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Skagit County Auditor

2/2/2010 Page 1 of 28 1:26PM

Shearman & Sterling LLP  
599 Lexington Avenue  
New York, New York 10022-6069  
Attention: Malcolm K. Montgomery, Esq.  
File #07664-00137

CHICAGO TITLE CO.

020004413

Document title(s): **Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing (Washington)**

Reference number(s) of document(s) assigned or released (if applicable): N/A

Grantor(s): **PPR CASCADE LLC**, a Delaware limited liability company

Grantee(s): **ROYAL BANK OF CANADA**, as collateral agent for the Secured Parties under the Term Loan Agreement dated August 21, 2009 (Beneficiary)

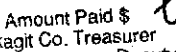
**LAWYERS TITLE INSURANCE CORPORATION**, a Nebraska corporation (Trustee)

Legal description (abbreviated): Lots 1-6, Cascade Mall Binding Site Plan

SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX  
Assessor's Tax Parcel Numbers:

- Lot 1 of Parcel A: 340406-4-001-0126
- Lot 2 of Parcel A: 340406-4-001-0225
- Lot 3 of Parcel A: 340406-4-001-0324
- Lot 4 of Parcel A: 340406-4-001-0423
- Portion of Lot 6 of Parcel A: 340406-4-001-0019
- Portion of Lot 6 of Parcel A: 340406-4-001-0900

FEB 02 2010

Amount Paid \$  
By  Skagit Co. Treasurer  
Deputy

**THE SECURED PARTY (BENEFICIARY) DESIRES THIS FIXTURE FILING TO BE INDEXED AGAINST THE RECORD OWNER OF THE REAL ESTATE DESCRIBED HEREIN.**

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

**THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (WASHINGTON)** (this "*Deed of Trust*") is dated as of February 1, 2010 by and from **PPR CASCADE LLC**, a Delaware limited liability company ("*Grantor*"), with an address at c/o The Macerich Company, 401 Wilshire Boulevard, Suite 700, Santa Monica, California 90401 to **LAWYERS TITLE INSURANCE CORPORATION**, a Nebraska corporation ("*Trustee*"), with an address at 600 University Street, #1518, Seattle, WA 98101, for the benefit of **ROYAL BANK OF CANADA**, as collateral agent (in such capacity, together with any successor collateral agent appointed pursuant to Article VIII of the Loan Agreement (defined below) "*Agent*") for the Secured Parties as defined in the Loan Agreement, having an address at 200 Bay Street, 12<sup>th</sup> Floor, South Tower, Toronto, Ontario M5J 2J5 (Agent, together with its successors and assigns, "*Beneficiary*").

**ARTICLE 1  
DEFINITIONS**

**Section 1.1 Definitions.** All capitalized terms used herein without definition shall have the respective meanings ascribed to them in that certain Term Loan Agreement dated as of August 21, 2009, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time (the "*Loan Agreement*"), among Pacific Premier Retail Trust, a Maryland real estate investment trust (the "*Borrower*"), the Lenders party thereto, the Subsidiary Guarantors party thereto (including, without limitation, Grantor), Agent, and the other Secured Parties identified therein. As used herein, the following terms shall have the following meanings:

(a) "*Event of Default*": An Event of Default under and as defined in the Loan Agreement.

(b) "*Guaranty*": That certain guaranty provided pursuant to Article VII of the Loan Agreement by and from Grantor and the other Subsidiary Guarantors referred to therein for the benefit of the Secured Parties dated as of even date herewith, as the same may hereafter be amended, amended and restated, supplemented or otherwise modified from time to time.

(c) "*Indebtedness*": (1) All indebtedness of Grantor to Beneficiary or any of the other Secured Parties under the Loan Agreement or any other Loan Document to which Grantor is a party, including, without limitation (except as otherwise set forth in Section 7.01(b) of the Loan Agreement), the sum of all (a) principal, interest and other amounts owing under or evidenced or secured by the Loan Documents, (b) principal, interest and other amounts which may hereafter be lent by Beneficiary or any of the other Secured Parties under or in connection with the Loan Agreement or any of the other Loan Documents, whether evidenced by a promissory note or other instrument which, by its terms, is secured hereby, and (c) obligations and liabilities of any nature now or hereafter existing under or arising in connection with other extensions of credit under the Loan Agreement or any of the other Loan Documents and reimbursement obligations in respect thereof, together with interest and other amounts payable with respect thereto, and (2) all other indebtedness, obligations and liabilities now or hereafter existing of any kind of Grantor to any of the Secured Parties under documents which recite that they are intended to be secured by this Deed of Trust. The Indebtedness secured hereby includes, without limitation, all interest and expenses accruing after the commencement by or against Grantor or any of its affiliates of a

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proceeding under the Bankruptcy Code (defined below) or any similar law for the relief of debtors. This Deed of Trust secures all Advances under the Loan Agreement.

(d) **"Mortgaged Property"**: The fee interest in the real property described in Exhibit A attached hereto and incorporated herein by this reference, together with any greater estate therein as hereafter may be acquired by Grantor (the **"Land"**), and all of Grantor's right, title and interest now or hereafter acquired in and to (1) all improvements now owned or hereafter acquired by Grantor, now or at any time situated, placed or constructed upon the Land (the **"Improvements"**); the Land and Improvements are collectively referred to as the **"Premises"**), (2) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Grantor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements, and all equipment, inventory and other goods (including, without limitation, all partitions, appliances, furniture, furnishings, machinery, elevators, boilers, building materials, computers and software, window coverings and floor coverings and other property now or in the future attached, or installed in the Improvements and all replacements, repairs, additions, or substitutions to these items) in which Grantor now has or hereafter acquires any rights or any power to transfer rights and that are or are to become fixtures (as defined in the UCC, defined below) related to the Land (the **"Fixtures"**), (3) all goods, accounts, inventory, general intangibles, instruments, documents, contract rights and chattel paper, including all such items as defined in the UCC, now owned or hereafter acquired by Grantor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Premises (the **"Personalty"**), (4) all reserves, escrows or impounds required under the Loan Agreement or any of the other Loan Documents and all deposit accounts maintained by Grantor with respect to the Mortgaged Property (the **"Deposit Accounts"**), (5) all leases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits, including, without limitation, all rights, easements, title, interest, benefits, privileges and franchises of Grantor in, to, under, or arising from any reciprocal easement agreements affecting the Mortgaged Property (the **"Leases"**), (6) all of the rents, revenues, royalties, income, proceeds, profits, accounts receivable, security and other types of deposits, and other benefits paid or payable by parties to the Leases for using, leasing, licensing possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property, including, without limitation, all payments, rights and claims for payments under or in respect of any reciprocal easement agreements affecting the Mortgaged Property (the **"Rents"**), (7) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property (the **"Property Agreements"**), (8) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing and the reversion(s), remainder(s), and claims of Grantor with respect to such items, and the benefits of any existing or future conditions, covenants and restrictions affecting the Land, (9) all property tax refunds payable with respect to the Mortgaged Property (the **"Tax Refunds"**), (10) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the **"Proceeds"**), (11) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Grantor (the **"Insurance"**), and (12) all awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to any condemnation or other taking (or any purchase in lieu thereof) of all or any portion of the Land, Improvements, Fixtures or Personalty (the **"Condemnation**



*Awards*”). As used in this Deed of Trust, the term “Mortgaged Property” shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

(e) “*Obligations*”: All of the agreements, covenants, conditions, warranties, representations and other obligations of Grantor under the Loan Agreement and the other Loan Documents to which it is a party.

(f) “*Permitted Liens*”: Permitted Liens as defined in the Loan Agreement.

(g) “*Security Agreement*”: That certain Security Agreement by and from Grantor and the other grantors referred to therein to Agent and the other Secured Parties dated as of even date herewith, as the same may hereafter be amended, amended and restated, supplemented or otherwise modified from time to time.

(h) “*UCC*” or “*Uniform Commercial Code*”: The Uniform Commercial Code as in effect in the State of New York from time to time or, if pursuant to the Uniform Commercial Code as in effect in the State of New York from time to time, the creation, perfection and enforcement of any security interest granted under any Collateral Document is governed by the laws of a state other than the State of New York, then, as to the matter in question, the Uniform Commercial Code as in effect in that state from time to time.

## **ARTICLE 2**

### **GRANT**

**Section 2.1 Grant.** To secure the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, Grantor GRANTS, BARGAINS, ASSIGNS, SELLS, CONVEYS and CONFIRMS, to Trustee the Mortgaged Property, subject, however, only to the matters that are set forth on Exhibit B attached hereto (the “*Permitted Encumbrances*”) and to Permitted Liens, TO HAVE AND TO HOLD the Mortgaged Property, IN TRUST, WITH POWER OF SALE, and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Trustee.

## **ARTICLE 3**

### **WARRANTIES, REPRESENTATIONS AND COVENANTS**

Grantor warrants, represents and covenants to Beneficiary as follows:

**Section 3.1 Title to Mortgaged Property and Lien of this Instrument.** Grantor owns the Mortgaged Property free and clear of any liens, claims or interests, except the Permitted Encumbrances and the Permitted Liens. This Deed of Trust creates valid, enforceable first priority liens and security interests against the Mortgaged Property.

**Section 3.2 First Lien Status.** Grantor shall preserve and protect the first lien and security interest status of this Deed of Trust and the other Loan Documents. If any lien or security interest other than a Permitted Encumbrance or a Permitted Lien is asserted against the Mortgaged Property, Grantor shall promptly, and at its expense, (a) give Beneficiary a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the



requirements of the Loan Agreement (including the requirement of providing a bond or other security satisfactory to Beneficiary).

**Section 3.3 Payment and Performance.** Grantor shall pay the Indebtedness when due under the Loan Agreement and the other Loan Documents and shall perform the Obligations in full when they are required to be performed.

**Section 3.4 Replacement of Fixtures and Personalty.** Grantor shall not, without the prior written consent of Beneficiary, permit any of the Fixtures or Personalty owned or leased by Grantor to be removed at any time from the Land or Improvements, unless (i) the removed item is removed temporarily for maintenance and repair or is permitted to be removed by the Loan Agreement or (ii) such item has become obsolete or is no longer necessary to the operation of the Mortgaged Property. Notwithstanding anything to the contrary herein or in any other Loan Document, the removal of Fixtures or Personalty in accordance with this Section 3.4 is expressly permitted.

**Section 3.5 Inspection.** Grantor shall permit Beneficiary and the other Secured Parties and their respective agents, representatives and employees, upon reasonable prior notice to Grantor, to inspect the Mortgaged Property and all books and records of Grantor located thereon, and to conduct such environmental and engineering studies as Beneficiary or the other Secured Parties may require, provided that such inspections and studies shall not materially interfere with the use and operation of the Mortgaged Property.

**Section 3.6 Other Covenants.** All of the covenants in the Loan Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall be covenants running with the Land.

**Section 3.7 Insurance; Condemnation Awards and Insurance Proceeds.**

(a) Insurance. Grantor shall maintain or cause to be maintained, with financially sound and reputable insurers, insurance with respect to the Mortgaged Property in compliance with the requirements set forth on Schedule I attached hereto.

(b) Condemnation Awards. Grantor assigns all Condemnation Awards to Beneficiary and authorizes Beneficiary to collect and receive such Condemnation Awards and to give proper receipts and acquittances therefor, subject to the terms of the Loan Agreement and the applicable provisions of Schedule I attached hereto.

(c) Insurance Proceeds. Grantor assigns to Beneficiary all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property. Subject to the terms of the Loan Agreement and the applicable provisions of Schedule I attached hereto, Grantor authorizes Beneficiary to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Beneficiary, instead of to Grantor and Beneficiary jointly.



**ARTICLE 4**  
*[Intentionally Omitted]*

**ARTICLE 5**  
**DEFAULT AND FORECLOSURE**

**Section 5.1 Remedies.** Upon the occurrence and during the continuance of an Event of Default, Beneficiary may, at Beneficiary's election and by or through Trustee or otherwise, exercise any or all of the following rights, remedies and recourses:

(a) Acceleration. Subject to any provisions of the Loan Documents providing for the automatic acceleration of the Indebtedness upon the occurrence of certain Events of Default, declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Grantor), whereupon the same shall become immediately due and payable.

(b) Entry on Mortgaged Property. Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto or located thereon. If Grantor remains in possession of the Mortgaged Property following the occurrence and during the continuance of an Event of Default and without Beneficiary's prior written consent, Beneficiary may invoke any legal remedies to dispossess Grantor.

(c) Operation of Mortgaged Property. Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Beneficiary may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Beneficiary deems necessary or desirable), and apply all Rents and other amounts collected by Trustee or Beneficiary in connection therewith in accordance with the provisions of Section 5.7.

(d) Foreclosure and Sale. Institute proceedings for the complete foreclosure of this Deed of Trust by judicial action or by power of sale, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels as Beneficiary may determine. With respect to any notices required or permitted under the UCC, Grantor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings, power of sale, or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Grantor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Grantor, and against all other Persons claiming or to claim the property sold or any part thereof, by, through or under Grantor. Beneficiary or any of the other Secured Parties may be a purchaser at such sale. If Beneficiary or such other Secured Party is the highest bidder, Beneficiary or such other Secured Party may credit the portion of the purchase price that would be distributed to Beneficiary or such other Secured Party against the Indebtedness in lieu of paying cash. In the event this Deed of Trust is foreclosed by judicial action, appraisal of the Mortgaged Property is waived.

(e) Receiver. Make application to a court of competent jurisdiction for the appointment of a receiver of the Mortgaged Property. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged



Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 5.7.

(f) Other. Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity.

**Section 5.2 Separate Sales**. The Mortgaged Property may be sold in one or more parcels and in such manner and order as Trustee in its sole discretion may elect. The right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

**Section 5.3 Remedies Cumulative, Concurrent and Nonexclusive**. Trustee, Beneficiary and the other Secured Parties shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Grantor or others obligated under the Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Trustee, Beneficiary or such other Secured Party, as the case may be, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Trustee, Beneficiary or any other Secured Party in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

**Section 5.4 Release of and Resort to Collateral**. Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Loan Documents or their status as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Beneficiary may resort to any other security in such order and manner as Beneficiary may elect.

**Section 5.5 Waiver of Redemption, Notice and Marshalling of Assets**. To the fullest extent permitted by law, Grantor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Grantor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of any election by Trustee or Beneficiary to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

**Section 5.6 Discontinuance of Proceedings**. If Trustee, Beneficiary or any other Secured Party shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Trustee, Beneficiary or such other Secured Party, as the case may be, shall have the unqualified right to do so and, in such an event, Grantor, Trustee, Beneficiary and the other Secured Parties shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Trustee, Beneficiary and the other Secured Parties shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of



Trustee, Beneficiary or any other Secured Party thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

**Section 5.7 Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property by Beneficiary or Trustee, shall be applied by Beneficiary or Trustee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) trustee's and receiver's fees and expenses, including the repayment of the amounts evidenced by any receiver's certificates, (2) court costs, (3) attorneys' and accountants' fees and expenses, and (4) costs of advertisement;

(b) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Beneficiary in its sole discretion may determine; and

(c) the balance, if any, to the Persons legally entitled thereto.

**Section 5.8 Occupancy After Foreclosure.** Any sale of the Mortgaged Property or any part thereof in accordance with Section 5.1(d) will divest all right, title and interest of Grantor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Grantor retains possession of such property or any part thereof subsequent to such sale, Grantor will be considered a tenant at sufferance of the purchaser, and will, if Grantor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law.

**Section 5.9 Additional Advances and Disbursements; Costs of Enforcement.**

(a) Upon the occurrence and during the continuance of any Event of Default, Beneficiary and each of the other Secured Parties shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Grantor. All sums advanced and expenses incurred at any time by Beneficiary or any other Secured Party under this Section 5.9, or otherwise under this Deed of Trust or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the rate of interest that would be payable at such time on a Base Rate Advance pursuant to Section 2.06(b) of the Loan Agreement, and all such sums, together with interest thereon, shall be secured by this Deed of Trust.

(b) Grantor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Deed of Trust and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Deed of Trust and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Beneficiary in respect thereof, by litigation or otherwise.

**Section 5.10 No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 5, the assignment of the Rents and Leases under Article 6, the security interests under Article 7, nor any other remedies afforded to Beneficiary under the Loan Documents, at law or in equity shall cause Trustee, Beneficiary or any other Secured Party to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Trustee, Beneficiary or any other



Secured Party to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

**ARTICLE 6**  
**ASSIGNMENT OF RENTS AND LEASES**

**Section 6.1 Assignment.** In furtherance of and in addition to the assignment made by Grantor in Section 2.1 of this Deed of Trust, Grantor hereby absolutely and unconditionally assigns as security, sells, transfers and conveys to Trustee (for the benefit of Beneficiary) and to Beneficiary all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment intended as security and Assignee shall be entitled to all of the rights and benefits available under Rev. Code Wash. Chapter 7.28. So long as no Event of Default shall have occurred and be continuing, Grantor shall have a revocable license from Trustee and Beneficiary to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Obligations and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Obligations or solvency of Grantor, the license herein granted shall automatically expire and terminate, without notice to Grantor by Trustee or Beneficiary (any such notice being hereby expressly waived by Grantor to the extent permitted by applicable law). Upon the written waiver of all Events of Default then existing (following receipt of any requisite consents from the Required Lenders, or all Lenders, as required by the Loan Agreement), the license granted by this Section 6.1 shall (except to the extent expressly provided in such waiver) be automatically reinstated without further action of the parties.

**Section 6.2 Perfection Upon Recordation.** Grantor acknowledges that Beneficiary and Trustee have taken all actions necessary to obtain, and that upon recordation of this Deed of Trust Beneficiary and Trustee shall have, to the extent permitted under applicable law, a valid and fully perfected, first priority, present assignment of the Rents arising out of the Leases and all security for such Leases. Grantor acknowledges and agrees that upon recordation of this Deed of Trust Trustee's and Beneficiary's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Grantor and to the extent permitted under applicable law, all third parties, including, without limitation, any subsequently appointed trustee in any case under Title 11 of the United States Code (the "*Bankruptcy Code*"), without the necessity of commencing a foreclosure action with respect to this Deed of Trust, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

**Section 6.3 Bankruptcy Provisions.** Without limitation of the absolute nature of the assignment of the Rents hereunder, Grantor, Trustee and Beneficiary agree that (a) this Deed of Trust shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Deed of Trust extends to property of Grantor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

**Section 6.4 No Merger of Estates.** So long as part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the



Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Beneficiary, any tenant or any third party by purchase or otherwise.

## **ARTICLE 7** **SECURITY AGREEMENT**

**Section 7.1 Security Interest.** This Deed of Trust constitutes a “security agreement” on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards. To this end, Grantor grants to Beneficiary a first and prior security interest in the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance, Condemnation Awards and all other Mortgaged Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards sent to Grantor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Grantor. In the event of any conflict or inconsistency between the terms of this Deed of Trust and the terms of the Security Agreement with respect to the collateral covered both therein and herein, the Security Agreement shall control and govern to the extent of any such conflict or inconsistency.

**Section 7.2 Financing Statements.** Grantor shall prepare and deliver to Beneficiary such financing statements, and shall execute and deliver to Beneficiary such other documents, instruments and further assurances, in each case in form and substance satisfactory to Beneficiary, as Beneficiary may, from time to time, reasonably consider necessary to create, perfect and preserve Beneficiary’s security interest hereunder. Grantor hereby irrevocably authorizes Beneficiary to cause financing statements (and amendments thereto and continuations thereof) and any such documents, instruments and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Grantor represents and warrants to Beneficiary that Grantor’s jurisdiction of organization is the State of Delaware. After the date of this Deed of Trust, Grantor shall not change its name, type of organization, organizational identification number (if any), jurisdiction of organization or location (within the meaning of the UCC) without giving at least thirty (30) days’ prior written notice to Beneficiary.

**Section 7.3 Fixture Filing.** This Deed of Trust shall also constitute a “fixture filing” for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. The information provided in this Section 7.3 is provided so that this Deed of Trust shall comply with the requirements of the UCC for a mortgage instrument to be filed as a financing statement. Grantor is the “Debtor” and its name and mailing address are set forth in the preamble of this Deed of Trust immediately preceding Article 1. Beneficiary is the “Secured Party” and its name and mailing address from which information concerning the security interest granted herein may be obtained are also set forth in the preamble of this Deed of Trust immediately preceding Article 1. A statement describing the portion of the Mortgaged Property comprising the fixtures hereby secured is set forth in Section 1.1(c) of this Deed of Trust. Grantor represents and warrants to Beneficiary that Grantor is the record owner of the Mortgaged Property, the employer identification number of Grantor is 95-4725991 and the organizational identification number of Grantor is 3002837.



**ARTICLE 8**  
**CONCERNING THE TRUSTEE**

**Section 8.1 Certain Rights.** With the approval of Beneficiary, Trustee shall have the right to select, employ and consult with counsel. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. Trustee shall be entitled to reimbursement for actual, reasonable expenses incurred by it in the performance of its duties and to reasonable compensation for Trustee's services hereunder as shall be rendered. Grantor shall, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and indemnify, defend and save Trustee harmless against, all liability and reasonable expenses which may be incurred by it in the performance of its duties, including those arising from joint, concurrent, or comparative negligence of Trustee; *provided, however*, that Grantor shall not be liable under such indemnification to the extent such liability or expenses result solely from Trustee's gross negligence or willful misconduct. Grantor's obligations under this Section 8.1 shall not be reduced or impaired by principles of comparative or contributory negligence.

**Section 8.2 Retention of Money.** All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

**Section 8.3 Successor Trustees.** If Trustee or any successor Trustee shall die, resign or become disqualified from acting in the execution of this trust, or Beneficiary shall desire to appoint a substitute Trustee, Beneficiary shall have full power to appoint one or more substitute Trustees and, if preferred, several substitute Trustees in succession who shall succeed to all the estates, rights, powers and duties of Trustee. Such appointment may be executed by any authorized agent of Beneficiary and as so executed, such appointment shall be conclusively presumed to be executed with authority, valid and sufficient, without further proof of any action.

**Section 8.4 Perfection of Appointment.** Should any deed, conveyance or instrument of any nature be required from Grantor by any successor Trustee to more fully and certainly vest in and confirm to such successor Trustee such estates, rights, powers and duties, then, upon request by such Trustee, all such deeds, conveyances and instruments shall be made, executed, acknowledged and delivered and shall be caused to be recorded and/or filed by Grantor.

**Section 8.5 Trustee Liability.** In no event or circumstance shall Trustee or any substitute Trustee hereunder be personally liable under or as a result of this Deed of Trust, either as a result of any action by Trustee (or any substitute Trustee) in the exercise of the powers hereby granted or otherwise, except for its own gross negligence or willful misconduct.

**ARTICLE 9**  
**MISCELLANEOUS**

**Section 9.1 Notices.** Any notice required or permitted to be given under this Deed of Trust shall be given in accordance with Section 9.02 of the Loan Agreement.

**Section 9.2 Covenants Running with the Land.** All Obligations contained in this Deed of Trust are intended by Grantor, Beneficiary and Trustee to be, and shall be construed as,

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covenants running with the Land. As used herein, "Grantor" shall refer to the party named in the first paragraph of this Deed of Trust and to any subsequent owner of all or any portion of the Mortgaged Property. All Persons who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; *provided, however*, that no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary.

**Section 9.3 Attorney-in-Fact.** Grantor hereby irrevocably appoints Beneficiary as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, with full authority in the place and stead of Grantor and in the name of Grantor or otherwise (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, if Grantor shall fail to do so within ten (10) days after written request by Beneficiary, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the exercise of any power of sale contained herein or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards in favor of the grantee of any such deed and as may be necessary or desirable for such purpose (without representation or warranty of any kind), (c) to prepare and file or record financing statements and continuation statements, and to prepare, execute and file or record applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Mortgaged Property, and (d) after the occurrence and during the continuance of any Event of Default, to perform any obligation of Grantor hereunder; *provided, however*, that (1) Beneficiary shall not under any circumstances be obligated to perform any obligation of Grantor; (2) any sums advanced by Beneficiary in such performance shall be added to and included in the Indebtedness and shall bear interest at the highest rate at which interest is then computed on any portion of the Indebtedness; (3) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (4) Beneficiary shall not be liable to Grantor or any other person or entity for any failure to take any action which it is empowered to take under this Section 9.3.

**Section 9.4 Successors and Assigns.** This Deed of Trust shall be binding upon and inure to the benefit of Beneficiary, the other Secured Parties, Trustee and Grantor and their respective successors and assigns. Grantor shall not, without the prior written consent of Beneficiary, assign any rights, duties or obligations hereunder.

**Section 9.5 No Waiver.** Any failure by Beneficiary, the other Secured Parties or Trustee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Beneficiary, the other Secured Parties and Trustee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

**Section 9.6 Loan Agreement.** If any conflict or inconsistency exists between this Deed of Trust and the Loan Agreement, the Loan Agreement shall control and govern to the extent of any such conflict or inconsistency.



**Section 9.7 Release or Reconveyance.** Upon payment in full of the Indebtedness and performance in full of the Obligations or upon a sale or other disposition of the Mortgaged Property permitted by the Loan Agreement, Beneficiary, at Grantor's request and expense, shall release the liens and security interests created by this Deed of Trust or reconvey the Mortgaged Property to Grantor.

**Section 9.8 Waiver of Stay, Moratorium and Similar Rights.** Grantor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Deed of Trust or the Indebtedness or Obligations secured hereby, or any agreement between Grantor and Beneficiary or any rights or remedies of Trustee, Beneficiary or any other Secured Party.

**Section 9.9 Applicable Law.** Except to the extent set forth in the definition of "UCC" herein which shall govern with respect to those portions of the Mortgaged Property not comprising real estate or interests therein, the provisions of this Deed of Trust regarding the creation, perfection and enforcement of the liens and security interests herein granted shall be governed by and construed under the laws of the state in which the Mortgaged Property is located. All other provisions of this Deed of Trust shall be governed by the laws of the State of New York (including, without limitation, Section 5-1401 of the General Obligations Law of the State of New York).

**Section 9.10 Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

**Section 9.11 Severability.** If any provision of this Deed of Trust shall be held by any court of competent jurisdiction to be unlawful, void or unenforceable for any reason, such provision shall be deemed severable from and shall in no way affect the enforceability and validity of the remaining provisions of this Deed of Trust.

**Section 9.12 Entire Agreement.** This Deed of Trust and the other Loan Documents embody the entire agreement and understanding between Grantor and Beneficiary relating to the subject matter hereof and thereof and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

**Section 9.13 Beneficiary as Agent; Successor Agents.**

(a) Agent has been appointed to act as Agent hereunder by the other Secured Parties. Agent shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of the Mortgaged Property) in accordance with the terms of the Loan Agreement, any related agency agreement among Agent and the other Secured Parties (collectively, as amended, amended and restated, supplemented or otherwise modified or replaced from time to time, the "*Agency Documents*") and this Deed of Trust. Grantor and all other Persons shall be entitled to rely on releases, waivers, consents, approvals, notifications and other acts of Agent, without inquiry into the existence of required consents or approvals of the Secured Parties therefor.



(b) Beneficiary shall at all times be the same Person that is Agent under the Agency Documents. Written notice of resignation by Agent pursuant to the Agency Documents shall also constitute notice of resignation as Agent under this Deed of Trust. Removal of Agent pursuant to any provision of the Agency Documents shall also constitute removal as Agent under this Deed of Trust. Appointment of a successor Agent pursuant to the Agency Documents shall also constitute appointment of a successor Agent under this Deed of Trust. Upon the acceptance of any appointment as Agent by a successor Agent under the Agency Documents, that successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Agent as the Beneficiary under this Deed of Trust, and the retiring or removed Agent shall promptly (i) assign and transfer to such successor Agent all of its right, title and interest in and to this Deed of Trust and the Mortgaged Property, and (ii) execute and deliver to such successor Agent such assignments and amendments and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Agent of the liens and security interests created hereunder, whereupon such retiring or removed Agent shall be discharged from its duties and obligations under this Deed of Trust. After any retiring or removed Agent's resignation or removal hereunder as Agent, the provisions of this Deed of Trust and the Agency Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Deed of Trust while it was Agent hereunder.

**ARTICLE 10**  
**LOCAL LAW PROVISIONS**

**Section 10.1. Non-Agricultural Use.** The Premises are not used principally for agricultural or farming purposes, and Grantor so represents and warrants to Beneficiary and Trustee.

*[The remainder of this page has been intentionally left blank]*



IN WITNESS WHEREOF, Grantor has on the date set forth in the acknowledgement hereto, effective as of the date first above written, caused this instrument to be duly EXECUTED AND DELIVERED by authority duly given.

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

**GRANTOR:**

PPR CASCADE LLC,  
a Delaware limited liability company

By: Pacific Premier Retail Trust,  
a Maryland real estate investment trust,  
its sole member

By: \_\_\_\_\_  
Name: Scott Kingsmore  
Title: Senior Vice President

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



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Skagit County Auditor

# ACKNOWLEDGMENT

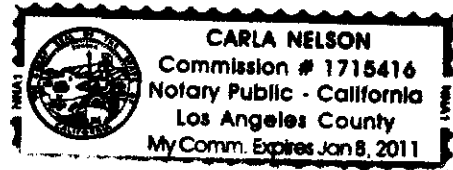
State of California )  
 ) SS  
County of Los Angeles )

On January 20, 2010, before me, Carla Nelson, notary public, personally appeared Scott Kingsmore, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Carla Nelson  
(Seal)



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Skagit County Auditor

**EXHIBIT A**

**LEGAL DESCRIPTION**

Legal Description of premises (Cascade Mall) located at 201 Cascade Mall Drive, Burlington, Washington 98233:

**PARCEL A:**

Lots 1, 2, 3, 4 and 6, CASCADE MALL BINDING SITE PLAN, recorded October 19, 1989 in Volume 8 of Short Plats, page 170, under Auditor's File No. 8910190065, records of Skagit County, Washington; being a portion of the Southeast Quarter of the Northeast Quarter and the East Half of the Southeast Quarter of Section 6, Township 34 North, Range 4 East of the Willamette Meridian,

Situated in Skagit County, Washington

**PARCEL B:**

Those certain non-exclusive easements as described in that certain Declaration of Restrictions and Grant of Easements by Pan Pacific Development (Cascade) Inc. recorded July 21, 1989 under Auditor's File No. 8907210046, records of Skagit County, Washington and amended by instruments recorded October 30, 1997 and May 8, 1998, under Auditor's File No. 9710300078 and 9805080072, records of Skagit County, Washington, respectively.

Situated in Skagit County, Washington



**EXHIBIT B**

**PERMITTED ENCUMBRANCES**

Those exceptions set forth in Schedule B of that certain policy of title insurance issued to Beneficiary by Lawyers Title Insurance Corporation on or about the date hereof pursuant to commitment order number 620004413.

UNOFFICIAL DOCUMENT



## SCHEDULE I

### **INSURANCE, CASUALTY AND CONDEMNATION REQUIREMENTS**

#### 1.1 Insurance.

1.1.1 Insurance Policies. (a) Grantor shall obtain and maintain, or cause to be maintained, insurance for Grantor and the Mortgaged Property providing at least the following coverages:

(i) all risk insurance on the Improvements and the personal property at the Mortgaged Property, including contingent liability from operation of building laws, demolition costs and increased cost of construction endorsements, in each case (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Deed of Trust shall mean actual replacement value (containing no exclusion for foundations, underground utilities and footings), but the amount shall in no event be less than the aggregate outstanding principal balance of the Facility; (B) containing an agreed amount endorsement (or its equivalent) with respect to the Improvements and personal property at the Mortgaged Property waiving all or containing no co-insurance provisions; (C) providing for no deductible in excess of One Hundred Thousand and No/100 Dollars (\$100,000) for all such insurance coverage, except for (1) windstorm coverage in which the deductible may not exceed five percent (5%) of the insured value of the Mortgaged Property (provided, however, that if Grantor provides Agent with evidence reasonably satisfactory to Agent that windstorm coverage is not available at commercially reasonable rates with such a deductible, Agent may, in its sole discretion, agree to permit an increase in such deductible) and (2) flood and earthquake coverage in which the deductible may not exceed five percent (5%) of the insured value of the Mortgaged Property for flood coverage (unless the amount of such deductible in excess of \$50,000 (not to exceed a maximum deductible of \$100,000) is fully insured against by excess coverage provided through the National Flood Insurance Program) and five percent (5%) of the replacement cost or two percent (2%) of the insured value for Mortgaged Property not located in California (subject to a minimum deductible of \$100,000) for earthquake coverage; and (D) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the Improvements or the use of the Mortgaged Property shall at any time constitute legal non-conforming structures or uses. In addition, Grantor shall obtain: (y) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area", flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of the Advances or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended or such greater amount as Agent shall require; and (z) earthquake insurance in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas as the Mortgaged Property or otherwise in amounts and in form and substance satisfactory to Agent in the event the Mortgaged Property is located in an area with a high degree of seismic activity, or if the probable maximum loss is greater than twenty percent (20%) provided that the insurance pursuant to clauses (y)



and (z) hereof shall be on terms consistent with the comprehensive all risk insurance policy required under this subsection (i).

(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Mortgaged Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit, excluding umbrella coverage, of not less than One Million and No/100 Dollars (\$1,000,000); and (B) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; and (4) blanket contractual liability for all customarily insurable contractual obligations;

(iii) business income insurance (A) with loss payable to Agent; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and personal property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of one (12) months from the date that the Mortgaged Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (D) in an amount equal to one hundred percent (100%) of the gross income (at the time of the loss) from the Mortgaged Property for a period of twelve (12) months from the date of loss (provided, however, that Grantor agrees that such twelve (12) month period shall, at the request of Agent, be extended to not more than twelve (24) months, to the extent Agent at any time, in its reasonable discretion, determines that such longer period(s) of coverage are available at commercially reasonable rates and are those which a prudent owner of similar property would purchase). The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Grantor's reasonable estimate of the gross income from the Mortgaged Property for the succeeding twelve (12) month, or greater, as applicable, period;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Mortgaged Property coverage form does not otherwise apply, (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above, (3) including permission to occupy the Mortgaged Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(v) workers' compensation, subject to the statutory limits of the state in which the Mortgaged Property is located, and employer's liability insurance with a limit of at least Five Hundred Thousand and No/100 Dollars (\$500,000) per accident and per disease per employee, and Five Hundred Thousand and No/100 Dollars (\$500,000) for disease aggregate in respect of any work or operations on or about the Mortgaged Property, or in connection with the Mortgaged Property or its operation (if applicable);



(vi) comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Agent on terms consistent with the commercial property insurance policy required under subsection (i) above;

(vii) pollution legal liability and clean-up protection in an amount of not less than \$5,000,000 with a sub-limit permitted for mold of \$2,000,000.

(viii) umbrella liability insurance in addition to primary coverage in an amount not less than Twenty-Five Million and No/100 Dollars (\$25,000,000) per occurrence on terms consistent with the commercial general liability insurance policy required under subsections (ii) above and (viii) below;

(ix) motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence, excluding umbrella coverage, of One Million and No/100 Dollars (\$1,000,000);

(x) so-called "host liquor liability" insurance or other liability insurance required in connection with the vicarious sale of alcoholic beverages;

(xi) insurance against employee dishonesty in an amount not less than \$1 million per loss and with a deductible not greater than Fifteen Thousand and No/100 Dollars (\$15,000); and

(xii) upon sixty (60) days' notice, such other reasonable insurance and in such reasonable amounts as Agent from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Mortgaged Property located in or around the region in which the Mortgaged Property is located.

The comprehensive all risk insurance and business income insurance policies required under subsections (i) and (iii) above shall be required to cover perils of terrorism and acts of terrorism for the maximum amount obtainable up to the amounts set forth in subsections (i) and (iii) above and with deductibles no greater than \$1,000,000. Notwithstanding the foregoing, if acts of terrorism or perils of terrorism or other similar acts or events are hereafter excluded from the policies required under subsections (i) and (iii) above, Grantor shall obtain an endorsement to such policy, or a separate policy from an insurance provider reasonably approved by Agent, insuring against all acts of terrorism and perils of terrorism and "fire following" (or, in the case of any period of time during which the Terrorism Risk Insurance Act of 2002 ("TRIA") or its successors, is in effect, insuring against all "certified acts of terrorism" as defined in TRIA and "fire following"), each in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Deed of Trust shall mean actual replacement value (containing no exclusion for costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, plus required business income coverage, but the amount shall in no event be less than the aggregate outstanding principal balance of the Facility. The endorsement or policy shall be in form and substance reasonably satisfactory to Agent. Notwithstanding the foregoing, Grantor's obligation to obtain and maintain terrorism coverage shall be limited to an expenditure of funds for premiums relating thereto of not more than one hundred and fifty percent (150%) of the portion of the all risk and business income insurance premiums allocated to terrorism coverage at the time terrorism coverage becomes an excluded risk.



(b) All insurance provided for in Section 1.1.1(a) above shall be obtained under valid and enforceable policies (collectively, the "**Policies**" or in the singular, the "**Policy**") and, to the extent not specified above, shall be subject to the reasonable approval of Agent as to deductibles, loss payees and insureds. Not less than ten (10) days prior to the expiration dates of the Policies theretofore furnished to Agent, certificates of insurance evidencing the Policies accompanied by evidence reasonably satisfactory to Agent of payment of the premiums then due thereunder (the "**Insurance Premiums**"), shall be delivered by Grantor to Agent.

(c) Any blanket insurance Policy shall specifically allocate to the Mortgaged Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Mortgaged Property in compliance with the provisions of Section 1.1.1(a) above.

(d) All Policies of insurance provided for or contemplated by Section 1.1.1(a) above, except for the Policy referenced in Section 1.1.1(a)(v), shall name Grantor as the insured and Agent and its successors and/or assigns as the additional insured, as its interests may appear, and the Policies referenced in Sections 1.1.1(a)(ii) and 1.1.1(a)(viii) above shall also name each other Secured Party and its successors and/or assigns as additional insureds, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a so-called New York standard lender's endorsement and loss payable clause in favor of and acceptable to Agent.

(e) All Policies of insurance provided for in Section 1.1.1(a) above, except for the Policies referenced in Section 1.1.1(a)(v) and (a)(viii), shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Grantor, or anyone acting for Grantor, or of any tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Agent or any Secured Party is concerned;

(ii) the Policy shall not be canceled without at least thirty (30) days' written notice to Agent and any other party named therein as an additional insured and, if obtainable by Grantor using commercially reasonable efforts, shall not be materially changed (other than to increase the coverage provided thereby) without such a thirty (30) day notice; and

(iii) Neither Agent nor any Secured Party shall be a co-insurer and they shall not be liable for any contribution or Insurance Premiums thereon or subject to any assessments thereunder.

(f) If at any time Agent is not in receipt of written evidence that all insurance required hereunder is in full force and effect and Grantor fails to provide the same within three (3) Business Days after request therefor, Agent shall have the right, without notice to Grantor, to take such action as Agent deems necessary to protect its interest in the Mortgaged Property, including, without limitation, the obtaining of such insurance coverage as Agent in its sole discretion deems appropriate and all premiums incurred by Agent in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Grantor to Agent upon demand and until paid shall be secured by this Deed of Trust and shall bear interest at the default interest rate specified in the Loan Agreement.

(g) In the event of foreclosure of this Deed of Trust or other transfer of title to the Mortgaged Property in extinguishment in whole or in part of the Facility, all right, title and interest of



Grantor in and to the Policies that are not blanket Policies then in force concerning the Mortgaged Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Agent or other transferee in the event of such other transfer of title.

1.1.2 Insurance Company. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the state in which the Mortgaged Property is located and shall be otherwise reasonably satisfactory to Agent, and carry an A.M. Best rating of at least AVIII. Notwithstanding the foregoing, Grantor shall be permitted to maintain the Policies with insurance companies which do not meet the foregoing requirements (an "**Otherwise Rated Insurer**"), provided Grantor obtains a "cut-through" endorsement (that is, an endorsement which permits recovery against the provider of such endorsement) with respect to any Otherwise Rated Insurer from an insurance company which meets the claims paying ability ratings required above.

## Section 1.2 Casualty and Condemnation.

1.2.1 Casualty. If the Mortgaged Property shall sustain the occurrence of damage or destruction to the Mortgaged Property, or any part thereof, by fire, flood, vandalism, windstorm, hurricane, earthquake, acts of terrorism or any other casualty (a "**Casualty**"), Grantor shall give prompt notice of such Casualty to Agent and, provided Agent makes or will make the insurance proceeds less (i) the cost, if any, to Agent of recovering the insurance proceeds including, without limitation, reasonable attorney's fees and expenses, and adjuster's fees, and (ii) any business income insurance proceeds received by Agent (the "**Net Proceeds**") available therefor (but irrespective of the sufficiency of the amount of such Net Proceeds for Restoration (as hereinafter defined)), shall promptly commence and diligently prosecute to completion the repair and restoration of the Mortgaged Property as nearly as possible to the condition the Mortgaged Property was in immediately prior to such Casualty (a "**Restoration**") and otherwise in accordance with Section 1.3 below, it being understood, however, that Grantor shall not be obligated to restore the Mortgaged Property to the precise condition of the Mortgaged Property prior to such Casualty provided the Mortgaged Property is restored, to the extent practicable, to be of at least equal value and of substantially the same character as prior to the Casualty. Grantor shall pay all costs of such Restoration whether or not such costs are covered by insurance. Agent may, but shall not be obligated to, make proof of loss if not made promptly by Grantor and, subject to the terms hereof, participate in any claim recovery. Grantor shall provide Agent with a copy of any and all claims for which the proceeds are expected to exceed the Restoration Threshold (as defined below), and diligently continuously pursue such claim with the Insurer in a manner, which shall maximize the amount and expedite the timing of such claim. Grantor shall provide Agent with a copy of all such documents related to the processing of such claim. Grantor shall continue to inform Agent as to the status of recovery of the Net Proceeds and shall provide Agent with all information reasonably requested by Agent in connection therewith. In the event of a Casualty where the loss does not exceed five percent (5%) of the Allocated Loan Amount for the applicable Mortgaged Property (the "**Restoration Threshold**"), Grantor may settle and adjust such claim; provided that (a) no Event of Default has occurred and is continuing and (b) such adjustment is carried out in a commercially reasonable and timely manner. In the event of a Casualty where the loss exceeds the Restoration Threshold or if an Event of Default then exists, Grantor may settle and adjust such claim only with the consent of Agent and Agent shall have the opportunity to participate, at Grantor's cost, in any such adjustments. Agent is hereby authorized and irrevocably appointed as attorney-in-fact, for Grantor coupled with an interest, to adjust or settle any claim(s) (i) if not adjusted or settled promptly by Grantor or (ii) if there has occurred an Event of Default. Notwithstanding any Casualty, Grantor shall continue to repay the aggregate outstanding principal amount of the Advances at the time and in the manner provided for its payment in the Loan Agreement and in this Deed of Trust.



1.2.2 Condemnation. Grantor shall give Agent prompt notice of any actual or threatened taking by any Governmental Authority (as hereinafter defined) of the Mortgaged Property or any part thereof through eminent domain or otherwise (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of such taking) (a "**Condemnation**") and shall deliver to Agent a copy of any and all papers served in connection with such proceedings. Provided no Event of Default has occurred and is continuing, in the event of a Condemnation where the amount of the taking does not exceed the Restoration Threshold, Grantor may settle and compromise such Condemnation; provided that the same is effected in a commercially reasonable and timely manner. In the event of a Condemnation where the amount of the taking exceeds the Restoration Threshold or if an Event of Default then exists, Grantor may settle and compromise the Condemnation only with the consent of Agent and Agent shall have the opportunity to participate, at Grantor's cost, in any litigation and settlement discussions in respect thereof and Grantor shall from time to time deliver to Agent all instruments requested by Agent to permit such participation. Agent is hereby authorized and irrevocably appointed as attorney-in-fact for Grantor coupled with an interest to sell or compromise or litigate if the Condemnation (i) is not settled, compromised or litigated promptly by Grantor or (ii) if there has occurred an Event of Default. Grantor shall, at its expense, diligently prosecute any such proceedings, and shall consult with Agent, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any Condemnation, Grantor shall continue to repay the aggregate outstanding principal amount of the Advances at the time and in the manner provided for its payment in the Loan Agreement. Agent shall not be limited to the interest paid on the Condemnation Award by any nation or government, any state or other political subdivision thereof, and any Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to such government ("**Governmental Authority**"), but shall be entitled to receive out of the Condemnation Award interest at the rate or rates provided herein or in the Loan Agreement. If the Mortgaged Property or any portion thereof is taken by Governmental Authority, Grantor shall promptly commence and diligently prosecute the Restoration of the Mortgaged Property and otherwise comply with the provisions of Section 1.3 below. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Agent of the Condemnation Award, Agent shall have the right, whether or not a deficiency judgment on the Notes shall have been sought, recovered or denied, to receive the Condemnation Award, or a portion thereof sufficient to repay the aggregate outstanding principal amount of the Advances.

1.2.3 Casualty Proceeds. Notwithstanding anything to the contrary herein, provided no Event of Default has occurred and is continuing, Grantor has the right to make, settle and collect upon claims with respect to business interruption and rental loss insurance, and Grantor may utilize any proceeds received with respect thereto as it determines is appropriate in the operation of its business. In the event that the insurance company does not disburse such proceeds directly into the applicable Clearing Account, Grantor agrees to cause the same to be deposited into the applicable Clearing Account promptly upon receipt thereof. Provided no Event of Default has occurred and is continuing, if Agent shall receive any such proceeds, Agent shall deposit such proceeds directly into the applicable Clearing Account within five (5) Business Days of Agent's receipt thereof.

### Section 1.3 Delivery of Net Proceeds.

1.3.1 Minor Casualty or Condemnation. Notwithstanding anything to the contrary herein, provided no Event of Default has occurred and is continuing, if a Casualty or Condemnation has occurred to the Mortgaged Property and the Net Proceeds shall be less than the Restoration Threshold and the costs of completing the Restoration shall be less than the Restoration Threshold, the Net Proceeds will be disbursed directly to Grantor to be used for the Restoration of the Mortgaged Property. Promptly after receipt of the Net Proceeds, Grantor shall commence and satisfactorily complete with due diligence the Restoration in accordance with the terms of this Deed of Trust. If any Net Proceeds are received by



Grantor and may be retained by Grantor pursuant to the terms hereof, such Net Proceeds shall, until completion of the Restoration, be held in trust for Agent and shall be segregated from other funds of Grantor to be used to pay for the cost of Restoration in accordance with the terms hereof. To the extent that a Restoration is undertaken, Grantor shall have (A) commenced with such Restoration within one hundred and twenty (120) days of the date of the Casualty, (B) thereafter proceeded continuously and diligently with the Restoration and (C) completed such Restoration on or before the earliest to occur of (i) the date which is three (3) months prior to the Maturity Date (as the same may be extended), (ii) a date which is eighteen (18) months after such Casualty, and (iii) such time as may be required under applicable law in order to repair and restore the Mortgaged Property as required hereby.

1.3.2 Major Casualty or Condemnation. (a) If a Casualty or Condemnation has occurred to the Mortgaged Property and the Net Proceeds are equal to or greater than the Restoration Threshold or the costs of completing the Restoration is equal to or greater than the Restoration Threshold, Agent shall make the Net Proceeds available for the Restoration, provided that each of the following conditions are met:

- (i) no Event of Default shall have occurred and be continuing;
- (ii) (A) in the event the Net Proceeds are insurance Proceeds, less than twenty-five percent (25%) of the total floor area of the Improvements at the Mortgaged Property has been damaged, destroyed or rendered unusable as a result of such Casualty or (B) in the event the Net Proceeds are Condemnation Awards, less than ten percent (10%) of the land constituting the Mortgaged Property is taken, and such land is located along the perimeter or periphery of the Mortgaged Property, and no material portion of the Improvements is the subject of the Condemnation;
- (iii) There shall be a sufficient number of Leases which remain in full force and effect during and after the completion of the Restoration without abatement of rent beyond the time required for Restoration, notwithstanding the Casualty or Condemnation, such that the Underwritten Property Debt Service Coverage Ratio shall at all times during and following the Restoration equal or exceed the Underwritten Property Debt Service Coverage Ratio immediately prior to the Casualty or Condemnation (with credit given to business interruption insurance proceeds);
- (iv) Grantor shall commence the Restoration as soon as reasonably practicable (but in no event later than one hundred and twenty (120) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion;
- (v) Agent shall be satisfied that any operating deficits and all payments of principal and interest under the Notes will be paid during the period required for Restoration from (A) the Net Proceeds, or (B) other funds of Grantor (including business interruption proceeds);
- (vi) Agent shall be satisfied that the Restoration will be completed on or before the earliest to occur of (A) the date three (3) months prior to the Maturity Date (as the same may be extended), (B) the earliest date required for such completion under the terms of any Lease required to remain in effect pursuant to the provisions of subparagraph (iii) above, (C) such time as may be required under applicable law in order to repair and restore the Mortgaged Property to the condition it was in immediately prior



to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable or (D) the expiration of the insurance coverage referred to in Section 1.1.1(a)(iii) above;

(vii) the Mortgaged Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable law;

(viii) the Restoration shall be done and completed by Grantor in an expeditious and diligent fashion and in compliance with all applicable law; and

(ix) such Casualty or Condemnation, as applicable, does not result in the loss of access to the Mortgaged Property or the related Improvements.

(b) Except as otherwise provided herein, the Net Proceeds shall be paid directly to Agent and held by Agent in an interest-bearing account and, until disbursed in accordance with the provisions of this Section 1.3.2, shall constitute additional security for the Facility. The Net Proceeds shall be disbursed by Agent to, or as directed by, Grantor from time to time during the course of the Restoration, upon receipt of evidence reasonably satisfactory to Agent that (A) all requirements set forth in Section 1.3.2(a) have been satisfied, (B) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with that portion of the Restoration for which such disbursement was requested have been paid for in full, and (C) there exist no notices of pendency, stop orders, mechanic's or material man's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Mortgaged Property arising out of the Restoration which have not either been fully bonded to the reasonable satisfaction of Agent and discharged of record or in the alternative fully insured to the satisfaction of Agent by the title company issuing the Mortgage Policy. Notwithstanding the foregoing or anything to the contrary herein or in any Loan Document, provided no Event of Default has occurred and is continuing, if any reciprocal easement agreement, ground lease or Major Lease requires Grantor to restore any portion of the Mortgaged Property or to make available to the counterparty insurance Proceeds or Condemnation Awards, then Agent shall release to Grantor any such insurance Proceeds or Condemnation Awards received by it for Grantor's application to such use.

(c) All plans and specifications required in connection with any Restoration where the proceeds are greater than the Restoration Threshold shall be subject to prior approval of Agent and an independent architect selected by Agent (the "*Casualty Consultant*"), such approval not to be unreasonably withheld or delayed. The plans and specifications shall require that the Restoration be completed in a first-class workmanlike manner at least equivalent to the quality and character of the original work in the Improvements (provided, however, that in the case of a partial Condemnation, the Restoration shall be done to the extent reasonably practicable after taking into account the consequences of such partial Condemnation), so that upon completion thereof, the Mortgaged Property shall be at least equal in value and general utility to the Mortgaged Property prior to the damage or destruction; it being understood, however, that Grantor shall not be obligated to restore the Mortgaged Property to the precise condition of the Mortgaged Property prior to such Casualty provided the Mortgaged Property is restored, to the extent practicable, to be of at least equal value and of substantially the same character as prior to the Casualty. Provided Agent makes or will make the Net Proceeds available therefor, Grantor shall restore all Improvements such that when they are fully restored and/or repaired, such Improvements and their contemplated use fully comply with all applicable material applicable law. The identity of the contractors, subcontractors and material men engaged in any Restoration where the proceeds are greater than the Restoration Threshold, as well as the contracts under which they have been engaged, shall be subject to approval of Agent and the Casualty Consultant, such approval not to be unreasonably withheld



or delayed. All reasonable costs and expenses incurred by Agent in connection with recovering, holding and advancing the Net Proceeds for the Restoration including, without limitation, reasonable attorneys' fees and disbursements and the Casualty Consultant's fees and disbursements, shall be paid by Grantor.

(d) In no event shall Agent be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, less the Casualty Retainage. The term "Casualty Retainage" shall mean, as to each contractor, subcontractor or material man engaged in the Restoration, an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until the Restoration has been fifty percent (50%) completed, such fifty percent (50%) completion to be certified by the Casualty Consultant, it being understood that upon such 50% completion of such Restoration, such Casualty Retainage would be reduced to an amount equal to five percent (5%) of the costs actually incurred for work in place as part of such Restoration. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 1.3.2(d), be less than the amount actually held back by Grantor from contractors, subcontractors and material men engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Agent that the Restoration has been completed in accordance with the provisions of this Section 1.3.2(d) and that all approvals necessary for the re-occupancy and use of the Mortgaged Property have been obtained from all appropriate Governmental Authorities, and Agent receives evidence reasonably satisfactory to Agent that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; provided, however, that Agent will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or material man engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Agent that the contractor, subcontractor or material man has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or material man's contract, the contractor, subcontractor or material man delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or material man as may be reasonably requested by Agent or by the title company issuing the Mortgage Policy, and Agent receives an endorsement to the Mortgage Policy insuring the continued priority of the lien of the Mortgage and evidence of payment of any premium payable for such endorsement. If required by Agent, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or material man. This clause (d) shall only apply to Casualties or Condemnations where the insurance Proceeds or Condemnation Awards exceed the Restoration Threshold.

(e) Agent shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(f) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Agent in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Grantor shall either (1) pay the deficiency (the "*Net Proceeds Deficiency*") or (2) deposit the Net Proceeds Deficiency with Agent before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Agent shall be held by Agent and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 1.3.2 shall constitute additional security for the Facility.

(g) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Agent after the Casualty Consultant certifies to Agent that the



Restoration has been completed in accordance with the provisions of this Section 1.3.2, and the receipt by Agent of evidence reasonably satisfactory to Agent that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Agent to Grantor, provided no Event of Default shall have occurred and shall be continuing under any of the Loan Documents; provided, however, the amount of such excess returned to Grantor in the case of a Condemnation shall not exceed the amount of Net Proceeds Deficiency deposited by Grantor with the balance being applied to repay the aggregate outstanding principal amount of the Advances in the manner provided for in subsection 1.3.2(h).

(h) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Grantor as excess Net Proceeds pursuant to Section 1.3.2(g), other than those which Grantor is entitled to receive and/or collect directly in accordance herewith, may be retained and applied by Agent toward the payment of the aggregate outstanding principal amount of the Advances, whether or not then due and payable, in such order, priority and proportions as Agent in its sole discretion shall deem proper, or, at the discretion of Agent, the same may be paid, either in whole or in part, to Grantor for such purposes as Agent shall designate.

