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Skagit County Auditor

3/10/2008 Page 1 of 25 11:34AM

RECORDING REQUESTED BY AND,  
WHEN RECORDED, RETURN TO:

STERLING SAVINGS BANK  
c/o Intervest-Mortgage Investment Company  
Attention: Brenda Lund  
5005 S.W. Meadows Road, Suite 400  
Lake Oswego, Oregon 97035

GUARDIAN NORTHWEST TITLE CO.

93679-3

**Document Title:** Deed of Trust, Assignment of Rents and Security Agreement (and Fixture Filing)  
**Grantor:** HP Heart Partners, LLC  
**Trustee:** First American Title Insurance Company  
**Beneficiary:** Sterling Savings Bank  
**Legal Description:** Lot 1 of Burlington Short Plat No. BURL-1-95, Volume 11 of Short Plats, pages 194 and 195, located in Skagit County, Washington. A complete legal description is attached as Exhibit "A."  
**Assessor's Property Tax Parcel/Account Number:** 3867-000-050-2300/P109266

**DEED OF TRUST, ASSIGNMENT OF RENTS  
AND SECURITY AGREEMENT (AND FIXTURE FILING)**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (AND FIXTURE FILING) (hereinafter called "Deed of Trust") is made this 10 day of March, 2008, between HP HEART PARTNERS, LLC, a Washington limited liability company, whose address is c/o Frontier Management, 17400 SW Upper Boones Ferry Road, Suite 230, Durham, Oregon 97224 (hereinafter called "Grantor"); FIRST AMERICAN TITLE INSURANCE COMPANY, whose address is 2101 Fourth Avenue, Suite 800, Seattle, Washington 98121 (hereinafter called "Trustee"); and STERLING SAVINGS BANK, whose address is c/o Intervest-Mortgage Investment Company, 5005 S.W. Meadows Road, Suite 400, Lake Oswego, Oregon 97035 (hereinafter called "Beneficiary"),

WITNESSETH:

That Grantor does hereby irrevocably GRANT, BARGAIN, SELL, and CONVEY TO TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the County of Skagit, State of Washington, described in Exhibit "A" attached hereto and by this reference incorporated herein, which is herein collectively called the "Property."

TOGETHER WITH all right, title and interest of Grantor in and to all contract rights, chattel paper, rents, general intangibles and all accounts now in existence or hereafter acquired which arise out of the operation of the Property, including, but not limited to, all monies due and to become due thereunder and all guaranties and security for the payment of monies due and to become due thereunder;

TOGETHER WITH all rents, issues, profits, royalties, income, room receipts and other benefits derived from the Property (collectively called "rents"), subject to the right, power and authority hereinafter given to Grantor to collect and apply such rents;

TOGETHER WITH all leasehold estate, right, title and interest of Grantor in and to all leases or subleases covering the Property or any portion thereof now or hereafter existing or entered into; and all right, title and interest of Grantor thereunder, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature;

TOGETHER WITH all right, title and interest of Grantor in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired;

TOGETHER WITH all interests, estate or other claims, both in law and in equity, which Grantor now has or may hereafter acquire in the Property;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same;

TOGETHER WITH all right, title and interest of Grantor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property; and any and all sidewalks, alleys, and strips and gores of land adjacent to or used in connection with the Property;

TOGETHER WITH any and all buildings and improvements now or hereafter erected thereon, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery and other articles attached to said buildings and improvements (the "Improvements");

TOGETHER WITH all right, title and interest of Grantor in and to all tangible personal property now or at any time hereafter affixed to the Property or Improvements (the "Personal Property") owned by Grantor including, but not limited to, all goods, machinery, equipment (including fire sprinklers and alarm systems, office air conditioning, heating, refrigerating, electronic monitoring, window or structural cleaning rigs), water heaters and incinerators, chandeliers and other lighting fixtures, all heating and incinerating apparatus, all boilers, engines, motors, dynamos, generating equipment, piping and plumbing fixtures, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, elevators, escalators, partitions, mantles, shrubbery and plants, other landscape improvements, including sprinkling and lighting systems; and including also all interest of any owner of the said premises in any of such items hereafter at any time acquired under conditional sale contract, chattel mortgage or other title retaining or security instrument, all of which property mentioned in this paragraph shall be deemed part of the realty and not severable wholly or in part without material injury to the freehold; and

TOGETHER WITH all the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Grantor now has or may hereafter acquire in the Property, and any and all awards made for the taking



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by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of the Trust Estate, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages.

The entire estate, property, and interest hereby conveyed to Trustee may hereafter be referred to as the "Trust Estate."

**FOR THE PURPOSE OF SECURING:**

1. Payment of indebtedness in the original principal amount of Seven Million Four Hundred Fifty Thousand Dollars (\$7,450,000.00) with interest thereon, together with all costs and fees, including attorneys' fees, incurred by Beneficiary in enforcing the obligations of the Promissory Note, evidenced by that certain Promissory Note of even date herewith (the "Note"), executed by Grantor, which has been delivered to, and is payable to, the order of Beneficiary and which, by this reference, is made a part hereof, and any and all modifications, extensions and renewals thereof. Principal and interest are payable on the Note which matures April 1, 2013.

2. Payment of indebtedness in the original principal amount of Eleven Million Five Hundred Fifty Thousand Dollars (\$11,550,000.00) with interest thereon, together with all costs and fees, including attorneys' fees, incurred by Beneficiary in enforcing the obligations of the Other Notes as defined in Section 5.15 herein, executed by Grantor's sister entities, which have been delivered to, and are payable to, the order of Beneficiary and which, by this reference, are made a part hereof, and any and all modifications, extensions and renewals thereof. Principal and interest are payable on the Other Notes which mature April 1, 2013.

3. Payment of all sums which may become due from Grantor or advances by Beneficiary or its successor, with interest thereon at the Note rate, which include but are not limited to, fire and other hazard insurance and taxes upon the real property herein described, according to the terms of this Deed of Trust; payment by Grantor of all attorneys' fees and costs incurred by Trustee or Beneficiary in foreclosing this Deed of Trust or realizing upon any of the collateral for the obligations which this Deed of Trust secures; payment by Grantor of all attorneys' fees and costs incurred by Trustee or Beneficiary in defending the priority or validity of this Deed of Trust or the title to the Property; payment by Grantor of all sums advanced by Beneficiary to or on behalf of Grantor for the purpose of clearing encumbrances or defects from the title to the Property described in this Deed of Trust where Beneficiary, in good faith, believes such encumbrances to be superior to the lien of the Deed of Trust, including, without limitation, payment of ad valorem taxes and mechanics' or materialmen's liens which may have gained priority over the lien of costs incurred by Trustee or Beneficiary in any bankruptcy proceedings or any reorganization or arrangement proceeding under the Bankruptcy Act affecting Grantor, this Deed of Trust, or the covenant of Grantor herein contained or incorporated herein by reference and payment of all other sums advanced by Beneficiary to protect the Trust Estate, with interest thereon at the Note rate.

4. Payment of all other sums, with interest thereon, which may hereafter be loaned to Grantor, its successors, or assigns, by Beneficiary, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

5. Performance of each agreement, term and condition set forth or incorporated by reference in the Loan Commitment dated February 26, 2008, from Beneficiary to Grantor, and any amendments thereto, which are incorporated herein by this reference or contained herein.

This Deed of Trust, the Note, the Loan Commitment and any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby may



hereafter be referred to as the "Loan Instruments."

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, GRANTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

## ARTICLE I COVENANTS AND AGREEMENTS OF GRANTOR

Grantor hereby covenants and agrees:

1.01 Warranties of Title and Authority. Grantor hereby represents and warrants that it is lawfully seized of an indefeasible fee interest to the Property; that it has the authority and right to execute and deliver this Deed of Trust; that it shall defend the title to the Property against all claims and demands whatsoever; that the Property is free and clear of any and all liens, claims, encumbrances, restrictions, encroachments, and interest whatsoever in favor of any third party except as may be described in Exhibit "B" attached hereto, Beneficiary's title insurance policy, or as approved by Beneficiary in writing; that the Property is in compliance with and does not violate any applicable local, state, federal or other law, statute, regulation or ordinance; and that any and all obligations it may have incurred in connection with the Property are current and without default. In the event any Grantor hereunder is a partnership, limited liability company or a corporation, each person executing this instrument on behalf of such entity individually and personally represents and warrants that this Deed of Trust and each other instrument signed in the name of such entity and delivered to evidence or further secure the obligations secured hereby is, in all respects, binding upon such entity as an act and obligation of said partnership, limited liability company or corporation.

1.02 Payment of Secured Obligations. To pay when due the principal of, and the interest on, the indebtedness evidenced by the Note; charges, fees, and all other sums as provided in the Loan Instruments; and the principal of, and interest on, any future advances secured by this Deed of Trust.

1.03 Maintenance, Repair, Alterations. To keep the Trust Estate in good condition and repair; not to remove, demolish, or substantially alter (except such alterations as may be required by laws, ordinances, or regulations) any of the Improvements; to complete promptly and in a good and workmanlike manner any building or other improvement which may be constructed on the Property and promptly restore in like manner any Improvement which may be damaged or destroyed thereon; to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws, ordinances, regulations, covenants, conditions, and restrictions now or hereafter affecting the Trust Estate or any part thereof or requiring any alterations or improvements; not to commit or permit any waste or deterioration of the Trust Estate; to keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; to comply with the provisions of any Lease; not to commit, suffer, nor permit any act to be done in or upon the Trust Estate in violation of any law, ordinance, or regulation.

1.04 Required Insurance. At all times to provide, maintain, and keep in force, or cause to be provided, maintained, and kept in force, the following policies of insurance:

a. Insurance against loss or damage to the Improvements by fire and any of the risks covered by insurance of the type known as "broad form of extended coverage," and flood insurance (or evidence satisfactory to Beneficiary that the Property is not within a 100-year flood plain as defined in the Flood Disaster Protection Act of 1973, as amended) if required by federal law, in an amount not less than the greater of (i) the original amount of the Note, (ii) one hundred percent (100%) of the full replacement cost of the Improvements (exclusive of the cost of excavations, foundations, and footings below the lowest basement



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floor), or (iii) an amount sufficient to prevent Grantor and/or Beneficiary from becoming a co-insurer within the terms of the applicable policies; and with not more than Five Thousand Dollars (\$5,000.00) deductible from the loss payable for any casualty. The policies of insurance carried in accordance with this subparagraph a. shall contain the "Replacement Cost Endorsement";

b. Insurance against loss or damage to the Personal Property by fire and other risks covered by insurance of the type known as "fire and extended coverage";

c. Insurance against the loss of "rental value" of the buildings which constitute a part of the Property on a "rented or vacant basis" arising out of the perils insured against, pursuant to subparagraph a. above, in an amount equal to six (6) months' gross "rental value" of the Improvements. "Rental value," as used herein, is defined as the sum of (i) the total anticipated gross rental income from tenant occupancy or room receipts of such building as furnished and equipped by Grantor; (ii) the amount of all charges which are the legal obligation of tenants and which would otherwise be the obligation of Grantor; and (iii) the fair rental value of any portion of such building which is occupied by Grantor. The proceeds of such insurance shall be assigned to Beneficiary, to be applied in payment of the interest and principal of the Note secured by this Deed of Trust, insurance premiums, taxes, assessments, and private impositions until such time as such building shall have been restored and placed in full operation, at which time, provided Grantor is not then in default under this Deed of Trust, the balance of such insurance proceeds, if any, held by Beneficiary shall be returned to Grantor;

d. General liability insurance (in connection with which Beneficiary is to be named insured) against claims for bodily injury or death or for damage or injury to property occurring upon, in or about the Property, in such amount as may be reasonably required by Beneficiary but in no event less than One Million Dollars (\$1,000,000.00) for bodily injury for one person for each occurrence and One Million Dollars (\$1,000,000.00) for property damage for each occurrence. Such insurance shall be in form satisfactory to Beneficiary and provide that it may not be canceled without ten (10) days' prior notice to Beneficiary.

e. Such other insurance and in such amounts as may, from time to time, be reasonably required by Beneficiary against the same or other hazards.

f. All policies of insurance required by the terms of this Deed of Trust shall contain a CP12 and a BFU forms of endorsement or their equivalent.

1.05 Delivery of Policies; Payment of Premiums. That all policies of insurance shall be issued by companies and in amounts in each company satisfactory to Beneficiary. All policies of insurance shall have attached thereto a lender's loss payable endorsement for the benefit of Beneficiary in form satisfactory to Beneficiary. Grantor shall furnish Beneficiary with an original policy of all policies of required insurance. If Beneficiary consents to Grantor providing any of the required insurance through blanket policies carried by Grantor and covering more than one (1) location, then Grantor shall furnish Beneficiary with a certificate of insurance for each such policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number, and the expiration date. At least thirty (30) days prior to the expiration of each such policy, Grantor shall furnish Beneficiary with evidence satisfactory to Beneficiary of the payment of premium and the re-issuance of a policy continuing insurance in force as required by this Deed of Trust. All such policies shall contain a provision that such policies will not be canceled or materially amended, which term shall include any reduction in the scope or limits of coverage without at least thirty (30) days' prior written notice to Beneficiary. In the event Grantor fails to provide, maintain, keep in



force, or deliver and furnish to Beneficiary the policies of insurance required by this section, Beneficiary may procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and Grantor will pay all premiums thereon promptly upon demand by Beneficiary and, until such payment is made by Grantor, the amount of all such premiums, together with interest thereon at the Note rate, shall be secured by this Deed of Trust. Upon the occurrence of an event of default under Section 4.01 herein, Beneficiary may require Grantor to deposit with Beneficiary in monthly installments, an amount equal to one-twelfth (1/12) of the estimated aggregate annual insurance premiums on all policies of insurance required by this Deed of Trust. In such event, Grantor further agrees, upon Beneficiary's request, to cause all bills, statements, or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements, or other documents and providing Grantor has deposited sufficient funds with Beneficiary pursuant to this Section 1.05, Beneficiary shall pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds deposited with such Beneficiary are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary shall notify Grantor and Grantor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Section 1.05. Beneficiary may commingle said reserve with its own funds and Grantor shall be entitled to no interest thereon.

1.06 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the debt secured hereby, all right, title, and interest of Grantor in and to all policies of insurance required by Section 1.04 shall inure to the benefit of and pass to the successor in interest to Grantor or the purchaser or grantee of the Trust Estate.

1.07 Indemnification; Subrogation; Waiver of Offset.

a. If Beneficiary is made a party defendant to any litigation concerning this Deed of Trust or the Trust Estate or any part thereof or interest therein, or the occupancy thereof by Grantor, then Grantor shall indemnify, defend, and hold Beneficiary harmless from all liability by reason of said litigation, including attorneys' fees and expenses incurred by Beneficiary in any such litigation, whether or not any such litigation is prosecuted to judgment. If Beneficiary commences an action against Grantor to enforce any of the terms hereof or because of the breach by Grantor of any of the terms hereof or for the recovery of any sum secured hereby, Grantor shall pay to Beneficiary attorneys' fees and expenses, and such fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Grantor breaches any term of this Deed of Trust, Beneficiary may employ an attorney or attorneys to protect its rights hereunder and, in the event of such employment following any breach by Grantor, Grantor shall pay Beneficiary attorneys' fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Grantor by reason of such breach.

b. Grantor waives any and all right to claim or recover against Beneficiary, its officers, employees, agents, and representatives, for loss of or damage to Grantor, the Trust Estate, Grantor's property, or the property of others under Grantor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

c. All sums payable by Grantor hereunder shall be paid without notice, demand, counterclaim, set off, deduction, or defense and without abatement, suspension, deferment,

diminution, or reduction; and the obligations and liabilities of Grantor hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference with any use of the Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim which Grantor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Grantor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing and whether or not Grantor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Grantor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of any sum secured hereby and payable by Grantor.

**1.08 Taxes and Impositions.**

a. Grantor agrees to pay or cause to be paid, at least ten (10) days prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including, without limitation nongovernmental levies or charges resulting from covenants, conditions, and restrictions affecting the Trust Estate, which are assessed or imposed upon the Trust Estate or become due and payable, and which create, may create, or appear to create a lien upon the Trust Estate or any part thereof or upon any Personal Property, equipment, or other facility used in the operation or maintenance thereof (all of which taxes, assessments, and other governmental charges of like nature are hereinafter referred to as "Impositions"); provided, however, that if, by law, any such Imposition is payable or may, at the option of the taxpayer, be paid in installments, Grantor may pay or cause to be paid the same, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same become due; and before any fine, penalty, interest, or cost may be added thereto for the nonpayment of any such installment and interest.

b. If, at any time after the date hereof, there shall be assessed or imposed (i) a tax or assessment on the Trust Estate in lieu of or in addition to the Impositions payable by Grantor pursuant to subparagraph a. hereof; or (ii) a license fee, tax, or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments, or fees shall be deemed to be included within the term "Impositions" as defined in subparagraph a. hereof; and Grantor shall pay and discharge or cause to be paid and discharged the same as herein provided with respect to the payment of Impositions or, at the option of Beneficiary, all obligations secured hereby, together with all accrued interest thereon, shall immediately become due and payable. Anything to the contrary herein notwithstanding, Grantor shall have no obligation to pay any franchise, estate, inheritance, income, excess profits, or similar tax levied on Beneficiary or on the obligations secured hereby.

c. Subject to the provisions of subparagraph d. of this Section 1.08, Grantor covenants to furnish to Beneficiary, within forty-five (45) days after the date upon which any such Imposition is due and payable by Grantor, official receipts of the appropriate taxing authority or other proof satisfactory to Beneficiary evidencing the payments thereof.



d. Grantor shall have the right, before any delinquency occurs, to contest or object to the amount or validity of any such Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending Grantor's covenant to pay or cause to be paid any such Imposition at the time and in the manner provided in this Section 1.08, unless Grantor has given prior written notice to Beneficiary of Grantor's intent to so contest or object to an Imposition; and unless, at Beneficiary's sole option, (i) Grantor shall demonstrate to Beneficiary's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Trust Estate or any part thereof to satisfy such Imposition prior to final determination of such Proceedings; or (ii) Grantor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Beneficiary; or (iii) Grantor shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

e. Upon the occurrence of an event of default under Section 4.01 herein, Beneficiary may require Grantor to pay to Beneficiary, on the day monthly installments of principal and interest are payable under the Note and until the Note is paid in full, an amount equal to one-twelfth (1/12) of the annual Impositions reasonably estimated by Beneficiary to pay the installment of taxes next due on the Trust Estate. In such event, Grantor further agrees to cause all bills, statements, or other documents relating to Impositions to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements, or other documents and providing Grantor has deposited sufficient funds with Beneficiary pursuant to this Section 1.08, Beneficiary shall pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If, at any time and for any reason, the funds deposited with Beneficiary are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary shall notify Grantor and Grantor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Section 1.08. Beneficiary shall not be obliged to pay or allow any interest on any sums held by Beneficiary pending disbursement or application hereunder, and Beneficiary may impound or reserve for future payment of Impositions such portion of such payments as Beneficiary may in its absolute discretion deem proper, applying the balance on the principal of or interest on the obligations secured hereby. Should Grantor fail to deposit with Beneficiary (exclusive of that portion of said payments which has been applied by Beneficiary on the principal of or interest on the indebtedness secured by the Loan Instruments) sums sufficient to fully pay such Impositions at least thirty (30) days before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary as herein elsewhere provided or, at the option of Beneficiary, the latter may, without making any advance whatever, apply any sums held by it upon any obligation of the Grantor secured hereby. Should any default occur or exist on the part of the Grantor in the payment or performance of any of Grantor's and/or any guarantor's obligations under the terms of the Loan Instruments, Beneficiary may, at any time at Beneficiary's option, apply any sums or amounts in its hands received pursuant hereto, or as rents or income of the Trust Estate or otherwise, upon any indebtedness or obligation of the Grantor secured hereby in such manner and order as Beneficiary may elect. The receipt, use or application of any such sums paid by Grantor to Beneficiary hereunder shall not be construed to affect the maturity of any indebtedness secured by this Deed of Trust or any of the rights or powers of Beneficiary or Grantor under the terms of the Loan Instruments or any of the obligations of Grantor and/or any guarantor under this Loan Instrument.



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f. Grantor covenants and agrees not to suffer, permit, or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Trust Estate as a single lien.

g. If requested by Beneficiary, Grantor shall cause to be furnished to Beneficiary a tax reporting service covering the Trust Estate of the type, duration and with a company satisfactory to Beneficiary.

1.09 Utilities. To pay or cause to be paid when due all utility charges which are incurred by Grantor for the benefit of the Trust Estate or which may become a charge or lien against the Trust Estate for gas, electricity, water or sewer services furnished to the Trust Estate and all other assessments or charges of a similar nature, whether public or private, affecting the Trust Estate or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

1.10 Ground Leases. To pay when due all rents and other payments and perform all covenants and agreements contained in any lease, sublease or ground lease which may constitute a portion of or an interest in the Trust Estate; not surrender, assign or sublease any such lease, sublease or ground lease, nor take any action which would effect or permit the termination of any such lease, sublease or ground lease. If requested by Beneficiary Grantor covenants to furnish to Beneficiary within thirty (30) days after the date upon which such rents or other payments are due and payable by Grantor, receipts or other evidence satisfactory to Beneficiary evidencing the payment thereof.

1.11 Actions Affecting Trust Estate. To appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear.

1.12 Actions by Trustee and/or Beneficiary to Preserve Trust Estate. That should Grantor fail to make or cause to be made any payment or to do or cause to be done any act as and in the manner provided in any of the Loan Instruments, Beneficiary and/or Trustee, each in its own discretion, without obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligation, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. In connection therewith (without limiting their general powers), Beneficiary and/or Trustee shall have and are hereby given the right, but not the obligation, (i) to enter upon and take possession of the Trust Estate; (ii) to make additions, alterations, repairs and improvements to the Trust Estate which they or either of them may consider necessary or proper to keep the Trust Estate in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of either may affect or appears to affect the security of this Deed of Trust or be prior or superior hereto; and (v) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Grantor shall, immediately upon demand therefor by Beneficiary, pay all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing rights, including without limitation costs of evidence of title, court costs, appraisals, surveys and attorneys' fees. All costs, charges and expenses so incurred shall accrue interest at the rate set forth herein, and shall be secured by the lien of this Deed of Trust.

1.13 Additional Security. That in the event Beneficiary at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder.



1.14 Appointment of Successor Trustee. That Beneficiary may substitute a trustee or trustees to execute the trust hereby created, and when such substitution has been filed for record in the office of the Recorder of the County in which the Trust Estate is located, it shall be conclusive evidence of the appointment of such trustee or trustees, and such new trustee or trustees shall succeed to all of the powers and duties of the trustee or trustees named herein.

1.15 Successors and Assigns. That this Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" shall mean the owner and holder of the Note, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

1.16 Inspections. That Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Instruments.

1.17 Liens. To pay and promptly discharge or cause to be paid and discharged, at Grantor's cost and expense, all liens, encumbrances and charges upon the Trust Estate, or any part thereof or interest therein which have priority over this Deed of Trust; Grantor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Grantor shall first deposit with Beneficiary a bond or other security satisfactory to Beneficiary in such amounts as Beneficiary shall reasonably require, but not more than one and one-half (150%) of the amount of the claim, and provided further that Grantor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Grantor shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond or the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law.

1.18 Trustee's Powers. At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of said Trust Estate, Trustee may (i) reconvey any part of said Trust Estate; (ii) consent in writing to the making of any map or plat thereof; (iii) join in granting any easement thereon; or (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof.

1.19 Beneficiary's Powers. Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Property not then or theretofore released as security for the full amount of all unpaid obligations, Beneficiary may, from time to time at the request of any one of the Grantors, or their successors or assigns and without notice (i) release any person so liable; (ii) extend the maturity or alter any of the terms of any such obligation; (iii) grant other indulgences; (iv) release or reconvey, or cause to be released or reconveyed at any time at Beneficiary's option any parcel or portion of the Trust Estate so long as the release or reconveyance does not materially affect the security value of the Trust Estate; (v) take or release any other or additional security for any obligation herein mentioned; or (vi) make compositions or other arrangements with debtors in relation thereto. By accepting payment of any obligation herein mentioned after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other obligations herein mentioned or to declare default for failure so to pay.



1.20 Financial Statements. Grantor will keep full, complete and correct books of account reflecting transactions relating to the Property and at any and all times permit Beneficiary by its agents or attorneys to examine all of his books of accounts, records, reports and other papers relating to the Property, and to take copies and extracts therefrom and to examine the Property. Grantor will furnish to the Beneficiary as soon as available, and in any event within ninety (90) days after the end of each fiscal year of Grantor, certified as correct by Grantor or the Property manager, copies of operating statements showing the gross income (itemized as to minimum and percentage rent and other sources) during the preceding fiscal year received from the operations of the Property and the expenses of maintaining the Property (itemized including depreciation charges) during the preceding fiscal year. Concurrently with the furnishing of the aforesaid financial statements, Grantor will deliver to Beneficiary a statement of income of Grantor for such fiscal year. In addition, Grantor shall furnish Beneficiary, within sixty (60) days from the end of each fiscal year, a rent roll, including but not limited to a listing of each tenant, the space occupied, the amount of rent and the expiration of the lease. Grantor shall also furnish to Beneficiary, within sixty (60) days after the end of each calendar quarter, unaudited statements setting forth rental income and expenditures relating to the Property for such quarter, certified as to being correct by Grantor. In the event Grantor fails to furnish any of the financial statements hereinabove required, Beneficiary may cause an audit to be made, at Grantor's sole cost and expense, of the respective books and records.

1.21 Trade Names. At the request of Beneficiary, Grantor shall execute a certificate in form satisfactory to Beneficiary listing the trade names under which Grantor intends to operate the Trust Estate, and representing and warranting that Grantor does business under no other trade names with respect to the Trust Estate. Grantor shall immediately notify Beneficiary in writing of any change in said trade names, and will, upon request of Beneficiary, execute any additional financing statements and other certificates revised to reflect the change in trade name.

1.22 Application of Insurance and Awards.

a. Grantor will give the Beneficiary prompt notice of any damage to or destruction of the Property, and in case of loss covered by policies of insurance the Beneficiary (whether before or after foreclosure sale) is hereby authorized at its option without the consent of the Grantor to settle and adjust any claim arising out of such policies and collect and receipt for the proceeds payable therefrom. Any expense incurred by the Beneficiary in the adjustment and collection of insurance proceeds (including the cost of any independent appraisal of the loss or damage on behalf of Beneficiary) shall be reimbursed to the Beneficiary first out of any proceeds. In the event of any insured damage to or destruction of the Property, or any part thereof, Beneficiary, in its sole discretion, may apply the proceeds or any part thereof upon or in reduction of the indebtedness secured hereby then most remotely to be paid, whether due or not, without the application of any prepayment premium, or may apply the same to the restoration or repair of the Trust Estate, in which event, provided no default or an event of default be existing under this Deed of Trust or the Note, the proceeds of insurance shall be applied to reimburse the Grantor for the cost of so restoring or repairing the Trust Estate with the proceeds to be paid out in the manner as provided for in Section 1.22 c. hereof; provided, always, that Grantor shall pay all costs of restoring or repairing, in excess of the proceeds of insurance.

b. Grantor will give Beneficiary prompt notice of any action, actual or threatened, in condemnation or eminent domain and hereby assigns, transfers, and sets over to the Beneficiary the entire proceeds of any award or claim for damages for all or any part of the Trust Estate taken or damaged under the power of eminent domain or condemnation, the Beneficiary being hereby authorized to intervene in any such action in the name of Grantor and to collect and receive from the condemning authorities and give proper receipts



and acquittances for such proceeds. Any expenses incurred by the Beneficiary in intervening in such action or collecting such proceeds shall be reimbursed to the Beneficiary first out of the proceeds. The Beneficiary may elect to apply the proceeds of the award upon or in reduction of the indebtedness secured hereby then most remotely to be paid, whether due or not, without application of any prepayment premium, or to apply the same to the restoration or repair of the Trust Estate, in which event, provided no default or an event of default be existing under this Deed of Trust or the Note, the proceeds shall be applied to reimburse Grantor for the cost of such restoration or repair with the proceeds of the award to be paid out in the manner provided for in Section 1.22 c. hereof; provided, always Grantor shall pay all costs of such restoring or repairing in excess of the proceeds.

c. Should any insurance or condemnation proceeds be applied to the restoration or repair of the Trust Estate the restoration or repair shall be done under the supervision of an architect acceptable to Beneficiary and pursuant to plans and specifications approved by Beneficiary. In such case the proceeds shall be held by Beneficiary for such purposes and will from time to time be disbursed by Beneficiary to defray the costs of such restoration or repair under such safeguards and controls as Beneficiary may reasonably require to assure completion in accordance with the approved plans and specifications and free of liens or claims. Any surplus which may remain after payment of all costs of restoration or repair may at the option of Beneficiary be applied on account of the indebtedness secured hereby then most remotely to be paid, whether due or not, without application of any prepayment premium or shall be returned to Grantor as its interest may appear, the choice of application to be solely at the discretion of Beneficiary.

d. Notwithstanding anything to the contrary contained in this Section 1.22, in the event of insured damage to the improvements or in the event of a taking by condemnation of only a portion of the improvements or land area of the Trust Estate and provided the portion remaining can, with restoration or repair, continue to be operated for the purposes utilized immediately prior to such damage or taking, and if the appraised value of the Trust Estate after such restoration or repair shall not have been reduced, and provided further, no event of default exists under this Deed of Trust and the project otherwise is economically feasible, the Beneficiary agrees to make the proceeds available to the restoration or repair of the improvements on the Trust Estate in accordance with the provisions of Section 1.22 c. hereof.

1.23 Repayment of Advances. Upon receipt of notice, Grantor shall repay immediately all sums expended or advanced hereunder by or on behalf of Beneficiary or Trustee, with interest from the date of such advance or expenditure at the rate contained in the Note, and the repayment thereof shall be secured hereby. Failure to repay such expenditure or advance and interest thereon within ten (10) days of such notice will, at Beneficiary's option, constitute an event of default hereunder; or Beneficiary may, at its option, commence an action against Grantor for the recovery of such expenditure or advance and interest thereon, and in such event Grantor agrees to pay, in addition to the amount of such expenditure or advance, all costs and expenses incurred in such action, together with attorney's fees.

## **ARTICLE II ASSIGNMENT OF RENTS, ISSUES AND PROFITS**

2.01 Assignment of Rents and Profits Under All Leases and Rental Agreements. Grantor absolutely and irrevocably assigns to Beneficiary the rents, issues and profits of the Trust Estate and all of the right, title and interest of Grantor in and under all leases and rental agreements now or hereafter affecting said Trust Estate are hereby assigned and transferred to Beneficiary as evidenced



by an Assignment of Leases and Cash Collateral executed contemporaneously herewith by Grantor in favor of Beneficiary and by reference included herein. So long as no default shall exist in compliance with any covenants, terms, conditions or obligations hereof or of any other instrument at any time executed with respect to this Deed of Trust, Grantor may collect assigned rents and profits as the same fall due, but upon the occurrence of any such default, all right of Grantor to collect or receive rents or profits shall wholly terminate. All rents, issues or profits receivable from or in respect to said Trust Estate which Grantor shall be permitted to collect hereunder shall be received by it in trust to pay the usual and reasonable operating expenses of, and the taxes upon, said Trust Estate and the sums owing to Beneficiary as they become due and payable as provided in this Deed of Trust or in the said Note or in any modification of either.

Grantor hereby agrees:

- a. It will promptly perform and observe all the terms, covenants and conditions required to be performed and observed by it, as landlord under all leases and rental agreements and will do all things necessary to preserve and keep unimpaired its rights thereunder and will maintain all leases and rental agreements in full force and effect and will enforce the same and will take such action to that end as Beneficiary may request;
- b. It will not create, nor permit any lien, charge or encumbrance upon its interest as landlord of the leases or rental agreements except the lien of this Deed of Trust and except as provided in this Deed of Trust;
- c. It will not, without the written consent of Beneficiary, collect or permit the collection of any rental payment under any of the leases or rental agreements for a period of more than one (1) month in advance of the date on which such payment is due.

All leases or rental agreements of the whole or any part of the Trust Estate shall be subject and subordinate to the lien of this Deed of Trust unless Beneficiary consents in writing to the priority of certain leases or rental agreements. Beneficiary may, at its option, require that specific leases be made superior to the lien of this Deed of Trust. Grantor shall pay all costs incident to making such leases superior to such lien, including attorneys' fees. In the event of any default hereunder and the exercise by Beneficiary of its rights hereby granted, Grantor agrees that payments made by tenants or occupants to Beneficiary shall, as to such tenants, be considered as though made to Grantor and in discharge of tenants' obligations as such to Grantor. Nothing herein contained shall be construed as obliging Beneficiary to perform any of Grantor's covenants under any lease or rental agreement. Grantor shall execute and deliver to Beneficiary upon demand any further or supplemental assignments deemed desirable by Beneficiary in order to further carry out and confirm the intentions of this paragraph and upon failure of Grantor so to comply, Beneficiary may, in addition to any other rights or remedies, at its option, declare all obligations secured by this Deed of Trust to be immediately due and payable.

2.02 Leases. Grantor agrees as follows:

- a. To fully comply with all of the terms, conditions and provisions of all leases on said Trust Estate so that the same shall not become in default and to do all that is needful to preserve all said leases in force.
- b. To permit no assignment of any lease, or any subletting thereunder unless the right to assign or sublet is expressly reserved by the lessee under such lease.
- c. That save and except for taxes and assessments provided to be paid by



Grantor as specified in Paragraph 1.08 Grantor will not create or suffer or permit to be created, subsequent to the date of the execution and delivery of this Deed of Trust, any lien or encumbrance which may be or become superior to any lease affecting said Trust Estate.

d. That if any part of the automobile parking areas included within said Trust Estate is taken by condemnation or before said areas are otherwise reduced, Grantor will provide parking facilities in kind, size and location to comply with all leases, and before making any contract for such substitute parking facilities, Grantor will furnish to Beneficiary satisfactory assurance of completion thereof, free of liens and in conformity with all governmental zoning and regulations.

2.03 Security, Rents, Profits and Zoning. Grantor shall not, without first obtaining Beneficiary's written consent, assign any of the rents or profits of the Trust Estate or collect any rent for more than one (1) month in advance or change the general nature of the occupancy or initiate or acquiesce in any zoning reclassification, or do or suffer any act or thing which would impair the security for said debt or Beneficiary's lien upon said Trust Estate or the rents thereof. In the event of breach of any requirement of this paragraph, Beneficiary may, in addition to any other rights or remedies, at any time thereafter declare the whole of said principal sum immediately due and payable.

### **ARTICLE III SECURITY AGREEMENT**

3.01 Creation of Security Interest. Grantor hereby grants to Beneficiary a security interest in the Personal Property located on or at the Property, including without limitation any and all property of similar type or kind hereafter located on or at the Property for the purpose of securing all obligations of Grantor contained in any of the Loan Instruments and contract rights.

3.02 Warranties, Representations and Covenants of Grantor. Grantor hereby warrants, represents and covenants as follows:

a. Except for the security interest granted hereby, Grantor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever. Grantor will notify Beneficiary of, and will defend the Personal Property against, all claims and demands of all persons at any time claiming the same or any interest therein.

b. Grantor will not lease, sell, convey or in any manner transfer the Personal Property without the prior written consent of Beneficiary.

c. The Personal Property is not used or bought for personal, family or household purposes.

d. The Personal Property will be kept on or at the Property and Grantor will not remove the Personal Property from the Property without the prior written consent of Beneficiary, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Grantor.

e. Grantor maintains a place of business in the State of Washington, and Grantor will immediately notify Beneficiary in writing of any change in its place of business.



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f. At the request of Beneficiary, Grantor will join Beneficiary in executing one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code of Washington in form satisfactory to Beneficiary, and will pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary to be necessary or desirable. Grantor hereby authorizes Beneficiary to file a financing statement, with or without Grantor's signature, to perfect Beneficiary's lien and security interest in the Personal Property and Improvements as described in the Loan Instruments (including any required continuation statements, amendment statements or other such documents necessary to perfect and continue the lien) and Grantor hereby expressly ratifies any financing statements Beneficiary may have filed prior to the date of this Deed of Trust.

g. All covenants and obligations of Grantor contained herein relating to the Trust Estate shall be deemed to apply to the Personal Property whether or not expressly referred to herein.

h. This Deed of Trust constitutes a security agreement as that term is used in the Uniform Commercial Code of Washington.

3.03 **Real Property.** Grantor and Beneficiary agree that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in any wise derogating from or impairing this declaration and hereby stated intention of the parties hereto, that everything used in connection with the production of income from the Trust Estate and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be, regarded as part of the real estate irrespective of (i) any such item physically attached to the Improvements, (ii) serial numbers used for better identification of certain equipment items capable of being thus identified in a recital contained in this Deed of Trust or in any list filed with Beneficiary, (iii) any such item referred to or reflected in any such financing statement so filed at any time.

3.04 **Fixture Filing.** As to all of the Personal Property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under the Washington Uniform Commercial Code, as amended or recodified from time to time.

#### ARTICLE IV REMEDIES UPON DEFAULT

4.01 **Events of Default.** Any of the following events shall be deemed an event of default hereunder:

a. Default shall be made in the payment of any installment of principal or interest on the Note or any other sum secured hereby when due and the failure to cure such default within fifteen (15) days after written notice of default to Grantor; or

b. Grantor shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Grantor or of all or any part of the Trust Estate, or of any or all of the royalties, revenues, rents, issues or profits thereof, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or



c. A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Grantor seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of Grantor or of all or any part of the Trust Estate, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed without the consent or acquiescence of Grantor and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

d. A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Trust Estate, or any judgment involving monetary damages shall be entered against Grantor which shall become a lien on the Trust Estate or any portion thereof or interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy; or

e. If Grantor shall transfer, assign, alienate, mortgage, encumber, pledge, hypothecate or grant an interest in Trust Estate without Beneficiary's prior written consent, unless otherwise allowed by the terms of this Deed of Trust; or

f. There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in any of the Loan Instruments or any part thereof, not referred to in this Section 4.01 and the failure to cure such default within thirty (30) days after written notice of default to Grantor.

**4.02 Acceleration Upon Default, Additional Remedies.** In the event of any event of default, Beneficiary may declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Beneficiary may:

a. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the rents, issues and profits thereof (including room receipts), including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Trust Estate or the collection, receipt and application of rents, issues or profits, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Instruments or by law upon occurrence of any event of default, including the right to exercise the power of sale;

b. Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;



c. Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code of Washington, including, but not limited to:

(1) Either personally or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Grantor and all others claiming under Grantor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Grantor in respect to the Personal Property or any part thereof. In the event Beneficiary demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Instruments, Grantor promises and agrees to promptly turn over and deliver complete possession thereof to Beneficiary;

(2) Without notice to or demand upon Grantor, make such payments and do such acts as Beneficiary may deem necessary to protect its security interest in the Personal Property, including without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority to pay all expenses incurred in connection therewith;

(3) Require Grantor to assemble the Personal Property or any portion thereof, at a place designated by Beneficiary and reasonably convenient to both parties, and promptly to deliver such Personal Property to Beneficiary, or an agent or representative designated by it. Beneficiary, and its agents and representatives shall have the right to enter upon any or all of Grantor's Trust Estate and property to exercise Beneficiary's rights hereunder;

(4) Sell, lease or otherwise dispose of the Personal Property at public sale, with or without having the Personal Property at the place of sale, and upon such terms and in such manner as Beneficiary may determine. Beneficiary may be a purchaser at any such sale;

(5) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Beneficiary shall give Grantor at least ten (10) days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof. Such notice may be mailed to Grantor at the address set forth at the beginning of this Deed of Trust; and

d. Execute or cause the Trustee to execute a written notice of such default and of his election to cause to be sold the Trust Estate to satisfy the obligations hereof and shall cause such notice to be recorded in the office of the Recorder of each recording district in which the Trust Estate or some part thereof is located.

4.03 **Foreclosure by Power of Sale.** Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

a. Upon receipt of such notice from Beneficiary, Trustee shall cause to be given such Notice of Default as then required by law. Trustee shall, without demand on Grantor, after lapse of such time as may then be required by law and after Notice of Sale having been



given as required by law, sell the Trust Estate 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 States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Grantor, Trustee or Beneficiary, may purchase at such sale.

b. After deducting all costs, fees and expenses of Trustee and of this Trust, including costs of evidence of title and counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the Note rate, all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto.

4.04 Appointment of Receiver. If any event of default described in Section 4.01 of this Deed of Trust shall have occurred and be continuing, Beneficiary, as a matter of right and without notice to Grantor or anyone claiming under Grantor, and without regard to the then value of the Trust Estate or the interest of Grantor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate, and Grantor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided in Section 4.02 a. and shall continue as such and exercise all such powers until the date of confirmation of sale of the Trust Estate unless such receivership is sooner terminated.

4.05 Remedies Not Exclusive. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under any Loan Instrument or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, 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 herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as 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 herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Instruments 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.

4.06 Sale of Trust Estate Pursuant to a Foreclosure. In case of a sale pursuant to a foreclosure of this Deed of Trust, the said Trust Estate, 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, in its unrestricted discretion, may elect, and Grantor for and on behalf of itself and all persons claiming by, through or under it, waives any and all rights to have the property and estates



comprising the Trust Estate marshalled upon any foreclosure sale and agrees that upon foreclosure, the Trust Estate may be sold as an entirety and not in parcels.

4.07 Restoration of Former Positions. In case Beneficiary shall proceed to enforce any right under this Deed of Trust and the proceedings for enforcement thereof shall have been discontinued or abandoned for any reason or shall have been determined adversely to Beneficiary, then and in every such case Beneficiary, Trustee and Grantor shall, subject to any determination in such proceedings, severally and respectively be restored to their former positions and rights hereunder, and thereafter all rights and remedies and powers of Beneficiary and Trustee shall continue as though no such proceeding had been taken.

4.08 Sale, Transfer, Vacation or Encumbrance of Property Prohibited. So long as any obligation secured hereby remains unpaid, Grantor covenants and agrees that neither said Property nor any portion thereof nor interest therein nor a controlling interest of Grantor (if a corporation or limited liability company) nor a general partnership interest in Grantor (if a partnership) shall be sold, conveyed, transferred or encumbered by Grantor without Beneficiary's prior written consent. If title to said Property or any portion or interest in said Property or a controlling interest of Grantor (if a corporation or limited liability company) or a general partnership interest in Grantor (if a partnership) shall pass from Grantor by deed or otherwise, voluntarily or involuntarily or if said Property or any portion or interest therein is sold on contract, or if the Property or any portion or interest therein is vacated by Grantor, or if said Property or any portion or interest therein or a controlling interest of Grantor (if a corporation or limited liability company) or a general partnership interest in Grantor (if a partnership) is further encumbered without the consent of Beneficiary, such change in title or occupancy or interest of Grantor or further encumbrance shall be deemed to increase the risk of Beneficiary, and Beneficiary may declare all sums secured hereby immediately due and payable, or may at its sole option consent to such change in title or occupancy or interest of Grantor and increase the interest rate on the indebtedness hereby secured. In the event Beneficiary accelerates said indebtedness pursuant to the terms of this paragraph, Grantor shall pay, in addition to the indebtedness, the prepayment bonus as set forth in the Note, if any.

In the event ownership of the Property or any portion thereof becomes vested in a person other than Grantor herein named, or if a controlling interest in Grantor (if a corporation or limited liability company) or a general partnership interest in Grantor (if a partnership) is sold or encumbered, Beneficiary may, without notice to Grantor herein named, whether or not Beneficiary has given written consent to such change in ownership, deal with such successor or successors in interest with reference to this Deed of Trust and the obligations secured hereby, in the same manner as with Grantor herein named, without in any way vitiating or discharging Grantor's liability hereunder or the obligations hereby secured.

4.09 Request for Notice. Grantor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in the first paragraph of this Deed of Trust.

## ARTICLE V MISCELLANEOUS

5.01 Governing Law. This Deed of Trust, Assignment of Rents and Security Agreement shall be governed by the laws of the State of Washington. In the event that any provision or clause of any of the Loan Instruments conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Instruments which can be given effect without the conflicting provision, and to this end the provisions of the Loan Instruments are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing



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signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

5.02 Limitation of Interest. It is the intent of Grantor and Beneficiary in the execution of this Deed of Trust, the Note and all other instruments securing the Note to contract in strict compliance with the usury laws of the State of Washington governing the loan evidenced by the Note. In furtherance thereof, Beneficiary and Grantor stipulate and agree that none of the terms and provisions contained in the Loan Instruments shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of Washington governing the loan evidenced by the Note. Grantor or any guarantor, endorser or other party now or hereafter becoming liable for the payment of the Note shall never be liable for unearned interest on the Note and shall never be required to pay interest on the Note at a rate in excess of the maximum interest that may be lawfully charged under the laws of the State of Washington and the provisions of this section shall control over all other provisions of the Note and any other instrument executed in connection herewith which may be in apparent conflict herewith. If a court of competent jurisdiction shall make a final determination that the performance of any provision of the Note shall result in a payment of an amount for such use, forbearance or detention in excess of such rate, then (i) such provision shall be deemed to be appropriately modified to the extent necessary to reduce such amount to an amount not in excess of such rate; and (ii) any such excess amounts theretofore received by the holder of the Note shall be deemed to have been applied to the redemption at par of a like principal amount of the Note, and all necessary reallocations of subsequent payments with respect to such Note shall be made and appropriately annotated on such Note.

5.03 Statements by Grantor. Grantor, within ten (10) days after being given notice by mail, will furnish to Beneficiary a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Deed of Trust and stating whether any offset or defense exists against such principal and interest.

5.04 Reconveyance by Trustee. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Grantor of Trustee's fees, Trustee shall reconvey to Grantor, or the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

5.05 Notices. Whenever Beneficiary, Grantor or Trustee shall desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust, each such notice, demand, request or other communication shall be in writing and shall be effective only if the same is delivered by personal service or mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the address set forth at the beginning of this Deed of Trust. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

5.06 Acceptance by Trustee. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

5.07 Captions. The captions or headings at the beginning of each section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

5.08 Invalidity of Certain Provisions. If the lien of this Deed of Trust is invalid or



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unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Trust Estate, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust. Further, the invalidity or unenforceability of any portion or provision of this Deed of Trust shall in no way affect the validity or enforceability of the remainder hereof.

5.09 Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Trust Estate, such proceeds have been or will be advanced by Beneficiary at Grantor's request and Beneficiary shall be subrogated to any and all rights and liens owed by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

5.10 No Merger. If both the lessor's and lessee's estates under any lease or portion thereof which constitutes a part of the Trust Estate shall at any time become vested in one (1) owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any leases or subleases then existing and created by Grantor shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

5.11 Use. The Property which is the subject of this Deed of Trust is used for commercial purposes and is not used principally or primarily for agricultural or farming purposes.

5.12 Late Charge. In the event that any payment or portion thereof is not paid within fifteen (15) days after the date it is due, Beneficiary may collect, and the Grantor agrees to pay with such payment, a "late charge" of Four Cents (\$0.04) for each dollar so over due as liquidated damages for the additional expense of handling such delinquent payments. Such late charge represents the reasonable estimate of Beneficiary and Grantor of a fair, average compensation due to the failure of Grantor to make timely payments. Such late charge shall be paid without prejudice to the right of Beneficiary to collect any other amounts provided to be paid or to declare a default hereunder.

5.13 Hazardous Waste.

a. Grantor represents and warrants to Beneficiary that to the best of Grantor's knowledge, after due and diligent inquiry, no hazardous or toxic waste or substances are being stored on the Property or any adjacent property nor have any such waste or substances been stored or used on the Property or any adjacent property prior to Grantor's ownership, possession or control of the Property. Grantor agrees to provide written notice to Beneficiary immediately upon Grantor becoming aware that the Property or any adjacent property is being or has been contaminated with hazardous or toxic waste or substances. Grantor will not cause nor permit any activities on the Property which directly or indirectly could result in the Property or any other property becoming contaminated with hazardous or toxic waste or substances. For purposes of this Deed of Trust, the term "hazardous or toxic waste or substances" means any substance or material defined or designated as hazardous or toxic



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wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance or other similar term by any applicable federal, state or local statute, regulation or ordinance now or hereafter in effect.

b. Grantor covenants and agrees that in the event at any time there is discovered hazardous or toxic waste or substances on, in or under the Property or on, in or under any other property which becomes contaminated with hazardous or toxic waste or substances as a result of activities on or hazardous or toxic waste or substances from the Property, Beneficiary shall be permitted to incur and pay any and all costs and expenses necessary or reasonably required to perform site tests and to completely clean-up said hazardous or toxic waste or substances, whether or not the clean-up is required by any governmental authority, and which tests and clean-up shall not require prior notice to Grantor and all such costs and expenses shall be repaid to Beneficiary by Grantor. Grantor hereby gives Beneficiary and its agent(s) the unrestricted right to enter the Property at any time to perform site tests for hazardous or toxic waste or substances and to clean-up said hazardous or toxic waste or substances.

5.14 Compliance with Americans With Disabilities Act. Grantor represents and warrants to Beneficiary that Grantor has not and will not cause nor permit any activities on the Property which directly or indirectly could result in the violation of the Americans With Disabilities Act of 1990 (Pub. L. 101-336), 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611, and any and all regulations thereunder and any similar state or local laws, regulations or ordinances ("ADA") with respect to the Property.

a. Grantor acknowledges that, as between it and Beneficiary, it will be solely responsible for compliance with the ADA regarding the Property. Grantor's obligations under this paragraph are unconditional and shall not be limited by any nonrecourse or other limitations of liability provided for in the Loan Instruments.

b. In the event Grantor shall, at any time, be or have been in default under the Note, this Deed of Trust, or under the Loan Instruments, or in the event Beneficiary shall have reasonable cause to believe that Grantor has breached the warranties herein, or in the event there is otherwise reasonable cause to believe that there has or may have been a violation of ADA, then Beneficiary, at Grantor's sole expense, shall have the right, but not the obligation, to enter upon the Property, either by itself or through an agent, for the purpose of conducting a compliance audit or assessment of the Property. The costs of such audit or assessment shall be payable by Grantor to Beneficiary on demand, and shall bear interest at the Note rate, as modified. It is expressly agreed and understood by Grantor that the occurrence of a default, or the cause to believe a violation of ADA has occurred, shall be deemed to increase Beneficiary's risk hereunder, thereby creating a need for Beneficiary to have the information to be contained in such audit or assessment.

5.15 Additional Collateral, Cross Default and Cross Collateralization. Grantor is related to two other sister entities which are also taking out loans with Beneficiary and are secured by Deeds of Trust encumbering real property as follows:

<u>Sister Entity</u>	<u>Property Location</u>	<u>Loan Amount</u>
HP Burlington Partners, LLC	Skagit County, Washington	\$6,150,000.00
HP Oak Harbor Partners, LLC	Island County, Washington	\$5,400,000.00


The sister entities will be executing promissory notes (the "Other Notes") and granting Beneficiary deeds of trust on their respective real estate (the "Other Deeds of Trust"). The Other Deeds of Trust shall also secure the performance of each and every agreement of Grantor under this Deed of Trust, and Grantor hereby pledges the real property described in Exhibit "A" as additional collateral for the Other Notes and Other Deeds of Trust. In the event of a default in the performance of any provision of either the Other Deeds of Trust or this Deed of Trust or the promissory notes evidencing Grantor's or any sister entity's indebtedness to Beneficiary, Beneficiary may at its option declare the entire unpaid principal balance of the Notes or any of them, and all accrued interest thereon immediately due and payable. It is further expressly agreed that the Other Deeds of Trust shall secure, in addition to the debt evidenced by the Other Notes, the liabilities under Grantor's Note executed concurrently herewith and the security instruments securing it, and any other liability or liabilities of Grantor to Beneficiary, now due or to become due, or which may hereafter be contracted by virtue of advances, disbursements, payments, charges or costs made or incurred by Beneficiary under the terms of the Loan Instruments.

5.16 Time of Essence. The parties hereto agree that time is of the essence and that all obligations hereunder shall be timely performed on the dates on which complete performance is specified according to the provisions of this agreement.

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust as of the day and year first above written.

GRANTOR:

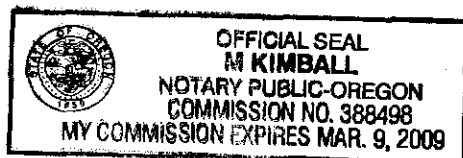
HP HEART PARTNERS, LLC,  
a Washington limited liability company

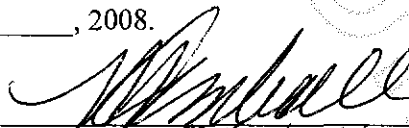
By   
Gregory A. Roderick, Member and Manager

State of Oregon )  
County of Multnomah ) ss.

I certify that I know or have satisfactory evidence that Gregory A. Roderick is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Member and Manager of HP Heart Partners, LLC, to be the free and voluntary act of such party, for the uses and purposes mentioned in the instrument.

DATED: 3/6/08, 2008.



  
Print Name: M Kimball  
Notary Public in and for the State  
of Oregon, residing at Beaverton OR  
My appointment expires: 3/9/09



## EXHIBIT "A"

Lot 1, of Burlington Short Plat No. BURL-1-95, as approved March 28, 1995, and recorded April 20, 1995, in Volume 11 of Short Plats pages 194 and 195, under Auditor's File No. 9504200032, records of Skagit County, Washington, being a portion of the North 1/2 of Tract 50, "Plat of the Burlington Acreage Property", according to the plat thereof recorded in Volume 1 of Plats, page 49, records of Skagit County, Washington.   
 \* OF THE WEST 1/2

Together with an easement for ingress, egress, utilities and parking as established by instrument recorded under Auditor's File No. 9903020075 and amended by instrument recorded on August 16, 2006 under Auditor's File No. 200608160154.

Also together with an easement for landscaping and utilities as established by instrument recorded under Auditor's File No. 200005180001, records of Skagit County, Washington.



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## EXHIBIT "B"

### Permitted exceptions:

1. Future general property and special taxes and assessments.  
Tax Parcel No.: 3867-000-050-2300/P109266
2. Matters disclosed in the record of survey recorded December 4, 1992 under recording no. 9212040024.
3. Restrictions and easements shown on the plat of BURL-1-95, recorded April 20, 1995 as Instrument No. 9504200032.
4. The terms and provisions contained in the document entitled "Storm Drainage Facilities and Reimbursement of Costs by Subsequent Users" recorded April 2, 1997 as Instrument No. 9704020107 of Official Records.
5. An easement for access, utilities and sidewalk and incidental purposes, recorded March 2, 1999 as Recording No. 9903020075 of Official Records.  
In favor of: Manor Properties II, LLC/Norris Place Limited Partnership  
Document(s) declaring modifications thereof recorded August 16, 2006 as Instrument No. 200608160154 of Official Records.
6. The terms and provisions contained in the document entitled "MDU Broadband Service Agreement" recorded April 9, 2001 as Instrument No. 200104090098 of Official Records.
7. An easement for broadband communications system and incidental purposes, recorded September 14, 2005 as Recording No. 200509140026 of Official Records.  
In favor of: Where the Heart is at Burlington, LLC



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