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Skagit County Auditor

PREPARED BY AND AFTER RECORDATION RETURN TO:

5/8/2006 Page 1 of 25 3:13PM

Katten Muchin Rosenman LLP
525 Monroe Street
Chicago, Illinois 60661
Attn: Benjamin F. Gould, Esq.

CHICAGO TITLE COMPANY IC38021 ✓

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

- 1. Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing
2.
3.
4.

Reference Number(s) of Documents assigned or released:
(on page ___ of document(s))

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

- 1. Oil Express, Inc.
2.
3.
4.
5. Additional names on page ___ of document.

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

- 1. Dymas Funding Company, LLC
2. Chicago Title Insurance Company
3.
4.
5. Additional names on page ___ of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

Additional legal is on Exhibit A of document. PTN NE SE 18-34-4
Page 25

Assessor's Property Tax Parcel/Account Number

340418-4-010-0006

The Auditor or Recording Officer will rely on the information provided on this form. The staff will not read the document to verify the accuracy of or the completeness of the indexing information provided herein.

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

This LEASEHOLD DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Deed of Trust**") is made as of this 27th day of April, 2006, by Oil Express, Inc., a Washington corporation ("**Grantor**"), having an address at c/o Heartland Automotive Services, Inc., 11308 Davenport Street, Omaha, Nebraska 68154, to CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation ("**Trustee**"), having an address at 701 5th Ave., Suite 3400, Seattle, Washington 98104, for the benefit of DYMAS FUNDING COMPANY, LLC having an address of One North Franklin Street, Suite 3500, Chicago, Illinois 60606, in its capacity as administrative agent (in such capacity, "**Beneficiary**") for all Lenders (as such term is defined in the Financing Agreement described below).

RECITALS

A. Lenders have agreed, subject to the terms and conditions of that certain Second Amended and Restated Financing Agreement dated as of February 27, 2006 by and among Lenders, Beneficiary, Heartland Automotive Services II, Inc., a Delaware corporation ("**Heartland II**"), HAS Holdings, Inc., a Delaware corporation (the "**Parent**" and, together with Heartland II, the "**Borrower**"; and each subsidiary of the Parent listed as a "**Guarantor**" on the signature pages thereto, including Grantor (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Financing Agreement**"), to make a revolving loan (the "**Revolving Loan**"), a term loan (the "**Term Loan A**") and an acquisition loan (the "**Acquisition Loan**") (the Revolving Loan, the Term Loan A and the Acquisition Loan are collectively referred to as, the "**Loans**") to Borrowers. All or any part of the Loans may, respectively, from time to time be evidenced by one or more Second Amended and Substitute Revolving Notes dated on or after February 27, 2006 in the original aggregate principal amount of \$15,000,000 made by the Borrowers (which note(s), together with all notes issued in substitution or exchange therefor and all amendments thereto and restatements thereof, are hereinafter referred to as the "**Revolving Note**"), one or more Second Amended and Substitute Term Notes A dated on or after February 27, 2006 in the original aggregate principal amount of \$160,000,000 made by the Borrowers (which note(s), together with all notes issued in substitution or exchange therefor and all amendments thereto and restatements thereof, are hereinafter referred to as the "**Term Note A**"), and one or more Amended and Substitute Acquisition Notes dated on or after February 27, 2006 in the original aggregate principal amount of \$50,000,000 made by the Borrowers (which note(s), together with all notes issued in exchange or substitution therefor, and all amendments thereto and restatements thereof, are hereinafter referred to as "**Acquisition Note**") (the Revolving Note, the Term Note A and the Acquisition Note, together with all notes issued in substitution or exchange therefor and all amendments thereto, are referred to as the "**Notes**"). Capitalized terms used but not defined herein shall have the same meanings herein as such terms have in the Financing Agreement."

B. Grantor is a subsidiary of Heartland II and, as such has received and will continue to receive direct and indirect benefits from the loans and other financial accommodations made by Lenders to Borrower under the Financing Agreement. Pursuant to the Financing Agreement,



200605080184

Skagit County Auditor

Grantor has guaranteed to Beneficiary and Lenders the prompt payment and performance of all Obligations.

C. Beneficiary and Lenders wish to secure: (i) the prompt performance of each and every covenant, condition, and agreement of Grantor contained in the Loan Documents to which Grantor is a party; and (ii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and indebtedness of any kind or nature now or hereafter owing, arising, due or payable from Grantor to Lenders or Beneficiary in connection with the transactions contemplated by the Financing Agreement.

D. Inasmuch as the Financing Agreement provides for advances to be made in the future ("**Future Advances**"), this Deed of Trust is given to, and shall, secure not only existing indebtedness, but also the payment of any and all Future Advances, whether such Future Advances are obligatory or are to be made at the option of Lenders, or otherwise, which are to be made within ten (10) years from the date of the execution of this Deed of Trust. Subject to any limitations mandated by Washington law, the total amount of indebtedness secured by this Deed of Trust may decrease or increase from time to time, but the total unpaid balance so secured at one time shall not exceed two (2) times the aggregate principal amount of the Notes, plus interest thereon, and any disbursements made for the payment of taxes, levies or insurance on the Property (as hereinafter defined), if any, together with interest on such disbursements. Subject to any limitations mandated by Washington law, Grantor hereby agrees that it shall not execute or file or record any notice limiting the maximum principal amount that may be so secured, and that no such notice shall be of any force and effect whatsoever unless Beneficiary shall have consented thereto in writing signed by Beneficiary and recorded in the public records of the county in which the Land (as hereinafter defined) is situated.

NOW, THEREFORE, IN CONSIDERATION OF LENDERS MAKING THE LOANS AND TO SECURE the prompt payment and performance of all Obligations of Grantor to Lenders and Beneficiary under the Financing Agreement and other Loan Documents to which Grantor is a party, including all liabilities, obligations and indebtedness of Grantor under this Deed of Trust, Grantor has executed this Deed of Trust and does hereby mortgage, convey, assign, warrant, transfer, pledge and grant to Trustee, IN TRUST, WITH THE POWER OF SALE, and right of entry and possession, under and subject to the terms and conditions hereof, for the benefit and security of Beneficiary, for the benefit of itself and the Lenders, Grantor's interest in all of the following described property and all proceeds thereof (which property is hereinafter sometimes collectively referred to as the "**Property**"):

A. All of Grantor's leasehold estate created under that certain Sublease Agreement dated as of July 23, 1999, by and between Q Lube, Inc., a Delaware corporation, as lessor (such lessor, together with its successors and assigns, is hereinafter referred to as the "**Lessor**"), and Grantor, as successor in interest to Five Diamonds, LLC, a Washington limited liability company, as lessee (such lease as heretofore amended, together with any future modifications, amendments, additions, assignments and supplements thereto, and substitutions, extensions, renewals or replacements thereof, is hereinafter referred to collectively as the "**Property Lease**") demising the real estate described on Exhibit A attached hereto and improvements thereon (the "**Land**"), together with all options to renew, extend or purchase (including rights of first refusal) now or hereafter contained in the Property Lease, and the benefit of all covenants



contained in the Property Lease, whether running with the Land or otherwise;

B. All of the following (collectively, the "**Improvements**"): Grantor's interest in all buildings, improvements and fixtures of every kind or nature situated on the Land; all machinery, appliances, equipment, furniture and all other personal property of every kind or nature located in or on, or attached to, or used or to be used in connection with the Land, buildings, structures, improvements or fixtures; all building materials and goods procured for use or in connection with the foregoing; and all additions, substitutions and replacements to any of the foregoing;

C. All easements, servitudes, rights-of-way, water courses, mineral rights, water rights, air rights and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto ("**Appurtenances**");

D. To the extent assignable, all agreements for the use, enjoyment or occupancy of the Land and/or Improvements now or hereafter entered into (the "**Sub-Leases**") and the immediate and continuing right to collect all rents, prepayments, termination payments, royalties, profits, issues and revenues from the Land and/or Improvements from time to time accruing or payable to Grantor under the Sub-Leases or otherwise (the "**Rents**"), reserving to Grantor, however, so long as no "Event of Default" (hereinafter defined) has occurred and is continuing, a revocable license to receive and apply the Rents in accordance with the terms and conditions of the Financing Agreement;

E. To the extent assignable, Grantor's interest in all claims, demands, judgments, insurance proceeds, tax refunds, rights of action, awards of damages, compensation, and settlements hereafter made resulting from or relating to (i) the taking of the Land or the Improvements or any part thereof under the power of eminent domain, (ii) any damage (whether caused by such taking, by casualty or otherwise) to the Land, Improvements or Appurtenances or any part thereof, or (iii) the ownership or operation of the Property;

F. To the extent assignable, all now or hereafter existing management contracts and all permits, certificates, licenses, agreements, approvals, entitlements and authorizations, however characterized, issued or in any way furnished for the acquisition, construction, operation and use of the Land, Improvements and/or Sub-Leases, including building permits, environmental certificates, licenses, certificates of operation, warranties and guaranties;

G. All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, Improvements, Appurtenances or any other property of the types described in the preceding granting clauses; and

H. Any and all after-acquired right, title or interest of Grantor in and to any property of the types described in the preceding granting clauses.

TO HAVE AND TO HOLD the Property and all parts thereof together with the rents, issues, profits and proceeds thereof, unto Trustee for the benefit of Beneficiary forever, subject, however, to the terms, covenants, and conditions herein.

Grantor covenants and agrees with Trustee, each Lender and Beneficiary as follows:



1. Payment of Indebtedness; Performance of Obligations.

Grantor shall promptly pay and perform when due all of its Obligations.

2. Taxes and Other Obligations.

Grantor shall pay, when due, and before any interest, collection fees or penalties shall accrue, all taxes, assessments, fines, impositions, utilities and other charges that have heretofore been, or may hereafter be, imposed, levied or assessed upon, or against, the Property, or any part thereof, subject, however, to Grantor's right to contest the amount or validity thereof, subject to and in accordance with, the terms and conditions set forth in the Financing Agreement.

3. Use of Property.

Unless required by applicable law, Grantor shall not permit changes which materially decrease the then current value of the Property, in the use of any part of the Property from the use existing at the time this Deed of Trust was executed. Grantor shall not initiate or acquiesce in a change in the zoning classification of the Property without Beneficiary's prior written consent, which consent shall not be unreasonably withheld.

4. Insurance and Condemnation.

(a) Insurance.

(i) Grantor shall keep the Improvements insured, and shall maintain general liability and other insurance coverage, all in such amounts and as is otherwise required by the Financing Agreement.

(ii) In case of loss or damage by fire or other casualty, Grantor shall give immediate written notice thereof to the insurance carrier(s) and to Beneficiary. Upon the occurrence and during the continuance of an Event of Default, Beneficiary is authorized and empowered, and Grantor hereby irrevocably appoints Beneficiary as its attorney-in-fact (such appointment is coupled with an interest), at its option, to make or file proofs of loss or damage and to settle and adjust any claim under insurance policies which insure against such risks, or to direct Grantor, in writing, to agree with the insurance carrier(s) on the amount to be paid in regard to such loss. The insurance proceeds are hereby assigned to Beneficiary and shall be applied in accordance with the Financing Agreement.

(b) Condemnation.

Grantor shall upon receipt of notice thereof, promptly notify Beneficiary of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Grantor shall, upon request by Beneficiary, appear in and prosecute any such action or proceeding. Upon the occurrence and during the continuance of an Event of Default Grantor authorizes Beneficiary (if Beneficiary so requests), at Beneficiary's option, as attorney-in-fact for Grantor (such appointment as attorney-in-fact is coupled with an interest), to commence, appear in and prosecute, in Beneficiary's or Grantor's name, any action or proceeding relating to any condemnation or other taking of the Property, and to settle or



compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Beneficiary and applied in accordance with the Financing Agreement. Beneficiary is authorized (but is under no obligation) to collect any such proceeds. The proceeds are hereby assigned to Beneficiary and shall be applied in accordance with the Financing Agreement.

5. Preservation and Maintenance of Property.

Grantor shall: (a) not commit waste or permit impairment or deterioration of the Property, subject to ordinary wear and tear and damage by fire or other casualty; (b) not abandon the Property; (c) keep the Property in good repair and restore or repair promptly, in a good and workmanlike manner, all or any part of the Property to the equivalent of its condition as of the date hereof, subject to ordinary wear and tear, or such other condition as Beneficiary may approve in writing, upon any damage or loss thereto; (d) comply in all material respects with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property; and (e) give notice in writing to Beneficiary of and, unless otherwise directed in writing by Beneficiary, appear in and defend any material action or proceeding purporting to affect the Property, the security granted by the Loan Documents or the rights or powers of Lenders or Beneficiary.

6. Protection of Security.

Upon the occurrence and during the continuance of an Event of Default, if any action or proceeding is commenced which adversely affects or could reasonably be expected to adversely affect the Property or any Lender's or Beneficiary's interest therein, including any loss, damage, cost, expense or liability incurred by any Lender or Beneficiary with respect to (i) any environmental matters relating to the Property or (ii) the preparation of the commencement or defense of any action or proceeding or any threatened action or proceeding affecting the Loan Documents or the Property, then Beneficiary, at its option, may make such appearances, disburse such sums and take such action as it deems reasonably necessary, to protect the Property or Lender's or Beneficiary's interest therein, including entry upon the Property to take such actions it reasonably determines appropriate to preserve, protect or restore the Property. Any amounts disbursed pursuant to this Section 6 (including reasonable attorneys' fees, costs and expenses), together with interest thereon at the default rate of interest specified in the Financing Agreement applicable to Revolving Loans (the "**Default Rate**") from the date of disbursement, shall become additional indebtedness of Grantor secured by the lien of this Deed of Trust and shall be due and payable on demand. Nothing contained in this Section 6 shall require Beneficiary to incur any expense or take any action hereunder.

7. Inspection.



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Skagit County Auditor

Beneficiary and its authorized agents may make or cause to be made entries upon, and inspections of, the Property upon reasonable prior notice and in accordance with the terms and provisions of the Financing Agreement.

8. Covenants.

(a) Grantor hereby represents and warrants unto Trustee, Beneficiary and each Lender that, at the time of the execution, delivery and recordation of this Deed of Trust, Grantor owns good and marketable title to, and is well seized of, an indefeasible leasehold estate in that portion of the Property that constitutes real property and has good and marketable title to that portion of the Property that constitutes personal property, in each instance free from all liens, encumbrances, charges and other claims whatsoever, except for Permitted Liens, and that the lien created on the Property by this Deed of Trust is a first, paramount and prior lien on said real property, subject only to Permitted Liens.

(b) Grantor shall and will forever warrant and defend the title to the Property against the claims of any and all persons and entities whatsoever, other than the Permitted Liens related thereto. Grantor shall not do or permit, cause or suffer to be done to, or omit to do, or permit the omission of, in, upon or about said Property, or any part thereof, anything that may in any way impair the validity, priority and/or enforceability of this Deed of Trust.

(c) Grantor represents and covenants that (i) all material licenses, permits, approvals, franchises, and certificates, including certificates of completion and occupancy permits, required by law or regulation for the ownership and operation of the Property have been obtained and are and shall remain in full force and effect; and (ii) the use and occupancy of the Property is and shall remain in material compliance with all applicable laws.

(d) [Intentionally Deleted]

(e) If at any time Grantor, anyone claiming by, through or under Grantor, or a trustee in bankruptcy shall have the right to reject the Property Lease pursuant to Section 365(a) of Title 11 of the United States Code (the "Bankruptcy Code"), or a successor statute, then Beneficiary shall have the exclusive right to exercise said right and Grantor hereby assigns said right to Beneficiary. If at any time Lessor, anyone holding by, through or under Lessor under the Property Lease, or a trustee in bankruptcy shall elect to reject the Property Lease pursuant to Section 365(a) of the Bankruptcy Code, or successor statute, thereby giving Grantor the right to elect either (i) to treat the Property Lease as terminated, or (ii) to retain its rights under the Property Lease (including but not limited to rights such as those relating to the amount and timing of payment of rent and other amounts payable by Grantor and any right of use, possession, quiet enjoyment, subletting, assignment or hypothecation) that are in or appurtenant to the Land for the balance of the term of the Property Lease and any extension or renewal thereof, pursuant to Section 365(h)(1)(A) of the Bankruptcy Code, or successor statute, then Beneficiary shall have the exclusive right to exercise said right and Grantor hereby assigns said right to Beneficiary. If the assignments provided for in this Section are held to be unenforceable, then Grantor, anyone claiming by, through or under Grantor, or a trustee in bankruptcy shall not exercise rights purportedly assigned to Beneficiary hereunder without the prior consent of Beneficiary and if Beneficiary shall give such consent, then Grantor, anyone claiming by,



through or under Grantor, or a trustee in bankruptcy shall promptly exercise any of said rights. The lien of this Deed of Trust shall attach to all of Grantor's rights and remedies at any time arising under or pursuant to Subsection 365(h) of the Bankruptcy Code including, without limitation, all of Grantor's rights to remain in possession of the Land.

(f) Grantor further covenants with and represents and warrants to Trustee, Beneficiary and each Lender as follows:

(i) Grantor has a good and valid leasehold interest to the estate created by the Property Lease, free and clear of all Liens other than the Permitted Liens;

(ii) There does not exist, nor will Grantor suffer to occur, any material default under the Property Lease, whether waived or not;

(iii) Grantor knows of no reason why the Property Lease is not valid, binding and enforceable against Lessor, no notice of default or termination by Lessor has been given which remains uncured, and the Property Lease is in full force and effect as of the date hereof. All of the covenants and obligations to be performed by Grantor as tenant under the Property Lease have been fully and promptly performed as of the date hereof;

(iv) This Deed of Trust and the other Loan Documents have been lawfully executed and delivered in full conformity with the Property Lease;

(v) Upon Beneficiary's request while an Event of Default is continuing, Grantor shall deliver to Beneficiary, within three (3) days after any payment is due under the Property Lease, copies of all checks in payment of rent and all amounts due under any Sub-Lease. Notwithstanding the foregoing, Beneficiary does not hereby assume any of Grantor's obligations under the Property Lease and nothing contained herein or in the other Loan Documents shall require Beneficiary to perform any such obligations of Grantor;

(vi) Grantor promptly, fully and faithfully will perform and observe all of the material terms, covenants, obligations and conditions required to be performed and observed by Grantor as lessee under the Property Lease, within the periods provided in the Property Lease, and will do all things necessary to preserve and to keep unimpaired its and Beneficiary's rights under this Deed of Trust and the Property Lease;

(vii) Grantor promptly will (a) notify Beneficiary in writing of the receipt by Grantor of any notice from Lessor noting or claiming any material default by Grantor in the performance or observance of any of the terms, covenants, obligations, and/or conditions on the part of Grantor to be performed or observed under the Property Lease; (b) notify Beneficiary in writing of the receipt by Grantor of any notice from Lessor to Grantor of termination of the Property Lease or of Grantor's right to possession of the Property; and (c) cause a copy of each such notice received by Grantor from Lessor to be delivered to Beneficiary;

(viii) Grantor promptly will notify Beneficiary in writing of any request made by either party to the Property Lease for arbitration proceedings pursuant to or in connection



with the Property Lease and of the institution of any arbitration proceedings, as well as of all proceedings thereunder, and will promptly deliver to Beneficiary a copy of the determination of the arbitrators in each such arbitration proceeding;

(ix) Grantor will not, without the prior written consent of Beneficiary, terminate, materially amend, materially supplement, materially modify or otherwise surrender or suffer, tolerate or permit any termination, material amendment, supplement, modification, or any surrender of the Property Lease or consent to any waiver or cancellation of any material provision thereunder or close and purchase the land and other property subject to the Property Lease by any agreement to purchase contained in the Property Lease or otherwise;

(x) Grantor hereby irrevocably designates, makes, constitutes and appoints Beneficiary (and all persons designated by Beneficiary) as Grantor's true and lawful attorney and agent-in-fact, with power upon the occurrence and during the continuance of an Event of Default or default under the Property Lease, upon notice to Grantor, and at such time or times thereafter as Beneficiary, at its sole election, may determine, in the name of Grantor, Beneficiary or in both names: (i) to exercise all of Grantor's remedies in and under the Property Lease in the event of a default by Lessor; (ii) to initiate such legal proceedings and to settle, adjust or compromise any legal proceedings deemed necessary by Beneficiary in its sole and reasonable discretion in order to enforce the provisions of the Property Lease or prevent the termination thereof; (iii) to commence or institute arbitration proceedings, or to participate in any arbitration proceedings commenced or instituted, pursuant to the Property Lease deemed necessary to Beneficiary in its sole discretion; (iv) to approve all arbitration determinations, awards or findings made pursuant to the provisions of the Property Lease; (v) to do any and all things necessary, in Beneficiary's sole opinion, to preserve and keep unimpaired Beneficiary's rights under this Deed of Trust and the Property Lease; and (vi) to do all acts and things necessary, in Beneficiary's sole discretion, to carry out any or all of the foregoing;

(xi) In the event of a material breach of the terms of the Property Lease by Grantor, Grantor shall execute and deliver, upon the reasonable request of Beneficiary, such instruments as Beneficiary may deem necessary to permit Beneficiary to cure any default under the Property Lease or permit Beneficiary to take such other actions as Beneficiary considers necessary to cure or remedy any matter in default and preserve the interest of Beneficiary in the Property;

(xii) So long as any of Grantor's Obligations shall remain outstanding or any other indebtedness shall otherwise remain unpaid, unless Beneficiary shall otherwise consent in writing, the fee title to and the leasehold estate in the Property, or any portion thereof, shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates either in the landlord or the tenant under the Property Lease, or in a third party, by purchase or otherwise;

(xiii) If the Property Lease shall be terminated prior to the natural expiration of its term due to default by Grantor or any other lessee or tenant thereunder (and such termination is final), and if, pursuant to any provision of the Property Lease or other document, Beneficiary or its designee shall acquire from Lessor a replacement lease



such new lease or the leasehold estate created thereby, or renewal or extension privileges or options to purchase or rights of first refusal therein contained shall vest in Grantor or its successors or assigns. Upon the execution of such a replacement or new lease, all rights in occupancy and space leases or subleases under the Property Lease shall, at Beneficiary's option, immediately vest in Beneficiary;

(xiv) Grantor shall not subordinate or consent to the subordination of the Property Lease to any mortgage on Grantor's interest in the land which is the subject of the Property Lease or any additional Sub-Lease, and any such subordination or consent shall be null and void;

(xv) Neither Grantor nor any Affiliate (as hereinafter defined) will acquire fee title to the Property or any mortgage on any reversionary interest in the leasehold estate in the Property which reverts back to the Lessor at the expiration of the Property Lease, unless Grantor first complies with the provisions of the Financing Agreement. The term "**Affiliate**" means with respect to any individual, trust, estate, partnership, limited liability company, corporation or any other incorporated or unincorporated organization (each a "**Person**"), a Person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with Grantor or any principal in Grantor; any officer, director, partner or shareholder of Grantor, or any principal in Grantor; and any relative of any of the foregoing. The term "**control**" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise; and

(xvi) The generality of the provisions of this **Section 8** relating to the Property Lease shall not be limited by other provisions of this Deed of Trust setting forth particular obligations of Grantor which are also required to be performed by Grantor as the tenant under the Property Lease.

(xvii) The Property that is subject to this Deed of Trust is not used principally or primarily for agricultural or farming purposes.

9. Sub-Lease.

The parties intend that this Deed of Trust grant a present, absolute, and unconditional assignment of the Rents and shall, immediately upon execution, give Beneficiary the right to collect the Rents and to apply them in payment of the principal, interest and all other sums payable under the Loan Documents. Such assignment and grant shall continue in effect until all Obligations are fully paid and satisfied. Subject to the provisions set forth herein and provided there is no Event of Default which is continuing, Beneficiary grants to Grantor a revocable license to enforce the Sub-Leases and collect the Rents as they become due and Grantor shall hold the same, in trust, to be applied in a manner not prohibited by the Financing Agreement.

Grantor shall comply with and observe Grantor's obligations as landlord under all Sub-Leases.



This Deed of Trust shall not be deemed to impose upon Beneficiary any of the obligations or duties of the landlord or Grantor provided in any Sub-Lease. Grantor hereby acknowledges and agrees: (i) Grantor is and will remain liable under the Sub-Leases to the same extent as though this Deed of Trust had not been made; and (ii) Beneficiary has not by this Deed of Trust assumed any of the obligations of Grantor under the Sub-Leases. This Deed of Trust shall not make Beneficiary responsible for the control, care, management, or repair of the Property or any personal property or for the carrying out of any of the terms of the Sub-Leases. Beneficiary shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm, or corporation in or about the Property.

10. Transfers of the Property; No Additional Liens.

Except as expressly permitted by the Financing Agreement, Grantor agrees that it shall not: (i) transfer, sell or convey all or any portion of the Property; and/or (ii) further encumber or pledge all or any portion of the Property.

11. Uniform Commercial Code Security Agreement.

(a) This Deed of Trust shall constitute a security agreement pursuant to the Uniform Commercial Code of Washington for any portion of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code of Washington (such portion of the Property is hereinafter called the "**Personal Property**"), and Grantor hereby grants to Beneficiary, for the benefit of itself and the Lenders, a security interest in the Personal Property. Beneficiary shall have all of the rights and remedies of a secured party under the Uniform Commercial Code of Washington as well as all other rights available at law or in equity. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Grantor agrees to execute (to the extent, if any, that Grantor's signature is required thereon) and deliver to Beneficiary any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Deed of Trust in such form as Beneficiary may reasonably require to perfect a security interest with respect to the Personal Property. Grantor hereby authorizes and empowers Beneficiary and irrevocably appoints Beneficiary its agent and attorney-in-fact to execute and file, on Grantor's behalf, all financing statements and refilings and continuations thereof as Beneficiary reasonably deems necessary or advisable to create, preserve and protect such lien. Grantor shall pay all actual out-of-pocket costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements as Beneficiary may reasonably require. Without limitation of the foregoing, if an Event of Default occurs and is continuing, Beneficiary shall be entitled immediately to exercise all remedies then available to it under the Uniform Commercial Code of Washington.

(b) Any party to any contract subject to the security interest granted herein shall be entitled to rely on the rights of Beneficiary without the necessity of any further notice or action by Grantor. Beneficiary shall not, by reason of this Deed of Trust or the exercise of any right granted hereby, be obligated to perform any obligation of Grantor with respect to any portion of the Personal Property, nor shall Beneficiary be responsible for any act committed by Grantor or any breach or failure to perform by Grantor with respect to any portion of the Personal Property.



(c) To the extent permitted by law, Grantor and Beneficiary agree that, with respect to all items of Personal Property which are or will become fixtures on the Land, this Deed of Trust, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of the Uniform Commercial Code of Washington.

12. Events of Default; Acceleration of Indebtedness.

The occurrence of an Event of Default under the Financing Agreement shall constitute an "Event of Default" under this Deed of Trust.

Upon the occurrence and continuation of an Event of Default, at the option of Beneficiary, the Obligations shall become immediately due and payable without notice to Grantor and Beneficiary shall be entitled to all of the rights and remedies provided in the Loan Documents or at law or in equity. Each remedy provided in the Loan Documents is distinct and cumulative to all other rights or remedies under the Loan Documents or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

It is specifically covenanted and agreed that the Beneficiary may proceed, at the same or different times, to foreclose this Deed of Trust or any of the other security documents as shall have been executed and delivered in connection with the extension of the Loans to Grantor (the "Other Security Documents") or resort to any of its other remedies thereunder, by any proceedings appropriate in the state where any of the land lies, and that no event of enforcement taking place in any state, including, without limiting the generality of the foregoing, any pending foreclosure, judgment or decree of foreclosure, foreclosure sale, rents received, possession taken, deficiency judgment or decrees, or judgment taken on any of the Notes, shall in any way stay, preclude or bar enforcement of this Deed of Trust or any of the Other Security Documents or any of them in any other state, and that Beneficiary may pursue any or all of its remedies to the maximum extent permitted by state law until all Obligations have been paid or discharged in full.

13. Entry; Foreclosure.

(a) Surrender Possession. Upon the occurrence and continuation of an Event of Default, Grantor, upon demand of Beneficiary, shall forthwith surrender to Beneficiary the actual possession of the Property, or to the extent permitted by law, Trustee or Beneficiary or their officers or agents or a receiver appointed by a court of competent jurisdiction, may enter and take possession of all or any part of the Property, and may exclude Grantor and its agents and employees wholly therefrom. If Grantor shall for any reason fail to surrender or deliver the Property or any part thereof after such demand by Beneficiary, Beneficiary, Trustee or such receiver may obtain a judgment or decree conferring on Beneficiary, Trustee or such receiver, the right to immediate possession of the Property or requiring the delivery of the Property to Beneficiary, Trustee or such receiver, and Grantor specifically consents to the entry of such judgment or decree. Upon every such entering upon or taking of possession, Beneficiary or such receiver may hold, store, use, operate, manage and control the Property and conduct the business thereof, and Beneficiary or such receiver may take any action required by applicable law or which Beneficiary or such receiver reasonably believes necessary to enforce compliance with applicable law. Beneficiary and such receiver and their representatives shall have no liability for



any loss, damage, injury, cost or expense resulting from any action or omission which is taken or omitted in good faith.

(b) Pursue Remedies. When the Obligations, or any part thereof, shall become due, whether by acceleration or otherwise, Beneficiary may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy to: (a) enforce payment of the Notes or the performance of any term, covenant, condition or agreement of Grantor under any of the Loan Documents; (b) foreclose the lien hereof for the Obligations or part thereof by judicial action, and sell the Property as an entirety or otherwise, as Beneficiary may determine; and/or (c) pursue any other right or remedy available to it under or by the law and decisions of the State in which the Land is located. Notwithstanding any statute or rule of law to the contrary, the failure to join any tenant or tenants of the Property as party defendant or defendants in any foreclosure action or the failure of any such order or judgment to foreclose their rights shall not be asserted by Grantor as a defense in any civil action instituted to collect (i) the indebtedness secured hereby, or any part thereof or (ii) any deficiency remaining unpaid after foreclosure and sale of the Property.

Upon any foreclosure sale, Beneficiary and any Lender may bid for and purchase the Property and shall be entitled to apply all or any part of the Obligations owing to it as a credit to the purchase price.

(c) Trustee's Sale. Should Beneficiary elect to foreclose by exercise of the power of sale contained herein, Beneficiary shall notify Trustee and shall, if required, deposit with Trustee the Notes, the original or a certified copy of this Deed of Trust, and such other documents, receipts and evidences of expenditures made and secured hereby as Trustee may require.

(i) Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded and delivered to Grantor such notice of default as may then be required by law and by this Deed of Trust. Trustee shall, without demand on Grantor, after lapse of such time as may then be required by law and after recordation of such notice of default and after notice of sale has been given as required by law, sell the Property at the time and place of sale fixed by it in said notice of sale, either as a whole or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United State payable at the time of sale. Trustee shall deliver to the purchaser or purchasers at such sale its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied, from the Trustee. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustee, Beneficiary or any Lender, may purchase at such sale, and Grantor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(ii) Trustee may postpone the sale of all or any portion of the Property from time to time in accordance with the laws of the State in which the Land is located.

(iii) To the fullest extent allowed by law, Grantor hereby expressly waives any right which it may have to direct the order in which any of the Property shall be sold in the event of any sale or sales pursuant to this Deed of Trust.



(iv) If an Event of Default occurs and Beneficiary so requests, Trustee shall sell the Property in accordance with the Deed of Trust Act of the State of Washington (RCW Chapter 61.24 as existing now or hereafter amended) at public auction to the highest bidder. Any person, except Trustee, may bid at the Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (A) to the expenses of sale, including Trustee's fees and attorneys' fees; (B) to all the principal and interest evidenced by the Note and all other indebtedness secured by this Deed of Trust and any other loan document; and (C) the surplus, if any, shall be distributed in accordance with the Deed of Trust Act. The Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the Property which Grantor had or had the power to convey at the time of its execution of this Deed of Trust and such as it may have acquired thereafter. The Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of the law and of this Deed of Trust, which recital shall be prima facie evidence that such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value. The power of sale conferred by this Deed of Trust and the Deed of Trust Act in the State of Washington is not an exclusive remedy, and when not exercised, Beneficiary may foreclose this Deed of Trust as a mortgage.

Upon the occurrence of an Event of Default, Beneficiary is authorized, either by itself or its agent, to be appointed by it for the purpose, or by a receiver appointed by a court of competent jurisdiction, to enter into and upon and take hold and possession of any portion or all of the Property, both real and personal, and exclude Grantor and all other persons therefrom; to operate and manage the Property and rent and lease the same; to perform such reasonable acts of repair and protection as may be reasonably necessary or proper to conserve the value thereof; and collect any Rents for the benefit and protection of Beneficiary, and from time to time apply or accumulate such Rents in such order and manner as Beneficiary or such receiver, in its sole discretion shall consider advisable to or upon the following; expenses of receivership, if any; the costs of upkeep, maintenance, repair and/or operation of the Property; the repayment of any sums theretofore, or thereafter advanced pursuant to this Deed of Trust, the interest then due or to become due upon the Indebtedness secured hereby; the taxes and assessments upon the Property then due or next to become due; or upon the unpaid principal of such indebtedness. The collection or receipt of Rents by Beneficiary, its agent or receiver after notice of default and notice of sale shall not affect or impair such default of notices or any sale proceedings predicated thereon. Any Rents in possession of Beneficiary's agents or receiver at the time of sale and not theretofore applied as herein provided shall be applied in the same manner and for the same purposes as the proceeds of sale. Neither Trustee nor Beneficiary shall be under any obligation to make any of the payments or do any of the acts referred to in this paragraph, and any actions referred to in this paragraph may be taken by Beneficiary regardless of whether any notice of default or notice of sale has been given hereunder and without regard to the adequacy of the security for the indebtedness evidenced by the Note. Nothing herein shall require Beneficiary, debtor or receiver appointed to collect any Rents; however, Beneficiary shall be entitled to such appointment at its options in accordance with this Paragraph 21. This assignment of Rents is intended to be specific, perfected and choate upon recording as provided in RCW 7.28.230.

The Property, real, personal or mixed, may be sold as an entirety or



in parcels by one sale or by several sales held at one time or at different times, all as Trustee or Beneficiary, in their unrestricted discretion may elect. Grantor, for and on behalf of itself and all persons including by, through or under Grantor, waives any and all right to have the Property marshaled upon any foreclosure sale, and agrees that upon foreclosure, the Property may be sold as an entirety and not in parcels.

Upon the Event of a Default, Beneficiary, separately or in an action to foreclose this Deed of Trust, shall be entitled without notice and without regard of the adequacy of any security for the Note, the absence of waste or deterioration of the Property or other arguments based on equity, the appointment of a receiver of the Rents of the Property who shall have, in addition to all the rights and powers customarily given to and exercised by such receiver, all the rights and powers granted to Beneficiary by the covenants herein. Once appointed, at Beneficiary's option, such receiver shall remain in place until the default is cured.

Whenever this Deed of Trust requires that amounts payable by a third party to be paid directly to Beneficiary (for example, insurance proceeds and proceeds of claims of loss or damage to the Property), Beneficiary may enforce such rights with a preliminary injunction or temporary restraining order. Grantor agrees that irreparable harm may result if such payments are not made directly to Beneficiary. Grantor agrees not to oppose such a motion for injunction or restraining order provided the arrangements are made to deposits of sums in a third party depository.

(d) Mixed Collateral. Beneficiary shall have all of the rights and remedies provided in the Uniform Commercial Code of Washington, including the right to proceed under the Uniform Commercial Code of Washington provisions governing default as to any personal property separately from the real estate included within the Property, and without regard to the remainder of the Property in accordance with Beneficiary's rights and remedies provided by the Uniform Commercial Code of Washington, as well as other rights and remedies available at law equity or to proceed as to all of the Property in accordance with its rights and remedies in respect thereof. Upon the occurrence and continuation of an Event of Default, Beneficiary, pursuant to the appropriate provisions of the Uniform Commercial Code of Washington, shall have an option to proceed with respect to both the real property portion of the Property and the Personal Property in accordance with its rights, powers and remedies with respect to such real property, in which event the default provisions of the Uniform Commercial Code of Washington shall not apply. Such option shall be revocable by Beneficiary as to all or any portion of the Personal Property at any time prior to the sale of the remainder of the Property. In such event Beneficiary shall designate Trustee to conduct the sale of the Personal Property in combination with the sale of the remainder of the Property. Should Beneficiary elect to sell the Personal Property or any part thereof which is real property or which Beneficiary has elected to treat as real property or which may be sold together with the real property as provided above, Beneficiary or Trustee shall give such notice of default and election to sell as may then be required by law. The parties agree that if Beneficiary shall elect to proceed with respect to any portion of the Personal Property separately from such real property, ten (10) days' notice of the sale of the Personal Property shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Beneficiary shall include, but not be limited to, reasonable attorneys' fees, costs and expenses, and other expenses incurred by Beneficiary.



(e) Rescission of Notice of Sale. Beneficiary may from time to time rescind any notice of default or notice of sale before any Trustee's sale as provided above in accordance with the laws of the of the State in which the Land is located. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring, or impair the right of Beneficiary to execute and deliver to Trustee, as above provided, other declarations or notices of default to satisfy the obligations of this Deed of Trust, or otherwise affect any provision, covenant or condition of any Loan Document or any of the rights, obligations or remedies of Trustee or Beneficiary hereunder or thereunder.

(f) Rights and Remedies Cumulative. Trustee and Beneficiary shall have all powers, rights and remedies under applicable law whether or not specifically or generally granted or described in this Deed of Trust. Nothing contained herein shall be construed to impair or to restrict such powers, rights and remedies or to preclude any procedures or process otherwise available to trustees or beneficiaries under deeds of trust in the State in which the Land is located. Trustee and Beneficiary, and each of them, shall be entitled to enforce the payment and performance of the Obligations and to exercise all rights and powers under this Deed of Trust or under any other Loan Document or other agreement of any laws now or hereafter in force, notwithstanding the fact that some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers contained herein, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other rights or security now or hereafter held by Trustee or Beneficiary. Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other rights or security now or hereafter held by Trustee or Beneficiary in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy contained herein or by law provided or permitted, but each shall, to the extent permitted by law, be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. Every power or remedy given by any of the Loan Documents to Trustee or Beneficiary, or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary, and either of them may pursue inconsistent remedies. By exercising or by failing to exercise any right, option or election hereunder, Beneficiary shall not be deemed to have waived any provision hereof or to have released Grantor from any of the obligations secured hereby unless such waiver or release is in writing and signed by Beneficiary and, if necessary, Required Lenders. The waiver by Beneficiary of Grantor's failure to perform or observe any term, covenant or condition referred to or contained herein to be perform or observed by Grantor shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent failure of Grantor to perform or observe the same or any other such term, covenant or condition referred to or contained herein, and no custom or practice which may develop between Grantor, Beneficiary and any Lender during the term hereof shall be deemed a waiver of or in any way affect the right of Beneficiary to insist upon the performance by Grantor of the obligations secured hereby in strict accordance with the terms hereof or of any other Loan Document. Grantor shall remain liable for any deficiency upon foreclosure.

14. Expenditures and Expenses.



In any action to foreclose the lien hereof or otherwise enforce Beneficiary's and Trustee's rights and remedies hereunder, there shall be allowed and included as additional indebtedness secured hereby all expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary and Trustee, including repair costs, payments to remove or protect against liens, attorneys' fees, costs and expenses, receivers' fees, costs and expenses, appraisers' fees, engineers' fees, accountants' fees, fees, costs and expenses in connection with any environmental matters concerning the Property, outlays for documentary and expert evidence, stenographers' charges, stamp taxes, publication costs, and costs (which may be estimates as to items to be expended after entry of an order or judgment) for procuring all such abstracts of title, title searches and examination, title insurance policies, and similar data and assurances with respect to title as Beneficiary may deem reasonably necessary either to prosecute any action or to evidence to bidders at any sale which may be had pursuant to an order or judgment the true condition of the title to, or the value of, the Property. All expenditures and expenses of the nature mentioned in this **Section 14** and such costs, expenses and fees as may be incurred or as may be owing to Beneficiary in the protection of the Property and the maintenance of the lien of this Deed of Trust, including the fees, costs and expenses of any attorneys employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust, the other Loan Documents to which Grantor is a party or the Property, including probate, appellate and bankruptcy proceedings, or in preparations for the commencement or defense of any action or proceeding or threatened action or proceeding, including costs and expenses in connection with obtaining any court order or the appointment of a receiver, shall be immediately due and payable to Beneficiary, with interest thereon at the Default Rate, and shall be secured by this Deed of Trust. In addition to the foregoing award of attorneys' fees and costs, Beneficiary shall be entitled to its attorneys' fees and costs incurred in any post-judgment proceedings to collect or enforce any judgment or order relating to this Deed of Trust, or the other Loan Documents to which Grantor is a party. This provision is separate and several and shall survive the merger of this provision into any judgment.

15. Application of Proceeds of Foreclosure Sale.

After deducting all costs, fees and expenses of Trustee and Beneficiary, including, without limitation, costs of evidence of title and actual and customary attorneys' fees of Trustee and Beneficiary in connection with a sale as provided in **Section 13** above, the proceeds of any foreclosure sale of the Property shall be distributed and applied in the order of priority set forth in the Financing Agreement with the excess, if any, to be distributed to the Person or Persons legally entitled thereto.

16. Appointment of Receiver or Beneficiary in Possession.

If an Event of Default has occurred and is continuing or if Beneficiary shall have accelerated the indebtedness secured hereby, Beneficiary, upon application to a court of competent jurisdiction, whether in conjunction with Beneficiary's commencement of judicial proceedings to foreclose the lien hereof, or pursuant to other proceedings, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of the Property or any other security for the indebtedness or the insolvency of any party bound for its payment, in each of the foregoing instances, to the extent permitted by applicable law, to the appointment of a receiver to take possession of and to operate the Property, or any portion



thereof, and to collect and apply the Rents, and Grantor hereby irrevocably consents to such appointment and waives notice of any application therefor.

17. After - Acquired Property.

To the extent permitted by, and subject to, applicable law, the lien of this Deed of Trust, including, without limitation, the security interest created under the granting clauses of this Deed of Trust, shall automatically attach, without further act, to all property hereafter acquired by Grantor located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Property or any part thereof.

18. Trustee Provisions.

(a) From time to time upon written request of Beneficiary and presentation of this Deed of Trust for endorsement and without affecting the personal liability of any person for payment or performance of the Obligations, Trustee may, without liability therefor and without notice: reconvey all or any part of the Property; consent to the making of any map or plat thereof; join in granting any easement thereon; join in any declaration of covenants and restrictions; or join in any extension agreement or any agreement subordinating the lien or charge hereof. Trustee or Beneficiary may from time to time apply in any court of competent jurisdiction for aid and direction in the execution of the trusts hereunder and the enforcement of the rights and remedies available hereunder, and Trustee or Beneficiary may obtain orders or decrees directing or confirming or approving acts in the execution of such trusts and the enforcement of such remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding unless held or commenced and maintained by Trustee under this Deed of Trust. Grantor shall pay to Trustee reasonable compensation and reimbursement for services and expenses in the enforcement of the trusts created hereunder, including reasonable attorney's fees. Grantor shall indemnify Trustee, Beneficiary and each Lender against all losses, claims, demands and liabilities which either may incur, suffer or sustain in the execution of the trusts created hereunder or in the performance of any act required or permitted hereunder or by law.

(b) From time to time, by a writing signed by Beneficiary, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor, with the same effect as if originally named Trustee herein.

19. Forbearance by Beneficiary Not a Waiver.

Any forbearance by Beneficiary or any Lender in exercising any right or remedy under any of the Loan Documents, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. Beneficiary's or any Lender's acceptance of payment of any sum secured by any of the Loan Documents after the due date of such payment shall not be a waiver of Beneficiary's or such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Beneficiary shall not be a waiver of Beneficiary's right to accelerate the maturity of the indebtedness secured hereby, nor shall Beneficiary's receipt of any awards, proceeds or damages under Section 4 hereof operate to cure or waive Grantor's default in payment or sums secured by



any of the Loan Documents. With respect to all Loan Documents, only waivers made in writing by Beneficiary and, to the extent required, Required Lenders shall be effective against Beneficiary and Lenders.

20. Waiver of Statute of Limitations.

To the extent permitted by applicable law, Grantor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Notes or any other obligation secured by any of the Loan Documents.

21. Waivers.

Grantor, on behalf of itself, its successors and assigns, and each and every person it may legally bind acquiring any interest in, or title to, the Property on or subsequent to the date of this Deed of Trust: (i) does hereby expressly waive any and all rights of appraisal, valuation, stay, extension, reinstatement and (to the extent permitted by law) redemption from sale under any order or decree of foreclosure of this Deed of Trust; (ii) does hereby waive any equitable, statutory or other right available to it, in respect to marshaling of assets hereunder, so as to require the separate sales of interests in the Property before proceeding against any other interest in the Property; (iii) does hereby expressly consent to and authorize, at the option of Beneficiary, the sale, either separately or together, of any and all interests in the Property; and (iv) does hereby agree that in no event shall Beneficiary or Lenders be required to allocate any proceeds received from foreclosure sale or otherwise, to all or any interest in the Property; and (v) does hereby agree that when sale is had under any decree of foreclosure of this Deed of Trust, upon confirmation of such sale, the master in chancery or other officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to the purchaser at such sale a deed conveying the Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.

22. Governing Law; Severability.

This Deed of Trust shall be governed by, and shall be construed and enforced in accordance with, the internal laws of the State of New York without regard to conflicts of law principles, provided, however, that to the extent the mandatory provisions of the laws of another jurisdiction relating to (i) the perfection or the effect of perfection or non-perfection of the security interests in any of the Property, (ii) the lien, encumbrance or other interest in the Property granted or conveyed by this Deed of Trust, or (iii) the availability of and procedures relating to any remedy hereunder or related to this Deed of Trust are required to be governed by such other jurisdiction's laws, such other laws shall be deemed to govern and control. The invalidity, illegality or unenforceability of any provision of this Deed of Trust and the Loan Documents shall not affect or impair the validity, legality or enforceability of the remainder of this Deed of Trust and the other Loan Documents, and to this end, the provisions of this Deed of Trust and the other Loan Documents are declared to be severable.

23. Notice.



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Skagit County Auditor

Unless otherwise required by law, any notice or other communication required shall be in writing and shall be mailed, telecopied or delivered to the respective party as set forth below. All such notices and other communications shall be effective, (i) if mailed, when received or three (3) days after deposited in the mails, whichever occurs first, (ii) if telecopied, on the date of transmission if transmitted before 4:00 p.m. (New York time) otherwise on the next Business Day, (iii) if delivered by personal delivery, upon delivery, or (iv) if delivered by overnight courier one (1) Business Day after delivery to the courier, in each case, properly addressed

Notices shall be addressed as follows:

Notices to Grantor: Heartland Automotive Services, Inc.
11308 Davenport Street
Omaha, Nebraska 68154
Attn: Mr. Roy J. Schumacher, Chief Executive Officer
Telephone: (402) 333-0990
Telecopier: (402) 333-2338

With a copy to: White & Case
1155 Avenue of the Americas
New York, New York 10036
Attn: David E. Joyce
Telephone: (212) 819-8401
Telecopier: (212) 354-8332

Notices to Beneficiary: DYMAS FUNDING COMPANY, LLC
One North Franklin Street
Suite 3500
Chicago, Illinois 60606
Attention: Bradley Charcutt
Telephone: (312) 755-8100
Telecopier: (312) 755-8101

With a copy to: KATTEN MUCHIN ROSENMAN LLP
525 Monroe St.
Chicago, Illinois 60661
Attention: Stuart Shulruff, Esq.
Telephone: (312) 902-5694
Telecopier: (312) 577-8680

24. Successors and Assigns Bound; Joint and Several Liability; Agents; Captions.

The covenants and agreements contained in the Loan Documents shall bind, and the rights thereunder shall inure to, the respective successors and assigns of Beneficiary and Grantor, subject to the provisions of Section 10 hereof. All covenants and agreements of Grantor shall be joint and several. In exercising any rights under the Loan Documents or taking any actions provided for therein, Beneficiary may act through its employees, agents or independent contractors as authorized by Beneficiary. The captions and headings of the paragraphs of this



Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

25. Release.

Following the Termination Date (as hereinafter defined), this Deed of Trust shall be released of record, and the Beneficiary, at the request and expense of the Grantor, will promptly execute and deliver to the Grantor a property instrument or instruments acknowledging the satisfaction and termination of this Deed of Trust. As used herein, the "Termination Date" shall mean the date upon which the Obligations and the Commitments have been satisfied in full. In addition, this Deed of Trust shall be wholly or partially released of record, as appropriate: (x) in the event of a sale, transfer or other disposition of all or a portion of the Property specifically permitted pursuant to the Credit Agreement; or (y) if at any time all of the equity interests of the Grantor are sold in a transaction permitted pursuant to the Credit Agreement (a release under either of the preceding clauses (x) or (y) are referred to herein as a "Permitted Release"). Upon the occurrence of a Permitted Release, the Beneficiary shall, at the expense of the Grantor, promptly execute and deliver to the Grantor a proper instrument or instruments evidencing the Permitted Release.

26. Time of Essence.

Time is of the essence of this Deed of Trust and the performance of each of the covenants and agreement contained herein.

27. Waiver of Jury Trial, etc.

EACH OF GRANTOR AND BENEFICIARY HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS DEED OF TRUST, AND AGREES THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. GRANTOR CERTIFIES THAT NO OFFICER, REPRESENTATIVE, AGENT OR ATTORNEY OF BENEFICIARY OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BENEFICIARY OR ANY LENDER WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVER. GRANTOR HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE BENEFICIARY ENTERING INTO THIS DEED OF TRUST.

28. Deed of Trust Foreclosure Law.

(a) In the event that any provision in this Deed of Trust shall be inconsistent with any applicable provision of the law of the state in which the Land is located governing foreclosure,



(herein collectively called the "Laws"), the provisions of the Laws shall take precedence over the provisions of this Deed of Trust, but shall not invalidate or render unenforceable any other provision of this Deed of Trust that can be construed in a manner consistent with the Laws.

(b) If any provision of this Deed of Trust shall grant to Beneficiary any rights or remedies upon default of Grantor which are more limited than the rights that would otherwise be vested in Beneficiary under the Laws in the absence of said provision, Beneficiary shall be vested with the rights granted in the Laws to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Beneficiary to the extent reimbursable under the Laws, whether incurred before or after any decree or judgment of foreclosure, and whether or not provided for elsewhere in this Deed of Trust, shall be added to the indebtedness secured by this Deed of Trust or by the judgment of foreclosure.

29. Relationship.

The relationship between each Lender (and Beneficiary) and Grantor shall be that of creditor-debtor only. No term in this Deed of Trust or in any of the other Loan Documents and no course dealing between the parties shall be deemed to create any relationship of agency, partnership or joint venture or any fiduciary duty by Beneficiary or any Lender to Grantor or any other party.

[remainder of page intentionally left blank;
signature page follows]



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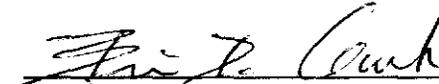
Skagit County Auditor

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

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust or has caused the same to be executed by its duly authorized representatives as of the date first above written.

GRANTOR

OIL EXPRESS, INC., a Washington corporation

By: 
Name: Brian D. Clark
Title: Vice President

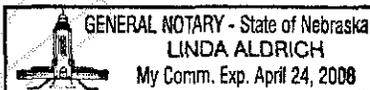
STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

On this 20th day of April, 2006, before me, the undersigned, a Notary Public in and for the State of Nebraska, duly commissioned and sworn, personally appeared Brian D. Clark to me known to be the person who signed as Vice President of Oil Express, Inc., the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as Vice President of the corporation, that he was authorized to execute said instrument on behalf of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.



(Signature of Notary)



(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State of Nebraska

residing at Omaha

My appointment expires: 4-24-08

EXHIBIT A

That portion of the North Half of the Northwest Quarter of the Southeast Quarter of Section 18, Township 34 North, Range 4 East of the Willamette Meridian, lying North of that certain fence line designated in the last paragraph of that certain judgment entered April 28, 1961, in Skagit County Superior Court Cause No. 25671, records of Skagit County, Washington, lying West of both Parcel "A" as described in Stipulated Judgment and Decree of Appropriation as to Item No. 1, filed April 21, 1975, in Skagit County Superior Court Cause No. 34431, records of Skagit County, Washington, and Parcel "A" as described in Stipulated Judgment and Decree of Appropriation, filed April 24, 1974, in Skagit County Superior Court Cause No. 34117, records of Skagit County, Washington; and lying East of Line 2 as described in said Stipulated Judgment and Decree of Appropriation, in said Skagit County Superior Court Cause No. 34431, records of Skagit County, Washington;

EXCEPT the North 165 feet thereof;

(Also known as Tract B of that certain survey recorded April 22, 1983 in Volume 5 of Surveys, page 5, under Auditor's File No. 8304220009, records of Skagit County, Washington).

Situated in Skagit County, Washington.

