



201210310002
Skagit County Auditor

10/31/2012 Page 1 of 53 8:53AM

WHEN RECORDED RETURN TO:

McGuireWoods LLP
201 North Tryon Street
Charlotte, NC 28202
Attn: M.L. Evans

CHICAGO TITLE
620016801

DOCUMENT TITLE(S):

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

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

200707310160

GRANTORS:

NORTHWEST RESTAURANTS, INC., a Washington corporation
NORTHWEST RESTAURANTS OREGON, INC., an Oregon corporation
SPOKANE, INC. a Washington corporation

GRANTEE(S):

BANK OF AMERICA, N.A.. as ADMINISTRATIVE AGENT
CHICAGO TITLE COMPANY, TRUSTEE

ABBREVIATED LEGAL DESCRIPTION:

Lots 1-8 & 16-20, TGW, vacated alley, Blk 46, Ana.

TAX PARCEL NUMBER(S):

P55158 and P117487

Store No. E080-077 f/k/a/ 80
1702 Commercial Avenue, Anacortes, WA (Skagit Co.)

IN RE: WASHINGTON DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (LEASEHOLD) DATED JULY 19, 2007 AND RECORDED AS INSTRUMENT NUMBER 200707310160 WITH THE SKAGIT COUNTY RECORDER

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

Grantor: **NORTHWEST RESTAURANTS, INC. - Organizational ID # 601645120**
 NORTHWEST RESTAURANTS OREGON, INC. - Organizational ID #636879-83
 SPOKANE, INC. - Organizational ID #600554286

Grantee #1 (Trustee): **CHICAGO TITLE COMPANY**

Grantee #2 (Beneficiary): **BANK OF AMERICA, N.A.. as ADMINISTRATIVE AGENT**

THIS AMENDED AND RESTATED WASHINGTON DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (LEASEHOLD) (this "Deed of Trust" or "Instrument") is made this 30th day of October, 2012, collectively by **NORTHWEST RESTAURANTS, INC.**, a Washington corporation, **NORTHWEST RESTAURANTS OREGON, INC.**, an Oregon corporation, and **SPOKANE, INC.**, a Washington corporation, each having an address of 17331 135th Avenue NE, Suite B, Woodinville, WA 98072 (hereinafter collectively called "Grantor") to **CHICAGO TITLE COMPANY**, having an address of 425 Commercial Street, Mount Vernon, WA 98273 or any successor or substitute appointed and designated as herein provided from time to time acting hereunder as trustee (hereinafter called "Trustee") for the benefit of **BANK OF AMERICA, N.A.**, a national banking association, in its capacity as Administrative Agent for the Secured Parties (as hereinafter defined) under the Credit Agreement (as hereinafter defined) (in such capacity and together with any successor Administrative Agent under the Credit Agreement and such Administrative Agent's successors, "Agent"), having an address of Bank of America, N.A., Mail Code: NC1-002-1536, 101 South Tryon Street, Charlotte, NC 28255-0001. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement as hereinafter defined.

WHEREAS, the Borrowers (as hereinafter defined), the lenders party thereto and Bank of America, N.A., as Administrative Agent thereunder, are parties to that certain Credit Agreement dated as of July 19, 2007 (as amended prior to the date hereof, the "Existing Credit Agreement");

WHEREAS, to secure the obligations under the Existing Credit Agreement, Grantor executed and delivered to Transnation Title Insurance Company, as trustee (the "Original Trustee"), for the benefit of the Agent that certain Washington Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (Leasehold) dated July 19, 2007 and



recorded in the local public registry as Instrument No. 200707310160 (the "Existing Deed of Trust");

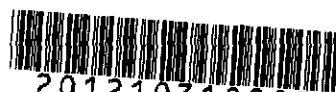
WHEREAS, the Borrowers, the lenders from time to time party thereto (the "Lenders") and Bank of America, N.A., as Administrative Agent and Swing Line Lender have entered into that certain Amended and Restated Credit Agreement dated as of the date hereof to amend and restate the Existing Credit Agreement (the Existing Credit Agreement, as amended and restated by the Amended and Restated Credit Agreement and as it may hereafter be amended, modified, supplemented or amended and restated from time to time, the "Credit Agreement") which amendments are set forth therein and include, without limitation, an extension of the maturity date (the "Amendment and Restatement");

WHEREAS, by its execution and delivery of this Deed of Trust, the Agent hereby removes the Original Trustee and substitutes Trustee in the place of the Original Trustee as trustee under this Instrument, and Trustee shall have and be vested with all of the title, estate, powers, rights and duties of the Trustee as if originally designated as such Trustee; and

WHEREAS, as a condition to the foregoing, Grantor and the Agent have agreed to amend and restate each of the Mortgages entered into with the Existing Credit Agreement (including the Existing Deed of Trust), as follows:

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and in order to facilitate the Amendment and Restatement and otherwise to effectuate the desires of the Grantor along with the Borrower, the Grantor and the Agent hereby agree that this Amended and Restated Washington Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (Leasehold) amends and restates in its entirety in the manner as set forth below the Existing Deed of Trust and the terms, conditions and provisions hereof shall hereafter govern the rights and obligations of Grantor, Trustee and Agent thereunder, which shall be as follows:

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THIS DEED OF TRUST is given by GRANTOR to TRUSTEE for the benefit of AGENT.

ARTICLE 1

Definitions; Granting Clauses; Secured Indebtedness

Section 1.1. Principal Secured. This Deed of Trust secures the aggregate principal amount of up to Sixty-Two Million and No/100 Dollars (\$62,000,000.00) owed under the Loan Documents and the secured indebtedness (as defined in Section 1.5 below), plus such other amounts as described in Section 1.5, plus such additional amounts as Agent may from time to time advance pursuant to the terms and conditions of this Deed of Trust or for the protection of the lien of this Deed of Trust, including, without limitation, advances for taxes, liens, assessments, insurance premiums, repairs, costs and other obligations, together with interest thereon.

Section 1.2. Definitions. (a) In addition to other terms defined herein, each of the following terms shall have the meaning assigned to it, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

“Accessories” shall have the meaning set forth in Section 1.3 of this Deed of Trust.

“Affiliate” shall have the meaning set forth in the Credit Agreement.

“Agent” or “Administrative Agent” shall have the meaning set forth in the Credit Agreement.

“Bankruptcy Code” means 11 U.S.C. § 101, et seq., as the same may be amended from time to time.

“Borrower” or “Borrowers” shall mean, collectively, Northwest Restaurants Inc., a Washington corporation, Northwest Restaurants Oregon, Inc., an Oregon corporation, Spokane, Inc., a Washington corporation, Coastal Plains Restaurants, LLC, a North Carolina limited liability company and Plains Coastal Properties, LLC, a North Carolina limited liability company.

“Collateral” shall have the meaning set forth in Section 1.4 of this Deed of Trust.

“Collateral Documents” shall have the meaning set forth in the Credit Agreement.

“Credit Agreement” means the Amended and Restated Credit Agreement dated as of October 30, 2012, among the Borrowers, the lenders from time to time party thereto and Bank



of America, N.A., as Administrative Agent and Swing Line Lender, which agreement is incorporated by reference in this Deed of Trust and which provides for the making of loans and the issuance of letters of credit as provided therein, which Amended and Restated Credit Agreement amends and restates that certain Credit Agreement dated as of July 19, 2007 among the Borrowers, the lenders party thereto and the Agent (as the same may be further amended, modified, extended, renewed, restated, supplemented, increased and/or amended and restated from time to time).

"Debtor Relief Laws" shall have the meaning set forth in the Credit Agreement.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means the Default Rate as defined in the Credit Agreement that is applicable to Obligations.

"Event of Default" shall have the meaning set forth in Section 4.1 of this Deed of Trust.

"Facility Termination Date" shall have the meaning set forth in the Credit Agreement.

"Governmental Authority" shall have the meaning set forth in the Credit Agreement.

"Grantor" shall mean the above-defined Grantor and its permitted successors and assigns.

"Ground Lease" shall mean each Lease Agreement more particularly described on Schedule 1 attached hereto and incorporated herein by reference (as from time to time amended, modified, renewed, extended, revised, supplemented, replaced or amended and restated).

"Ground Lessor" shall mean the landlord or lessor under each Ground Lease.

"Guarantors" shall have the meaning set forth in the Credit Agreement, and shall include without limitation the Grantor.

"Improvements" shall have the meaning set forth in Section 1.3 of this Deed of Trust.

"Land" shall have the meaning set forth in Section 1.3 of this Deed of Trust.

"Law" shall have the meaning set forth in Section 2.1(f) of this Deed of Trust.

"Lease" shall have the meaning set forth in Section 3.1 of this Deed of Trust.

"Legal Requirement" shall have the meaning set forth in Section 2.1(f) of this Deed of Trust.

"Lenders" shall mean Bank of America, N.A., a national banking association, and any other lenders from time to time party to the Credit Agreement, their respective successors and assigns, including, without limitation, the Swing Line Lender.



"Letter of Credit" means any letter of credit issued under the Credit Agreement.

"Loan Documents" shall have the meaning set forth in the Credit Agreement, and shall include without limitation the Credit Agreement, each Note, each Collateral Document, the Fee Letter, the Guaranty, each Guaranty Joinder Agreement and each Autoborrow Agreement.

"Loan Parties" shall have the meaning set forth in the Credit Agreement, and shall include without limitation the Borrower, the Grantor and the other Guarantors.

"Loans" shall have the meaning set forth in the Credit Agreement.

"Maximum Amount" shall have the meaning set forth in Section 6.11 of this Deed of Trust.

"Notes" shall mean, collectively, each Note as defined in the Credit Agreement, and any notes given in replacement, substitution, refinance, modification, supplement, increase, renewal or extension thereof, in whole or in part.

"Obligations" shall mean all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, Secured Cash Management Agreement or Secured Hedge Agreement, including, without limitation, (a) the principal, interest, premium (if any) and other sums owing or payable by the Borrower, the Grantor, or any other Loan Party pursuant to the Loan Documents, which includes present advances and future advances to be incurred within the terms specified in the Credit Agreement; (b) any and all additional advances made by Agent to protect or preserve the Property or the security title, security interest and lien hereof on the Property or to repair or maintain the Property, or to complete improvements on the Property (whether or not Grantor remains the owner of, or otherwise has any interest in, the Property at the time of such advances and whether or not the Agent or the other Secured Parties remain the owner of the Obligations and this Deed of Trust) in accordance with the provisions hereof; and (c) any and all costs and expenses incident to effecting the collection, performance and/or satisfaction of the Obligations secured hereby and the foreclosure hereof by action in court or by exercise of the power of sale herein contained, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"Permitted Encumbrances" shall have the meaning set forth in Section 2.1(b) of this Deed of Trust.

"Permitted Title Encumbrances" shall mean those title exceptions relating to the Property as set forth in Schedule B, Section II on the title commitment(s) for the Property submitted to and approved by Agent, and such other title exceptions submitted in writing to, and approved by Agent.



"Premises" shall have the meaning set forth in Section 1.3 of this Deed of Trust.

"Property" shall have the meaning set forth in Section 1.3 of this Deed of Trust.

"Release Date" shall have the meaning set forth in Section 2.1(o)(ii) of this Deed of Trust.

"Rents" shall have the meaning set forth in Section 3.1 of this Deed of Trust.

"Secured Cash Management Agreement" shall mean any Cash Management Agreement that is entered into by and between any Loan Party and any Cash Management Bank.

"Secured Hedge Agreement" shall mean any Swap Contract required or permitted under the Credit Agreement that is entered into by and between any Loan Party and any Hedge Bank.

"Secured Parties" shall mean, collectively, the Administrative Agent, the Lenders, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to the Credit Agreement, and the other Persons the Secured Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents, and each of their respective successors and assigns.

"Subordinate Lien" shall have the meaning set forth in Section 2.1(h) of this Deed of Trust.

"Trustee" shall mean **CHICAGO TITLE COMPANY**, with offices in Mount Vernon, Washington, or any successor or substitute appointed and designated as herein provided from time to time acting hereunder.

(b) Any term used or defined in the Washington Uniform Commercial Code, as in effect from time to time, and not defined in this Deed of Trust has the meaning given to the term in the Washington Uniform Commercial Code, as in effect from time to time, when used in this Deed of Trust; provided, however, if a term is defined in Article 9 of the Washington Uniform Commercial Code differently than in another article of the Washington Uniform Commercial Code, the term has the meaning specified in Article 9.

(c) Any capitalized term used herein but not otherwise defined herein shall have the same respective meaning given to it in the Credit Agreement as it existed on the date hereof and as it may be amended, modified, extended, renewed, restated, supplemented, increased and/or amended and restated from time to time.

Section 1.3. Granting Clause. For and in consideration of the indebtedness, and to secure the payment of the Obligations, and all other sums provided for in the Credit Agreement, the Notes, the other Loan Documents and in this Deed of Trust according to their respective terms and conditions, and all future or additional advances as may be made pursuant to the provisions of this Deed of Trust, and for performance of the agreements, conditions, covenants, provisions and stipulations contained herein and therein, and in certain other agreements and instruments made and given by Grantor to Agent in connection therewith, and also for and in



consideration of the sum of TEN DOLLARS (\$10.00) paid by Agent at or before the execution and delivery of these presents, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by Grantor, Grantor hereby irrevocably grants, bargains, assigns, conveys and transfers unto the Trustee, in trust for the benefit and security of the Agent on behalf of the Secured Parties **IN TRUST WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION**, the following:

ALL OF THE GRANTOR'S RIGHT, TITLE AND INTEREST IN AND TO (a) the real property described in Exhibit A which is attached hereto and incorporated herein by reference (the "Land") pursuant to the Ground Lease (the "Leasehold Estate"); together with (i) any and all buildings, structures, improvements, alterations or appurtenances now or hereafter situated or to be situated on the Land (collectively the "Improvements"); and (ii) together with (1) any and all other, further or additional title, estates, interests or rights which may at any time be acquired by Grantor in or to the premises demised by the Ground Lease; (2) any and all options or rights to purchase all or any part of the premises demised by the Ground Lease which the Grantor may now have or hereafter acquire; (3) any and all deposits, securities or other property which may be held at any time and from time to time by Ground Lessor to secure the performance of the covenants, conditions and agreements of the Grantor contained in the Ground Lease; (4) any and all rights to exercise options pursuant to the Ground Lease (including, without limitation, options to renew, extend, terminate, reject or assume), give consents and receive payments, reimbursements and refunds; (5) any and all rights to modify, change, supplement, alter, amend, terminate, cancel, sever or surrender the Ground Lease and any and all rights to release or discharge Ground Lessor of or from the obligations, covenants, conditions and agreements by Ground Lessor to be kept, observed or performed thereunder; (6) any and all claims and rights to the payment of damages that may presently exist or hereafter arise under or in connection with the Ground Lease or the rights of Grantor thereunder, including, without limitation, any such claim or right that may arise as a result of the rejection or disaffirmance of the Ground Lease by Ground Lessor, or by any trustee of Ground Lessor, pursuant to the Bankruptcy Code; (7) any and all rights, privileges and benefits, of whatever character, to which Grantor may hereafter be entitled pursuant to Section 365 of the Bankruptcy Code, including, without limitation, all of Grantor's rights to remain in possession after rejection or disaffirmance of the Ground Lease by Ground Lessor or by any trustee of Ground Lessor; and (8) all other rights, privileges and benefits, of whatever character derived by Grantor, or to which Grantor may be entitled, under or by virtue of the Ground Lease; and (iii) all right, title and interest of Grantor, now owned or hereafter acquired, in and to (1) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the Land or the Improvements; (2) any strips or gores between the Land and abutting or adjacent properties; (3) all options to purchase the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements; and (4) all water and water rights, timber, crops and mineral interests on or pertaining to the Leasehold Estate in the Land (the Leasehold Estate in the Land, the Improvements and the other rights, titles and interests referred to in this clause (a) being herein sometimes collectively called the "Premises"); (b) all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, engines, boilers, incinerators, supplies, and articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or

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hereafter acquired by Grantor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing, including, without limitation, fixtures and equipment for supplying or distributing heating, cooling, electricity, gas, water, sewage, air and light, and all fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, paneling, unattached rugs, carpet and other attached floor coverings, restaurant equipment, furniture, furnishings, computer equipment, office equipment, pictures, antennas, trees and plants; and Grantor's rights under equipment leases (the properties referred to in this clause (b) being herein sometimes collectively called the "Accessories," all of which are hereby declared to be permanent accessions to the Land); (c) all (i) plans and specifications for the Improvements; (ii) Grantor's rights, but not liability for any breach by Grantor, under all commitments (including any commitments for financing to pay any of the secured indebtedness, as defined below), insurance policies (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity), Secured Cash Management Agreements or Secured Hedge Agreements, contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including but not limited to payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Premises or the Accessories or the operation thereof; (iii) deposits and deposit accounts arising from or related to any transactions related to the Premises or the Accessories (including but not limited to Grantor's rights in tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits, deposit accounts or reserves hereunder or under any other Loan Documents for taxes, insurance or otherwise), rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts, (including deposit accounts) instruments, documents, promissory notes and chattel paper (whether tangible or electronic) arising from or by virtue of any transactions related to the Premises or the Accessories, and any account or deposit account from which Grantor may from time to time authorize Agent to debit and/or credit payments due with respect to the Loans or any Secured Cash Management Agreement or Secured Hedge Agreement, all rights to the payment of money from any Cash Management Bank under any Cash Management Agreement or from any Hedge Bank under any Secured Hedge Agreement, and all accounts, deposit accounts and general intangibles including payment intangibles, described in any Secured Cash Management Agreement or Secured Hedge Agreement; (iv) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories, including without limitation Grantor's rights in those certain Franchise Agreements entered into with (i) KFC National Management Company, Inc. with respect to the operation of the KFC Restaurants, (ii) Taco Bell Corp., with respect to the operation of the Taco Bell Restaurants, and (iii) A&W Corp. with respect to the A&W Restaurants; (v) leases, rents, issues, profits, royalties, bonuses, revenues and other benefits of the Premises and the Accessories (without derogation of Article 3 hereof); (vi) as-extracted collateral produced from or allocated



to the Land including, without limitation, oil, gas and other hydrocarbons and other minerals and all products processed or obtained therefrom, and the proceeds thereof; and (vii) engineering, accounting, title, legal, and other technical or business data concerning the Property which are in the possession of Grantor or in which Grantor can otherwise grant a security interest; and (d) all (i) accounts and proceeds (cash or non-cash and including payment intangibles) of or arising from the properties, rights, titles and interests referred to above in this Section 1.3, including, but not limited to, proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity) relating thereto (including premium refunds), proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto; (ii) all letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Grantor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3; (iii) all commercial tort claims Grantor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3; and (iv) other interests of every kind and character which Grantor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in this Section 1.3 and all property used or useful in connection therewith, including but not limited to rights of ingress and egress and remainders, reversions and reversionary rights or interests; and if the estate of Grantor in any of the property referred to above in this Section 1.3 is a leasehold estate, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by Grantor in or to the property demised under the lease creating the leasehold estate;

TO HAVE AND TO HOLD the foregoing rights, interests and properties, and all rights, estates, powers and privileges appurtenant thereto (herein collectively called the "Property"), unto Trustee, and its successors or substitutes in this trust, and to its successors and assigns, in trust, for the benefit of Agent on behalf of the Secured Parties forever, AS AN ESTATE FOR YEARS, subject to the terms, provisions and conditions herein set forth, to secure the obligations of Grantor and the other Loan Parties under the Notes and Loan Documents and all other indebtedness and matters defined as "secured indebtedness" in Section 1.5 of this Deed of Trust upon this special trust: that should the indebtedness secured hereby be paid according to the tenor and effect thereof when the same shall be due and payable and should Grantor timely and fully discharge its obligations hereunder, then the Property shall be reconveyed to Grantor or the title thereto shall be revested according to the provisions of law.

Section 1.4. Security Interest. Grantor hereby grants to Agent for the benefit of the Secured Parties a security interest in all of the Property which constitutes personal property or fixtures, all proceeds and products thereof, and all supporting obligations ancillary to or arising in any way in connection therewith (herein sometimes collectively called the "Collateral") to secure the obligations of Grantor and the other Loan Parties under the Notes and Loan Documents and all other indebtedness and matters defined as "secured indebtedness" in Section 1.5 of this Deed of Trust. In addition to its rights hereunder or otherwise, the Agent on behalf of

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the Secured Parties shall have all of the rights of a secured party under the Washington Uniform Commercial Code, as in effect from time to time, or under the Uniform Commercial Code in force, from time to time, in any other state to the extent the same is applicable law.

Section 1.5. Notes, Loan Documents, Other Obligations, Amount Secured. This Deed of Trust is made to secure and enforce the payment and performance of the following promissory notes, obligations, indebtedness, duties and liabilities and all renewals, extensions, supplements, increases, and modifications thereof in whole or in part from time to time: (a) the Notes; (b) all Obligations; (c) all indebtedness, liabilities, duties, covenants, promises and other obligations, whether joint or several, direct or indirect, fixed or contingent, liquidated or unliquidated, and the cost of collection of all such amounts, owed by Grantor or any of the other Loan Parties to any of the Secured Parties now or hereafter incurred or arising pursuant to or permitted by the provisions of the Notes, this Deed of Trust, or any other document now or hereafter evidencing, governing, guaranteeing, securing or otherwise executed in connection with the Loans evidenced by the Notes, including, but not limited to, the Credit Agreement, any other loan or credit agreement, any letter of credit or reimbursement agreement, tri-party financing agreement, any Secured Cash Management Agreement or Secured Hedge Agreement, any other Loan Documents, or any other agreement between any Loan Party and any Secured Party, or among any Loan Party, any Secured Party and any other party or parties, pertaining to the repayment or use of the proceeds of the Loans evidenced by the Notes, as they or any of them may have been or may be from time to time renewed, extended, supplemented, increased, modified, amended, restated and/or amended and restated; and (d) all other loans and future advances made by any Secured Party to any Loan Party under any Loan Document and all other debts, obligations and liabilities of any Loan Party of every kind and character now or hereafter existing in favor of any Secured Party under any Loan Document, whether direct or indirect, primary or secondary, joint or several, absolute or contingent, secured or unsecured, due or to become due, whether from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred, and any and all renewal or renewals, extension or extensions, modification or modifications of said indebtedness, and substitution or substitutions for said indebtedness and whether originally payable to a Secured Party or to a third party and subsequently acquired by a Secured Party, it being contemplated that such Loan Party may hereafter become indebted to such Secured Party for such further debts, obligations and liabilities; provided, however, and notwithstanding the foregoing provisions of this clause (d), this Deed of Trust shall not secure any such other loan, advance, debt, obligation or liability with respect to which such Secured Party is by applicable law prohibited from obtaining a lien on real estate nor shall this clause (d) operate or be effective to constitute or require any assumption or payment by any person, in any way, of any debt of any other person to the extent that the same would violate or exceed the limit provided in any applicable usury or other law. The indebtedness referred to in this Section 1.5 is hereinafter referred to as the "secured indebtedness" or the "indebtedness secured hereby."

ARTICLE 2

Representations, Warranties and Covenants

Section 2.1. Grantor represents, warrants, and covenants as follows:

(a) Payment and Performance. Grantor and the other Loan Parties will make due and punctual payment of the secured indebtedness. Grantor will timely and properly perform and comply with all of the covenants, agreements, and conditions imposed upon it by this Deed of Trust and the other Loan Documents and will not permit a default to occur hereunder or thereunder. Time is of the essence with respect to all covenants and obligations of Grantor under this Deed of Trust.

(b) Title and Permitted Encumbrances. Grantor has, in Grantor's own right, and Grantor covenants to maintain, lawful, good and marketable title to the Property. Grantor further covenants that Grantor is lawfully seized and possessed of the Property and every part thereof, and has the right to mortgage, grant, convey and assign the same, free and clear of all liens, charges, claims, security interests, and encumbrances except for (i) the Permitted Title Encumbrances, which are Permitted Title Encumbrances only to the extent the same are valid and subsisting and affect the Property, (ii) the liens and security interests evidenced by this Deed of Trust, (iii) statutory liens for real estate taxes and assessments on the Property which are not yet delinquent, and (iv) other liens and security interests (if any) in favor of Agent on behalf of the Secured Parties or as otherwise allowed by the terms of the Credit Agreement (the matters described in the foregoing clauses (i), (ii), (iii), and (iv) being herein called the "Permitted Encumbrances"). Grantor, and Grantor's successors and assigns, will warrant generally and forever defend title to the Property, subject as aforesaid, to Trustee and its successors or substitutes and assigns, against the claims and demands of all persons claiming or to claim the same or any part thereof. Grantor will punctually pay, perform, observe and keep all covenants, obligations and conditions in or pursuant to any Permitted Encumbrance and will not modify or permit modification of any Permitted Encumbrance without the prior written consent of Agent. Inclusion of any matter as a Permitted Encumbrance does not constitute approval or waiver by Agent of any existing or future violation or other breach thereof by Grantor, by the Property or otherwise. No part of the Property constitutes all or any part of the principal residence of Grantor if Grantor is an individual. If any right or interest of Agent in the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly, Trustee and Agent, or either of them (whether or not named as parties to legal proceedings with respect thereto), are hereby authorized and empowered to take such steps as in their reasonable discretion may be proper for the defense of any such legal proceedings or the protection of such right or interest of Agent on behalf of the Secured Parties, including, but not limited to, the employment of independent counsel, the prosecution or defense of litigation, and the compromise or discharge of adverse claims. All expenditures so made of every kind and character shall be a demand obligation (which obligation Grantor hereby promises to pay) owing by Grantor to Agent or Trustee (as the case may be), and the party (Agent or Trustee, as the case may be) making such expenditures shall be subrogated to all rights of the person receiving such payment. Except as otherwise permitted in the Credit Agreement, neither Grantor nor any party comprising Grantor shall grant, bargain, sell, convey, transfer, assign or exchange all or any portion of the Property or the interest of Grantor or such other party in the Property.

(c) Taxes and Other Impositions. Grantor will pay, or cause to be paid, all taxes, assessments and other charges or levies imposed upon or against or with respect to the Property or the ownership, use, occupancy or enjoyment of any portion thereof, or any utility service thereto, as the same become due and payable, including, but not limited to, all real estate taxes



assessed against the Property or any part thereof, and shall deliver promptly to Agent such evidence of the payment thereof as Agent may require.

(d) Insurance. Grantor shall obtain and maintain at Grantor's sole expense insurance in such amounts and with such insurance companies as is required pursuant to the terms and conditions of the Credit Agreement. All insurance policies maintained, or caused to be maintained, by Grantor with respect to the Property shall contain a standard mortgagee clause (without contribution) naming Agent for the benefit of the Secured Parties as mortgagee and loss payee with loss proceeds payable to Agent notwithstanding (i) any act, failure to act or negligence of or violation of any warranty, declaration or condition contained in any such policy by any named or additional insured; (ii) the occupation or use of the Property for purposes more hazardous than permitted by the terms of any such policy unless such occupation or use is known to Agent; (iii) any foreclosure or other action by Agent under the Loan Documents; or (iv) any change in title to or ownership of the Property or any portion thereof, such proceeds to be held for application as provided in the Loan Documents.

(e) Condemnation. Grantor shall promptly notify Beneficiary of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and thereafter Grantor shall comply with, and perform, in accordance with the terms and conditions relating to condemnation as set forth in the Credit Agreement.

(f) Compliance with Legal Requirements. The Property and the use, operation and maintenance thereof and all activities thereon do and shall at all times comply with all applicable Legal Requirements (hereinafter defined). The Property is not, and shall not be, dependent on any other property or premises or any interest therein other than the Property to fulfill any requirement of any Legal Requirement other than those easements, licenses or other rights (if any) described in Agent's title insurance policy. Except for any appurtenant easements contained in Agent's title insurance policy, and the rights of the parties granted therein, Grantor shall not, by act or omission, permit any building or other improvement not subject to the lien of this Deed of Trust to rely on the Property or any interest therein to fulfill any requirement of any Legal Requirement. To Grantor's knowledge, and except as disclosed to Agent, no improvement upon or use of any part of the Property constitutes a nonconforming improvement or use under any zoning law or similar law or ordinance. Grantor has obtained and shall preserve in force all requisite zoning, utility, building, health, environmental and operating permits from the governmental authorities having jurisdiction over the Property.

If Grantor receives a notice or claim from any person that the Property, or any use, activity, operation or maintenance thereof or thereon, is not in compliance with any Legal Requirement, Grantor will promptly furnish a copy of such notice or claim to Agent. Grantor has received no notice and has no knowledge of any such material noncompliance. As used in this Deed of Trust: (i) the term "Legal Requirement" means any Law (hereinafter defined), agreement, covenant, restriction, easement or condition (including, without limitation of the foregoing, any condition or requirement imposed by any insurance or surety company), as any of the same now exists or may be changed or amended or come into effect in the future; and (ii) the term "Law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, permit, authorization, decision, order, injunction or decree, domestic or foreign.



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

(h) No Other Liens. Except as otherwise permitted in the Credit Agreement, Grantor will not, without the prior written consent of Agent, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any Deed of Trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual, security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Deed of Trust, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of Agent, Grantor will cause the same to be promptly discharged and released. Grantor will own all parts of the Property and will not acquire any fixtures, equipment or other property (including software embedded therein) forming a part of the Property pursuant to a lease, license, security agreement or similar agreement, whereby any party has or may obtain the right to repossess or remove same, without the prior written consent of Agent. If Agent consents to the voluntary grant by Grantor of any Deed of Trust, lien, security interest, or other encumbrance (hereinafter called "Subordinate Lien") covering any of the Property or if the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable as to a Subordinate Lien, any such Subordinate Lien shall contain express covenants to the effect that: (1) the Subordinate Lien is unconditionally subordinate to this Deed of Trust and all Leases (hereinafter defined); (2) if any action (whether judicial or pursuant to a power of sale) shall be instituted to foreclose or otherwise enforce the Subordinate Lien, no tenant of any of the Leases (hereinafter defined) shall be named as a party defendant, and no action shall be taken that would terminate any occupancy or tenancy without the prior written consent of Agent; (3) Rents (hereinafter defined), if collected by or for the holder of the Subordinate Lien, shall be applied first to the payment of the secured indebtedness then due and expenses incurred in the ownership, operation and

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maintenance of the Property in such order as Agent may determine, prior to being applied to any indebtedness secured by the Subordinate Lien; (4) written notice of default under the Subordinate Lien and written notice of the commencement of any action (whether judicial or pursuant to a power of sale) to foreclose or otherwise enforce the Subordinate Lien or to seek the appointment of a receiver for all or any part of the Property shall be given to Agent with or immediately after the occurrence of any such default or commencement; and (5) neither the holder of the Subordinate Lien, nor any purchaser at foreclosure thereunder, nor anyone claiming by, through or under any of them shall succeed to any of Grantor's rights hereunder without the prior written consent of Agent.

(i) Operation of Property. Grantor will operate and maintain the Property in a good and workmanlike manner and in material compliance with all Legal Requirements, will pay all fees or charges of any kind in connection therewith, and maintain the franchise agreements therefor in good standing. Grantor will keep the Property occupied so as not to impair the insurance carried thereon. Grantor will not use or occupy or conduct any activity on, or allow the use or occupancy of or the conduct of any activity on, the Property in any manner which violates any Legal Requirement in any material respect or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. Grantor will not initiate or permit any zoning reclassification of the Property or seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other Legal Requirement. Except as permitted in the Credit Agreement, Grantor will not impose any easement, restrictive covenant or encumbrance upon the Property, execute or file any subdivision plat or condominium declaration affecting the Property or consent to the annexation of the Property to any municipality, without the prior written consent of Agent. Grantor will not do or suffer to be done any act whereby the value of any part of the Property may be lessened. Grantor will preserve, protect, renew, extend and retain all material rights and privileges granted for or applicable to the Property. Without the prior written consent of Agent, there shall be no drilling or exploration for or extraction, removal or production of any mineral, hydrocarbon, gas, natural element, compound or substance (including sand and gravel) from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof. Grantor will cause all debts and liabilities of any character (including without limitation all debts and liabilities for labor, material and equipment (including software embedded therein) and all debts and charges for utilities servicing the Property) incurred in the construction, maintenance, operation and development of the Property to be promptly paid. **At no time shall the Property, or any part thereof, be used principally or at all for agricultural purposes.**

(j) Financial Matters. Grantor is solvent after giving effect to all obligations contemplated by the Loan Documents and no proceeding under any Debtor Relief Law is pending (or, to Grantor's knowledge, threatened) by or against Grantor, or any Affiliate of Grantor, as a debtor. All reports, statements, plans, budgets, applications, agreements and other data and information heretofore furnished or hereafter to be furnished by or on behalf of Grantor to Agent or the other Secured Parties in connection with the loan or loans evidenced by the Loan Documents (including, without limitation, all financial statements and financial information) are and will be true, correct and complete in all material respects as of their respective dates and do

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not and will not omit to state any fact or circumstance necessary to make the statements contained therein not misleading. No material adverse change has occurred since the dates of such reports, statements and other data in the financial condition of Grantor or, to Grantor's knowledge, of any tenant under any lease described therein. For the purposes of this paragraph, "Grantor" shall also include any person liable directly or indirectly for the secured indebtedness or any part thereof and any joint venturer or general partner of Grantor.

(k) Status of Grantor; Suits and Claims; Loan Documents. If Grantor is a corporation, partnership, limited liability company, or other legal entity, Grantor is and will continue to be (i) duly organized, validly existing and in good standing under the laws of its state of organization, (ii) authorized to do business in, and in good standing in, each state in which the Property is located, and (iii) possessed of all requisite power and authority to carry on its business and to own and operate the Property. Each Loan Document executed by Grantor has been duly authorized, executed and delivered by Grantor, and the obligations thereunder and the performance thereof by Grantor in accordance with their terms are and will continue to be within Grantor's power and authority (without the necessity of joinder or consent of any other person), are not and will not be in contravention of any Legal Requirement or any other document or agreement to which Grantor or the Property is subject, and do not and will not result in the creation of any encumbrance against any assets or properties of Grantor, or any other person liable, directly or indirectly, for any of the secured indebtedness, except as expressly contemplated by the Loan Documents. There is no suit, action, claim, investigation, inquiry, proceeding or demand pending (or, to Grantor's knowledge, threatened) against Grantor or against any other person liable directly or indirectly for the secured indebtedness or which affects the Property (including, without limitation, any which challenges or otherwise pertains to Grantor's title to the Property) or the validity, enforceability or priority of any of the Loan Documents. There is no judicial or administrative action, suit or proceeding pending (or, to Grantor's knowledge, threatened) against Grantor, or against any other person liable directly or indirectly for the secured indebtedness, except as has been disclosed in writing to Agent in connection with the Loans evidenced by the Notes. The Loan Documents constitute legal, valid and binding obligations of the Loan Parties enforceable in accordance with their terms, except as the enforceability thereof may be limited by Debtor Relief Laws and except as the availability of certain remedies may be limited by general principles of equity. Grantor is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e. Grantor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined therein and in any regulations promulgated thereunder). The Loans evidenced by the Notes are solely for business and/or investment purposes, and are not intended for personal, family, household or agricultural purposes. Grantor further warrants that the proceeds of the Notes shall be used for commercial purposes and stipulates that the Loans evidenced by the Notes shall be construed for all purposes as commercial loans. Grantor's exact legal name is correctly set forth at the end of this Deed of Trust. If Grantor is not an individual, Grantor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the first paragraph of this Deed of Trust. If Grantor is an unregistered entity (including, without limitation, a general partnership) it is organized under the laws of the state specified in the first paragraph of this Deed of Trust. Grantor will not cause or permit any change to be made in its name, identity (including its trade name or names), or corporate or partnership structure, unless

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Grantor shall have notified Agent in writing of such change at least 30 days prior to the effective date of such change, and shall have first taken all action required by Agent for the purpose of further perfecting or protecting the lien and security interest of Agent in the Property. In addition, Grantor shall not change its corporate or partnership structure without first obtaining the prior written consent of Agent. Grantor's principal place of business and chief executive office, and the place where Grantor keeps its books and records including recorded data of any kind or nature regardless of the medium of recording including, without limitation, software, writings, plans, specifications and schematics concerning the Property, has for the preceding four months (or, if less, the entire period of the existence of Grantor) been and will continue to be (unless Grantor notifies Agent of any change in writing at least 30 days prior to the date of such change) the address of Grantor set forth at the end of this Deed of Trust. If Grantor is an individual, Grantor's principal residence has for the preceding four months been and will continue to be (unless Grantor notifies Agent of any change in writing at least 30 days prior to the date of such change) the address of the principal residence of Grantor set forth at the end of this Deed of Trust. Grantor's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the first page of this Deed of Trust. Grantor shall promptly notify Agent (i) of any change of its organizational identification number, or (ii) if Grantor does not now have an organizational identification number and later obtains one, of such organizational identification number.

(l) Inspections. Agent may make or cause to be made reasonable entries upon and inspections of the Property in accordance with the terms and conditions of the Credit Agreement.

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

(n) Fees and Expenses. Without limitation of any other provision of this Deed of Trust or of any other Loan Document and to the extent not prohibited by applicable law, Grantor will pay, and will reimburse to Agent and/or Trustee on demand to the extent paid by Agent and/or Trustee: (i) all appraisal fees, filing, registration and recording fees, recordation, transfer



and other taxes, brokerage fees and commissions, abstract fees, title search or examination fees, title policy and endorsement premiums and fees, uniform commercial code search fees, judgment and tax lien search fees, escrow fees, attorneys' fees, architect fees, engineer fees, construction consultant fees, environmental inspection fees, survey fees, and all other out-of-pocket costs and expenses of every character incurred by Grantor and/or Trustee in connection with the preparation of the Loan Documents, the evaluation, closing and funding of the Loans evidenced by the Loan Documents, and any and all amendments and supplements to this Deed of Trust, the Notes or any other Loan Documents or any approval, consent, waiver, release or other matter requested or required hereunder or thereunder, or otherwise attributable or chargeable to Grantor as owner of the Property; and (ii) all costs and expenses, including attorneys' fees and expenses incurred or expended in connection with the exercise of any right or remedy, or the defense of any right or remedy or the enforcement of any obligation of Grantor, hereunder or under any other Loan Document.

(o) Indemnification.

(i) Grantor will indemnify and hold harmless Agent, the other Secured Parties and Trustee from and against, and reimburse them on demand for, any and all Indemnified Matters (hereinafter defined). For purposes of this paragraph (o), the terms "Agent", "Secured Parties" and "Trustee" shall include Agent, the other Secured Parties and Trustee, respectively, any persons owned or controlled by, owning or controlling, or under common control or affiliated with Agent, the other Secured Parties or Trustee, respectively, and the directors, officers, partners, employees, attorneys, agents and representatives of each of them. Without limitation, the foregoing indemnities shall apply to each indemnified person with respect to matters which in whole or in part are caused by or arise out of the negligence of such (and/or any other) indemnified person. However, such indemnities shall not apply to a particular indemnified person to the extent that the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct and bad faith of that indemnified person. Any amount to be paid under this paragraph (o) by Grantor to Agent, the other Secured Parties and/or Trustee shall be a demand obligation owing by Grantor (which Grantor hereby promises to pay) to Agent, the other Secured Parties, and/or Trustee pursuant to this Deed of Trust. Nothing in this paragraph, elsewhere in this Deed of Trust or in any other Loan Document shall limit or impair any rights or remedies of Agent, the other Secured Parties and/or Trustee (including, without limitation, any rights of contribution or indemnification) against Grantor or any other person under any other provision of this Deed of Trust, any other Loan Document, any other agreement or any applicable Legal Requirement.

(ii) As used herein, the term "Indemnified Matters" means any and all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including, without limitation, reasonable fees and expenses of attorneys and other professional consultants and experts, and of the investigation and defense of any claim, whether or not such claim is ultimately defeated, and the settlement of any claim or judgment including all value paid or given in settlement) of every kind, known or unknown, foreseeable or unforeseeable, which may be imposed upon, asserted against or incurred or paid by Agent, the other Secured Parties and/or Trustee at any time and from time to time, whenever imposed, asserted or incurred, because of,



resulting from, in connection with, or arising out of any transaction, act, omission, event or circumstance in any way connected with the Property or with this Deed of Trust or any other Loan Document, including, but not limited to, any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever at any time on or before the Release Date, any act performed or omitted to be performed hereunder or under any other Loan Document, any breach by Grantor of any representation, warranty, covenant, agreement or condition contained in this Deed of Trust or in any other Loan Document, the occurrence of any Event of Default, any claim under or with respect to the Ground Lease, any Lease (hereinafter defined) or arising under the Environmental Agreement. The term "Release Date" as used herein means the earlier of the following dates: (i) the Facility Termination Date, (ii) the date on which the indebtedness and obligations secured hereby have been paid and performed in full and this Deed of Trust has been released, or (iii) the date on which the lien of this Deed of Trust is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective, and possession of the Property has been given to the purchaser or grantee free of occupancy and claims to occupancy by Grantor and Grantor's heirs, devisees, representatives, successors and assigns; provided, that if such payment, performance, release, foreclosure or conveyance is challenged, in bankruptcy proceedings or otherwise, the Release Date shall be deemed not to have occurred until such challenge is rejected, dismissed or withdrawn with prejudice. The indemnities in this paragraph (o) shall not terminate upon the Release Date or upon the release, foreclosure or other termination of this Deed of Trust but will survive the Release Date, foreclosure of this Deed of Trust or conveyance in lieu of foreclosure, the repayment of the secured indebtedness, the termination of any and all Secured Cash Management Agreements or Secured Hedge Agreements, the discharge and release of this Deed of Trust and the other Loan Documents, any bankruptcy or other debtor relief proceeding, and any other event whatsoever.

(p) Records and Financial Reports. Grantor will keep accurate books and records in accordance with sound accounting principles in which full, true and correct entries shall be promptly made with respect to the Premises and the operation thereof, and will permit all such books and records, and all recorded data of any kind or nature, regardless of the medium of recording including, without limitation, all software, writings, plans, specifications and schematics to be inspected and copied, and the Premises to be inspected and photographed, by Agent and its representatives during normal business hours and, at any other reasonable times. Without limitation of other or additional requirements in any of the other Loan Documents, Grantor will furnish to Agent current operating statements, together with compliance certificates, all as required in the Credit Agreement.

(q) Taxes on Notes or Deed of Trust. Grantor will promptly pay all income, franchise and other taxes owing by Grantor and any stamp, documentary, recordation and transfer taxes or other taxes (unless such payment by Grantor is prohibited by law) which may be required to be paid with respect to the Notes, this Deed of Trust or any other instrument evidencing or securing any of the secured indebtedness. In the event of the enactment after this date of any law of any governmental entity applicable to Agent or any other Secured Party, the Notes, the Property or this Deed of Trust deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Agent or any other Secured Party the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by

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

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

Section 2.2. Performance by Agent on Grantor's Behalf. Grantor agrees that, if Grantor fails to perform any act or to take any action which under any Loan Document Grantor is required to perform or take, or to pay any money which under any Loan Document Grantor is required to pay, and whether or not the failure then constitutes an Event of Default hereunder or thereunder, and whether or not there has occurred any default or defaults hereunder or the secured indebtedness has been accelerated, Agent, in Grantor's name or its own name, may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Agent and any money so paid by Agent shall be a demand obligation owing by Grantor to Agent (which obligation Grantor hereby promises to pay), shall be a part of the indebtedness secured hereby, and Agent, upon making such payment, shall be subrogated to all of the rights of the person, entity or body politic receiving such payment. Grantor further agrees that, if Grantor fails to perform any act or to take any action which under any Loan Document Grantor is required to perform or take which creates an imminent risk of harm to any person or the value of the Property, whether or not an Event of Default has occurred hereunder or thereunder, Agent, in Grantor's name or its own name, may, but shall not be obligated to, perform or cause to be performed such act or take such action, and any expenses so incurred by Agent shall be a demand obligation owing by Grantor to Agent (which obligation Grantor hereby promises to pay), shall be a part of the indebtedness secured hereby, and Agent, upon making such payment, shall be subrogated to all of the rights of the person, entity or body politic receiving such payment. Agent and its designees shall have the right, upon prior written notice to Grantor, to enter upon the Property at any time and from time to time for any such purposes. No such payment or performance by Agent shall waive or cure any Event of Default or waive any right, remedy or recourse of Agent. Any such payment may

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be made by Agent in reliance on any statement, invoice or claim without inquiry into the validity or accuracy thereof. Each amount due and owing by Grantor to Agent pursuant to this Deed of Trust shall bear interest, from the date such amount becomes due until paid, at the Default Rate, but never in excess of the maximum nonusurious amount permitted by applicable law, which interest shall be payable to Agent on demand; and all such amounts, together with such interest thereon, shall automatically and without notice be a part of the indebtedness secured hereby. The amount and nature of any expense by Agent hereunder and the time when paid shall be fully established by the certificate of Agent or any of Agent's officers or agents.

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

Section 2.4. Authorization to File Financing Statements; Power of Attorney. Grantor hereby authorizes Agent at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, required by Agent to establish or maintain the validity, perfection and priority of the security interests granted in this Deed of Trust. For purposes of such filings, Grantor agrees to furnish any information requested by Agent promptly upon request by Agent. Grantor also ratifies its authorization for Agent to have filed any like initial financing statements, amendments thereto or continuation statements if filed prior to the date of this Deed of Trust. Grantor hereby irrevocably constitutes and appoints Agent and any officer or agent of Agent, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Grantor or in Grantor's own name to execute in Grantor's name any such documents and to otherwise carry out the purposes of this Section 2.4, to the extent that Grantor's authorization above is not sufficient. To the extent permitted by law, Grantor hereby ratifies all acts said attorneys-in-fact shall lawfully do, have done in the past or cause to be done in the future in furtherance of the foregoing and as permitted hereunder or by any other Loan Document. This power of attorney is a power coupled with an interest and shall be irrevocable.

Section 2.5. Ground Lease. Grantor represents, warrants, and covenants as follows with respect to each Ground Lease:



(a) Grantor will make all payments and otherwise perform all obligations in respect of the Ground Lease, and will maintain such Ground Lease in full force and effect and not allow such Ground Lease to lapse or be terminated (except in connection with the exercise by Grantor of a purchase option in respect of the real and other property subject to such Ground Lease) or any rights to renew the Ground Lease or options to purchase the premises demised thereby to be forfeited or canceled. Grantor further covenants that it will not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, will impair the security of this Deed of Trust or will be grounds for declaring a forfeiture of the Ground Lease. Grantor further agrees to use commercially reasonable efforts to enforce the obligations of Ground Lessor under the Ground Lease. Grantor will notify Agent of any default by any party with respect to the Ground Lease and Grantor will promptly notify Agent of the giving of any notice by Ground Lessor to Grantor of any default by Grantor in the performance or observance of any of the terms, covenants or conditions of the Ground Lease on the part of Grantor, as lessee under the Ground Lease, to be performed or observed and promptly deliver to Agent a true copy of each such notice.

(b) Except with respect to the termination of the Ground Lease in connection with the exercise by Grantor of a purchase option in respect of any real and other property subject to the Ground Lease, Grantor will not, without the prior written consent of the Agent, surrender, cancel or terminate the Ground Lease or consent to or accept any cancellation or termination thereof or consent to or accept Ground Lessor's termination of the Ground Lease upon a casualty or partial condemnation, or amend or otherwise modify the Ground Lease or give any consent, waiver or approval thereunder, or waive any default thereunder or breach thereof, agree in any manner to any other amendment, modification or change of any term or condition of the Ground Lease, or take any other action in connection with the Ground Lease. Grantor shall exercise all rights to renew the Ground Lease by timely notice to the Ground Lessor as required by the Ground Lease so that the Ground Lease will not expire or terminate prior to October 30, 2019. Any surrender of the Leasehold Estate created by the Ground Lease or termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease without the prior consent of Agent shall be null and void and of no force and effect.

(c) Subject to the foregoing, if Grantor defaults under subsection (a) hereof by failing to make any payment required to be made by Grantor pursuant to the provisions of the Ground Lease or to keep, observe or perform, or cause to be kept, observed or performed, any of the terms, covenants, provisions or agreements of the Ground Lease (unless waived by Ground Lessor under such Ground Lease), Grantor agrees that Agent may (but shall not be obligated to) take any action on behalf of Grantor (with right of entry onto the Property demised by the Ground Lease), to keep or cause to be kept, observed or performed any such terms, covenants, provisions or agreements and to enter upon such Property (after reasonable advance notice to Grantor) and take all such action thereon as may be reasonably necessary therefor, and all money so expended by Agent, with interest thereon at the Default Rate from the date of each such expenditure, shall be paid by Grantor to Agent promptly upon demand by Agent and shall be added to the indebtedness secured by this Deed of Trust. If Agent shall make any payment or perform any act or take any action in accordance with the preceding sentence, then the payment, performance or action shall not remove or waive, as between Grantor and Agent, the corresponding Default under the terms of this Deed of Trust.



(d) Grantor covenants and agrees that, unless Agent shall otherwise expressly consent in writing, neither Grantor nor its successors or assigns shall suffer or permit the fee title to the property demised by the Ground Lease and the Leasehold Estate thereunder to merge, it being understood and agreed that said estates shall always remain separate and distinct, notwithstanding the union of said estates in any person whomever by purchase or otherwise; and in case Grantor acquires the fee title or any other estate, title or interest in the property demised by the Ground Lease, this Deed of Trust shall attach to and cover and be a lien upon the fee title or such other estate so acquired, and such fee title or other estate shall, without further assignment, mortgage or conveyance, become and be subject to the lien of and covered by this Deed of Trust.

(e) If the Ground Lease shall be terminated prior to the natural expiration of its term due to default by the lessee thereunder, and if, pursuant to any provision of such Ground Lease or pursuant to Agent's exercise of its rights hereunder or under any other Loan Document, the Agent or its designee shall acquire from Ground Lessor a new lease of the Property, Grantor shall have no right, title, or interest in or to such new lease or the leasehold estate created thereby, or renewal privileges therein contained.

(f) Grantor will not subordinate or consent to the subordination of the Ground Lease to any mortgage, deed of trust, lease or other interest on or in Ground Lessor's interest in all or any part of the Property, unless, in each such case, such subordination (i) is required by the Ground Lease or (ii) contains customary non-disturbance and recognition language protecting Grantor's rights under the Ground Lease.

(g) Grantor shall also provide all services required by the Ground Lease, for which provisions have not been made hereinbefore, when and as the same shall become due and payable, and shall cause Ground Lessor under the Ground Lease, to the extent permitted by the Ground Lease, to pay any portion of said taxes, assessments, rates, charges and impositions to be borne by Ground Lessor under the Ground Lease, if any, that might become liens on the Property demised by the Ground Lease (but only to the extent having priority over the Ground Lease) or on the Leasehold Estate created by the Ground Lease, and upon request of the Agent, Grantor shall deliver, or cause to be delivered to Agent on the first day of the calendar month following any such payment, evidence, reasonably acceptable to Agent, of any such payments by Grantor.

(h) Grantor covenants that no release or forbearance of any of Grantor's obligations as lessee under the Ground Lease, pursuant to the Ground Lease or otherwise, shall release Grantor from any of its obligations under this Deed of Trust, including its obligations with respect to the payment of rent as provided for in the Ground Lease and the performance of all of the terms, provisions, covenants, conditions and agreements contained in the Ground Lease, to be kept, performed and complied with by the lessee therein.

(i) Grantor will: (i) promptly notify Agent in writing of the commencement of a proceeding under the federal bankruptcy laws by or against Grantor or Ground Lessor under the Ground Lease; (ii) if any of the secured indebtedness hereby remains unpaid at the time when notice may be given by the lessee under the Ground Lease of the exercise of any right to renew or extend the term of the Ground Lease, promptly give notice to Ground Lessor of the exercise of



such right of extension or renewal; (iii) in case any proceeds of insurance upon the Property or any part thereof are deposited with any person other than Agent pursuant to the requirements of the Ground Lease, promptly notify Agent in writing of the name and address of the person with whom such proceeds have been deposited and the amount so deposited; and (iv) promptly notify Agent in writing of any request made by either party to the Ground Lease to the other party thereto for arbitration or appraisal proceedings pursuant to the Ground Lease, and of the institution of any arbitration or appraisal proceedings and promptly deliver to Agent a copy of the determination of the arbitrators or appraisers in each such proceeding.

(j) Grantor acknowledges that pursuant to Section 365 of the Bankruptcy Code it is possible that a trustee in bankruptcy of Ground Lessor under the Ground Lease, or Ground Lessor as a debtor-in-possession could reject the Ground Lease, in which case Grantor, as lessee, would have the election described in Section 365(h) of the Bankruptcy Code (such election together with any comparable right under any other state or federal law relating to bankruptcy, reorganization or other relief for debtors, whether now or hereafter in effect, the "Election") to treat such Ground Lease as terminated by such rejection or, in the alternative, to remain in possession for the balance of the term of the Ground Lease and any renewal or extension thereof that is enforceable by the lessee under applicable nonbankruptcy law.

(k) Grantor covenants that it will not suffer or permit the termination of the Ground Lease by exercise of the Election or otherwise without the prior written consent of Agent. Grantor acknowledges that since the Ground Lease is a primary part of the security for the secured indebtedness, it is not anticipated that Agent would consent to termination of the Ground Lease in connection with any such election and Agent shall not under any circumstances be obliged to give such consent.

(l) In order to secure the covenants made in this Section and as security for the secured indebtedness, if and to the extent permitted by law, Grantor assigns the Election and all rights related thereto to Agent for the benefit of the Secured Parties. Grantor acknowledges and agrees that the foregoing assignment of the Election and related rights is one of the rights which Agent may use at any time in order to protect and preserve the other rights and interests of Agent under this Deed of Trust, since exercise of the Election in favor of terminating the Ground Lease would constitute waste hereunder.

(m) Grantor acknowledges and agrees that the Election is in the nature of a remedy and is not a property interest which Grantor can separate from the Ground Lease. Therefore, Grantor agrees that exercise of the Election in favor of preserving the right to possession under the Ground Lease shall not be deemed to constitute a taking or sale of the Property by Agent and shall not entitle Grantor to any credit against the indebtedness secured by this Deed of Trust.

(n) Grantor acknowledges and agrees that in the event the Election is exercised in favor of Grantor remaining in possession, Grantor's resulting rights under the Ground Lease, as adjusted by the effect of Section 365 of the Bankruptcy Code, shall then be part of the Property and shall be subject to the lien created by this Deed of Trust.



(o) Agent shall have the right to proceed in its own name or in the name of Grantor in respect of any claim, suit, action or proceeding relating to the rejection of the Ground Lease by Ground Lessor or any other party, including, without limitation, the right to file and prosecute under the Bankruptcy Code, without joining or the joinder of Grantor, any proofs of claim, complaints, motions, applications, notices and other documents. Any amounts received by Agent as damages arising out of the rejection of the Ground Lease as aforesaid shall be applied first to all costs and expenses of Agent (including, without limitation, attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this paragraph. Grantor acknowledges that the assignment of all claims and rights to the payment of damages from the rejection of the Ground Lease made under the granting clauses of this Deed of Trust constitutes a present irreversible and unconditional assignment and Grantor shall, at the request of Agent, promptly make, execute, acknowledge and deliver, in form and substance reasonably satisfactory to Agent, a UCC Financing Statement (Form UCC-1) and all such additional instruments, agreements and other documents, as may at any time hereafter be required by Agent to carry out such assignment.

(p) If pursuant to Subsection 365(h)(2) of the Bankruptcy Code, Grantor shall seek to offset against the rent reserved in the Ground Lease the amount of any damages caused by the nonperformance by Ground Lessor or any other party of any of their respective obligations under the Ground Lease after the rejection by Ground Lessor or such other party of such Ground Lease under the Bankruptcy Code, then Grantor shall, prior to effecting such offset, notify Agent of its intent to do so, setting forth the amount proposed to be so offset and the basis therefor. Agent shall have the right to object to all or any part of such offset that, in the reasonable judgment of Agent, would constitute a breach of such Ground Lease, and in the event of such objection, Grantor shall not effect any offset of the amounts found objectionable by Agent. Neither Agent's failure to object as aforesaid nor any objection relating to such offset shall constitute an approval of any such offset by Agent. Grantor shall indemnify and hold Agent harmless from and against any and all claims, demands, actions, suits, proceedings, damages, losses, costs and expenses of every nature whatsoever (including witness limitation, attorney fees) arising from or relating to any such offset by Grantor.

(q) If any action, proceeding, motion or notice shall be commenced or filed in respect of Ground Lessor under the Ground Lease or any other party or in respect of the Ground Lease in connection with any case under the Bankruptcy Code, then Agent shall have the option, exercisable upon notice from Agent to Grantor, to conduct and control any such litigation with counsel of Agent's choice. Agent on behalf of the Secured Parties may proceed in its own name or in the name of Grantor in connection with any such litigation, and Grantor agrees to execute any and all powers, authorizations, consents or other documents required by Agent in connection therewith. Grantor shall, upon demand, pay to Agent all costs and expenses (including attorneys' fees) paid or incurred by Agent in connection with the prosecution or conduct of any such proceedings. Grantor shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Ground Lease in any such case under the Bankruptcy Code without the prior written consent of Agent.

(r) Grantor shall, after obtaining knowledge thereof, promptly notify Agent of any filing by or against Ground Lessor or other party with an interest in the Land of a petition under



the Bankruptcy Code. Grantor shall promptly deliver to Agent, following receipt, copies of any and all notices, summonses, pleadings, applications and other documents received by Grantor in connection with any such petition and any proceedings relating thereto.

(s) If there shall be filed by or against Grantor a petition under the Bankruptcy Code and Grantor, as lessee under the Ground Lease, shall determine to reject the Ground Lease pursuant to Section 365(a) of the Bankruptcy Code, then Grantor shall give Agent not less than twenty (20) days' prior notice of the date on which Grantor shall apply to the Bankruptcy Court for authority to reject the Ground Lease. Agent shall have the right, but not the obligation, to serve upon Grantor within such twenty (20) day period a notice stating that Agent demands that Grantor assume and assign the Ground Lease to Agent for the benefit of the Secured Parties pursuant to Section 365 of the Bankruptcy Code. If Agent shall serve upon Grantor the notice described in the preceding sentence, Grantor shall not seek to reject such Ground Lease and shall comply with the demand provided for in the preceding sentence. In addition, effective upon the entry of an order for relief with respect to Grantor under the Bankruptcy Code, Grantor hereby assigns and transfers to Agent a non-exclusive right to apply to the Bankruptcy Court under subsection 365(d)(4) of the Bankruptcy Code for an order extending the period during which the Ground Lease may be rejected or assumed.

(t) Grantor represents and warrants that the Ground Lease is valid and in full force and effect, and Grantor is not in default under any of the terms thereof. All rent, additional rent and other charges reserved therein have been paid to the extent they are payable to the date hereof. Grantor has title to and the right to assign the Ground Lease to the Trustee and the Agent for the benefit of the Secured Parties, and no other assignment of the Ground Lease has been granted. To the best of Grantor's knowledge and belief, Ground Lessor is not in default under the Ground Lease and is not the subject of any bankruptcy, insolvency or similar proceeding. The Ground Lease constitutes, to the best of Grantor's knowledge, the legal, valid and binding obligation of the Ground Lessor, and is enforceable by the Grantor in accordance with its terms, and the terms of the Ground Lease are as set forth in the lease document(s) referenced in the definition of "Ground Lease" herein, copies of which have been delivered to the Agent. Grantor enjoys the quiet and peaceful possession of the property demised thereby in accordance with and subject to the terms of such Ground Lease.

ARTICLE 3

Assignment of Rents, Leases, Issues and Profits

Section 3.1. Assignment. Grantor hereby absolutely and unconditionally assigns to Agent for the benefit of the Secured Parties and grants a security interest to Agent for the benefit of the Secured Parties all Rents (hereinafter defined), issues and profits and all of Grantor's rights in and under all Leases (hereinafter defined). So long as no Event of Default has occurred, Grantor shall have a license (which license shall terminate automatically and without further notice upon the occurrence of an Event of Default) to collect, but not prior to accrual, the Rents under the Leases and, where applicable, subleases, such Rents to be held in trust for Agent for the benefit of the Secured Parties and to otherwise deal with all Leases as permitted by this Deed of Trust. Each month, provided no Event of Default has occurred, Grantor may retain such



Rents as were collected that month and held in trust for Agent for the benefit of the Secured Parties; provided, however, that all Rents collected by Grantor shall be applied solely to the ordinary and necessary expenses of owning and operating the Property or paid to Agent, or as is otherwise permitted in accordance with the terms and conditions of the Credit Agreement. Upon the revocation of such license, all Rents shall be paid directly to Agent and not through Grantor, all without the necessity of any further action by Agent, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Property or any action for the appointment of a receiver. Grantor hereby authorizes and directs the tenants under the Leases to pay Rents to Agent upon written demand by Agent, without further consent of Grantor, without any obligation of such tenants to determine whether an Event of Default has in fact occurred and regardless of whether Agent has taken possession of any portion of the Property, and the tenants may rely upon any written statement delivered by Agent to the tenants. Any such payments to Agent shall constitute payments to Grantor under the Leases, and Grantor hereby irrevocably appoints Agent as its attorney-in-fact to do all things, after an Event of Default, which Grantor might otherwise do with respect to the Property and the Leases thereon, including, without limitation, (i) collecting Rents with or without suit and applying the same, less expenses of collection, to any of the obligations secured hereunder or to expenses of operating and maintaining the Property (including reasonable reserves for anticipated expenses), at the option of the Agent, all in such manner as may be determined by Agent, or at the option of Agent, holding the same as security for the payment of the secured indebtedness, (ii) leasing, in the name of Grantor, the whole or any part of the Property which may become vacant, and (iii) employing agents therefor and paying such agents reasonable compensation for their services. The curing of such Event of Default, unless other Events of Default also then exist, shall entitle Grantor to recover its aforesaid license to do any such things which Grantor might otherwise do with respect to the Property and the Leases thereon and to again collect such Rents. The powers and rights granted in this paragraph shall be in addition to the other remedies herein provided for upon the occurrence of an Event of Default and may be exercised independently of or concurrently with any of said remedies. Nothing in the foregoing shall be construed to impose any obligation upon Agent to exercise any power or right granted in this paragraph or to assume any liability under any Lease of any part of the Property and no liability shall attach to Agent for failure or inability to collect any Rents under any such Lease. The assignment contained in this Section shall become null and void upon the release of this Deed of Trust. As used herein: (i) "Lease" means each existing or future lease, sublease (to the extent of Grantor's rights thereunder), license or other agreement under the terms of which any person has or acquires any right to occupy or use the Property, or any part thereof, or interest therein, and each existing or future guaranty of payment or performance thereunder, and all extensions, renewals, amendments, modifications, replacements or amendments and restatements of each such lease, sublease, license, agreement or guaranty; and (ii) "Rents" means all of the rents, issues and profits, and all revenue, income and proceeds derived and to be derived from the Property or arising from the use or enjoyment of any portion thereof or from any Lease, including, but not limited to, the proceeds from any negotiated termination or buyout of such Lease, liquidated damages following default under any such Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the Property, all of Grantor's rights to recover monetary amounts from any tenant in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims



arising out of Lease defaults, including rejections, under any applicable Debtor Relief Law, together with any sums of money that may now or at any time hereafter be or become due and payable to Grantor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas, mineral and mining leases covering the Property or any part thereof, and all proceeds and other amounts paid or owing to Grantor under or pursuant to any and all contracts and bonds relating to the construction or renovation of the Property. Grantor hereby covenants that Grantor has not executed any prior assignment of the Rents and Leases, that Grantor has not performed, and will not perform, any acts or has not executed, and will not execute, any instrument which would prevent Agent from exercising its rights under this paragraph, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any of the Rents of the Property. Grantor further covenants that Grantor will execute and deliver to Agent such further assignments of Rents and Leases of the Property as Agent may from time to time request.

Section 3.2. Covenants, Representations and Warranties Concerning Leases and Rents. Grantor covenants, represents and warrants that: (a) Grantor has good title to, and is the owner of the entire landlord's interest in, the Leases and Rents hereby assigned and authority to assign them; (b) all Leases are valid and enforceable, and in full force and effect, and are unmodified except as stated therein; (c) neither Grantor nor any tenant in the Property is in default under its Lease (and no event has occurred which with the passage of time or notice or both would result in a default under its Lease) or is the subject of any bankruptcy, insolvency or similar proceeding; (d) unless otherwise stated in a Permitted Encumbrance, no Rents or Leases have been or will be assigned, mortgaged, pledged or otherwise encumbered and no other person has or will acquire any right, title or interest in such Rents or Leases; (e) no Rents have been waived, released, discounted, set off or compromised; (f) except as stated in the Leases, Grantor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents; (g) Grantor shall perform all of its obligations under the Leases and enforce the tenants' obligations under the Leases to the extent enforcement is prudent under the circumstances and/or required under the Credit Agreement; (h) except as otherwise permitted in the Credit Agreement, Grantor will not without the prior written consent of Agent, enter into any Lease after the date hereof, or waive, release, discount, set off, compromise, reduce or defer any Rent, receive or collect Rents more than one (1) month in advance, grant any rent-free period to any tenant, reduce any Lease term or waive, release or otherwise modify any other material obligation under any Lease, approve or consent to an assignment of a Lease or a subletting of any part of the premises covered by a Lease, or settle or compromise any claim against a tenant under a Lease in bankruptcy or otherwise; (i) Grantor will not, without the prior written consent of Agent, terminate or consent to the cancellation or surrender of any Lease having an unexpired term of one (1) year or more; (j) Grantor will not execute any Lease except in accordance with the Loan Documents and for actual occupancy by the tenant thereunder; (k) Grantor shall give prompt notice to Agent, as soon as Grantor first obtains notice, of any claim, or the commencement of any action, by any tenant or subtenant under or with respect to a Lease regarding any claimed damage, default, diminution of or offset against Rent, cancellation of the Lease, or constructive eviction, excluding, however, notices of default under residential Leases, and Grantor shall defend, at Grantor's expense, any proceeding pertaining to any Lease, including, if Agent so requests, any such proceeding to which Agent is a party; (l) Grantor shall as often as requested by Agent, within ten (10) days of each request, deliver to Agent a complete

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rent roll of the Property in such detail as Agent may reasonably require, and financial statements of the tenants, subtenants and guarantors under each Lease (to the extent available to Grantor), and deliver to such of the tenants and others obligated under the Leases specified by Agent written notice of the assignment in Section 3.1 hereof in form and content satisfactory to Agent; (m) promptly upon request by Agent, Grantor shall deliver to Agent executed originals of all Leases and copies of all records relating thereto; (n) there shall be no merger of the leasehold estates created by the Leases, with the Leasehold Estate in the Land created by the Ground Lease without the prior written consent of Agent; and (o) Agent may at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Deed of Trust to any Lease, without joinder or consent of, or notice to, Grantor, any tenant or any other person, and notice is hereby given to each tenant under a Lease of such right to subordinate. No such subordination shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder; and nothing herein shall be construed as subordinating this Deed of Trust to any Lease.

Section 3.3. Estoppel Certificates. All Leases shall require the tenant to execute and deliver to Agent an estoppel certificate in form and substance acceptable to Agent within ten (10) days after notice from the Agent.

Section 3.4. No Liability of Agent. Agent's acceptance of this assignment shall not be deemed to constitute Agent a "mortgagee in possession," nor obligate Agent to appear in or defend any proceeding relating to any Lease or to the Property, or to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under any Lease, or assume any obligation for any deposit delivered to Grantor by any tenant and not as such delivered to and accepted by Agent. Agent shall not be liable for any injury or damage to person or property in or about the Property, or for Agent's failure to collect or to exercise diligence in collecting Rents, but shall be accountable only for Rents that it shall actually receive. Neither the assignment of Leases and Rents nor enforcement of Agent's rights regarding Leases and Rents (including collection of Rents) nor possession of the Property by Agent nor Agent's consent to or approval of any Lease (nor all of the same), shall render Agent liable on any obligation under or with respect to any Lease or constitute affirmation of, or any subordination to, any Lease, occupancy, use or option.

If Agent seeks or obtains any judicial relief regarding Rents or Leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall same constitute an election of judicial relief for any foreclosure or any other purpose. Agent neither has nor assumes any obligations as lessor or landlord with respect to any Lease. The rights of Agent under this Article 3 shall be cumulative of all other rights of Agent under the Loan Documents or otherwise.

ARTICLE 4

Default

Section 4.1. Events of Default. An "Event of Default", "default" or "Default" shall have the meaning ascribed to it in the Credit Agreement and the Notes. NOTICE IS HEREBY

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GIVEN THAT THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL AND ANY AND ALL SECURED CASH MANAGEMENT AGREEMENTS AND SECURED HEDGE AGREEMENTS ARE SUBJECT TO TERMINATION, OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED.

ARTICLE 5

Remedies

Section 5.1. Certain Remedies. If an Event of Default shall occur, Trustee and/or Agent on behalf of the Secured Parties may (but shall have no obligation to) exercise any one or more of the following remedies, without notice (unless notice is required by applicable statute):

(a) Acceleration. Agent may at any time and from time to time declare any or all of the secured indebtedness immediately due and payable in full, without notice or demand, or take such other actions as may be taken by Agent under the Credit Agreement.

(b) Enforcement of Assignment of Rents. In addition to the rights of Agent under Article 3 hereof, prior or subsequent to taking possession of any portion of the Property or taking any action with respect to such possession, Agent may: (1) collect and/or sue for the Rents in Agent's own name on behalf of the Secured Parties, give receipts and releases therefor, and after deducting all expenses of collection, including attorneys' fees and expenses, apply the net proceeds thereof to the secured indebtedness in such manner and order as Agent may elect and/or to the operation and management of the Property, including the payment of management, brokerage and attorney's fees and expenses; and (2) require Grantor to transfer all security deposits and records thereof to Agent together with original counterparts of the Leases.

(c) Foreclosure; Power of Sale. Upon the occurrence of an Event of Default, and upon written request of Agent, Trustee may sell the Property, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy; Agent may cause this Deed of Trust to be foreclosed as a mortgage. Any sale made by Trustee hereunder may be as an entirety or in such parcels as Agent may request. To the extent permitted by applicable law, any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. The sale by Trustee of less than the whole of the Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Property shall be sold; and, if the proceeds of such sale of less than the whole of the Property shall be less than the aggregate of the indebtedness secured hereby and the expense of executing this trust as provided herein, this Deed of Trust and the lien hereof shall remain in full force and effect as to the unsold portion of the Property just as though no sale had been made; provided, however, that Grantor shall never have any right to require the sale of less than the whole of the Property but Agent shall have the right, at its sole election, to request Trustee to sell less than the whole of the Property. Trustee may, after any request or direction by Agent, sell not only the real property but



also the Collateral and other interests which are a part of the Property, or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Property separately from the remainder of the Property. It shall not be necessary for Trustee to have taken possession of any part of the Property or to have present or to exhibit at any sale any of the Collateral. After each sale, Trustee shall make to the purchaser or purchasers at such sale good and sufficient conveyances, conveying the property so sold to the purchaser or purchasers in fee simple, subject to the Permitted Encumbrances (and to such leases and other matters, if any, as Trustee may elect upon request of Agent), and shall receive the proceeds of said sale or sales and apply the same as herein provided. Payment of the purchase price to the Trustee shall satisfy the obligation of purchaser at such sale therefor, and such purchaser shall not be responsible for the application thereof. In the event any sale hereunder is not completed or is defective in the opinion of Agent, such sale shall not exhaust the power of sale hereunder and Agent shall have the right to cause a subsequent sale or sales to be made hereunder. Any and all statements of fact or other recitals made in any deed or deeds or other conveyances given by Trustee or any successor or substitute appointed hereunder as to nonpayment of the secured indebtedness or as to the occurrence of any Default, or as to Agent's having declared all of said indebtedness to be due and payable, or as to the request to sell, or as to notice of time, place and terms of hearing and/or sale and the properties to be sold having been duly given, or as to the refusal, failure or inability to act of Trustee or any substitute or successor trustee, or as to the appointment of any substitute or successor trustee, or as to any other act or thing having been duly done by Agent or by such Trustee, substitute or successor, shall be taken as prima facie evidence of the truth of the facts so stated and recited. The Trustee or its successor or substitute may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Trustee, including the posting of notices and the conduct of sale, but in the name and on behalf of Trustee, its successor or substitute. If Trustee or its successor or substitute shall have given notice of hearing and/or sale hereunder, any successor or substitute Trustee thereafter appointed may complete the hearing and/or sale and the conveyance of the property pursuant thereto as if such notice had been given by the successor or substitute Trustee conducting the hearing and/or sale. Grantor agrees that such a sale of all the Property as real estate constitutes a commercially reasonable disposition thereof, Trustee may postpone sale of all or any portion of the Property, and from time to time thereafter may postpone such sale, as provided by statute.

(d) Uniform Commercial Code. Without limitation of Agent's rights of enforcement with respect to the Collateral or any part thereof in accordance with the procedures for foreclosure of real estate, Agent may exercise its rights of enforcement with respect to the Collateral or any part thereof under the Washington Uniform Commercial Code, as in effect from time to time (or under the Uniform Commercial Code in force, from time to time in any other state to the extent the same is applicable law) and in conjunction with, in addition to or in substitution for those rights and remedies: (1) Agent may enter upon Grantor's premises to take possession of, assemble and collect the Collateral or, to the extent and for those items of the Collateral permitted under applicable law, to render it unusable; (2) Agent may require Grantor to assemble the Collateral and make it available at a place Agent designates which is mutually convenient to allow Agent to take possession or dispose of the Collateral; (3) written notice mailed to Grantor as provided herein at least five (5) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; provided that, if Agent fails to comply with this clause (3) in any

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respect, its liability for such failure shall be limited to the liability (if any) imposed on it as a matter of law under the Washington Uniform Commercial Code, as in effect from time to time (or under the Uniform Commercial Code, in force from time to time, in any other state to the extent the same is applicable law); (4) any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Property under power of sale as provided in paragraph (c) above in this Section 5.1; (5) in the event of a foreclosure sale, whether made by Trustee under the terms hereof, or under judgment of a court, the Collateral and the other Property may, at the option of Agent, be sold as a whole; (6) it shall not be necessary that Agent take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; (7) with respect to application of proceeds from disposition of the Collateral under Section 5.2 hereof, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses (including, without limitation, the allocated costs for in-house legal services) incurred by Agent; (8) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the secured indebtedness or as to the occurrence of any Event of Default, or as to Agent having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Agent, shall be taken as prima facie evidence of the truth of the facts so stated and recited; (9) Agent may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Agent, including the sending of notices and the conduct of the sale, but in the name and on behalf of Agent; (10) Agent may comply with any applicable state or federal law or regulatory requirements in connection with a disposition of the Collateral, and such compliance will not be considered to affect adversely the commercial reasonableness of any sale of the Collateral; (11) Agent may sell the Collateral without giving any warranties as to the Collateral, and specifically disclaim all warranties including, without limitation, warranties relating to title, possession, quiet enjoyment and the like, and all warranties of quality, merchantability and fitness for a specific purpose, and this procedure will not be considered to affect adversely the commercial reasonableness of any sale of the Collateral; (12) Grantor acknowledges that a private sale of the Collateral may result in less proceeds than a public sale; and (13) Grantor acknowledges that the Collateral may be sold at a loss to Grantor, and that, in such event, Agent shall have no liability or responsibility to Grantor for such loss.

(e) Lawsuits. Agent may proceed by a suit or suits in equity or at law, whether for collection of the indebtedness secured hereby, the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Property under the judgment or decree of any court or courts of competent jurisdiction.

(f) Entry on Property. Agent is authorized, prior or subsequent to the institution of any foreclosure proceedings, to the fullest extent permitted by applicable law, to enter upon the Property, or any part thereof, and to take possession of the Property and all books and records,

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

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

(h) Termination of Commitment to Lender. Agent or the Secured Parties may terminate any commitment or obligation to lend or disburse funds under any Loan Document.

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

Section 5.2. Proceeds of Foreclosure. The proceeds of any sale held by Trustee or Agent or any receiver or public officer in foreclosure of the liens and security interests evidenced hereby shall be applied in accordance with the requirements of applicable laws and to the extent consistent therewith, FIRST, to the payment of all necessary costs and expenses incident to such



foreclosure sale, including, but not limited to, all attorneys' fees and legal expenses for legal services actually performed, advertising costs, auctioneer's fees, costs of title rundowns and lien searches, inspection fees, appraisal costs, fees for professional services, environmental assessment and remediation fees, all court costs and charges of every character, and a reasonable fee to Trustee, SECOND, in accordance with Section 8.03 of the Credit Agreement; provided however, that with respect to any remainder of such proceeds after the foregoing application thereof, the remainder, if any there shall be, shall be paid to Grantor, or to Grantor's heirs, devisees, representatives, successors or assigns, or such other persons (including the holder or beneficiary of any inferior lien) as may be entitled thereto by law; provided, however, that if Agent is uncertain which person or persons are so entitled, Agent may interplead such remainder in any court of competent jurisdiction, and the amount of any attorneys' fees, court costs and expenses incurred in such action shall be a part of the secured indebtedness and shall be reimbursable (without limitation) from such remainder.

Section 5.3. Agent as Purchaser. Agent on behalf of the Secured Parties shall have the right to become the purchaser at any sale held by Trustee or substitute or successor or by any receiver or public officer or at any public sale, and Agent shall have the right to credit upon the amount of Agent's successful bid, to the extent necessary to satisfy such bid, all or any part of the secured indebtedness in such manner and order as Agent may elect.

Section 5.4. Foreclosure as to Matured Debt. Upon the occurrence of an Event of Default, Agent shall have the right to proceed with foreclosure (judicial or nonjudicial) of the liens and security interests hereunder without declaring the entire secured indebtedness due, and in such event any such foreclosure sale may be made subject to the unmatured part of the secured indebtedness; and any such sale shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part this Deed of Trust shall remain in full force and effect just as though no sale had been made. The proceeds of such sale shall be applied as provided in Section 5.2 hereof except that the amount paid under clause FIRST thereof shall be only the matured portion of the secured indebtedness and any proceeds of such sale in excess of those provided for in clause FIRST (modified as provided above) shall be applied to the prepayment (without penalty) of any other secured indebtedness in such manner and order and to such extent as Agent deems advisable, and the remainder, if any, shall be applied as provided in clause SECOND of Section 5.2 hereof. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the secured indebtedness.

Section 5.5. Remedies Cumulative. All rights and remedies provided for herein and in any other Loan Document are distinct and cumulative of each other and of any and all other rights and remedies existing at law or in equity, and may be exercised concurrently, independently, or successively, in any order whatsoever, and Trustee and Agent on behalf of the Secured Parties shall, in addition to the rights and remedies provided herein or in any other Loan Document, be entitled to avail themselves of all such other rights and remedies as may now or hereafter exist at law or in equity for the collection of the secured indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and the resort to any right or remedy provided for hereunder or under any such other Loan Document or provided for by law or in equity shall not prevent the concurrent or subsequent employment of any other appropriate right or rights or remedy or remedies.



Section 5.6. Discretion as to Security. Agent may resort to any security given by this Deed of Trust or to any other security now existing or hereafter given to secure the payment of the secured indebtedness, in whole or in part, and in such portions and in such order as may seem best to Agent in its sole and uncontrolled discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Deed of Trust.

Section 5.7. Grantor's Waiver of Certain Rights. To the full extent Grantor may do so, Grantor agrees that Grantor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, homestead, moratorium, reinstatement, marshaling or forbearance, and Grantor, for Grantor, Grantor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by applicable law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of intention to mature or declare due the whole of the secured indebtedness, notice of election to mature or declare due the whole of the secured indebtedness and all rights to a marshaling of assets of Grantor, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and/or security interests hereby created. Grantor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Agent under the terms of this Deed of Trust to a sale of the Property for the collection of the secured indebtedness without any prior or different resort for collection, or the right of Agent under the terms of this Deed of Trust to the payment of the secured indebtedness out of the proceeds of sale of the Property in preference to every other claimant whatsoever. If any law referred to in this Section and now in force, of which Grantor or Grantor's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Property might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section.

To the full extent permitted by law, Grantor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Notes, the Credit Agreement, or any other Obligation secured by this Instrument.

Section 5.8. Delivery of Possession After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, Grantor or Grantor's heirs, devisees, representatives, or successors as owners of the Property are occupying or using the Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of purchaser, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser; and to the extent permitted by applicable law, the purchaser at such sale shall, notwithstanding any language herein apparently to the contrary, have the sole option to demand immediate possession following the sale or to permit the occupants to remain as tenants at will. After such foreclosure, any Leases to tenants or subtenants that are subject to this Deed of Trust (either by their date, their express terms, or by agreement of the tenant or subtenant) shall, at the sole option of Agent or any purchaser at such sale, either (i) continue in full force



and effect, and the tenant(s) or subtenant(s) thereunder will, upon request, attorn to and acknowledge in writing to the purchaser or purchasers at such sale or sales as landlord thereunder, or (ii) upon notice to such effect from Agent, the Trustees or any purchaser or purchasers, terminate within thirty (30) days from the date of sale. In the event the tenant fails to surrender possession of the Property upon demand, the purchaser shall be entitled to institute and maintain a summary action for possession of the Property (such as an action for forcible detainer) in any court having jurisdiction.

ARTICLE 6

Miscellaneous

Section 6.1. Scope of Deed of Trust. This Deed of Trust is a Deed of Trust and mortgage of both real and personal property, a security agreement, an assignment of rents and leases, a financing statement and fixture filing and a collateral assignment, and also covers proceeds and fixtures.

Section 6.2. Effective as a Financing Statement. This Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all goods that are or are to become fixtures included within the Property and is to be filed for record in the real estate records of each county where any part of the Property (including said fixtures) is situated. This Deed of Trust shall also be effective as a financing statement covering as-extracted collateral (including oil and gas), accounts and general intangibles under the Washington Uniform Commercial Code, as in effect from time to time, and the Uniform Commercial Code, as in effect from time to time, in any other state where the Property is situated which will be financed at the wellhead or minehead of the wells or mines located on the Property and is to be filed for record in the real estate records of each county where any part of the Property is situated. This Deed of Trust shall also be effective as a financing statement covering any surplus of withheld funds resulting from the invalidity of "stop notice" claims or the failure of claimants to prosecute their claims to judgment and any other Property in which an interest can be perfected by filing and may be filed in any other appropriate filing or recording office. The real property to which the foregoing fixtures and as-extracted collateral relate is the Land described on Exhibit A attached hereto. The record owner of the real property described in Exhibit A attached hereto is the Ground Lessor. The name, type of organization and jurisdiction of organization of the debtor for purposes of this financing statement are the name, type of organization and jurisdiction of organization of the Grantor set forth in the first paragraph of this Deed of Trust, and the name of the secured party for purposes of this financing statement is the name of the Agent set forth in the first paragraph of this Deed of Trust. Grantor's (debtor's) organizational identification number is as set forth on page 2 of this Deed of Trust. The mailing address of Grantor (debtor) is set forth in the first paragraph of this Deed of Trust, and the mailing address of Agent (secured party) is set forth in the first paragraph of this Deed of Trust. A carbon, photographic or other reproduction of this Deed of Trust or of any financing statement relating to this Deed of Trust shall be sufficient as a financing statement for any of the purposes referred to in this Section. In addition, Grantor agrees to execute and deliver to Agent, upon its request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Agent may require to perfect a security interest with respect to

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said items on behalf of the Agent. Grantor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Agent may reasonably require. Without the prior written consent of Agent, Grantor shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto, except for "purchase money" security interests permitted by the Credit Agreement.

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

Section 6.4. Waiver by Agent. Agent may at any time and from time to time by a specific writing intended for the purpose: (a) waive compliance by Grantor with any covenant herein made by Grantor to the extent and in the manner specified in such writing; (b) consent to Grantor's doing any act which hereunder Grantor is prohibited from doing, or to Grantor's failing to do any act which hereunder Grantor is required to do, to the extent and in the manner specified in such writing; (c) release any part of the Property or any interest therein from the lien and security interest of this Deed of Trust, without the joinder of Trustee; or (d) release any party liable, either directly or indirectly, for the secured indebtedness or for any covenant herein or in any other Loan Document, without impairing or releasing the liability of any other party. No such act shall in any way affect the rights or powers of Agent or Trustee hereunder except to the extent specifically agreed to by Agent in such writing.

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

Section 6.6. Acts Not Constituting Waiver by Agent. Agent may waive any Event of Default without waiving any other prior or subsequent Event of Default. Agent may remedy any Event of Default without waiving the Event of Default remedied. Neither failure by Agent to exercise, nor delay by Agent in exercising, nor discontinuance of the exercise of any right, power or remedy (including, but not limited to, the right to accelerate the maturity of the secured indebtedness or any part thereof) upon or after any Event of Default shall be construed as a waiver of such Event of Default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Agent of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and



every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Grantor therefrom shall in any event be effective unless the same shall be in writing and signed by Agent and then such waiver or consent shall be effective only in the specific instance, for the purpose for which given and to the extent therein specified. No notice to nor demand on Grantor in any case shall of itself entitle Grantor to any other or further notice or demand in similar or other circumstances. Remittances in payment of any part of the secured indebtedness other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Agent on behalf of the Secured Parties in immediately available U.S. funds and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Agent on behalf of the Secured Parties of any payment in an amount less than the amount then due on any secured indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of an Event of Default hereunder, notwithstanding any notation on or accompanying such partial payment to the contrary.

Section 6.7. Grantor's Successors. If the ownership of the Property or any part thereof becomes vested in a person other than Grantor, Agent may, without notice to Grantor, deal with such successor or successors in interest with reference to this Deed of Trust and to the indebtedness secured hereby in the same manner as with Grantor, without in any way vitiating or discharging Grantor's liability hereunder or for the payment of the indebtedness or performance of the obligations secured hereby. No transfer of the Property, no forbearance on the part of Agent, and no extension of the time for the payment of the indebtedness secured hereby given by Agent shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Grantor hereunder for the payment of the indebtedness or performance of the obligations secured hereby or the liability of any other person hereunder for the payment of the indebtedness secured hereby. Each Grantor agrees that it shall be bound by any modification of this Deed of Trust or any of the other Loan Documents made by Agent and any subsequent owner of the Property, with or without notice to such Grantor, and no such modifications shall impair the obligations of such Grantor under this Deed of Trust or any other Loan Document. Nothing in this Section or elsewhere in this Deed of Trust shall be construed to imply Agent's consent to any transfer of the Property.

Section 6.8. Place of Payment; Forum; Waiver of Jury Trial. All secured indebtedness which may be owing hereunder at any time by Grantor shall be payable at the place designated in the Credit Agreement. Grantor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the non-exclusive jurisdiction of any Washington state court, or any United States federal court, sitting in the county in which the secured indebtedness is payable, and to the non-exclusive jurisdiction of any state or United States federal court sitting in the state in which any of the Property is located, over any suit, action or proceeding arising out of or relating to this Deed of Trust or the secured indebtedness. Grantor hereby irrevocably waives, to the fullest extent permitted by law, any objection that Grantor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Grantor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit,

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action or proceeding in any Washington state court, or any United States federal court, sitting in the state in which the secured indebtedness is payable may be made by certified or registered mail, return receipt requested, directed to Grantor at its address stated at the end of this Deed of Trust, or at a subsequent address of Grantor of which Agent received actual notice from Grantor in accordance with this Deed of Trust. Nothing herein shall affect the right of Agent to serve process in any manner permitted by law or limit the right of Agent to bring proceedings against Grantor in any other court or jurisdiction. TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTOR WAIVES THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT.

Section 6.9. Subrogation to Existing Liens. To the extent that proceeds of the Notes or the other Loan Documents are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Agent at Grantor's request, and Agent shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, however remote, irrespective of whether said liens, security interests, charges or encumbrances are released, and all of the same are recognized as valid and subsisting and are renewed and continued and merged herein to secure the secured indebtedness, but the terms and provisions of this Deed of Trust shall govern and control the manner and terms of enforcement of the liens, security interests, charges and encumbrances to which Agent is subrogated hereunder. It is expressly understood that, in consideration of the payment of such indebtedness by Agent, Grantor hereby waives and releases all demands and causes of action for offsets and payments in connection with the said indebtedness.

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

Section 6.11. Nature of Loans; Compliance with Usury Laws. The Loans evidenced by the Notes are being made solely for the purpose of carrying on or acquiring a business or commercial enterprise. It is the intent of Grantor, the Agent, the Lenders and all other parties to the Loan Documents to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between Agent, the Lenders and Grantor (or any other party liable with respect to any indebtedness under the Loan Documents) are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising. In no way, nor in any event or contingency (including, but not limited to, prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable, or received under this Deed of Trust, the Notes or any other Loan Document or otherwise, exceed the maximum nonusurious amount permitted by applicable law (the "Maximum Amount"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this Section and, if and to the extent permitted by law, such document shall ipso



facto be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. If Agent or any of the Lenders shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the secured indebtedness in the inverse order of its maturity and not to the payment of interest, or refunded to Grantor or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal. The right to accelerate maturity of the Notes or any other secured indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and neither Agent nor the Lenders intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Agent or the Lenders shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Amount. As used in this Section, the term "applicable law" shall mean the laws of the State of Washington or the federal laws of the United States applicable to this transaction, whichever laws allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future.

Section 6.12. Trustee's Acceptance. Trustee accepts these trusts when this Instrument, executed and acknowledged by Grantor, is made a public record as provided by law.

Section 6.13. Substitute Trustee. The Trustee may resign by an instrument in writing addressed to Agent, or Trustee may be removed at any time with or without cause by an instrument in writing executed by Agent. In case of the death, resignation, removal, or disqualification of Trustee, or if for any reason Agent shall deem it desirable to appoint a substitute or successor trustee to act instead of the herein named trustee or any substitute or successor trustee, then Agent shall have the right and is hereby authorized and empowered to appoint a successor trustee(s), or a substitute trustee(s), without other formality than appointment and designation in writing executed by Agent and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the indebtedness secured hereby has been paid in full, or until the Property is fully and finally sold hereunder. The aforesaid writing executed and acknowledged by Agent and recorded in the Office of the County Recorder of the County or Counties wherein the Property is situated, shall be conclusive proof of the proper substitution of such successor or Trustee, who shall have all the estate, powers, duties and trusts in the Property vested in or conferred on the original Trustee. If Agent is a corporation or association and such appointment is executed on its behalf by an officer of such corporation or association, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation or association. Upon the making of any such appointment and designation, all of the estate and title of Trustee in the Property shall vest in the named successor or substitute Trustee(s) and he shall thereupon succeed to, and shall hold, possess and execute, all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to "Trustee" shall be deemed to refer to Trustee (including any successor(s) or substitute(s) appointed and designated as herein provided) from time to time

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acting hereunder. If there be more than one Trustee, either may act alone and execute the Trusts upon the request of Agent and his acts shall be deemed to be the acts of all Trustees, and the recital in any conveyance executed by such sole Trustee of such requests shall be conclusive evidence thereof, and of the authority of such sole Trustee to act. Agent agrees to provide prompt written notice to Grantor of the name and address of any substitute trustee.

Section 6.14. No Liability of Trustee. The Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever (including Trustee's negligence), except for Trustee's gross negligence or willful misconduct. The 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 him hereunder, believed by him in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by him hereunder. Grantor hereby ratifies and confirms any and all acts which the herein named Trustee or its successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof. Grantor will reimburse Trustee for, and save him harmless against, any and all liability and expenses which may be incurred by him in the performance of its duties. The foregoing indemnity shall not terminate upon discharge of the secured indebtedness or foreclosure, or release or other termination, of this Deed of Trust.

Section 6.15. Releases.

(a) **Release of Deed of Trust.** If all of the secured indebtedness be paid as the same becomes due and payable and all of the covenants, warranties, undertakings and agreements made in this Deed of Trust are kept and performed, and all Secured Cash Management Agreements, Secured Hedge Agreements and all other obligations, if any, of Agent and the other Secured Parties for further advances have been terminated, then, and in that event only, all rights under this Deed of Trust shall terminate (except to the extent expressly provided herein with respect to indemnifications, representations and warranties and other rights which are to continue following the release hereof) and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, and such liens and security interests shall be released by Agent in due form at Grantor's cost. Without limitation, all provisions herein for indemnity of Agent, the other Secured Parties or Trustee shall survive discharge of the secured indebtedness, the termination of any and all Secured Cash Management Agreements and Secured Hedge Agreements, and any foreclosure, release or termination of this Deed of Trust.

(b) **Partial Releases; No Release in Default.** Partial releases of the lien of this Deed of Trust shall be made only in accordance with the terms and provisions of the Credit Agreement, or in accordance with such other terms and conditions as may subsequently be agreed to in advance in writing by Agent. No partial release shall be sought, requested or required if any Event of Default has occurred which has not been cured.

(c) **Effect of Partial Release.** Agent may, regardless of consideration, cause the release of any part of the Property from the lien of this Deed of Trust without in any manner



affecting or impairing the lien or priority of this Deed of Trust as to the remainder of the Property.

(d) Reconveyance. Upon receipt of a written-request from Agent reciting that all sums secured hereby have been paid and upon surrender of this Instrument and the Loan Documents to Trustee for cancellation and retention and upon the payment of the Trustee's fees by Grantor, the Trustee shall reconvey without warranty the Property then held hereunder. The recitals in such conveyance of any matters of fact shall be conclusive proof of the truth thereof. The grantee in such reconveyance may be described in general terms as "The person or persons legally entitled thereto," and Trustee is authorized to retain this Instrument and the Loan Documents.

(e) Grantor and Lien Not Released. From time to time, Agent may, at Agent's option, without giving notice to or obtaining the consent of Grantor (except as provided in this paragraph), its successors or assigns or of any junior lienholder or guarantor, without liability on Agent's part and notwithstanding Grantor's breach of any covenant or agreement of Grantor in this Instrument or existence of any other Event of Default, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, release from the lien of this Instrument any part of the Property or take or release other or additional security or reconvey any part of the Property or consent to any map or plan of the Property or consent to the granting of any easement, join in any extension or subordination agreement or agree in writing with Borrowers to modify the rate of interest on the Notes or to change the amount of the installments payable thereunder. Any actions taken by Agent pursuant to the terms of this paragraph shall not affect the obligation of Borrowers and their successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Grantor contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and shall not affect the lien or priority of lien hereof on the Property. Grantor shall pay Agent a reasonable service charge, together with such title insurance premiums and attorney's fees as may be incurred at Agent's option for any such action if taken at Grantor's request.

Section 6.16. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in the first paragraph of this Deed of Trust(unless changed by similar notice in writing given by the particular party whose address is to be changed) or by telegram, telex, or facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of nationally recognized overnight courier service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of telegram, telex or facsimile, upon receipt. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt. This Section shall not be construed in any way to affect or impair any



waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

Section 6.17. Invalidity of Certain Provisions. A determination that any provision of this Deed of Trust is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Deed of Trust to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

Section 6.18. Gender; Titles; Construction. Within this Deed of Trust, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Deed of Trust and not to any particular Article, Section, paragraph or provision. The term "person" and words importing persons as used in this Deed of Trust shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies and other legal entities, including Governmental Authorities, as well as natural persons.

Section 6.19. Reporting Compliance. Grantor agrees to comply with any and all reporting requirements applicable to the transaction evidenced by the Credit Agreement, the Notes and secured by this Deed of Trust and the other Loan Documents which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority, including but not limited to The International Investment Survey Act of 1976, The Agricultural Foreign Investment Disclosure Act of 1978, The Foreign Investment in Real Property Tax Act of 1980 and the Tax Reform Act of 1986 and further agrees upon request of Agent to furnish Agent with evidence of such compliance.

Section 6.20. Agent's Consent. Except where otherwise expressly provided herein, in any instance hereunder where the approval, consent or the exercise of judgment of Agent is required or requested, (a) the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Agent, and Agent shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner, regardless of the reasonableness of either the request or Agent's judgment, and (b) no approval or consent of Agent shall be deemed to have been given except by a specific writing intended for the purpose and executed by an authorized representative of Agent.

Section 6.21. Grantor. Unless the context clearly indicates otherwise, as used in this Deed of Trust, "Grantor" means the grantors named in Section 1.2 hereof or any of them. The obligations of Grantor hereunder shall be joint and several. If any Grantor, or any signatory who signs on behalf of any Grantor, is a corporation, partnership or other legal entity, Grantor and any such signatory, and the person or persons signing for it, represent and warrant to Agent that this instrument is executed, acknowledged and delivered by Grantor's duly authorized

representatives. If Grantor is an individual, no power of attorney granted by Grantor herein shall terminate on Grantor's disability.

Section 6.22. Execution; Recording. This Deed of Trust has been executed in several counterparts, all of which are identical, and all of which counterparts together shall constitute one and the same instrument. The date or dates reflected in the acknowledgments hereto indicate the date or dates of actual execution of this Deed of Trust, but such execution is as of the date shown on the signature page hereof, and for purposes of identification and reference the date of this Deed of Trust shall be deemed to be the date reflected on the signature page hereof. Grantor will cause this Deed of Trust and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating thereto to be recorded, filed, re-recorded and refiled in such manner and in such places as Trustee or Agent shall reasonably request and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

Section 6.23. Successors and Assigns; Agents. The terms, provisions, covenants and conditions hereof shall be binding upon Grantor, and the heirs, devisees, representatives, successors and assigns of Grantor, and shall inure to the benefit of Trustee and Agent and shall constitute covenants running with the Land. All references in this Deed of Trust to Grantor shall be deemed to include all such heirs, devisees, representatives, successors and assigns of Grantor. All covenants of Borrowers in the Notes, the Credit Agreement, and the other Loan Documents shall be joint and several with other obligors. In exercising any rights hereunder or taking any actions provided for herein, Agent may act through their employees, agents or independent contractors as authorized by Agent.

Section 6.24. Modification or Termination. The Loan Documents may only be modified or terminated by a written instrument or instruments intended for that purpose and executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

Section 6.25. No Partnership, Etc. The relationship between the Lenders and Grantor is solely that of lender and borrower or guarantor. Agent and the other Secured Parties have no fiduciary or other special relationship with Grantor. Nothing contained in the Loan Documents is intended to create any partnership, joint venture, association or special relationship between Grantor and the Secured Parties or in any way make Agent or the other Secured Parties a co-principal with Grantor with reference to the Property. All agreed contractual duties between or among the Secured Parties, Grantor and Trustee are set forth herein and in the other Loan Documents and any additional implied covenants or duties are hereby disclaimed. Any inferences to the contrary of any of the foregoing are hereby expressly negated.

Section 6.26. Governing Law. The remedial provisions and real property covenants of this Instrument shall be governed by the law of Washington, but the Notes, the Credit Agreement, and the other Loan Documents and the Loan transactions secured by this Instrument are governed by New York law. In the event that any provision of this Instrument or the Notes or the Credit Agreement conflicts with applicable law, such conflict shall not affect other provisions of this Instrument, the Notes, the Credit Agreement or any other Loan Document which can be



given effect without the conflicting provisions, and to this end the provisions of such documents are declared to be severable. In the event that any applicable law limiting the amount of interest or other charge permitted to be collected from Grantor is interpreted so that any charge provided for in this Instrument, in the Notes or in the Credit Agreement, whether considered separately or together with other charges levied in connection with this Instrument and the Notes, violates such law, and Grantor is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to Agent in excess of the amounts payable to Agent pursuant to such charges as reduced shall be applied by Agent to reduce the principal of the indebtedness evidenced by the Notes. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Grantor has been violated, all Indebtedness which is secured by this Instrument, or evidenced by the Notes, or the Credit Agreement, and which constitutes interest, as well as all other charges levied in connection with such Indebtedness which constitute interest, shall be deemed to be uniformly allocated and spread over the stated terms of the Notes.

To the extent the laws of the State of Washington limit (i) the availability of the exercise of any of the remedies set forth in this Deed of Trust, including without limitation the right of Agent, the Lenders and the other Secured Parties to exercise self-help in connection with the enforcement of the terms of this Deed of Trust, or (ii) the enforcement of waivers and indemnities made by Grantor, such remedies, waivers, or indemnities shall be exercisable or enforceable, any provisions in this Deed of Trust to the contrary notwithstanding, if, and to the extent, permitted by the laws in force at the time of the exercise of such remedies or the enforcement of such waivers or indemnities without regard to the enforceability of such remedies, waivers or indemnities at the time of the execution and delivery of this Deed of Trust.

Section 6.27. Execution Under Seal. Grantor agrees that this instrument is executed under seal. If Grantor is a corporation, the designation ("SEAL" or "CORPORATE SEAL") on this instrument shall be as effective as the affixing of Grantor's corporate seal physically to this instrument.

Section 6.28. Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Grantor and Agent and the other Secured Parties with respect to the transactions arising in connection with the indebtedness secured hereby and supersede all prior written or oral understandings and agreements between Grantor and Agent and the other Secured Parties with respect to the matters addressed in the Loan Documents. Grantor hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no persons are or were authorized by Agent or the other Secured Parties to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

Section 6.29. Future Advances. This Deed of Trust secures all present and future advances and/or future obligations that may from time to time be made or incurred by the Borrower, the Grantor or any other Loan Party, under the Loan Documents (including, without limitation, this Deed of Trust), and all other sums from time to time owing to the Agent and/or the other Secured Parties under the Loan Documents and under the secured indebtedness (including without limitation any existing obligations incurred or any advances made at or prior



to the filing of this Deed of Trust of record in the real estate records of the county where the Property is situated). The maximum principal amount that may be secured by this Deed of Trust at any one time is One Hundred Million and No/100 Dollars (\$100,000,000.00).

Section 6.30. Priority of Lien. This Instrument shall remain in full force and effect notwithstanding any extension or extensions of the maturity date or other modification of the obligations which this Instrument secures and notwithstanding the fact that such extensions and modifications may be evidenced by a note or notes signed and dated after the date of this Instrument.

Section 6.31. Exclusion of Environmental Indemnity. Neither this Instrument nor any of the other Loan Documents secures, nor shall be deemed to secure, that certain Amended and Restated Environmental Indemnity Agreement given by Grantor to Agent of even date herewith, nor any other environmental indemnification provisions set forth elsewhere in any of the Loan Documents.

Section 6.32. Amendment and Restatement. Grantor and Agent hereby agree that this Deed of Trust is a complete amendment and restatement of the Existing Deed of Trust but without interruption or impairment of the right, title, interest, liens, encumbrances and security interests established pursuant to the Existing Deed of Trust. From and after the date of this Deed of Trust, all of the terms and provisions of the Existing Deed of Trust shall be deemed superseded and replaced by the terms and provisions of this Deed of Trust. Grantor and Agent acknowledge and agree that (i) the Amended and Restated Credit Agreement does not constitute a novation of the Original Credit Agreement or the indebtedness described therein; and (ii) the issuance of new Notes, if any, pursuant to the Amended and Restated Credit Agreement shall not be construed as a novation and shall not affect, diminish or abrogate Grantor's liability under this Deed of Trust or the priority of this Deed of Trust. The parties further acknowledge and agree that nothing herein shall be construed or deemed to affect the priority of the Existing Deed of Trust.

Section 6.33. Related Swap Contracts and Related Cash Management Agreements. No Person who obtains the benefit of any lien by virtue of the definition of Obligations shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Property (including the release or impairment of any Property) other than in its capacity as Lender and only to the extent expressly provided in the Loan Documents. Each Secured Party not a party to the Credit Agreement who obtains the benefit of this Deed of Trust shall be deemed to have acknowledged and accepted the appointment of Agent pursuant to the terms of the Credit Agreement, and that with respect to the actions and omissions of Agent hereunder or otherwise relating hereto that do or may affect such Secured Party, Agent and its Related Parties shall be entitled to all the rights, benefits and immunities conferred under Article IX of the Credit Agreement.

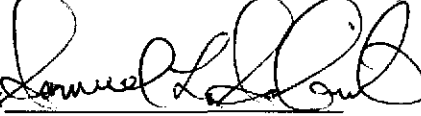
(Signatures appear on the following page)



IN WITNESS WHEREOF, Grantor and Agent, each by its duly authorized officer, has executed and delivered this Instrument under seal as of October 30, 2012. **PLEASE BE ADVISED THAT ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR FOREBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

GRANTOR:

NORTHWEST RESTAURANTS, INC.

By: 

Samuel L. Sibert
Secretary/Treasurer/Chief Executive Officer

[CORPORATE SEAL]

NORTHWEST RESTAURANTS OREGON, INC.

By: 

Samuel L. Sibert
Secretary/Treasurer/Chief Executive Officer

[CORPORATE SEAL]

SPOKANE, INC.

By: 

Samuel L. Sibert
Secretary/Treasurer/Chief Executive Officer

[CORPORATE SEAL]



201210310002
Skagit County Auditor

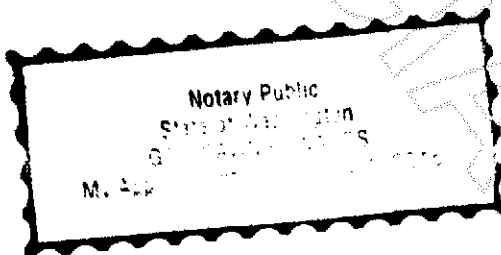
STATE OF WASHINGTON

SS.

COUNTY OF KING

I certify that I know or have satisfactory evidence that Samuel L. Sibert is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledge it as the Secretary/Treasurer/Chief Executive Officer of NORTHWEST RESTAURANTS, INC., a Washington corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in this instrument.

Dated: October 24th, 2012



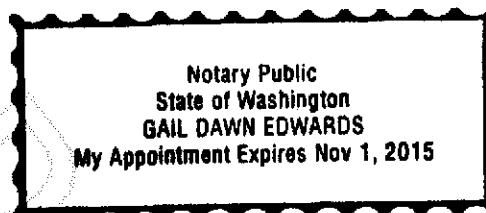
Gail Dawn Edwards
Notary name printed or typed: Gail Dawn Edwards
Notary Public in and for the State of Washington
Residing at Snodgrass Crk
My appointment expires: 11/1/15

| ss.

STATE OF WASHINGTON

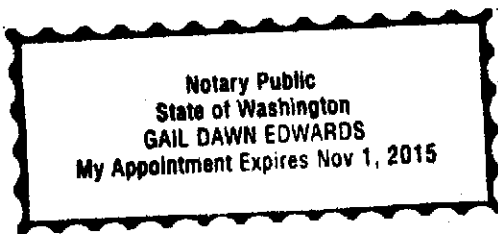
SS.

COUNTY OF KING



I certify that I know or have satisfactory evidence that Samuel L. Sibert is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledge it as the Secretary/Treasurer/Chief Executive Officer of NORTHWEST RESTAURANTS OREGON, INC., an Oregon corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in this instrument.

Dated: October 24th, 2012



Gail Dawn Edwards
Notary name printed or typed: Gail Dawn Edwards
Notary Public in and for the State of Washington
Residing at Snodgrass Crk
My appointment expires: 11/1/15

| ss.



STATE OF WASHINGTON

SS.

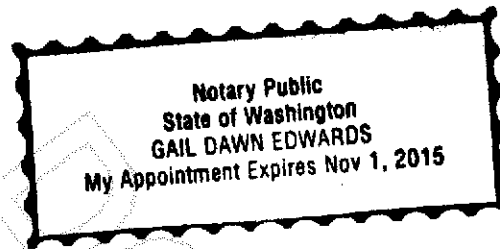
COUNTY OF KING

I certify that I know or have satisfactory evidence that Samuel L. Sibert is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledge it as the Secretary/Treasurer/Chief Executive Officer of SPOKANE, INC., a Washington corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in this instrument.

Dated: October 24th, 2012

Gail Dawn Edwards
Notary name printed or typed: Gail Dawn Edwards
Notary Public in and for the State of Washington
Residing at Spokane City
My appointment expires: 11/1/15

| SS.



201210310002
Skagit County Auditor

AGENT:

BANK OF AMERICA, N.A., a national
banking association, as Agent

By: *Darleen R. Parmelee* (SEAL)
Name: Darleen R. Parmelee
Title: Assistant Vice President

STATE OF NORTH CAROLINA

§
§
§

COUNTY OF MECKLENBURG

I certify that the following person(s) personally appeared before me this day, and each
acknowledging to me that he or she signed the foregoing document: **Darleen R. Parmelee.**

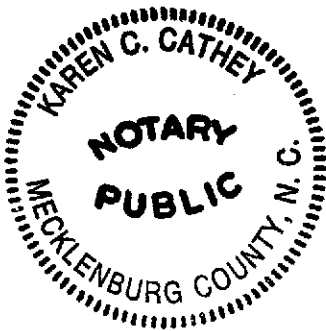
Date: October 25, 2012

Karen C. Cathey
Notary Public

Printed Name: Karen C. Cathey

(Official Seal)

My commission expires: September 29, 2016



201210310002
Skagit County Auditor

Trustee hereby executes this Deed of Trust to evidence its consent to the foregoing amendment and restatement of the Existing Deed of Trust.

CHICAGO TITLE COMPANY

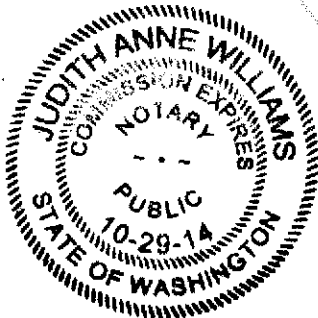
By: Melody Derrossett
Name: Melody Derrossett
Title: Recorder

STATE OF WASHINGTON §
COUNTY OF SAGLE §

I certify that the following person(s) personally appeared before me this day, and each acknowledging to me that he or she signed the foregoing document: MELODY DERLOSSETT

Date: October 30, 2012

(Official Seal)



Judith Anne Williams
Notary Public
Printed Name JUDITH ANNE WILLIAMS

My commission expires: 10/29/14



201210310002
Skagit County Auditor

Store No. E080-077 f/k/a Store No. 80
1702 Commercial Avenue Anacortes, WA
Skagit County

EXHIBIT A

Legal Description

Land

Leasehold estate in the following parcel(s) of real property:

LOTS 1 THROUGH 8, INCLUSIVE. BLOCK 46, EXCEPT THE SOUTH 21 FEET OF LOTS 1 THRU 5, INCLUSIVE, "MAP OF THE CITY OF ANACORTES, SKAGIT COUNTY, WASHINGTON", AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, *PAGE 4, RECORDS OF SKAGIT COUNTY, WASHINGTON. *PAGES 4 THROUGH 7

SITUATE IN THE CITY OF ANACORTES, COUNTY OF SKAGIT, STATE OF WASHINGTON.

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201210310002

Skagit County Auditor

Store No. E080-077 f/k/a Store No. 80
1702 Commercial Avenue Anacortes, WA
Skagit County

SCHEDULE 1

GROUND LEASE

That certain Lease Agreement dated December 7, 1998 by and between Madrona Real Estate Investors, LLC, as Landlord, and Orchard LLC, as Tenant, as the same may have been or may hereafter be amended, a memorandum of which is recorded as Auditor's Number 200006290112 in the Skagit County Auditor's Office. Tenant's interest in said lease was assigned to Northwest Restaurants, Inc., a Washington corporation, by Assignment of Leasehold Estate recorded as Auditor's Number 200302130097 in the aforesaid Auditor's Office.

Record Owner: Madrona Real Estate Investors One, LLC

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201210310002

Skagit County Auditor