

**RECORDATION REQUESTED BY:**

Farleigh Wada Witt  
121 SW Morrison Street, Suite 600  
Portland, OR 97204



201704280125

Skagit County Auditor

\$331.00

4/28/2017 Page

1 of 39 1:36PM

**WHEN RECORDED MAIL TO:**

Farleigh Wada Witt  
Attn: Marisol McAllister  
121 SW Morrison Street, Suite 600  
Portland, OR 97204

113712

GUARDIAN NORTHWEST TITLE CO.

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

THIS DEED OF TRUST IS INTENDED ALSO AS A FIXTURE FILING AND IS TO BE INDEXED NOT ONLY AS A DEED OF TRUST BUT ALSO AS A FIXTURE FILING.

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

**GRANTOR:**

John D. Carroll L.L.C., a Washington limited liability company

**GRANTEE:**

Hyundai Capital America (beneficiary)  
First American Title Insurance Company (trustee)

**LEGAL DESCRIPTION (abbreviated):**

SECTION 6, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., PTN. SE ¼ (AKA LOTS 1 & 2, SKAGIT CROSSINGS BSP BURL BSP-1-07 AND LOTS 1 AND 3, FISHER COMMERCIAL PARK DIV. NO. 1)  
(Additional on Exhibit A)

**ASSESSOR'S TAX PARCEL  
OR OTHER ACCOUNT NO.:**

P23882, 8074-000-001-0000, P127091, 8074-000-002-0000, P82932, 4462-000-001-0002, P82934, 4462-000-003-0000

1ST AM NCS-843563-60A1

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

Dated and effective as of April 27, 2017

between

**JOHN D. CARROLL L.L.C.**,  
a Washington limited liability company  
Grantor,

**FIRST AMERICAN TITLE INSURANCE COMPANY**,  
Trustee

and

**HYUNDAI CAPITAL AMERICA**, a California corporation,  
Beneficiary

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

This **DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING** (herein called this "Deed of Trust") is made and granted as of the 27th day of April, 2017, by **JOHN D. CARROLL L.L.C.**, a Washington limited liability company, having its chief executive office and principal place of business at 1313 S. Goldenrod Road, Burlington, WA 98233 (herein, together with its successors and assigns, "Grantor" or "Borrower"), to **FIRST AMERICAN TITLE INSURANCE COMPANY** with an office at 818 Stewart Street, Suite 800, Seattle, WA 98101 ("Trustee"), for the benefit and in favor of **HYUNDAI CAPITAL AMERICA**, a California corporation, with an office at 3161 Michelson Drive, Suite 1900, Irvine, CA 92612 ("Beneficiary" or "Lender"). Any term capitalized but not specifically defined in this Deed of Trust shall have the same meaning in this Deed of Trust as in the Loan Agreement as hereinafter defined, the terms of which are incorporated herein by reference.

**WITNESSETH:**

To secure the following obligations and liabilities:

(a) the payment to Beneficiary of the maximum principal sum of **TWO MILLION THREE HUNDRED SIXTY EIGHT THOUSAND SEVEN HUNDRED FIVE AND 93/100 DOLLARS (\$2,368,705.93)** (the "Loan") in the aggregate to be paid, plus all accrued interest thereon to be paid pursuant to the provisions of that certain Loan Agreement of even date herewith between Borrower and Beneficiary (as amended, restated, modified or supplemented from time to time, the "Loan Agreement") as evidenced by that certain Business Purpose Promissory Note Secured by Real Property of even date herewith (as amended, restated, modified or supplemented from time to time, the "Note") issued by the Borrower in favor of the Beneficiary evidencing the Loan, (ii) any and all other sums due or to become due under the Loan Agreement, the Note, this Deed of Trust or any other Loan Document with respect to the Loan, (iii) any further or subsequent advances made under the Loan Agreement or this Deed of Trust with respect to the Loan, (iv) any extensions, renewals, replacements or modifications of the Loan, the Loan Agreement or any Loan Document, and (v) any other obligations of any kind owed by Borrower to Beneficiary, including, without limitation, any guaranty by Borrower of the payment and performance obligations of Jack Carroll's Lincoln Mercury, Inc. to Lender under the Loan and Security Agreement (as defined in the Loan Agreement) and all other documents, instruments and agreements delivered in connection therewith (the items set forth in clauses (i) through (v) hereof being hereinafter collectively referred to as the "Indebtedness"); and

(b) the performance of all of the terms, covenants, conditions, agreements, obligations and liabilities of Grantor with respect to the Loan or otherwise (collectively, the "Obligations") including, without limitation, under (i) the Loan Agreement, (ii) the Note, (iii) this Deed of Trust, (iv) any mortgages or deeds of trust in addition to this Deed of Trust now or

hereafter made by Grantor to Beneficiary to secure the Indebtedness (such additional mortgages and deeds of trust, as the same may be amended, restated, modified or supplemented from time to time, being hereinafter collectively referred to as the "New Security Instruments"), (v) any supplemental agreements, undertakings, instruments, documents or other writings executed by Grantor for the benefit of Beneficiary as a condition to advances under the Loan Agreement, or otherwise in connection with the Loan Agreement, (vi) all chattel mortgages, pledges, powers of attorney, consents, assignments, notices, leases and financing statements heretofore, now or hereafter executed by or on behalf of Grantor and/or delivered to Beneficiary in connection with the Loan Agreement, (vii) any guarantees by Grantor of the obligations of others to Beneficiary, including, without limitation, any guaranty by Grantor in favor of Beneficiary or any of its affiliates in connection with floor plan financing provided to an affiliate of Grantor, (viii) the Cross Default Agreement (as defined in the Loan Agreement), (ix) any extensions, renewals, replacements or modifications of any of the foregoing, together with (1) powers of attorney, consents, assignments, notices, leases and financing statements given by Grantor pursuant to and as provided in the Loan Agreement, and (2) any deeds of trust, mortgages, security agreements or assignments, now or hereafter made by Grantor to secure the Indebtedness and/or the Obligations and (x) any other document, instrument or agreement entered into between Borrower and Beneficiary (the items set forth in clauses (i) through (x) are hereinafter collectively referred to as the "Loan Documents");

and in consideration of Ten Dollars (\$10.00), in hand paid, the receipt and legal sufficiency of which are hereby acknowledged, Grantor does hereby,

(a) WARRANT, GRANT, BARGAIN, SELL, CONVEY AND GRANT WITH POWER OF SALE unto the Trustee named herein, and his or her successors and substitutes in trusts thereunder, for the use and benefit of the Beneficiary, and,

(b) to the extent the following constitutes personal property, ASSIGNS AS SECURITY TO BENEFICIARY,

the following described real, personal and other property and all substitutions for and all replacements, reversions and remainders of such property, whether now owned or held or hereafter acquired by Grantor (being hereinafter collectively referred to as the "Property") together with 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:

A. The real estate described on Exhibit A attached hereto (the "Land");

B. All of the following (collectively, the "Improvements"): all buildings, improvements and fixtures of every kind or nature now or in the future situated or to be constructed on the Land, including, but not limited to, Fixtures as such term is defined in Article 9 of the Uniform Commercial Code as now in effect or as may be revised or amended from time to time, all machinery, appliances, equipment, furniture, computer equipment, tools, tooling,

goods, supplies, materials and work in process, together with all additions, parts, fittings, accessories, special tools, attachments, and accessions now and hereafter affixed thereto and/or used in connection therewith, and all other personal property of every kind or nature located in or on, or attached to, or used or to be used in connection with the Land, buildings, structures, improvements or fixtures, including, but not limited to, Equipment as such term is defined in Article 9 of the Uniform Commercial Code as now in effect or as may be revised or amended from time to time; and all additions, substitutions and replacements to any of the foregoing (the Land together with the Improvements being hereinafter collectively referred to as the "Real Estate");

C. To the extent assignable, all plans, specifications, architectural renderings, drawings, soil test reports, other reports of examination or analysis of the Land or the Improvements;

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

E. All leases, licenses and other agreements affecting the use, enjoyment or occupancy of the Real Estate, now or hereafter entered into (the "Leases") and all rents, prepayments, security deposits, termination payments, royalties, profits, issues and revenues from the Real Estate from time to time accruing under the Leases (the "Rents"), reserving to Grantor, however, so long as no Event of Default has occurred hereunder, a revocable license to receive and apply the Rents in accordance with the terms and conditions of Section 11 of this Deed of Trust;

F. All claims, demands, judgments, insurance proceeds, tax refunds, reserves, deposits, rights of action, awards of damages, compensation, settlements and other rights to the payment of money hereafter made resulting from or relating to (i) the taking of the Real Estate or any part thereof under the power of eminent domain ("Awards"), (ii) any damage (whether caused by such taking, by casualty or otherwise) to the Real Estate or Appurtenances or any part thereof ("Insurance Proceeds"), or (iii) the ownership or operation of the Property;

G. To the extent assignable, all management contracts, permits, certificates, licenses, approvals, contracts, options, development rights, entitlements and authorizations, however characterized, issued or in any way furnished for the acquisition, construction, development, operation and use of the Real Estate and/or Leases, including building permits, licenses, environmental certificates, certificates of operation, warranties and guaranties and any rights relating to other entitlements for water, wastewater, and other utility services whether executed, granted, or issued by a private person or entity or a Governmental Agency or quasi-governmental agency, which are directly or indirectly related to, or connected with, the development, ownership, maintenance or operation of the Property, whether such contracts, licenses, and permits are now or at any time thereafter existing, including without limitation, any and all rights of other entitlements with respect to water, wastewater, and other utility services, certificates,

licenses, zoning variances, permits, and no-action letters from each governmental authority required: (a) to evidence compliance by Grantor and all improvements constructed or to be constructed on the Property with all Legal Requirements applicable to the Property, and (b) to develop and/or operate the Property as a commercial and/or residential project, as the case may be; (iii) any and all right, title, and interest Grantor may have in any financing arrangements relating to the financing of or the purchase of all or any portion of the Property by future purchasers; and (iv) all other contracts which in any way relate to the use, enjoyment, occupancy, operation, maintenance, repair, management or ownership of the Property (save and except any and all Leases), including, but not limited to, maintenance and service contracts and management agreements;

H. All accounts, contract rights, general intangibles, payment intangibles, deposit accounts, chattel paper including electronic chattel paper, documents, instruments, inventory, software, goods, equipment, securities, investment property, letters of credit, letter of credit rights, money, commercial tort claims, and all books and records and supporting obligations whether or not relating to the foregoing;

I. Any monies on deposit with or for the benefit of Beneficiary, including deposits for the payment of real estate taxes, insurance premiums and any cash collateral account;

J. All refunds, rebates, reimbursements, reserves, deferred payments, deposits, cost savings, governmental subsidy payments, governmentally-registered credits (such as emissions reduction credits), other credits, waivers and payments, whether in cash or in kind, due from or payable by (i) any federal, state, municipal or other governmental or quasi-governmental agency, authority or district (a "Governmental Agency") or (ii) any insurance or utility company relating to any or all of the Property or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development or rehabilitation of the Property;

K. All refunds, rebates, reimbursements, credits and payments of any kind due from or payable by any Governmental Agency for any taxes, special taxes, assessments, or similar governmental or quasi-governmental charges or levies imposed upon Grantor with respect to the Property or upon any or all of the Property or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development or rehabilitation of the Property;

L. All other general intangibles (including, without limitation, any proceeds from insurance policies after payment of prior interests), patents, unpatented inventions, trade secrets, copyrights, contract rights, goodwill, literary rights, rights to performance, rights under licenses, choses-in-action, claims, information contained in computer media (such as databases, source and object codes, and information therein), things in action, trademarks and trademarks applied for (together with the goodwill associated therewith) and derivatives thereof, trade names, including the right to make, use, and vend goods utilizing any of the foregoing, and permits, licenses, certifications, authorizations and approvals, and the rights of Grantor thereunder, issued

by any governmental, regulatory, or private authority, agency, or entity whether now owned or hereafter acquired, together with all cash and non cash proceeds and products thereof;

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

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

GRANTOR FURTHER REPRESENTS, WARRANTIES, COVENANTS AND AGREES AS FOLLOWS:

1. Warranty of Title. Grantor warrants to its knowledge that it has good and marketable fee simple absolute title to the Real Estate and has the right to grant and convey the same in accordance with the provisions set forth in this Deed of Trust and that to its knowledge this Deed of Trust is a valid and enforceable first lien on the Property, subject only to the exceptions to title more particularly described in the Loan Agreement (collectively, the "Permitted Encumbrances"). Grantor shall (a) preserve such title and the validity and priority of the lien of this Deed of Trust and shall forever warrant and defend the same unto Beneficiary against the claims of all and every person or persons, corporation or corporations and parties whomsoever, except for claims made under the Permitted Encumbrances, and (b) make, execute, acknowledge and deliver all such further documents, instruments or assurances and cause to be done all such further acts and things as may at any time hereafter be reasonably required by Beneficiary to confirm and fully protect the lien and priority of this Deed of Trust provided the obligations and liabilities of Grantor hereunder are not materially increased.

2. Payment of Indebtedness.

(a) Grantor shall pay the Indebtedness at the times and places and in the manner specified in the Loan Documents and shall perform all of the Obligations in accordance with the provisions set forth herein and in the other Loan Documents.

(b) Any payment made in accordance with the terms of this Deed of Trust by any person at any time liable for the payment of the whole or any part of the Indebtedness, or by any subsequent owner of the Property, or by any other person whose interest in the Property might be prejudiced in the event of a failure to make such payment, or by any stockholder, officer or director of a corporation or by any partner of a partnership which at any time may be liable for such payment or may own or have such an interest in the Property shall be deemed, as between Beneficiary and all persons who at any time may be liable as aforesaid or may own the Property, to have been made on behalf of all such persons.

3. Requirements; Proper Care and Use.

(a) Grantor promptly shall comply with, or cause to be complied with, in all material respects, all applicable present and future laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, restrictions and requirements (collectively, "Legal Requirements") of every Governmental Agency having jurisdiction over Grantor or the Property, the failure to comply with which would have a material adverse effect on the Property or the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or restoration of the Real Estate, without regard to the nature of the work to be done or the cost of performing the same, whether foreseen or unforeseen, ordinary or extraordinary, and shall perform, or cause to be performed, in all material respects all obligations, agreements, covenants, restrictions and conditions now or hereafter of record which are applicable to Grantor or to the Property or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or restoration of the Real Estate with respect to which the failure to perform would have a material adverse effect on the Property.

(b) Grantor shall (i) not abandon the Real Estate or any portion thereof, (ii) maintain the Real Estate and Fixtures in sufficient repair, order and condition to operate the business conducted on the Real Estate, ordinary wear and tear excepted and damage from casualty and Taking excepted, (iii) promptly make all necessary repairs, replacements, additions and improvements to the Real Estate to maintain the Property in first-class order and condition and will make all repairs, replacements, renewals, additions, betterments, improvements, and alterations thereof and thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep same in such order and condition, (iv) not commit or suffer waste with respect to the Real Estate, (v) refrain from impairing or diminishing the value or integrity of the Real Estate or the priority or security of the lien of this Deed of Trust, (vi) not remove, demolish or materially alter any of the Real Estate without the prior written consent of Beneficiary in each instance, (vii) not make, install or permit to be made or installed, any alterations or additions to the Real Estate if doing so would, in the reasonable opinion of Beneficiary, impair to any material extent the value of the Property unless the same is done pursuant to a lease approved or consented to by Beneficiary, (viii) not make, suffer or permit any public nuisance to exist on the Real Estate or any portion thereof, and (ix) permit Beneficiary and its agent, at all reasonable times and upon reasonable prior notice, to enter upon the Real Estate for the purpose of inspecting and appraising the Real Estate or any portion thereof upon reasonable written notice and at reasonable business hours.

(c) Grantor shall not by any act or omission permit any building or other improvement located on any property which is not subject to the lien of this Deed of Trust to rely upon the Real Estate or any portion thereof or any interest therein to fulfill in any material respect any Legal Requirement without Beneficiary's prior written consent. Grantor's use of the Real Estate, to Grantor's knowledge, is a permitted use under the applicable zoning for the Real Estate and Grantor shall not, by any act or omission, impair the integrity in any material respect of the Real Estate or initiate or join in any zoning change, private easement (excluding utility easements) or any other modification of the zoning regulating the Real Estate without Beneficiary's prior written consent. To the extent permitted by applicable law, any act or omission by Grantor which would result in a violation of any of the provisions of this Section 3



shall be null and void. Grantor will not, without the prior written consent of Beneficiary, permit any drilling or exploration for or extraction, removal, or production of, any minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof.

4. Taxes on Property or Beneficiary.

(a) If any Governmental Agency shall levy, assess or charge any tax, assessment, fee or imposition upon this Deed of Trust or any other Loan Document, the Indebtedness, the interest of Beneficiary in the Property, or Beneficiary by reason of this Deed of Trust or any other Loan Document, the Indebtedness or Beneficiary's interest in the Property (individually, a "Tax", and collectively, "Taxes") (excepting therefrom any income or franchise or similar taxes, tax on payments of interest made under the Loan Agreement or otherwise assessed against Beneficiary in connection therewith), Grantor shall pay all such Taxes to, for, or on account of, Beneficiary as they become due and payable, prior to delinquency, and, on demand, shall furnish proof of such payment to Beneficiary. Subject to terms and conditions provided in the Loan Agreement, if Grantor shall fail to pay any such Tax prior to delinquency, then, Beneficiary, at its option may pay any such Tax and, in such event, the amount so paid (i) shall be deemed to be Indebtedness, (ii) shall be a lien on the Property prior to any right or title to, interest in, or claim upon, the Property subordinate to the lien of this Deed of Trust, and (iii) immediately shall be due and payable, on demand, together with interest thereon at the rate of interest then payable under the Loan Agreement, including, in calculating such rate of interest, any additional interest which may be imposed under the Loan Agreement by reason of any default thereunder (such rate of interest being hereinafter referred to as the "Default Rate"), from the date of any such payment by Beneficiary to the date of repayment.

(b) If any Governmental Agency shall at any time require revenue, documentary or similar stamps to be affixed to this Deed of Trust or any other Loan Document or shall require the payment of any Taxes with respect to the ownership or recording of this Deed of Trust or any other Loan Document, Grantor, upon demand, shall pay for such stamps in the required amount and shall deliver the same to Beneficiary, for its benefit, together with a copy of the receipted bill therefor. Beneficiary, at its option, may pay for the same and, in such event, the amount so paid (i) shall be deemed to be Indebtedness, (ii) shall be a lien on the Property prior to any right or title to, or interest in, or claim upon, the Property subordinate to the lien of this Deed of Trust, and (iii) immediately shall be due and payable, on demand, together with interest thereon at the Default Rate, from the date of any such payment by Beneficiary to the date of repayment. To the extent permitted under applicable law, Grantor shall indemnify Beneficiary for, and shall hold Beneficiary harmless from and against, any and all liability which Beneficiary may incur on account of such revenue, documentary or other similar stamps or by reason of any Taxes referred to in Section 4(a) hereof whether such liability arises before or after payment of the Indebtedness and whether or not the lien of this Deed of Trust shall have been released; provided such liability is not caused directly and solely by the fraud, gross negligence or willful misconduct of Beneficiary.

5. Payment of Impositions.

(a) In addition to the payment of the amounts required under Section 4(a) above, Grantor shall pay and discharge no later than the date (the "Delinquency Date") which is the day before the date on which any fine, penalty, interest, late charge or loss may be added thereto or imposed by reason of the non-payment thereof, Grantor shall pay and discharge all Taxes (including, but without limiting the generality of the foregoing, all real property taxes and assessments, personal property taxes, income, franchise, withholding, profits and gross receipts taxes), charges for any easement or agreement maintained for the benefit of the Property or any portion thereof, general and special assessments and levies, permit, inspection and license fees, water and sewer rents and charges and any other charges of every kind and nature whatsoever, foreseen or unforeseen, ordinary or extraordinary, public or private, which, at any time, are imposed upon or levied or assessed against Grantor or the Property or any portion thereof, or which arise with respect to, or in connection with, the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or restoration of the Real Estate or any portion thereof, together with any penalties, interest or late charges which may be imposed in connection with any of the foregoing (all of the foregoing taxes, assessments, levies and other charges, together with such interest, penalties and late charges, being hereinafter collectively referred to as the "Impositions"). If, however, any Legal Requirement shall allow that any Imposition may, at Grantor's option, be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Grantor may exercise the option to pay such Imposition in such installments, and, in such event, Grantor shall be responsible for the payment of all such installments, together with the interest, if any, thereon, in accordance with the provisions of the applicable Legal Requirement. Not later than the Delinquency Date, Grantor shall deliver to Beneficiary evidence acceptable to Beneficiary showing the payment of such Imposition. Grantor also shall deliver to Beneficiary, within ten (10) days after receipt thereof, copies of all settlements pertaining to any Imposition which may be issued by any Governmental Agency.

(b) Nothing contained in this Deed of Trust shall affect any right or remedy of Beneficiary under this Deed of Trust or otherwise to pay, and without notice or demand so long as any such Event of Default is continuing, any Imposition from and after the date on which such Imposition shall have become delinquent and, in such event, the amount so paid (i) shall be deemed to be Indebtedness, (ii) shall be a lien on the Property prior to any right or title to, interest in, or claim upon, the Property subordinate to the lien of this Deed of Trust, and (iii) shall be immediately due and payable on demand, together with interest thereon at the Default Rate, from the date of any such payment by Beneficiary to the date of repayment.

6. Deposits.

(a) Subject to the provisions of paragraph (b) below, in order to assure the payment of all Impositions under Section 5 hereof and all premiums for insurance required under Section 7 hereof, Grantor agrees that, after occurrence and during the continuation of an Event of Default, upon demand made by Beneficiary, Grantor shall deposit with Beneficiary, for its

benefit on the first day of each month from and after the date hereof, an amount equal to one-twelfth (1/12th) of each of (i) the annual Impositions, and (ii) the annual premiums for the insurance required to be provided hereunder with respect to the Real Estate (such premiums for insurance being hereinafter referred to as the "Insurance Premiums"). The amount of annual Impositions and Insurance Premiums, when unknown shall be reasonably estimated by Beneficiary based upon the prior calendar year's Impositions and Insurance Premiums. Such deposits shall be used by Beneficiary to pay Impositions and Insurance Premiums when due. From time to time, on demand, Grantor shall pay to Beneficiary additional sums sufficient to permit payment of the next due installments of Impositions and Insurance Premiums, if, and to the extent that, the required monthly deposits thereafter falling due before the respective payment dates would otherwise be insufficient to permit the full payment thereof. After occurrence and during the continuation of an Event of Default, Beneficiary may apply any funds deposited with Beneficiary for Impositions or Insurance Premiums to the payment of any of the Indebtedness or to the performance of any such Obligation. To the extent permitted by law, the sums deposited pursuant to this Section 6 shall bear no interest and may be commingled with other funds of Beneficiary. Upon an assignment of this Deed of Trust, Beneficiary shall pay over the balance of any sums deposited pursuant to this Section 6 and then in its possession to Beneficiary's assignee, and, thereupon, Beneficiary shall be completely released from all liability with respect to such sums and Grantor shall look solely to Beneficiary's assignee with respect thereto. The foregoing provisions shall apply to every transfer of such deposits to a new assignee. Upon payment of the entire amount of the Indebtedness and performance of the Obligations in accordance with the provisions of this Deed of Trust and the other Loan Documents, or, at the election of Beneficiary, at any prior time, the balance of the deposits then in Beneficiary's possession shall be paid to Grantor. Grantor, at Beneficiary's request, shall make the aforesaid deposits with such servicer or financial institution as Beneficiary from time to time shall designate.

(b) Notwithstanding anything to the contrary contained in paragraph (a) above, (i) Beneficiary may not make such demand for deposits under paragraph (a) above, and may not require such deposits, unless and until an Event of Default shall have occurred and be continuing beyond any applicable cure period; and (ii) as soon as such information is available, in each year during the term hereof, Grantor shall submit to Beneficiary a statement (with supporting evidence) of the amount of Impositions and Insurance Premiums payable during the fiscal year ending on the immediately preceding December 31 with respect to the Real Estate and indicating the dates and amounts of Grantor's payments in respect thereof (with supporting evidence).

(c) Payments to the Beneficiary under this Section 6 or Section 7 shall not constitute payments of principal and interest on the Obligations secured by this Deed of Trust, unless applied to the obligations specifically in accordance with Section 6 and Section 7.

## **7. Insurance and Casualty.**

(a) Grantor will insure and keep insured the Property and each and every part and parcel thereof against such perils and hazards as the Beneficiary may from time to time require, and in any event including:

(i) Insurance against loss to any improvements on the Property caused by fire, lightning and risks covered by the so-called "all risk" endorsement and such other risks as the Beneficiary may reasonably require, in amounts equal to the full replacement value of the improvements, plus the cost of debris removal, with full replacement cost endorsement;

(ii) Commercial general liability insurance against bodily injury and property damage in any way arising in connection with the Property with such limits as the Beneficiary may reasonably require and in any event not less than THREE MILLION DOLLARS AND 00/100 (\$3,000,000.00) single limit coverage, naming Beneficiary as additional insured;

(iii) During the making of any alterations or improvements to the Property (A) insurance covering claims based on the owner's contingent liability not covered by the insurance provided in Subsection (ii) above; (B) Workmen's Compensation insurance covering all persons engaged in making such alterations or improvements; and (C) builder's risk insurance complete form;

(iv) Federal Flood Insurance in the maximum obtainable amount up to the amount of the Indebtedness evidenced by the Loan Agreement, if the Property is in a "flood plain area" as defined by the Federal Insurance Administration pursuant to the Federal Flood Disaster Protection Act of 1973, as amended;

(v) Rental value insurance (or, at the discretion of the Beneficiary, business interruption insurance) in amounts sufficient to pay during any period of up to one (1) year in which the Property may be damaged or destroyed (A) all income derived from the Property and (B) all amounts (including, but not limited to, all taxes, assessments, utility charges and insurance premiums) required herein to be paid by the Grantor by tenants of the Property; and

(vi) Boiler and Machinery Insurance when such fixtures and equipment, if any, are connected and ready for use.

(b) All policies of insurance to be maintained and provided as required by Section 7 hereof shall:

(i) be in forms reasonably acceptable to Beneficiary, and in companies having the best available and commercially reasonable rating, as reasonably approved by Beneficiary (but which shall not be required to be a higher rating than currently held by Grantor's insurers) and which are licensed to transact business in the State in which the Property is located, and in amounts reasonably satisfactory to Beneficiary, and all policies of casualty

insurance shall have attached thereto mortgagee clauses, lender's loss payee or such other endorsements acceptable to Beneficiary in favor of and with loss payable to Beneficiary;

(ii) contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Beneficiary;

(iii) be written in amounts equal to the full replacement cost of all of the improvements to the Property; and

(iv) provide for thirty (30) days prior written notice of cancellation or material modification to Beneficiary.

Grantor will deliver binding evidences of insurance evidencing all policies and renewal policies to Beneficiary, and in case of insurance policies about to expire, the Grantor will deliver renewal certificates not less than thirty (30) days prior to the respective dates of expiration. Upon Beneficiary's written request, Grantor will deliver all policies, including additional and renewal policies, to Beneficiary.

(c) The Grantor will give the Beneficiary prompt notice of any damage to or destruction of the Property, and,

(i) In case of loss covered by policies of insurance, the Beneficiary (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of the Grantor, or (ii) allow the Grantor to agree with the insurance company or companies on the amount to be paid upon the loss; provided that the Grantor may itself adjust losses aggregating not in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), and provided further that in any case the Beneficiary shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by the Beneficiary in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness, and shall be reimbursed to the Beneficiary upon demand;

(ii) In the event of any insured damage to or destruction of the Property or any part thereof (herein called an "Insured Casualty") and if, in the reasonable judgment of the Beneficiary, the Property can be restored to an architectural and economic unit of the same character and not less valuable than the same was prior to the Insured Casualty, and adequately securing the outstanding balance of the Indebtedness and the insurers do not deny liability to the insured, then, if no Event of Default as hereinafter defined shall have occurred and be then continuing, the proceeds of insurance shall be applied to reimburse the Grantor for the cost of restoring, repairing, replacing or rebuilding (herein generally called "Restoring") the Property or any part thereof subject to Insured Casualty. Notwithstanding the foregoing, in the event the cost of restoration exceeds any insurance proceeds, Grantor shall promptly deposit with

Beneficiary a sum equal to the amount by which the estimated costs of restoration of the Property (as determined by Beneficiary in its good faith judgment) exceeds the actual net insurance proceeds;

(iii) If in the reasonable judgment of Beneficiary the Property cannot be restored to an architectural and economic unit as provided for in Subsection (ii) above, then at any time from and after the Insured Casualty, upon thirty (30) days written notice to Grantor, Beneficiary may declare the entire balance of the Indebtedness to be, and at the expiration of such thirty (30) day period the Indebtedness shall be and become, immediately due and payable;

(iv) Except as provided for in Subsection (ii) of this Section 7(c), Beneficiary shall apply the proceeds of insurance (including amounts not required for Restoring effected in accordance with Subsection (ii) above) consequent upon any Insured Casualty toward the Indebtedness, in such order or manner as the Beneficiary may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness made out of insurance proceeds as aforesaid;

(v) In the event that proceeds of insurance, if any, shall be made available to the Grantor for the restoring of the Property, Grantor hereby covenants to restore the same so that the Property will be of at least equal value and of substantially the same character as prior to such damage or destruction; all to be effected in accordance with plans and specifications to be first submitted to and approved by the Beneficiary;

(vi) Any portion of the insurance proceeds remaining after payment in full of the Indebtedness shall be paid to Grantor or as ordered by a court of competent jurisdiction; and

(vii) Payments to the Beneficiary under this Section 7 shall not constitute payments of principal and interest on the Obligations secured by this Deed of Trust, unless applied to the Obligations specifically in accordance with this Section 7.

#### **WARNING**

**Unless Grantor provides Beneficiary with evidence of the insurance coverage as required herein, Beneficiary may purchase insurance at Grantor's expense to protect Beneficiary's interest. This insurance may, but need not, also protect Grantor's interest. If the Property becomes damaged, the coverage Beneficiary purchases may not pay any claim Grantor makes or any claim made against Grantor. Grantor may later cancel this coverage by providing evidence that Grantor has obtained property coverage elsewhere.**

**Grantor is responsible for the cost of any insurance purchased by Beneficiary. The cost of this insurance may be added to the Note balance. If the cost is added to the Note balance, the interest rate on the Note will apply to this added amount. The effective date of coverage may be the date**

**Grantor's prior coverage lapsed or the date Grantor failed to provide proof of coverage.**

**The coverage Beneficiary purchases may be considerably more expensive than insurance Grantor can obtain on Grantor's own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.**

**8. Condemnation/Eminent Domain.** Grantor will give Beneficiary prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (herein generally called a "Taking"), of all or any part of the Property, including damages to grade; and,

(a) Grantor hereby assigns, transfers and sets over unto Beneficiary the entire proceeds of any Award consequent upon any Taking;

(b) If in the reasonable judgment of the Beneficiary the Property can be restored to an architectural and economic unit of the same character and not less valuable than the Property prior to such Taking and adequately securing the outstanding balance of the Indebtedness, then if no Event of Default, as hereinafter defined, shall have occurred and be then continuing, the Award shall be applied to reimburse Grantor for the cost of Restoring the portion of the Property remaining after such Taking;

(c) If in the reasonable judgment of Beneficiary the Property cannot be restored to an architectural and economic unit as provided for in Subsection (b) above, then at any time from and after the Taking, upon thirty (30) days written notice to Grantor, Beneficiary may declare the entire balance of the Indebtedness to be, and at the expiration of such thirty (30) day period the Indebtedness shall be and become, immediately due and payable;

(d) Except as provided for in Subsection (b) of this Section 8, Beneficiary shall apply any Award (including the amount not required for restoration effected in accordance with Subsection (b) above) toward the Indebtedness in such order or manner as Beneficiary may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness made out of any Award as aforesaid;

(e) In the event that any Award shall be made available to the Grantor for Restoring the portion of the Property remaining after a Taking, Grantor hereby covenants to restore the remaining portion of the Property so that it will be of at least equal value and of substantially the same character as prior to such Taking, all to be effected in accordance with plans and specifications to be first submitted to and approved by Beneficiary; and

(f) Any portion of any Award remaining after payment in full of the Indebtedness shall be paid to Grantor or as ordered by a court of competent jurisdiction.

9. Prohibition of Assignments and Encumbrances by Grantor. Except as expressly contemplated hereby, until the provisions of this Agreement have been fully complied with, Grantor shall not, without the prior written consent of Beneficiary, create, effect, consent to, attempt, contract for, agree to make, suffer or permit any Prohibited Transfer (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation, or attempt to do any of the foregoing, of any of the following rights, properties or interests which occurs, is granted, accomplished, attempted or effectuated without Beneficiary's prior written consent shall constitute a "Prohibited Transfer" hereunder:

(a) Grantor's interests in the Property, or any part thereof, interest therein or earnings thereon, excepting only sales or other dispositions of collateral no longer useful in connection with the operation of the Property (herein called "Obsolete Collateral"), provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by collateral of at least equal value and utility and subject to the liens and security interests of the Loan Documents with the same priority as such liens and security interests in the collateral a disposed of;

(b) if Grantor, any Guarantor, any beneficiary of a trustee Grantor, any general partner in a partnership Grantor or partnership which is a beneficiary of a trustee Grantor is a corporation or any owner of substantially all of the stock of such corporation is itself a corporation (other than a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealer Automated Quotation System) of any shares of capital stock of such corporation, in one transaction or a series of transactions; or

(c) if Grantor, any Guarantor or any beneficiary of a trustee Grantor or Guarantor is a partnership or limited liability company, all or any part of the partnership or limited liability company, as the case may be, in such entity in one transaction or a series of transactions;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this Section shall not apply (i) to liens securing the Loan, or (ii) to the lien of current taxes and assessments not in default. NOTICE - THE INDEBTEDNESS IS SUBJECT TO ACCELERATION IN THE EVENT OF A TRANSFER WHICH IS PROHIBITED UNDER THIS SECTION 9.

10. Discharge of Liens. Except as otherwise provided in, or permitted by this Deed of Trust, Grantor at all times shall keep the Property free from the liens of mechanics, laborers, contractors, subcontractors and materialmen filed or otherwise and, except for the Permitted Encumbrances and any new or additional deed of trust or conveyance which may be made to Beneficiary, free from any and all other liens, claims, charges or encumbrances of any kind or nature whatsoever except those liens being contested in accordance with the terms of



Section 5(a) hereof.

**11. Leases; Assignment of Leases and Rents.**

(a) Grantor has no right or power, as against Beneficiary, without the prior written consent of Beneficiary, in its sole discretion, in each case (i) to enter into or modify or amend, terminate, waive, or cancel, any of the terms, covenants or conditions of any Leases, (ii) to consent to any assignment of any Lease or any subletting of the portion of the Real Estate subject to any Lease, (iii) to assign, mortgage or otherwise encumber any of the Leases or any of the Rents due or to become due thereunder or to which Beneficiary may now or hereafter become entitled, or (iv) to accept prepayments of installments of rent for more than thirty (30) days in advance of the time when the same shall become due or to anticipate the rents thereunder, except for security deposits not in excess of one (1) month's rent. Grantor shall notify Beneficiary as soon as Grantor is aware of the same and not later than six (6) months prior to the date of the expiration of the term of any Lease of its intention either to renew or not renew any such Lease and if Grantor shall intend to renew the Lease, the terms and conditions of any such renewal Lease.

(b) In addition to containing such other terms and conditions as Beneficiary shall approve, each Lease which shall be entered into in accordance with the provisions hereof shall (i) not permit the lessee thereunder to terminate or invalidate the terms of its Lease as a result of any action taken by Beneficiary to enforce this Deed of Trust either by foreclosure, or acceptance of a deed in lieu of foreclosure, or by resort to any other rights or remedies available to Beneficiary hereunder or at law or in equity, (ii) include a subordination clause providing that the Lease and the interest of the lessee thereunder in the Property are in all respects subject and subordinate to this Deed of Trust, (iii) provide that, at the option of Beneficiary or the purchaser at a foreclosure sale or the grantee in a voluntary conveyance in lieu of foreclosure, the lessee thereunder shall attorn to Beneficiary or to such purchaser or grantee under all of the terms of the Lease and recognize such entity as the lessor under the Lease for the balance of the term of the Lease, and (iv) provide that, in the event of the enforcement by Beneficiary of the rights and remedies provided by law or in equity or by this Deed of Trust, any person succeeding to the interest of Beneficiary as a result of such enforcement shall not be bound by any prepayment of installments of rent for more than thirty (30) days in advance of the time when the same shall become due or any material amendment, modification, extension, cancellation or renewal of the Lease is made without the prior written consent of Beneficiary, in its sole discretion.

(c) As to all Leases which shall be consented to by Beneficiary, Grantor shall (i) promptly perform, all of the provisions of such Leases on its part to be performed, (ii) promptly enforce in all material respects, all of the material provisions of such Leases on the part of the lessees thereunder to be performed, (iii) refrain from taking any action which would result in the diminution of the Rents under Leases, (iv) appear in and prosecute or defend any action or proceeding arising under, growing out of, or in any manner connected with, the Leases to which it is a party, (v) exercise, within five (5) days after demand by Beneficiary, any right to request from the lessee under any Lease a certificate with respect to the status thereof, (vi) deliver to

Beneficiary, within five (5) days after demand by Beneficiary, a written statement containing the names of all lessees, the terms of all Leases and the spaces occupied and rentals payable thereunder and a statement of all Leases which are then in default, including the nature and magnitude of any such default, and (vii) promptly deliver to Beneficiary a fully executed counterpart of each Lease upon the execution of the same. All Leases, if any, shall be subject and subordinate to this Deed of Trust.

(d) Grantor hereby absolutely assigns to Beneficiary from and after the date hereof (including any period allowed by law for redemption after any foreclosure to other sale), primarily, on a parity with the Property, and not secondarily, as further security for the payment of the Indebtedness and the performance of the Obligations, the Leases. Nothing contained in this Section 11 shall be construed to bind Beneficiary to the performance of any of the terms, covenants, conditions or agreements contained in any of the Leases or otherwise impose any obligation on Beneficiary (including, but without limiting the generality of the foregoing, any liability under the covenant of quiet enjoyment contained in any Lease in the event that any lessee shall have been joined as a party defendant in any action to foreclose this Deed of Trust or commenced by reason of an Event of Default hereunder or in the event any lessee shall have been barred and foreclosed of any or all right, title and interest and equity of redemption in the Property), except that Beneficiary shall be accountable for any money actually received pursuant to the aforesaid assignment. Grantor hereby further grants to Beneficiary the right, but not the obligation, exercisable after the occurrence of an Event of Default and Borrower hereby irrevocably appoints Beneficiary as its attorney-in-fact, which power of attorney is with full power of substitution and coupled with an interest, to do all things during the continuance of any Event of Default, including (i) to enter upon and take possession of the Real Estate for the purpose of exercising any rights or remedies under the Leases, (ii) to dispossess by the usual summary proceedings any lessee defaulting in making any payment due under any Lease to Beneficiary or defaulting in the performance of any of its other obligations under its Lease, (iii) to let the Real Estate or any portion thereof, and (iv) to perform such other acts as Beneficiary is entitled to perform pursuant to this Section 11. Such assignment and grant shall continue in effect until the entire amount of the Indebtedness shall be paid in full and all of the Obligations shall be fully performed in accordance with this Deed of Trust and the other Loan Documents, the execution of this Deed of Trust constituting and evidencing the irrevocable consent of Grantor to the entry upon and taking possession of the Real Estate by Beneficiary pursuant to such grant, whether or not an action to foreclose this Deed of Trust has been instituted and without applying for a receiver.

(e) Grantor by these presents does absolutely and unconditionally GRANT, BARGAIN, SELL, and CONVEY the Rents unto Beneficiary, in order to provide a source of future payment of the Indebtedness and the Obligations, subject only to the Permitted Exceptions applicable thereto and the License, it being the intention of Grantor and Beneficiary that this conveyance be presently and immediately effective; and is neither conditional nor security for the repayment of the Indebtedness and the Obligations, TO HAVE AND TO HOLD the Rents unto Beneficiary, forever, and Grantor does hereby bind itself, its successors, and assigns to

warrant and forever defend the title to the Rents unto Beneficiary against every person whomsoever lawfully claiming or to claim the same or any part thereof.

(f) Beneficiary hereby grants to Grantor the License subject to termination under Section 11(g) hereof, to exercise and enjoy all incidences of the status of a lessor with respect to the Rents, including without limitation, the right to collect, demand, sue for, attach, levy, recover, and receive the Rents, and to give proper receipts, releases, and acquittances therefor. Grantor hereby agrees to receive all Rents and hold the same as Beneficiary's Agent to be applied, and to apply the Rents so collected, first to the payment of the Indebtedness, next to the performance and discharge of the Obligations, and next to the payment of Operating Expenses. Thereafter, Grantor may use the balance of the Rents collected in any manner not inconsistent with the Loan Documents. Neither this Assignment nor the receipt of Rents by Beneficiary shall effect a pro tanto payment of the Indebtedness, and such Rents shall be applied as provided in this Section 11(f). Furthermore, and notwithstanding the provisions of this Section 11(f), no credit shall be given by Beneficiary for any Rents until the money constituting the Rents collected is actually received by Beneficiary at its principal office listed in the preamble of this Deed of Trust, or at such other place as Beneficiary shall designate in writing, and no such credit shall be given for any Rents collected or released after termination of the License, after foreclosure or other transfer of the Property (or part thereof from which Rents are derived pursuant to this Deed of Trust) to Beneficiary or any other third party.

(g) Beneficiary, or Trustee on Beneficiary's behalf, may at any time, and without notice, either in person, by agent, or by receiver to be appointed by a court, in its own name, sue for or otherwise collect the Rents. Grantor hereby agrees that Beneficiary shall upon the occurrence of an Event of Default, automatically, and without further action of any kind or nature by Beneficiary, terminate the License granted to Grantor in Section 11(f) hereof, and thereafter give the Lease Rent Notice to Lessees under the Leases, without any obligation on the part of Trustee or Beneficiary to determine whether an Event of Default does in fact exist or has in fact occurred. It shall never be necessary for Beneficiary to institute legal proceedings to enforce any provision of the assignment of rents provided for in this Deed of Trust. All Rents collected by Beneficiary, or Trustee acting on Beneficiary's behalf, shall be applied as provided for in Section 11(h) of this Deed of Trust; provided, however, that if the costs, expenses, and attorneys' fees incurred in connection therewith shall exceed the amount of Rents so collected, the excess shall be added to the Indebtedness, shall bear interest at the Default Rate, and shall be immediately due and payable.

(h) Upon receipt from Beneficiary of a Lease Rent Notice, each lessee under the Leases is hereby authorized and directed to pay directly to Beneficiary all Rents thereafter accruing and the receipt of Rents by Beneficiary shall be a release of such lessee to the extent of all amounts so paid. The receipt by a lessee under the Leases of a Lease Rent Notice shall be sufficient authorization for such lessee to make all future payments of Rents directly to Beneficiary and each such lessee shall be entitled to rely on such Lease Rent Notice and shall have no liability to Grantor for any Rents paid to Beneficiary after receipt of such Lease Rent Notice. Rents so received by Beneficiary for any period prior to foreclosure under this Deed of

Trust or acceptance of a deed in lieu of such foreclosure shall be applied by Beneficiary to the payment of the following (in such order and priority as Beneficiary shall determine): (i) all Operating Expenses; (ii) all expenses incident to taking and retaining possession of the Property and/or collecting Rent as it becomes due and payable; and (iii) the Indebtedness. In no event will the assignment of rents provided for herein reduce the Indebtedness except to the extent, if any, that Rents are actually received by Beneficiary and applied upon or after said receipt to such Indebtedness in accordance with the preceding sentence. Without impairing its rights hereunder, Beneficiary may, at its option, at any time and from time to time, release to Grantor, Rents so received by Beneficiary or any part thereof. As between Grantor and Beneficiary, and any person claiming through or under Grantor, other than any lessee under the Leases who has not received a Lease Rent Notice, this Assignment of Rents is intended to be absolute, unconditional and presently effective (and not an assignment for additional security), and the Lease Rent Notice hereof is intended solely for the benefit of each such lessee and shall never inure to the benefit of Grantor or any person claiming through or under Grantor, other than a lessee who has not received such Lease Rent Notice. It shall never be necessary for Beneficiary to institute legal proceedings of any kind whatsoever to enforce the provisions of this Deed of Trust with respect to Rents. GRANTOR SHALL HAVE NO RIGHT OR CLAIM AGAINST ANY LESSEE FOR THE PAYMENT OF ANY RENTS TO BENEFICIARY HEREUNDER, AND GRANTOR HEREBY INDEMNIFIES AND AGREES TO HOLD FREE AND HARMLESS EACH LESSEE FROM AND AGAINST ALL LIABILITY, LOSS, COST, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY SUCH LESSEE BY REASON OF SUCH LESSEE'S COMPLIANCE WITH ANY DEMAND FOR PAYMENT OF RENTS MADE BY BENEFICIARY CONTEMPLATED BY THIS DEED OF TRUST.

(i) At any time during which Grantor is receiving Rents directly from any of the lessees under the Leases, Grantor shall, upon receipt of written direction from Beneficiary, make demand and/or sue for all Rents due and payable under one or more Leases, as directed by Beneficiary, as it becomes due and payable, including Rents which are past due and unpaid. If Grantor fails to timely take such action, or at any time during which Grantor is not receiving Rents directly from lessees under the Leases, Beneficiary shall have the right (but shall be under no duty or obligation) to demand, collect and sue for, in its own name or in the name of Grantor, all Rents due and payable under the Leases, as same becomes due and payable, including Rents which are past due and unpaid.

(j) Upon payment in full of the Indebtedness, the delivery and recording of a release, satisfaction or discharge of the Deed of Trust duly executed by Beneficiary and a re-assignment of the Rents to Grantor, the assignment in Section 11(e) of this Deed of Trust shall terminate, become null and void and shall be of no further force and effect.

(k) For the purpose of this section:

"License" means a limited, non-assignable license, subject to automatic termination, under this Deed of Trust, and all other terms and provisions hereof, to exercise and enjoy all incidences of the status of a lessor with respect to the Rents, including the right to

collect, demand, sue for attach, levy, recover, and receive the Rents as Beneficiary's Agent and to give proper receipts, releases and acquittances therefor.

**"Operating Expenses"** means all costs and expenses related to the ownership, operation, management, repair and leasing of the Property, including, without limitation, ground lease payments, costs and expenses associated with the operation of any garage associated with and constituting a part of the Property, insurance charges and premiums for coverages related to the Property, Impositions, the costs of prevention of waste, ordinary repairs, maintenance, environmental audits, property management, security, normal fees paid to accountants, reasonable marketing and promotional expenses, reasonable legal expenses, the cost and expense of all obligations under the Leases and all costs related to compliance with Legal Requirements.

**"Lease Rent Notice"** means a notice from Beneficiary to any lessee under a Lease stating that the License has terminated and instructing each such lessee under a Lease to pay all current and future Rents under the Leases directly to Beneficiary, and attorn in respect of all other obligations thereunder directly to Beneficiary, or the Trustee on Beneficiary's behalf.

(l) Upon notice and demand, Grantor shall, from time to time, execute, acknowledge and deliver to Beneficiary, or shall cause to be executed, acknowledged and delivered to Beneficiary in form reasonably satisfactory to Beneficiary, one or more separate assignments (confirmatory of the general assignment provided in this Section 11) of the lessor's interest in any Lease. Grantor shall pay to Beneficiary the reasonable expenses incurred by Beneficiary in connection with the preparation and recording of any such instrument.

12. **Estoppel Certificates.** Grantor, within ten (10) days after request by Beneficiary to Grantor, shall deliver, in form reasonably satisfactory to Beneficiary, a written statement, duly executed and acknowledged, setting forth the amount of the Indebtedness then outstanding and whether any offsets, claims, counterclaims or defenses exist against the Indebtedness secured by this Deed of Trust, and if any are alleged to exist, the nature thereof shall be set forth in detail.

13. **Expenses.** Grantor shall pay all reasonable out-of-pocket expenses of Beneficiary in connection with the preparation of this Deed of Trust and the Loan Documents (including, without limitation, the reasonable fees and expenses of all of its counsel retained in connection with this Deed of Trust and the Loan Documents and the transactions contemplated thereby, as well as all costs incurred in connection with or related to the filing or recording of the Loan Documents), all as provided in the Note.

14. **Beneficiary's Right to Perform.** Upon the occurrence of an Event of Default hereunder, which is then continuing, Beneficiary may (but shall be under no obligation to), at any time perform the Obligations, without waiving or releasing Grantor from any Obligations or any Event of Default under this Deed of Trust, and, in such event, the reasonable cost thereof, including, but without limiting the generality of the foregoing, reasonable attorneys'

fees, reasonable costs and disbursements incurred in connection therewith (a) shall be deemed to be Indebtedness, (b) shall be a lien on the Property prior to any right or title to, interest in, or claim upon, the Property subordinate to the lien of this Deed of Trust, and (c) shall be payable, on demand, together with interest thereon at the Default Rate, from the date of any such payment by Beneficiary to the date of repayment to Beneficiary. No payment or advance of money by Beneficiary pursuant to the provisions of this Section 14 shall cure, or shall be deemed or construed to cure, any such Event of Default by Grantor hereunder or waive any rights or remedies of Beneficiary hereunder or at law or in equity by reason of any such Event of Default.

15. Grantor's Existence. Grantor shall do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of its state of organization and the laws of the state in which the Property is located and its right to own property and transact business in such states.

16. Beneficiary's Costs and Expenses. If (a) Grantor shall fail to make any payment of Indebtedness when the same shall be due and payable, subject to all applicable grace, notice and cure periods under the Loan Agreement and the other Loan Documents, or shall fail in any material respect to perform any of the Obligations under this Deed of Trust or any other Loan Document, or (b) Beneficiary shall exercise any of its rights or remedies hereunder in accordance with the terms hereof, or (c) any action or proceeding is commenced in which it becomes necessary to defend or uphold the lien or priority of this Deed of Trust or any action or proceeding is commenced in connection herewith to which Beneficiary is or becomes a party, or (d) the taking, holding or servicing of this Deed of Trust by Beneficiary is alleged to subject Beneficiary to any civil or criminal fine or penalty, and such civil or criminal fine or penalty is not due to the fraud, gross negligence or willful misconduct of Beneficiary, or (e) Beneficiary's review and approval of any document, including, but without limiting the generality of the foregoing, any Lease, is requested by Grantor or reasonably required by Beneficiary, then, in any such event, all such costs, expenses and fees reasonably incurred by Beneficiary in connection therewith (including, but without limiting the generality of the foregoing, any civil or criminal fines or penalties and reasonable attorneys' fees, reasonable costs and disbursements) (i) shall be deemed to be Indebtedness, (ii) shall be a lien on the Property prior to any right or title to, interest in, or claim upon, the Property subordinate to the lien of this Deed of Trust, and (iii) shall be payable, on demand, together with interest thereon at the Default Rate, from the date of any such payment by Beneficiary to the date of repayment. In any action to foreclose this Deed of Trust or to recover or collect the Indebtedness or any portion thereof, the provisions of this Section 16 with respect to the recovery of reasonable costs, expenses, disbursements and penalties shall prevail unaffected by the provisions of any Legal Requirement with respect to the same to the extent that the provisions of this Section 16 are not inconsistent therewith or violative thereof.

17. Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Deed of Trust:

(a) A default in the payment of any charges, fees, or other monetary obligations owing to Beneficiary arising out of or incurred in connection with this Deed of Trust within five (5) days following the date such payment is due;

(b) A default in the due observance or performance by Grantor of any other term, covenant or agreement contained in this Deed of Trust, which default shall have continued unremedied for a period of twenty (20) days after written notice of Beneficiary;

(c) Any failure of Grantor to strictly comply with Section 7 (insurance), Section 9 (prohibited transfers), and Section 10 (no additional liens) of this Deed of Trust; or

(d) The occurrence of any default or Event of Default and the expiration of any cure period expressly applicable thereto, if any, under the Note, the Loan Agreement or any other Loan Document.

All cure periods provided for in this section shall run concurrently with any cure period provided for in any applicable Loan Documents under which the default occurred.

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

#### 18. Remedies.

Upon the occurrence and during the continuance of any Event of Default hereunder, Beneficiary may, without notice, presentment, demand or protest, all of which are hereby expressly waived by Grantor to the extent permitted by applicable law, take such action as Beneficiary deems advisable, in its sole discretion, to protect and enforce its rights in and to the Property, including, but without limiting the generality of the foregoing, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such manner as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Beneficiary hereunder or at law or in equity:

(a) Right of Entry. Beneficiary may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Property, or any part thereof, and take exclusive possession of the Property and of all books, records, and accounts 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. The remedies in this subsection are in addition to other remedies available to the Beneficiary and the exercise of the remedies in this subsection shall not be deemed to be an election of nonjudicial or judicial remedies otherwise available to the Beneficiary.

(b) Right to Accelerate. Beneficiary may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Grantor and all other parties obligated in any manner whatsoever on the Indebtedness, declare the entire unpaid balance of the Indebtedness immediately due and payable, and upon such declaration, the entire unpaid balance of the Indebtedness shall be immediately due and payable. Thereupon, all of the other Obligations also shall become immediately due and payable. The failure to exercise any remedy available to the Beneficiary shall not be deemed to be a waiver of any rights or remedies of the Beneficiary under the Loan Documents, at law or in equity.

(c) Foreclosure. With respect to all or any part of the Property, the Trustee and Beneficiary shall have the right to foreclose by nonjudicial foreclosure, and to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law. In exercising its rights and remedies, the Trustee or Beneficiary shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Beneficiary shall be entitled to bid at any public sale on all or any portion of the Property.

(d) Beneficiary's Right to Appointment of Receiver. Beneficiary shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness and Obligations. The receiver may serve without bond if permitted by law. Beneficiary's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Beneficiary shall not disqualify a Person from serving as a receiver. Grantor acknowledges and agrees that the provisions of RCW 7.60 et. seq. or any similar or successor statute which authorize appointment of a receiver as necessary to secure ample justice to the parties, apply to Grantor's consent herein to the appointment of a receiver. Grantor expressly acknowledges that enforcement of Beneficiary's right to appointment of a receiver hereunder is necessary to secure ample justice to the parties. Grantor hereby further agrees to the extent permitted by law that the pendency of any action brought by Bank for the appointment of a receiver shall not prevent the foreclosure of this Deed of Trust. Grantor hereby expressly waives the effect, if any, of RCW 61.24.030(4) (or any similar successor statute) in this regard.

(e) Beneficiary's Uniform Commercial Code Remedies. The Beneficiary may exercise its rights of enforcement with respect to Fixtures and Personalty under the Uniform Commercial Code, and in conjunction with, in addition to or in substitution for the rights and remedies under the Uniform Commercial Code the Beneficiary may:

(i) without demand or notice to Grantor, enter upon the Property to take possession of, assemble, receive, and collect the Personalty, or any part thereof, or to render it unusable;



(ii) the Beneficiary may require Grantor to assemble the Personalty and make it available at a place the Beneficiary designates which is mutually convenient to allow the Beneficiary to take possession or dispose of the Personalty;

(iii) written notice mailed to Grantor as provided herein at least ten (10) days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made shall constitute reasonable notice;

(iv) any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the other Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Personalty hereunder as is required for such sale of the other Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under 9.501(d) of the Uniform Commercial Code;

(v) in the event of a foreclosure sale, whether made by the Trustee under the terms hereof, or under judgment of a court, the Personalty and the other Property may, at the option of the Beneficiary, be sold as a whole;

(vi) it shall not be necessary that the Beneficiary take possession of the Personalty, or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Personalty or any part thereof be present at the location of such sale;

(vii) prior to application of proceeds of disposition of the Personalty to the Indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like, and the attorneys' fees and legal expenses incurred by the Beneficiary;

(viii) after notification, if any, hereafter provided in this subsection, Beneficiary may sell, lease, or otherwise dispose of the Personalty, or any part thereof, in one or more parcels at public or private sale or sales, at Beneficiary's offices or elsewhere, for cash, on credit, or for future delivery. Upon the request of Beneficiary, Grantor shall assemble the personalty and make it available to Beneficiary at any place designated by Beneficiary that is reasonably convenient to Grantor and Beneficiary. Grantor agrees that Beneficiary shall not be obligated to give more than ten (10) days' written notice of the time and place of any public sale or of the time after which any private sale may take place and that such notice shall constitute reasonable notice of such matters. Grantor shall be liable for all expenses of retaking, holding, preparing for sale, or the like, and all attorneys' fees, legal expenses, and all other costs and expenses incurred by Beneficiary in connection with the collection of the Indebtedness and the enforcement of Beneficiary's rights under the Loan Documents. Beneficiary shall apply the proceeds of the sale of the Personalty against the Indebtedness in accordance with the provisions of Section 7.4 of this Deed of Trust. Grantor shall remain liable for any deficiency if the

proceeds of any sale or disposition of the Personalty are insufficient to pay the Indebtedness in full. Grantor waives all rights of marshalling in respect of the Personalty;

(ix) 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, the nonpayment of the Indebtedness, the occurrence of any Event of Default, the Beneficiary having declared all or a portion of such Indebtedness to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other act or thing having been duly done by the Beneficiary, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(x) the Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by the Beneficiary, including the sending of notices and the conduct of the sale, but in the name and on behalf of the Beneficiary.

(f) Other Rights. Beneficiary (i) may surrender the insurance policies maintained pursuant to Section 4.7 hereof or any part thereof, and upon receipt shall apply the unearned premiums as a credit on the Indebtedness, in accordance with the provisions of Section 7.4 hereof, and, in connection therewith, Grantor hereby appoints Beneficiary as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Grantor to collect such premiums; and (ii) apply the reserve for Impositions and insurance premiums, if any, required by the provisions of this Deed of Trust, toward payment of the Indebtedness; and (iii) shall have and may exercise any and all other rights and remedies which Beneficiary may have at law or in equity, or by virtue of any Loan Document or under the Uniform Commercial Code, or otherwise.

(g) Beneficiary as Purchaser. Beneficiary may be the purchaser of the Property or any part thereof, at any sale thereof, whether such sale be under the power of sale herein vested in Trustee or upon any other foreclosure of the liens and security interests hereof, or otherwise, and Beneficiary shall, upon any such purchase, acquire good title to the Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Indebtedness. The Beneficiary, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of the Beneficiary's purchase shall be applied in accordance with Section 7.4 of this Deed of Trust.

The remedies in this Section 18 are available under and governed by the real property laws of Washington and are not governed by the personal property laws of Washington, including but not limited to, the power of dispose of personal property in a commercially reasonable manner under Section 9.504 of the Uniform Commercial Code. No action by Beneficiary, taken pursuant to this subsection, shall be deemed to be an election to dispose of personal property under Section 9.505 of the Uniform Commercial Code. Any receipt of consideration received by Beneficiary pursuant to this subsection shall be immediately credited against the Indebtedness (in

the inverse order of maturity) and the value of said consideration shall be treated like any other payment against the Indebtedness.

19. Security Agreement under Uniform Commercial Code. It is the intention of Grantor and Beneficiary that this Deed of Trust shall constitute a Security Agreement within the meaning of the Uniform Commercial Code of the State in which the Property is located. Notwithstanding the filing of a financing statement covering any of the Property in the records normally pertaining to personal property, all of the Property, for all purposes and in all proceedings, legal or equitable, shall be regarded, at Beneficiary's option (to the extent permitted by law), as part of the Real Estate whether or not any such item is physically attached to the Real Estate or serial numbers are used for the better identification of certain items. The mention in any such financing statement of any of the Property shall never be construed in any way as derogating from or impairing this declaration and hereby stated intention of Grantor and Beneficiary that such mention in the financing statement is hereby declared to be for the protection of Beneficiary in the event any court shall at any time hold that notice of Beneficiary's priority of interest, to be effective against any third party, including the Federal government or any authority or agency thereof, must be filed in the Uniform Commercial Code records. Pursuant to the provisions of the Uniform Commercial Code, Grantor hereby authorizes Beneficiary to file financing and continuation statements if Beneficiary shall determine, in its sole discretion, that such financing or continuation statements are necessary or advisable in order to preserve or perfect its security interest in the fixtures covered by this Deed of Trust, and Grantor shall pay to Beneficiary, on demand, any expenses incurred by Beneficiary in connection with the preparation and filing of such statements that may be filed by Beneficiary.

20. No Waivers, Etc. A failure by Beneficiary to insist upon the strict performance by Grantor of any of the terms and provisions of this Deed of Trust shall not be deemed to be a waiver of any of the terms, covenants, conditions and provisions hereof and Beneficiary, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Grantor of any and all of the terms, covenants, conditions and provisions of this Deed of Trust to be performed by Grantor. Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Property, any part of the security held for payment of the Indebtedness or any portion thereof or for the performance of the Obligations secured by this Deed of Trust without, as to the remainder of the security, in any manner whatsoever, impairing or affecting the lien of this Deed of Trust or the priority of the lien of this Deed of Trust over any subordinate lien. Beneficiary may resort for the payment of the Indebtedness secured by this Deed of Trust to any other security therefor held by Beneficiary in such order and manner as Beneficiary may elect.

21. Trust Funds. All deposits made as security under any Leases shall be treated as trust funds, shall not be commingled with any other funds of Grantor and shall be held in accordance with the provisions of any other applicable Legal Requirements. Within ten (10) days after request by Beneficiary, Grantor shall furnish Beneficiary with evidence, satisfactory to Beneficiary, in its sole discretion, of compliance with this Section 21, together with a certified

statement of the amount of all of the security deposited by lessees and copies of all Leases not theretofore delivered to Beneficiary.

22. Additional Rights.

(a) Upon confirmation of a sale pursuant to any order, decree or judgment of foreclosure of this Deed of Trust, the appropriate governmental officer making such sale, or his successor in office, shall be and is hereby authorized immediately to execute and deliver to the purchaser at such sale, a deed, assignment or appropriate document conveying the Property to such purchaser. Upon the execution of such deed, assignment or appropriate document, the recitals therein of facts such as the terms of the sale, the sale, the purchase, payment of purchase money and other facts affecting the regularity or validity of such sale shall be conclusive proof of the truthfulness thereof, that such sale was regularly and validly made, and any such deed, assignment or appropriate document shall be conclusive against all persons as to all matters and facts recited therein.

(b) The holder of any subordinate lien on the Property shall have no right to terminate any Lease whether or not such Lease is subordinate to this Deed of Trust.

23. Waivers by Grantor. To the extent permitted by applicable law, and except as provided in the Loan Agreement,

(a) Grantor hereby waives all errors and imperfections in any proceedings instituted by Beneficiary under this Deed of Trust, the Loan Agreement or any other Loan Document and all benefit of any present or future statute of limitations or any other present or future statute, law, stay, moratorium, appraisal or valuation law, regulation or judicial decision which, nor shall Grantor at any time insist upon or plead, or in any manner whatsoever, claim or take any benefit or advantage of any such statute, law, stay, moratorium, regulation or judicial decision which (i) provides for the valuation or appraisal of the Property prior to any sale or sales thereof which may be made pursuant to any provision herein or pursuant to any decree, judgment or order of any court of competent jurisdiction, (ii) exempts any of the Property or any other property, real or personal, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale under execution, (iii) provides for homestead rights or exemptions or provides for any stay of execution, moratorium, marshalling of assets, exemption from civil process, reinstatement, redemption or extension of time for payment, (iv) requires Beneficiary to institute proceedings in foreclosure against the Property before exercising any other remedy afforded Beneficiary hereunder following an Event of Default, (v) affects any of the terms, covenants, conditions or provisions of this Deed of Trust, or (vi) conflicts with or may affect, in a manner which may be adverse to Beneficiary, any provision, covenant, condition or term of this Deed of Trust, the Loan Agreement, or any other Loan Document, nor shall Grantor at any time after any sale or sales of the Property pursuant to any provision herein, including, but without limiting the generality of the foregoing, after any sale pursuant to a judgment of foreclosure, claim or exercise any right under any present or future statute, law, stay, moratorium, regulation or judicial decision to redeem the Property or the portion thereof so sold.

(b) Grantor hereby waives the right, if any, to require any sale to be made in parcels, or the right, if any, to select parcels to be sold, and there shall be no requirement for marshalling of assets.

(c) WAIVER OF JURY TRIAL. GRANTOR HEREBY WAIVES TRIAL BY JURY IN RESPECT OF ANY "CLAIM" UNDER THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GRANTOR, AND GRANTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT. GRANTOR IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION 23(c) IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. GRANTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

24. Failure to Consent. Except as otherwise provided by the Loan Agreement, if Grantor shall seek the approval by, or the consent of, Beneficiary hereunder or under any other Loan Document, and Beneficiary shall fail or refuse to give such consent or approval, Grantor shall not be entitled to any damages for any withholding or delay of such consent by Beneficiary, it being intended that Grantor's sole remedy shall be to bring an action for an injunction or specific performance, which remedy of an injunction or specific performance shall be available only in those cases in which Beneficiary has expressly agreed hereunder or under any other Loan Documents not to unreasonably withhold or delay its consent or approval.

25. No Joint Venture or Partnership. Grantor and Beneficiary intend that the relationship created hereunder be solely that of Grantor and Beneficiary or borrower and lender, as the case may be. Nothing herein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Grantor and Beneficiary nor to grant Beneficiary any interest in the Property other than that of Beneficiary or lender.

26. Notice. All notices, requests and demands to or upon a party hereto to be effective shall be in writing and shall be sent or delivered to the appropriate party in the manner provided in the Loan Agreement.

27. Conflict with the Loan Documents. To the extent there shall be any conflict between the defined terms set forth herein and the defined terms set forth in any other Loan Document, then, the defined terms set forth in this Deed of Trust shall prevail with respect to this Deed of Trust. Subject to the foregoing, if there shall be any inconsistencies between the terms, covenants, conditions and provisions set forth in this Deed of Trust and the terms,

covenants, conditions and provisions set forth in the Loan Agreement, then the terms, covenants, conditions and provisions of the Loan Agreement shall prevail.

28. No Modification; Binding Obligations. This Deed of Trust may not be modified, amended, discharged or waived in whole or in part except by an agreement in writing signed by Grantor and Beneficiary. The covenants of this Deed of Trust shall run with the Land and shall bind Grantor and the heirs, distributees, personal representatives, successors and assigns of Grantor and all present and subsequent encumbrances, lessees and sublessees of any of the Property and shall inure to the benefit of Beneficiary and its respective successors, assigns and endorsees.

29. Subrogation. To the extent that Beneficiary, after the date hereof, pays any sum due under any provision of law or any instrument or documents creating any lien prior or superior to the lien of this Deed of Trust, Beneficiary shall have and be entitled to a lien on the Property equal in priority to that discharged, and Beneficiary shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence for the benefit of Beneficiary to secure the Indebtedness. Beneficiary shall be subrogated, notwithstanding its release of record, to mortgages, trust deeds, superior titles, vendor's liens, liens, charges, encumbrances, rights and equities on the Property to the extent that any obligation under any thereof is paid or discharged with proceeds of disbursements or advances under any instrument evidencing the Indebtedness.

30. No Merger. Unless Beneficiary shall otherwise expressly consent beforehand in writing, the fee title to any part of the Real Estate demised by any lease and the leasehold estates thereunder shall not merge but shall always remain separate and distinct, notwithstanding the union of said estates either in the lessor or in the lessee, or in a third party by purchase or otherwise, and in the event the owner or holder of the leasehold estate created by any such lease becomes the owner of the fee title to the property demised thereby, this Deed of Trust, without further act, deed, conveyance, mortgage, Deed of Trust or other assurance on behalf of said owner or holder, shall be deemed to have covered and spread to the fee estate of the property demised thereby and in the event thereof, upon request of Beneficiary without cost or expense to Beneficiary or any other secured party, the then owner or holder of said lease will execute, acknowledge and deliver all and every such further acts, conveyances, deeds, deeds of trust and assurances as Beneficiary shall reasonably require for purposes of accomplishing the subjection of the fee estate to this Deed of Trust and the spread of this Deed of Trust thereto.

31. No Liability on Beneficiary. Notwithstanding anything contained herein, this Deed of Trust is only intended as security for the Indebtedness and Beneficiary shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of Grantor under or pursuant to any of the Property, and except as otherwise provided by the Loan Agreement, Grantor shall and does hereby agree to indemnify and hold Beneficiary harmless of and from any and all liability, loss or damage which it may or might incur under any of the Property or under or by reason of their exercise of rights hereunder and of and from any and all claims and demands whatsoever which may be asserted against it by

reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Property. Beneficiary shall not have responsibility for the control, care, management or repair of the Property; nor shall Beneficiary be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Property resulting in loss or injury or death to any licensee, employee, tenant or stranger. Except as otherwise provided by the Loan Agreement, no liability shall be enforced or asserted against Beneficiary in its exercise of the powers herein granted to it, and Grantor expressly waives and releases any such liability. Except as otherwise provided by the Loan Agreement, should Beneficiary incur any such liability, loss or damage, under or by reason hereof, or in the defense of any claims or demands, Grantor agrees to reimburse Beneficiary immediately upon demand for the amount thereof, including, without limitation, reasonable costs, expenses and reasonable attorneys' fees. Notwithstanding anything to the contrary contained in this Section 31, the provisions of this Section 31 shall not apply to liability resulting directly and solely from Beneficiary's fraud, gross negligence or willful misconduct or arising from acts or omissions occurring after conveyance of title or possession of the Property to Beneficiary.

32. Indemnification. Grantor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary) and hold harmless each and every of the following persons or entities: (a) Beneficiary; (b) any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with, Beneficiary; (c) any participants and future co-lenders in the Loan; (d) the directors, officers, partners, employees, attorneys, agents and representatives of each of the foregoing persons and entities; and (e) the heirs, personal representatives, successors and assigns of each of the foregoing persons and entities ("Indemnified Party"), from and against, and reimburse them on demand for, any and all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including reasonable fees and expenses of attorneys and other professional consultants and experts, and of the investigation and defense of any claim, whether or not such claim is ultimately defeated, and the settlement of any claim or judgment including all value paid or given in settlement) of every kind, known or unknown, foreseeable or unforeseeable, which may be imposed upon, asserted against or incurred or paid by any Indemnified Party at any time and from time to time, whenever imposed, asserted or incurred, because of, resulting from, in connection with, or arising out of any transaction, act, omission, event or circumstance in any way connected with the Property or with this Deed of Trust or any other Loan Document, including any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever at any time, any act performed or omitted to be performed hereunder or under any other Loan Document, any breach by Borrower of any representation, warranty, covenant, agreement or condition contained in this Deed of Trust or in any other Loan Document, any Event of Default, or any claim under or with respect to any Lease ("Indemnified Matters"). Without limitation, the foregoing indemnity shall apply to each Indemnified Party with respect to matters which in whole or in part are caused by or arise out of the negligence of such (and/or any other) Indemnified Party. However, such indemnity shall not apply to a particular Indemnified Party to the extent that the

subject of the indemnification is caused by or arises out of the gross negligence, willful misconduct or illegal act of that Indemnified Party. Any amount to be paid under this Section 32 by Borrower to any Indemnified Party shall be a demand obligation owing by Borrower (which Borrower hereby promises to pay) to such Indemnified Party pursuant to this Deed of Trust. The indemnity in this Section 32 shall not terminate upon the release, foreclosure or other termination of this Deed of Trust but will survive the enforcement of any remedy provided in any Loan Document including the foreclosure of this Deed of Trust or conveyance in lieu of foreclosure, the repayment of the Indebtedness, the discharge and release of this Deed of Trust and the other Loan Documents, any bankruptcy or other proceeding under any federal, state or local law, domestic or foreign, as now or hereafter in effect relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension or adjustment of debts, or any similar law affecting the rights of creditors ("Debtor Relief Law"), and any other event whatsoever. The rights of Indemnified Parties under this Section 32 shall be in addition to all other rights that Indemnified Parties or any of them may have under this Deed of Trust, any other Loan Document, or the Environmental Indemnity Agreement dated of even date herewith executed by Borrower and certain other parties in favor of Beneficiary ("Environmental Agreement"). Nothing in this Section 32 or elsewhere in this Deed of Trust or in the Environmental Agreement shall limit or impair any rights or remedies that any Indemnified Party may have (including any rights of contribution or indemnification) against Borrower or any other person under any other provision of this Deed of Trust, any other Loan Document, any other agreement including the Environmental Agreement, or any applicable law, agreement, covenant, restriction, easement or condition (including, without limitation of the foregoing, any condition or requirement imposed by any insurance or surety company), as any of the same now exists or may be changed or amended or come into effect in the future.

33. Permitted Acts. Grantor agrees that, without affecting or diminishing in any way the liability of Grantor or any other person (except any person expressly released in writing) for payment of the Indebtedness or for performance of the Obligations, Beneficiary may at any time and from time to time, without notice to or consent of any person, release any person liable for payment of the Indebtedness or for performance of the Obligations; extend the time or agree to alter the terms of payment for the Indebtedness; modify or waive any Obligation; subordinate, modify or otherwise deal with the lien hereof; accept additional security of any kind; release any Property or other property securing the Indebtedness; make releases of any portion of the Real Estate; consent to the making of any map or plat of the Real Estate, the creation of any easements thereon or any covenants restraining use of occupancy thereof; or exercise or refrain from exercising or waive any right Beneficiary may have.

34. Care by Beneficiary. Beneficiary shall be deemed to have exercised reasonable care in the custody and preservation of any of the Property in its possession if it takes such action for that purpose as Grantor requests in writing, but failure of Beneficiary to comply with any such request shall not of itself be deemed a failure to exercise reasonable care, and no failure of Beneficiary to preserve or protect any rights with respect to such Property against prior parties, or to do any act with respect to the preservation of such Property not so requested by Grantor, shall be deemed a failure to exercise reasonable care in the custody or preservation of



such Property.

35. Reconveyance by Trustee. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Grantor of Trustee's fees, Trustee shall reconvey to Grantor, or the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto." Upon the full and complete payment and satisfaction of the Indebtedness in accordance with the terms at the times and in the manner provided in the Loan Agreement, or this Deed of Trust shall be null and void and following such payment and satisfaction an appropriate instrument of reconveyance or release shall promptly be made by Beneficiary to Grantor, at Grantor's expense.

36. Additional Secured Indebtedness. If, at any time prior to the payment in full of the Indebtedness secured by this Deed of Trust, Beneficiary shall advance additional funds to or for the benefit of Grantor as provided in the Loan Documents, such advance together with applicable interest thereon shall be secured by this Deed of Trust in accordance with all covenants, conditions and agreements herein contained and, to the extent permitted by law, shall be on a parity with and not subordinate to the Indebtedness evidenced by the Note.

37. Miscellaneous. The Section headings in this Deed of Trust are used only for convenience and are not part of this Deed of Trust and are not to be used in determining the intent of the parties or otherwise in interpreting this Deed of Trust. As used in this Deed of Trust, the singular shall include the plural, the plural shall include the singular and the use of any gender shall be applicable to all genders, as the context requires and the following words and phrases shall have the following meanings: (a) "provisions" shall mean "provisions, terms, covenants and/or conditions"; (b) "lien" shall mean "lien, charge, encumbrance, security interest, deed of trust and/or mortgage"; (c) "obligation" shall mean "obligation, duty, covenant and/or condition"; (d) "any of the Property" shall mean "the Property or any portion thereof or interest therein"; and (e) "Person" shall mean "any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, entity or government (whether federal, state, county, city, municipal or otherwise, including, but without limiting the generality of the foregoing, any instrumentality division, agency, body or department thereof). Any act which Beneficiary is permitted to perform under this Deed of Trust, the Loan Agreement or any other Loan Document may be performed at any time and from time to time by Beneficiary or by any person or entity designated by Beneficiary. Any act which is prohibited to Grantor under this Deed of Trust, the Loan Agreement or any other Loan Document is also prohibited to all lessees of any of the Property. Each appointment of Beneficiary as attorney-in-fact for Grantor under this Deed of Trust, the Loan Agreement or any other Loan Document shall be irrevocable as long as any of the Indebtedness shall remain unpaid or any of the Obligations remain to be performed and shall be deemed to be coupled with an interest. Unless otherwise provided herein or by any other Loan Document, Beneficiary shall have the right to reasonably refuse to grant its consent,

approval or acceptance or to indicate its satisfaction whenever such consent, approval, acceptance or satisfaction shall be required under any of the Loan Documents.

38. Conflict With Loan Agreement. Notwithstanding anything to the contrary contained herein, in the event that any of the representations and warranties, terms, provisions and/or covenants contained in this Deed of Trust, or any part or parts thereof, are in addition to, inconsistent with, expand upon, conflict with, or are contrary to the representations and warranties, terms, provisions and covenants contained in the Loan Agreement, then the Loan Agreement shall govern and any such representations and warranties, terms, provisions and/or covenants, or any part or parts thereof, contained herein shall be deemed to be deleted herefrom and shall have no force and effect except to the extent that any such terms or covenants are necessary to enable the Beneficiary to fully exercise its remedies hereunder. It is the intent of the parties hereto that the Loan Agreement be the dispositive and controlling agreement between the parties.

39. Choice of Law. This Deed of Trust shall be governed by the laws of Washington without regard to the principles of conflicts of laws. Nothing in this Deed of Trust or in any other Loan Documents shall require Grantor to pay, or Beneficiary to accept, interest in an amount which would subject Beneficiary to penalty under applicable law. In the event that the payment of any interest due hereunder or under any of the other Loan Documents or a payment which is deemed interest, exceeds the maximum amount payable as interest under the applicable usury laws, such excess amount shall be applied to the reduction of the Indebtedness, and upon payment in full of the Indebtedness, shall be applied to the performance of the Obligations, and upon performance in full of the Obligations, shall be deemed to be a payment made by mistake and shall be refunded to Grantor.

40. Receipt of Copy. Grantor acknowledges that it has received, without charge, a true copy of this Deed of Trust, and has fully examined executed counterparts of the other Loan Documents.

41. Trustee Provisions.

(a) Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Beneficiary and Grantor: (a) join in preparing and filing a map or plat of the Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Bank under this Deed of Trust.

(b) Obligation to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

(c) Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Beneficiary shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

(d) Successor Trustee. Beneficiary, at Beneficiary's option, may from time to time appoint a successor Trustee in accordance with the requirements of applicable law. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law.

42. State-Specific Provisions. By virtue of the fact that the Land is located in the state of Washington, the provisions set forth below shall be applicable to this Deed of Trust, and to the extent applicable, shall modify, affect and supplement the other provisions hereof. To the extent the applicable portion of the Property is situated in the state of Washington, the following provisions shall apply:

(a) No portion of the Property is being used principally for agricultural purposes, and the loan secured by this Deed of Trust is not made for personal, family or household purposes.

(b) After the date of any trustee's sale at which the Beneficiary or any affiliate of Beneficiary is the successful bidder, Grantor shall, to the extent permitted under RCW 61.24.100, as amended from time to time, or applicable case law, remain personally liable to Beneficiary for the repayment of the Indebtedness. Any deficiency for which Grantor is liable hereunder shall bear interest at the Default Rate from the date of sale to the date of payment.

(c) Grantor's failure to comply with the provisions of the Loan Documents relating to the use or delivery of any rents, insurance proceeds or condemnation awards to Beneficiary shall be deemed a wrongful retention thereof and Grantor shall remain personally liable therefore following a trustee's sale.

(d) This Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of Skagit County, Washington Recorder's Office, with respect to any and all fixtures comprising Property. The "debtor" is John D. Carroll L.L.C., a Washington limited liability company; the "secured party" is Hyundai Capital America, a California corporation; the collateral is as described in the granting clauses above; and the addresses of the debtor and secured party are the addresses stated in introductory paragraph of this Deed of Trust. The owner of record of the Property is John D. Carroll L.L.C., a Washington limited liability company.

43. Arbitration. All claims, disputes, or controversies arising out of or relating to this Deed of Trust, or the breach thereof, whether such claims or disputes sound in contract, tort, trade practices, equity, statutory or common law or otherwise, shall be determined by

UNRECORDED  
arbitration administered by the American Arbitration Association in accordance with its Commercial Financial Disputes Arbitration Rules (the "Rules"). To the extent applicable in civil actions in the state of Washington (the "Forum State"), the Forum State's substantive and procedural laws, including, without limitation, rules of civil procedure, rules of evidence, and rules of discovery, shall apply. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof, and the parties waive any objection based upon a lack of personal jurisdiction in the court where enforcement is sought. There shall be one arbitrator, which arbitrator shall be a retired judge of any court in the Forum State and experienced in commercial real estate finance and lending transactions. Resolution of the claim or dispute shall be based solely upon the substantive law governing the claims and defenses pleaded, and the arbitrator may not invoke any basis (including, but not limited to, notions of what is deemed "just and equitable" pursuant to AAA Commercial Rule R-43) other than such controlling law. The award shall be in writing, signed by the arbitrator, and shall include a statement setting forth the reasons for the disposition of any claim. The award shall include findings of fact and conclusions of law. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, the arbitrator's fees together with all of its attorney's fees and expenses as such attorney's fees, costs and expenses are defined in this Agreement.

Nothing in the preceding paragraph, or otherwise, nor the exercise of any right to arbitration, nor the commencement or pendency of any proceeding, shall limit the right of Lender or Borrower: (1) to seek judicial equitable relief, or other equitable relief available to it under applicable statutory and/or case law, and/or obtain provisional or ancillary remedies including, without limitation, injunctive relief and the appointment of a receiver; or (2) to exercise any self-help rights or any other rights or remedies available to it by contract or applicable statutory or case law (including, without limitation, to the filing of an involuntary petition in bankruptcy, the right of set off, attachment, recoupment, foreclosure, or repossession) with respect to its extension of credit, the protection and preservation of collateral, the liquidation and realization of collateral, the protection, continuation and preservation of lien rights and priorities, the collection of indebtedness, and the processing and payment or return of checks, whether such occurs before, during or after the pendency of any arbitration proceeding. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary rights or remedies or exercise of self-help remedies, all as provided herein, and the pursuit of any such rights or remedies, shall not constitute a waiver of the right or obligation of Lender or Borrower, including the plaintiff seeking judicial relief or remedies, to submit a dispute to arbitration, including disputes that may arise from the exercise of such rights. The arbitrator shall not have the power to order specific performance of any obligation or duty of Lender or Borrower or to issue injunctions in connection therewith or otherwise. The duty to arbitrate disputes hereunder extends beyond the date of the expiration or termination of this Deed of Trust, and beyond the date of the fulfillment of any repayment obligations of Borrower hereunder or under any loan document. In the event of any conflict between the Rules and this Section 43, the provisions of this Section 43 shall control.

*[Signature Pages Follow]*

**Signature Page to Deed of Trust, Security Agreement,  
Assignment of Leases and Rents and Fixture Filing**

IN WITNESS WHEREOF, Grantor has caused this Deed of Trust to be duly executed and acknowledged under seal the day and year first above written.

**GRANTOR:**

**JOHN D. CARROLL L.L.C.,**  
a Washington limited liability company

By: \_\_\_\_\_

John D. Carroll, Member

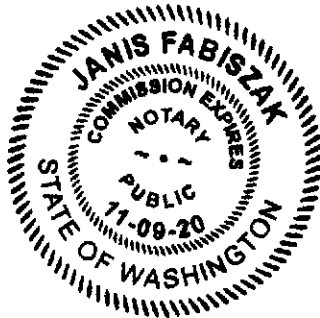
By: \_\_\_\_\_

Michael B. Carroll, Member

STATE OF WASHINGTON )  
 ) ss.  
County of Skagit )

I certify that I know or have satisfactory evidence that John D. Carroll is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Member of John D. Carroll L.L.C., a Washington limited liability company to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 26 day of April, 2017.



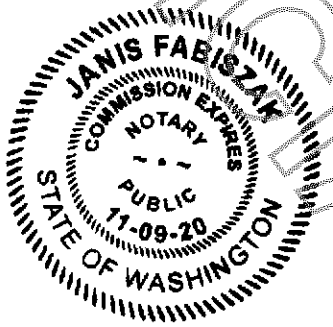
Janis Fabiszak  
Notary Public for Washington  
My Commission Expires: 11/09/2020

STATE OF WASHINGTON )

) ss.  
County of Skogit )

I certify that I know or have satisfactory evidence that Michael B. Carroll is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Member of John D. Carroll L.L.C., a Washington limited liability company to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 26 day of April, 2017.



Janis Fabiszak  
Notary Public for Washington  
My Commission Expires: 11/09/2020

**EXHIBIT A**

**LEGAL DESCRIPTION**

Real property in the County of Skagit, State of Washington, described as follows:

PARCEL "A":

LOTS 1 AND 2 OF SKAGIT CROSSINGS BINDING SITE PLAN BURL BSP 1-07, AS APPROVED JANUARY 31, 2008 AND RECORDED FEBRUARY 1, 2008, UNDER AUDITOR'S FILE NO. 200802010073, RECORDS OF SKAGIT COUNTY, WASHINGTON; BEING A PORTION OF THE SOUTHEAST ¼ OF SECTION 6, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M.

PARCEL "B":

LOTS 1 AND 3, "FISHER COMMERCIAL PARK DIV. NO. 1", ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 13 OF PLATS, PAGES 82 AND 83, RECORDS OF SKAGIT COUNTY, WASHINGTON.