorization from Beneficiary);

(v) endorse, in the name of Borrower, all checks, drafts and other evidences of payment relating to the Property, and receive, open and dispose of all mail addressed to Borrower and notify the postal authorities to change the address for delivery of such mail to such address as Beneficiary may designate; and

(vi) take such other action as Beneficiary deems appropriate to protect the security of this Deed of Trust.

(i) **Other Rights and Remedies.** Beneficiary may exercise any and all other rights and remedies which Beneficiary may have under the Loan Documents, or at law or in equity or otherwise.

Section 5.2 Proceeds of Foreclosure. The proceeds of any sale held by Trustee or Beneficiary or any receiver or public officer in foreclosure of the liens and security interests evidenced hereby shall be applied in accordance with the requirements of applicable laws and to the extent consistent therewith, **FIRST**, to the payment of all necessary costs and expenses incident to such foreclosure sale, including all attorneys' fees and legal expenses (including the Beneficiary's allocated cost for services provided by in-house counsel), advertising costs, auctioneer's fees, costs of title and lien searches, trustee's sale guaranties, foreclosure sale guaranties, litigation guaranties and/or other title policies and endorsements, inspection fees, appraisal costs, fees for professional services, environmental assessment and remediation fees, all court costs and charges of every character, and the maximum fee legally permitted, or a reasonable fee when the law provides no maximum limit, to Trustee acting under the provisions of clause (c) of Section 5.1 hereof if foreclosed by power of sale as provided in said clause (c), and to the payment of the other Secured Indebtedness, including specifically without limitation the principal, accrued interest and attorneys' fees due and unpaid on the Reimbursement Obligations and the amounts *due and unpaid* and owed to Beneficiary under this Deed of Trust, the order and manner of application to the items in this clause **FIRST** to be in Beneficiary's sole discretion; and **SECOND**, the remainder, if any, shall be paid to Borrower, or to Borrower's heirs, devisees, representatives, successors or assigns, or such other persons (including the holder or beneficiary of any inferior lien) as may be entitled thereto by law; provided, however, that if Beneficiary is uncertain which person or persons are so entitled, Beneficiary may interplead such remainder in any court of competent jurisdiction, and the amount of any attorneys' fees, court costs and expenses incurred in such action shall be a part of the Secured Indebtedness and shall be reimbursable (without limitation) from such remainder.

Section 5.3 Beneficiary as Purchaser. Beneficiary shall have the right to become the purchaser at any sale held by Trustee or substitute or successor or by any receiver or public officer or at any public sale, and Beneficiary shall have the right to credit upon the amount of Beneficiary's



successful bid, to the extent necessary to satisfy such bid, all or any part of the Secured Indebtedness in such manner and order as Beneficiary may elect.

Section 5.4 Remedies Cumulative. All rights and remedies provided for herein and in any other Loan Document are cumulative of each other and of any and all other rights and remedies existing at law or in equity, and Trustee and Beneficiary shall, in addition to the rights and remedies provided herein or in any other Loan Document, be entitled to avail themselves of all such other rights and remedies as may now or hereafter exist at law or in equity for the collection of the Secured Indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and the resort to any right or remedy provided for hereunder or under any such other Loan Document or provided for by law or in equity shall not prevent the concurrent or subsequent employment of any other appropriate right or rights or remedy or remedies.

Section 5.5 Discretion as to Security. Beneficiary may resort to any security given by this Deed of Trust or to any other security now existing or hereafter given to secure the payment of the Secured Indebtedness, in whole or in part, and in such portions and in such order as may seem best to Beneficiary in its sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Deed of Trust.

Section 5.6 Borrower's Waiver of Certain Rights. To the full extent Borrower may do so, Borrower agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, homestead, moratorium, reinstatement, marshaling or forbearance, and Borrower, for Borrower, Borrower's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by applicable law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution and all rights to a marshaling of assets of Borrower, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and/or security interests hereby created. Borrower shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Beneficiary under the terms of this Deed of Trust to a sale of the Property for the collection of the Secured Indebtedness without any prior or different resort for collection, or the right of Beneficiary under the terms of this Deed of Trust to the payment of the Secured Indebtedness out of the proceeds of sale of the Property in preference to every other claimant whatsoever.

Section 5.7 Delivery of Possession After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, Borrower or Borrower's heirs, devisees, representatives, or successors as owners of the Property are occupying or using the Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of purchaser, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser; and to the extent permitted by applicable law, the purchaser at such sale shall, notwithstanding any language herein apparently to the contrary, have the sole option to demand immediate possession following the sale or to permit the occupants to remain as tenants at will.

ARTICLE 6

Miscellaneous

Section 6.1 **Scope of Deed of Trust.** This Deed of Trust is a deed of trust with respect to that portion of the Property which is real property, a security agreement with respect to that portion of the Property which is personal property (it being agreed that, whenever possible, components of the Property shall be deemed to be real property rather than personal property), an assignment of rents and leases, a financing statement and fixture filing and a collateral assignment. In addition to the foregoing, this Deed of Trust covers all proceeds.

Section 6.2 **Effective as a Financing Statement and Fixture Filing.** This Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property, with Borrower as debtor and Beneficiary as secured party, and is to be filed for record in the real estate records of each county where any part of the Property (including said fixtures) is situated. This Deed of Trust shall also be effective as a financing statement covering as-extracted collateral (including oil and gas), accounts and general intangibles under the Washington Uniform Commercial Code, as in effect from time to time, and the Uniform Commercial Code as in effect from time to time, in any other state where the Property is situated which will be financed at the wellhead or minehead of the wells or mines located on the Property and is to be filed for record in the real estate records of each county where any part of the Property is situated. This Deed of Trust shall also be effective as a financing statement covering any other Property and may be filed in any other appropriate filing or recording office. The mailing addresses of Borrower and Beneficiary are set forth in the introductory paragraph of this Deed of Trust. A carbon, photographic or other reproduction of this Deed of Trust or of any financing statement relating to this Deed of Trust shall be sufficient as a financing statement for any of the purposes referred to in this Section 6.2.

Section 6.3 **Notice to Account Debtors.** In addition to the rights granted elsewhere in this Deed of Trust, if Borrower is in default, Beneficiary may at any time notify the account debtors or obligors of any accounts, chattel paper, general intangibles, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Beneficiary directly.

Section 6.4 **Waiver by Beneficiary.** Beneficiary may at any time and from time to time by a specific writing intended for the purpose: (a) waive any Default without waiving any other prior or subsequent Default; (b) waive compliance by Borrower with any covenant herein made by Borrower to the extent and in the manner specified in such writing; (c) consent to Borrower's doing any act which hereunder Borrower is prohibited from doing, or to Borrower's failing to do any act which hereunder Borrower is required to do, to the extent and in the manner specified in such writing; (d) release any part of the Property or any interest therein from the lien and security interest of this Deed of Trust, without the joinder of Trustee; or (e) release any party liable, either directly or indirectly, for the Secured Indebtedness or for any covenant herein or in any other Loan Document without impairing or releasing the liability of any other party. In addition to the foregoing, Beneficiary may remedy any Default without waiving the Default remedied. No such act shall in any way affect the rights or powers of Beneficiary or Trustee hereunder except to the extent specifically agreed to by Beneficiary in such writing. Neither failure by Beneficiary to exercise, nor delay by Beneficiary in exercising, nor discontinuance of the exercise of any right, power or remedy (including the right to accelerate the maturity of the Secured Indebtedness or any part thereof) upon or after any Default shall be construed as a waiver of such Default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Beneficiary of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No waiver of any provision hereof or consent to any departure by Borrower therefrom shall in any event be effective unless the

same shall be in writing and signed by Beneficiary and then such waiver or consent shall be effective only in the specific instance, for the purpose for which given and to the extent therein specified. No notice to or demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances.

Section 6.5 No Impairment of Security. The lien, security interest and other security rights of Beneficiary hereunder or under any other Loan Document shall not be impaired by any indulgence, moratorium or release granted by Beneficiary including any renewal, extension or modification which Beneficiary may grant with respect to any Secured Indebtedness, or any surrender, compromise, release, renewal, extension, exchange or substitution which Beneficiary may grant in respect of the Property, or any part thereof or any interest therein, or any release or indulgence granted to any endorser, guarantor or surety of any Secured Indebtedness. The taking of additional security by Beneficiary shall not release or impair the lien, security interest or other security rights of Beneficiary hereunder or affect the liability of Borrower or of any endorser, guarantor or surety, or improve the right of any junior lienholder in the Property (without implying hereby Beneficiary's consent to any junior lien).

Section 6.6 Borrower's Successors. If the ownership of the Property or any part thereof becomes vested in a person other than Borrower, Beneficiary may, without notice to Borrower, deal with such successor or successors in interest with reference to this Deed of Trust and to the Secured Indebtedness in the same manner as with Borrower, without in any way vitiating or discharging Borrower's liability hereunder or its liability for the payment of the Secured Indebtedness or performance of the obligations secured hereby. No transfer of the Property, no forbearance on the part of Beneficiary, and no extension of the time for the payment of the Secured Indebtedness given by Beneficiary shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Borrower hereunder for the payment of the Secured Indebtedness or performance of the obligations secured hereby or the liability of any other person hereunder for the payment of the Secured Indebtedness. Each Borrower agrees that it shall be bound by any modification of this Deed of Trust or any of the other Loan Documents made by Beneficiary and any subsequent owner of the Property, with or without notice to such Borrower, and no such modifications shall impair the obligations of such Borrower under this Deed of Trust or any other Loan Document. Nothing in this Section or elsewhere in this Deed of Trust shall be construed to imply Beneficiary's consent to any transfer of the Property.

Section 6.7 Place of Payment; Forum. All Secured Indebtedness which may be owing hereunder at any time by Borrower shall be payable at the place designated in the Reimbursement Agreement (or if no such designation is made, at the address of Beneficiary indicated in the introductory paragraph of this Deed of Trust). Borrower hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the non-exclusive jurisdiction of any Washington state court or any United States federal court sitting or having jurisdiction in the county in which the Secured Indebtedness is payable, and to the non-exclusive jurisdiction of any state or United States federal court sitting in the state in which any of the Property is located, over any suit, action or proceeding arising out of or relating to this Deed of Trust or the Secured Indebtedness. Borrower hereby irrevocably waives, to the fullest extent permitted by law, any objection that Borrower may now or hereafter have to the laying of venue in any such court and to any claim that any such court is an inconvenient forum. Borrower hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any Washington state court or any United States federal court sitting or having jurisdiction in the state in which the Secured Indebtedness is payable may be made by certified or registered mail, return receipt requested, directed to Borrower at its address stated in the introductory paragraph of this Deed of Trust or at a subsequent address of Borrower of which Beneficiary received actual notice from Borrower in accordance with this Deed of Trust, and service so made shall be



complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Beneficiary to serve process in any manner permitted by law or limit the right of Beneficiary to bring proceedings against Borrower in any other court or jurisdiction; provided, however, that in the event of any inconsistency between the terms and conditions of this Section 6.7 and those of any provision in the Reimbursement Agreement regarding reference and arbitration, the terms and conditions of the reference and arbitration provision of the Reimbursement Agreement shall prevail.

Section 6.8 WAIVER OF JURY TRIAL. BORROWER AND HOLDER WAIVE TRIAL BY JURY IN RESPECT OF ANY "CLAIM" AS DEFINED IN SECTION 1.2. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BORROWER AND HOLDER, AND BORROWER AND HOLDER HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. BORROWER AND HOLDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION 6.8 IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. BORROWER FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS DEED OF TRUST AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

Section 6.9 Subrogation to Existing Liens; Vendor's Lien. To the extent that proceeds of the Bonds are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Beneficiary at Borrower's request, and Beneficiary shall be subrogated to any and all rights, security interests and liens owned by any owner or Beneficiary of such outstanding liens, security interests, charges or encumbrances, however remote, regardless of whether said liens, security interests, charges or encumbrances are released, and all of the same are recognized as valid and subsisting and are renewed and continued and merged herein to secure the Secured Indebtedness, but the terms and provisions of this Deed of Trust shall govern and control the manner and terms of enforcement of the liens, security interests, charges and encumbrances to which Beneficiary is subrogated hereunder. It is expressly understood that, in consideration of the payment of such indebtedness by Beneficiary, Borrower hereby waives and releases all demands and causes of action for offsets and payments in connection with said indebtedness. If all or any portion of the proceeds of the Bonds or of any Secured Indebtedness has been advanced for the purpose of paying the purchase price for all or a part of the Property, no vendor's lien is waived; and Beneficiary shall have, and is hereby granted, a vendor's lien on the Property as cumulative additional security for the Secured Indebtedness. Beneficiary may foreclose under this Deed of Trust or under the vendor's lien without waiving the other or may foreclose under both.

Section 6.10 Application of Payments to Certain Indebtedness. If any part of the Secured Indebtedness cannot be lawfully secured by this Deed of Trust or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is not secured by this Deed of Trust.

Section 6.11 Nature of Credit Facility; Compliance with Usury Laws. The Credit Facility is being made solely for the purpose of carrying on or acquiring a business or commercial enterprise. It is the intent of Borrower and Beneficiary and all other parties to the Loan Documents to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between Beneficiary and Borrower (or any other party liable with respect to any



indebtedness under the Loan Documents) are hereby limited by the provisions of this Section 6.11, which shall override and control all such agreements, whether now existing or hereafter arising. In no event or contingency (including prepayment, default, demand for payment or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable or received under this Deed of Trust, the Reimbursement Agreement or any other Loan Document or otherwise, exceed the maximum nonusurious amount permitted by applicable law (the "**Maximum Amount**"). If from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this Section 6.11 and such document shall ipso facto be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. If Beneficiary shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Secured Indebtedness in the inverse order of its maturity and not to the payment of interest, or refunded to Borrower or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal. The right to accelerate the maturity of the Secured Indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Beneficiary does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Beneficiary shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of the Secured Indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Amount. As used in this Section, the term "applicable law" shall mean the laws of the State of Washington or the federal laws of the United States applicable to this transaction, whichever laws allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future.

Section 6.12 Substitute Trustee. Trustee may resign by an instrument in writing addressed to Beneficiary or Trustee may be removed at any time with or without cause by an instrument in writing executed by Beneficiary. In case of the resignation, removal or disqualification of Trustee, or if for any reason Beneficiary shall deem it desirable to appoint a substitute or successor trustee to act instead of the herein-named trustee or any substitute or successor trustee, then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor trustee(s) or a substitute trustee(s) without any formality other than appointment and designation in writing executed by Beneficiary and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the Secured Indebtedness has been paid in full or until the Property is fully and finally sold hereunder. If Beneficiary is a corporation or association and such appointment is executed on its behalf by an officer of such corporation or association, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation or association. Upon the making of any such appointment and designation, all of the estate and title of Trustee in the Property shall vest in the named successor or substitute Trustee(s) and it shall thereupon succeed to, and shall hold, possess and execute, all of the rights, powers, privileges, immunities and duties herein conferred upon Trustee.

Section 6.13 No Liability of Trustee. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever (including Trustee's negligence), except for Trustee's gross negligence or willful misconduct. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in



any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by it hereunder. Borrower hereby ratifies and confirms any and all acts which the herein-named Trustee or its successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof. Borrower will reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of its duties. The foregoing indemnity shall not terminate upon discharge of the Secured Indebtedness or foreclosure, release or other termination of this Deed of Trust.

Section 6.14 Reconveyances.

(a) **Reconveyance of Deed of Trust.** If all of the Secured Indebtedness is paid as it becomes due and payable, and all of the covenants, warranties, undertakings and agreements made in this Deed of Trust are kept and performed, and all obligations, if any, of Beneficiary for further advances have been terminated, then, and in that event only, upon written request of the Beneficiary stating that all obligations secured by this Deed of Trust have been paid, Trustee shall reconvey, without warranty, the Property then subject to this Deed of Trust, and all rights under this Deed of Trust shall terminate (except to the extent expressly provided herein with respect to indemnifications, representations and warranties and other rights which are to continue following the reconveyance hereof) and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, and such liens and security interests shall be released by the Beneficiary and such Property reconveyed by Beneficiary in due form at Borrower's cost. Without limitation, all provisions herein for indemnity of Beneficiary or Trustee shall survive discharge of the Secured Indebtedness and any foreclosure, reconveyance or termination of this Deed of Trust.

(b) **Partial Reconveyance; No Reconveyance in Default.** Beneficiary may, regardless of consideration, cause the reconveyance of any part of the Property from the lien of this Deed of Trust without in any manner affecting or impairing the lien or priority of this Deed of Trust as to the remainder of the Property. No partial reconveyance shall be sought, requested or required if any Default has occurred which has not been cured.

(c) **Reconveyance Fee.** Borrower agrees to pay reasonable fees for Trustee's rendering of services in connection with each partial or complete reconveyance of the Property from the lien of this Deed of Trust, such fees not to exceed those charged by other commercial Trustees located in King County, Washington, performing similar services.

Section 6.15 Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in the introductory paragraph of this Deed of Trust (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt; provided, that service of a notice required by the statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.



Section 6.16 Invalidity of Certain Provisions. A determination that any provision of this Deed of Trust is unenforceable or invalid shall not affect the enforceability or validity of any other provisions, and the determination that the application of any provision of this Deed of Trust to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

Section 6.17 Interpretation. References to Articles, Sections and Exhibit(s) are, unless specified otherwise, references to articles, sections and exhibit(s) of this Deed of Trust. Words of any gender shall include each other gender. Words in the singular shall include the plural and words in the plural shall include the singular. The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" shall refer to this entire Deed of Trust and not to any particular Article, Section, paragraph or provision. The words "include" and "including" shall be interpreted as if followed by the words "without limitation." Captions and headings in this Deed of Trust are for convenience only and shall not affect the construction of this Deed of Trust. The term "person" and words importing persons as used in this Deed of Trust shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), joint ventures, trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

Section 6.18 Binding Effect; Borrower. The terms, provisions, covenants and conditions hereof shall be binding upon Borrower and the heirs, devisees, representatives, successors and assigns of Borrower; provided, however, that Borrower may not assign this Deed of Trust, or assign or delegate any of its rights or obligations under this Deed of Trust, without the prior written consent of Beneficiary in each instance. The obligations of Borrower hereunder shall be joint and several. If any Borrower or any signatory who signs on behalf of any Borrower is a corporation, partnership or other legal entity, Borrower and any such signatory, and the person or persons signing for it, represent and warrant to Beneficiary that this instrument is executed, acknowledged and delivered by Borrower's duly authorized representatives. If Borrower is an individual, no power of attorney granted by Borrower herein shall terminate on Borrower's disability.

Section 6.19 Trustee and Beneficiary Assigns; Covenants Running with the Land. The terms, provisions, covenants and conditions hereof shall inure to the benefit of Trustee, Beneficiary, any other Beneficiary and any of their successors and assigns and shall constitute covenants running with the Land. Beneficiary may, at any time, sell, transfer, or assign the Secured Indebtedness and the Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement. In the event of any such sale, transfer or assignment of the Secured Indebtedness or any part thereof, the rights and benefits under this Deed of Trust may be transferred with such Secured Indebtedness. Borrower waives notice of any sale, transfer or assignment of the Secured Indebtedness or any part thereof, and agrees that failure by Beneficiary or any other party to give notice of any such sale, transfer or assignment will not affect the liability of Borrower hereunder. Beneficiary is hereby authorized to disseminate any information it now has or hereafter obtains pertaining to the Secured Indebtedness or this Deed of Trust, including credit or other information on Borrower, any of its principals, the Property and/or any guarantor or other party liable, directly or indirectly, for any part of the Secured Indebtedness, to any actual or prospective assignee or participant with respect to the Secured Indebtedness, to any of Beneficiary's affiliates, including Banc of America Securities LLC, to any regulatory body having jurisdiction over Beneficiary, and to any other parties as necessary or appropriate in Beneficiary's reasonable judgment.

Section 6.20 Execution; Recording. This Deed of Trust may be executed in several counterparts, all of which counterparts together shall constitute one and the same instrument. The



date or dates reflected in the acknowledgments hereto indicate the date or dates of actual execution of this Deed of Trust, but such execution is as of the date shown on the first page hereof, and for purposes of identification and reference the date of this Deed of Trust shall be deemed to be the date reflected on the first page hereof. Borrower will cause this Deed of Trust and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating thereto to be recorded, filed, re-recorded and refilled in such manner and in such places as Trustee or Beneficiary shall reasonably request and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

Section 6.21 Modification or Termination. The Loan Documents may be modified or terminated only by a written instrument or instruments intended for that purpose and executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

Section 6.22 No Partnership, Etc. The relationship between Beneficiary and Borrower is solely that of lender and borrower. Beneficiary has no fiduciary or other special relationship with Borrower. Nothing contained in the Loan Documents or the Environmental Agreement is intended to create any partnership, joint venture, association or special relationship between Borrower and Beneficiary or in any way make Beneficiary a co-principal with Borrower with reference to the Property. All agreed contractual duties between or among Beneficiary, Borrower and Trustee are set forth herein and in the other Loan Documents and in the Environmental Agreement, and any additional implied covenants or duties are hereby disclaimed. Any inferences to the contrary of any of the foregoing are hereby expressly negated.

Section 6.23 Applicable Law. THIS DEED OF TRUST, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH AND PURSUANT TO THE LAWS OF THE STATE OF WASHINGTON (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW, EXCEPT AS OTHERWISE REQUIRED BY MANDATORY PROVISIONS OF LAW AND EXCEPT TO THE EXTENT THAT REMEDIES PROVIDED BY THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF WASHINGTON ARE GOVERNED BY THE LAWS OF SUCH OTHER JURISDICTION.

Section 6.24 Entire Agreement. The Loan Documents and the Environmental Agreement constitute the entire understanding and agreement between Borrower and Beneficiary with respect to the transactions arising in connection with the Secured Indebtedness and supersede all prior written or oral understandings and agreements between Borrower and Beneficiary with respect to the matters addressed in the Loan Documents and the Environmental Agreement. Borrower hereby acknowledges that, except as incorporated in writing in the Loan Documents or the Environmental Agreement, there are not and were not, and no persons are or were authorized by Beneficiary to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents and the Environmental Agreement.

Section 6.25 WASHINGTON NOTICE. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.



IN WITNESS WHEREOF, Borrower has executed this instrument as of the date first written on page 1 hereof.

BORROWER:

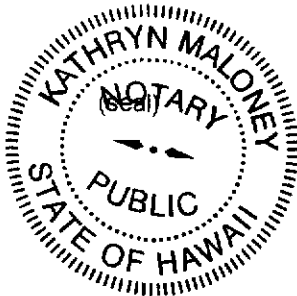
COUNTRY CLASS ASSETS, L.L.C.

By *Rickney D. Brown*
Rickney D. Brown, Authorized Member

STATE OF Hawaii)
COUNTY OF Maui)S

I certify that I know or have satisfactory evidence that Rickney D. Brown 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 acknowledge it as the Authorized Member of Country Class Assets, L.L.C., a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: November 16 2004



Kathryn Maloney
(Print Notary Name) Kathryn Maloney
Notary Public in and for the State of Hawaii
residing at Maui
My appointment expires 9/9/2005



EXHIBIT A

THIS EXHIBIT A IS PART OF THE DEED OF TRUST DATED NOVEMBER 1, 2004, BETWEEN COUNTRY CLASS ASSETS, L.L.C., A WASHINGTON LIMITED LIABILITY COMPANY, AS BORROWER, PRLAP, INC., AS TRUSTEE, AND BANK OF AMERICA, N.A., AS BENEFICIARY.

LEGAL DESCRIPTION:

THE NORTH 356.64 FEET OF THE WEST 450 FEET OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 35 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN;

EXCEPT THE WEST 30 FEET FOR COLLINS ROAD;

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITIES, OVER AND ACROSS THAT PORTION OF HOSPITAL DRIVE LYING WITHIN SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER AND LYING SOUTH OF THE ABOVE DESCRIBED PREMISES AND AS DELINEATED ON A SURVEY RECORDED 11/15/1993 IN VOLUME 11 OF SHORT PLATS, PAGES 17 AND 18, UNDER AUDITOR'S FILE NO. 9311150090, RECORDS OF SKAGIT COUNTY, WASHINGTON;

EXCEPT ANY PORTION LYING SOUTH OF THE NORTH LINE OF THE SOUTH 250 FEET OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER.

SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON.

