

**OFFICIAL RECORD**

Requested By:  
**FIRST AMERICAN TITLE COMPANY**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Woodburn and Wedge  
Attention: Gordon H. DePaoli  
P.O. Box 2311  
Reno, Nevada 89505

Douglas County - NV  
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1220-21-102-008  
1220-21-110-001

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

by

**BING KIMMERLING, LLC,**  
a Nevada limited liability company  
and **TILLMAN KIMMERLING CENTER, LLC,**  
a Nevada limited liability company

collectively, as Trustor

to

**FIRST AMERICAN TITLE COMPANY**

as Trustee

for the benefit of

**TILLMAN CENTER, LLC,**  
a Nevada limited liability company

as Beneficiary

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**EXHIBITS**

**A - Legal Description of Land**

**B- Permitted Encumbrances**



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

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") made and entered into this 9 day of November, 2005 by and between BING KIMMERLING, LLC, a Nevada limited liability company ("Bing") and TILLMAN KIMMERLING CENTER, LLC, a Nevada limited liability company ("Tillman" and collectively with Bing, "Trustor") whose address is 7754 "A" Balboa Boulevard, Van Nuys, California 91406, in favor of First American Title Company, a Nevada corporation ("Trustee") whose address is 1674 Highway 395, Suite 206, Minden, Nevada 89423, for the benefit of TILLMAN CENTER, LLC, a Nevada limited liability company ("Beneficiary"), whose principal office address is 1300 Buckeye Road, Minden, Nevada 89423.

**WITNESSETH:**

**WHEREAS**, Trustor is justly and lawfully indebted to Beneficiary in the principal sum of Two Million Two Hundred Fifty Thousand and No/100 Dollars (\$2,250,000.00 U.S.), evidenced by that certain Promissory Note (the "Note"), executed by Trustor, dated of even date herewith, accruing interest and to be paid according to its terms, the final payment of which is due and payable on November 1, 2010.

**NOW, THEREFORE**, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Trustor hereinafter set forth, Trustor does hereby grant, bargain, sell, convey, assign, transfer, pledge and set over unto Trustee and the successors, successors-in-title and assigns of Trustee, in trust WITH POWER OF SALE for the benefit of Beneficiary, all of the following (collectively, the "Property"):

(a) **Land.** Those certain lots, pieces or parcels of land described on Exhibits "A-1" (with respect to Bing) and "A-2" (with respect to Tillman) attached hereto and by this reference made a part hereof, together with all of the easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, powers, rights, privileges, franchises and appurtenances thereto which are appurtenant to said land or its ownership, including without limitation, all minerals, oil and gas and other hydrocarbon substances thereon or therein, development rights or credits, air rights, waters, water courses, water stock, water rights (whether riparian, appropriative, or otherwise, and whether or not appurtenant), sewer rights, flowers, shrubs, crops, trees, timber and other emblements now or hereafter on, under or above the same or any part or parcel thereof; and any title or reversion, in and to the land lying in the bed of any stream, way, street, road, avenue or alley, opened or proposed, in front of or adjoining the Land to the center line thereof (collectively, the "Land") and all of the estate, right, title, interest, claim or demand whatsoever of Trustor therein or thereto, either in law or in equity, in possession or in expectance, now or hereafter acquired;

(b) **Improvements.** All structures, buildings and improvements of every kind and description now or hereafter located on the Land and all of the estate, right, title, interest, claim or demand whatsoever of Trustor therein or thereto, either in law or in equity, in possession or in



expectance, now or hereafter acquired (collectively, the "Improvements"; the Land and Improvements, collectively, the "Real Property");

(c) **Equipment.** All Equipment (as hereinafter defined) now or hereafter owned or leased by Trustor and to the extent now or at any time hereafter affixed to, attached to, placed upon or utilized in any way in connection with the use, enjoyment, occupancy or operation of the Real Property or any portion thereof, together with all extensions, additions, improvements, betterments, after-acquired property, renewals, replacements and substitutions, or proceeds from the permitted sale of any of the Equipment; it being understood and agreed that all Equipment is part and parcel of the Real Property and appropriated to the use of the Real Property and, whether affixed or annexed or not, shall, for the purposes of this Deed of Trust, be deemed conclusively to be real estate and conveyed hereby. As used in this Deed of Trust, "Equipment" shall mean collectively, all tangible personal property of every kind and nature whatsoever in any way related to the Real Property, including without limitation, the following:

(i) all systems, machinery, apparatus, attachments, building materials, conduits, fittings, fixtures (trade, domestic and ornamental) and furnishings, whether actually or constructively attached to any portion of the Real Property, including without limitation:

(A) such of the foregoing as may be used (1) in connection with the generation or distribution of air, water, heat, electricity, light, fuel or refrigeration; or (2) for ventilation or sanitary purposes; or (3) for the exclusion of vermin or insects; or (4) for the removal of dust, refuse or garbage; or (5) for any of the following purposes: laundry, lifting, cleaning, fire prevention, fire extinguishing, sewage processing, communications and incineration;

(B) all pipes, pumps, tanks, motors, switchboards, lifting stations, plumbing and plumbing fixtures; boilers, furnaces, oil burners and units thereof; elevators, escalators; mechanical equipment; gas and electric fixtures; mantels; built-in mirrors; ducts; and compressors;

(C) all wall-beds, wall-safes, built-in furniture and installations, shelving, lockers, partitions, door-stops, vaults, dumb-waiters, awnings, window shades, venetian blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm systems, drapery rods and brackets, draperies, awnings, storm doors and windows, screens, linoleum, carpets, plumbing, laundry tubs and trays, ice-boxes, refrigerators, stoves, ovens, dishwashers, water heaters and other appliances; carpeting, underpadding, and all other floor coverings; vehicles; vacuum cleaning systems; furniture of public spaces, halls and lobbies; attached cabinets, partitions, and all building equipment and materials now or hereafter delivered to the Real Property and intended to be installed or placed in or about the Improvements; and

(ii) All right, title and interest of Trustor, to the full extent thereof, in and to any Equipment which may be subject to any title retention or security agreement or instrument prior in lien to the lien and security title of this Deed of Trust, (Trustor representing, however, that no such agreement or instrument exists with respect to any of the present Equipment);





(d) **Books and Records.** All of Trustor's right, title and interest in and to all documents, books and records relating to any of the Property, including without limitation, computer readable memory and any computer software or hardware reasonably necessary to access and process such memory;

(e) **Intangible Property.** All of Trustor's right, title and interest in and to all intangible property and rights relating to any of the Property or to the use, operation or development thereof or used in connection therewith, including without limitation franchise or license agreements, governmental permits, development agreements with private or governmental entities, all names, trade names, trademarks, service marks, logos under or by which any of the Property may at any time be in operation or known, all rights to carry on business under any such names or any variant thereof, and all goodwill in any way relating to the Property, and all of Trustor's rights under any and all contracts, permits, licenses, approvals, plans or intangibles (collectively, "Contracts") now or hereafter dealing with, affecting or concerning any of the Property, including without limitation, all Contracts for or related to the construction of improvements upon the Real Property, including performance and/or materialmen's bonds and any other related choses-in-action;

(f) **Inventory and Accounts.** All of Trustor's right, title and interest in and to all inventory, accounts, chattels, chattel paper, farm products, and consumer goods acquired in consideration of any of the other Property or the cash proceeds therefrom, all of which are hereby declared and shall be deemed a part of the Property as between the parties hereto and all persons claiming by, through or under them, and all of which shall be deemed to be a portion of the security for the Indebtedness (as hereinafter defined) and all other obligations secured by this Deed of Trust;

(g) **Deposits.** All of Trustor's right, title and interest in and to any and all deposits and payments now or hereafter made by Trustor or on behalf of Trustor;

(h) **Leases, Rents and Profits.** All of Trustor's right, title and interest as lessor in and to all leases, occupancy or rental agreements, written or oral, now or hereafter affecting the Real Property or any part thereof (collectively, the "Leases"); all of Trustor's rights to enter into any lease, occupancy agreement or rental agreement, written or oral, subordinate in any respect to any mortgage, deed of trust or security deed, other than this Deed of Trust; all rents, royalties, issues, revenues, income, profits, accounts receivables and other benefits of and from the Property, generated by the operation of the Property, arising from the use or enjoyment of all or any portion thereof or from any Lease or agreement pertaining thereto (collectively, the "Rents and Profits"), including without limitation, any cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether said cash or securities are to be held until the expiration of the terms of said Leases or applied to one or more of the installments of rents coming due immediately prior to the expiration of said terms; and any and all security interests now or hereafter held by Trustor, as lessor under any Leases, covering any furniture, furnishings, fixtures, equipment or other property of the lessee thereunder;

(i) **Condemnation, Insurance and Other Proceeds.** All of Trustor's right, title and interest in and to (i) any and all awards or payments, including interest thereon and the right to receive the same, growing out of or as a result of any exercise of the right of eminent domain,



including the taking of any of the Real Property or payment for alteration of the grade of any street upon which the Real Property abuts, or any other injury to, taking of, or decrease in the value of, the Real Property; (ii) all proceeds or sums payable as compensation for casualty loss or damage to any of the Property; (iii) all present and future casualty or liability insurance related to the Property, (including, without limitation, any unearned premiums paid thereon); (iv) all rights to the payment of moneys, accounts receivable, reserves, accounts, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits), chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Beneficiary), and all cash on deposit in deposit accounts, which arose from or relate to the Property; and (v) all other proceeds (including claims or demands thereto) from the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims;

(j) **Causes of Action.** All causes of action and the proceeds thereof of all types for any damage or injury to the Property or any part thereof, including without limitation causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact; and

(k) **Right to Further Encumber.** All of Trustor's rights to further encumber any of the Property, whether by mortgage, deed of trust, deed to secure debt, other security instrument, ground lease or otherwise, except by encumbrances expressly permitted by this Deed of Trust.

**TO HAVE AND TO HOLD** the Property and all parts, rights, members and appurtenances thereof, to the use, benefit and behoof of Trustee and the successors and assigns of Trustee, in trust for the benefit of Beneficiary and the successors and assigns of Beneficiary, subject, however, to the terms, covenants and conditions contained herein.

Trustor covenants and warrants that Trustor has good and marketable title to the Property and is lawfully seized and possessed of the Property in fee simple and has good right to sell and convey the same; that the Property is unencumbered except for those matters (the "Permitted Encumbrances") expressly set forth in **Exhibit "B"** attached hereto and by this reference made a part hereof; and that Trustor will forever warrant and defend the Property unto Trustee and Beneficiary against the lawful claims and demands of all persons whomsoever, except as to the Permitted Encumbrances. Trustor further covenants and warrants that the lien and security title created by this Deed of Trust is and shall remain throughout the term of the loan secured hereby, a first and prior lien and security title on all of the Property, subject only to the Permitted Encumbrances.

This Deed of Trust is given to secure the payment of the following described indebtedness (collectively, the "Indebtedness"):

(a) **The Note.** The debt evidenced by the Note, including any and all renewals, modifications, consolidations and extensions thereof;

(b) **Advances.** Any and all additional advances made by Beneficiary or Trustee to protect or preserve the Property or the security title and interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any



of Trustor's obligations hereunder or for any other purpose provided herein (whether or not the original Trustor remains the owner of the Property at the time of such advances);

(c) **Interest.** Any and all interest due and payable hereunder; and

(d) **Other Amounts Due.** Any and all other amounts now or hereafter due hereunder or under any of the other Loan Documents (as hereinafter defined).

This Deed of Trust is additionally given to secure the due, prompt and complete observance and performance of each and every obligation, covenant and agreement of Trustor contained herein and/or in any other instrument heretofore or hereafter executed by Trustor having reference to or arising out of the Indebtedness or given as security for the Note, including, without any limitation, any and all modifications, amendments, extensions or renewals, however evidenced, of such documents (with all such documents, being collectively referred to hereinafter as the "Loan Documents").

NOTICE — All persons who acquire an interest in all or any part of the Property are hereby given notice of, and will be subject to the terms of the Note, this Deed of Trust and the other Loan Documents, including without limitation, provisions of the same which provide that the terms thereof maybe modified from time to time.

Should the Indebtedness be paid in accordance with the Note and all other Loan Documents when the same shall become due and payable, and should Trustor perform all covenants and obligations set forth herein and in all other Loan Documents in a timely manner, then this Deed of Trust shall be canceled and surrendered.

**TRUSTOR** further covenants, represents, warrants and agrees to and with Beneficiary and Trustee as follows:

**1. COVENANTS AND REPRESENTATIONS**

**1.1 PAYMENT OF INDEBTEDNESS**

Trustor will pay the Indebtedness when due in strict accordance with the terms of the applicable Loan Document.

**1.2 TAXES, ASSESSMENTS AND OTHER CHARGES**

**(a) Payments**

Trustor will pay, when due and payable and prior to the same becoming delinquent, all taxes of every kind and nature in any way relating to the Property, including without limitation real and personal property taxes and income, franchise, withholding, profits and gross receipts taxes; all general and special assessments, levies, permits, inspection and license fees; all water, sewer and other utility rents and charges; all charges imposed pursuant to environmental laws or regulations; and all other public charges whether of a like or different nature, imposed upon or assessed against Trustor or the Property or any part thereof, or arising in respect of the occupancy, use or possession thereof. All of the above-referenced taxes, assessments and other



charges are hereinafter referred to collectively as "Impositions." Trustor shall deliver to Beneficiary a proper receipt showing payment in full of all Impositions on or before the last day upon which such Impositions may be paid without the imposition of interest or other late charge or penalty. Nothing herein contained shall require Trustor to pay Beneficiary's income taxes. Trustor's obligation to pay any particular Imposition shall not apply to the extent Trustor has deposited with Beneficiary pursuant to Section 1.3 sufficient funds to pay such Imposition and such funds have not been otherwise applied by Beneficiary as permitted by this Deed of Trust. The immediately preceding sentence shall not be deemed to create any option in Trustor to elect to pay such Impositions when due in lieu of making the deposits required pursuant to Section 1.3.

(b) Right to Contest

After prior written notice to Beneficiary, Trustor shall have the right to diligently, promptly and in good faith contest by appropriate legal proceedings, without cost or expense to Beneficiary, the amount or validity of any Imposition provided such contest will not adversely affect (i) the title of Trustor to all or any part of the Property or the lien and security title of this Deed of Trust, (ii) the conduct of Trustor's business, or (iii) the maintenance of that standard of physical condition of the Real Property herein provided for. Trustor shall not be relieved of its obligation to pay any such Impositions as required by Section 1.2(a), unless (A) the proceedings shall operate to prevent the collection of such Imposition and the sale of the Property, or any part thereof, to satisfy the same; and (B) Trustor either (1) shall have deposited with or at the direction of Beneficiary, as security, an amount sufficient, in the sole judgment of Beneficiary, to pay such Imposition and all interest and penalties in connection therewith, and all charges that might become a charge on the Property, or any part thereof, in such proceedings; or (2) shall have posted a bond with Beneficiary, naming Beneficiary as principal, with respect to the payment of such Imposition in an amount, with a corporate surety and otherwise in form and substance satisfactory to Beneficiary. At any time when Beneficiary shall deem the bond or monies so deposited to be insufficient security, Trustor shall, upon demand, increase the bond or deposit such additional monies as, in the sole judgment of Beneficiary, shall be sufficient, and upon failure of Trustor so to do, any monies deposited shall be applied to the payment of such Imposition, any interest and penalties in connection therewith, and any charges accruing in such proceedings, and the balance, if any, shall be paid to Trustor unless there is in effect at that time an Event of Default. In the event that such monies shall be insufficient for such payment, Trustor shall forthwith pay over to Beneficiary an amount of money sufficient, together with the monies previously deposited with Beneficiary, to pay the same.

(c) Additional Taxation Provisions/Right to Accelerate

In the event of the passage, after the date of this Deed of Trust, of any Federal, state or local law (i) deducting from the value of real property for the purposes of taxation any lien thereon; or (ii) changing (A) in any way the laws for the taxation of security instruments such as this or debts secured by security instruments such as this, for Federal, State or local purposes, or (B) the manner of the collection of any such taxes; or (iii) imposing a tax, either directly or indirectly, on this Deed of Trust or the Note, then Beneficiary shall have the right to declare the entire Indebtedness due and payable in full, on a date to be specified by not less than ninety (90) days' written notice to be given to Trustor by Beneficiary, provided, however, that such election



shall be ineffective if Trustor is permitted by applicable law to pay the whole of such tax in addition to all other payments required hereunder, and Trustor, prior to such specified date, pays such tax and agrees in a writing acceptable in all regards to Beneficiary, to pay any such tax when thereafter levied or assessed against the Real Property or against Beneficiary (and thereafter pays same when due), and such agreement shall constitute a modification of this Deed of Trust. If at any time applicable state or Federal law shall require revenue stamps to be affixed to the Note, Trustor will promptly pay for the same with any interest or penalties imposed in connection therewith.

### **1.3 INTENTIONALLY OMITTED**

### **1.4 INSURANCE**

#### **(a) General Requirements of Insurance**

All insurance herein required shall be provided through policies in form and amount (and issued by companies) approved by Beneficiary. Each policy shall be from companies having a Best's Rating of A, Class VII or better (where the coverage amount is for less than or equal to \$20,000,000) or a Best's Rating of A minus, Class IX or better (where the coverage amount is greater than \$20,000,000). Each policy shall be nonamendable, nonterminable and noncancellable without at least thirty (30) days' advance written notice to Beneficiary, and each shall provide that all losses shall be payable to Beneficiary. Beneficiary may alter any of the requirements of this Section 1.4, as to limits, coverage, and otherwise, upon thirty (30) days' written notice thereof to Trustor. Before the end of said thirty (30) day period, Trustor must provide evidence that it is then in compliance with the modified requirements of this Section 1.4, which evidence must be satisfactory to Beneficiary in its sole discretion. All insurance required of Trustor herein shall name Beneficiary as an additional insured and shall contain a standard form loss payable endorsement in favor of and in form acceptable to Beneficiary in its sole discretion, providing that all losses shall be payable to Beneficiary without contribution. In the event there is a deductible clause in any standard form policy in use in the state wherein the Property is located, then the amount deducted from the coverage by said clause shall be paid by Trustor in the event of loss. Trustor's obligation to obtain insurance hereunder shall not in any way diminish, alter or affect any other obligation or liability of Trustor hereunder or under any other Loan Document

#### **(b) Insurance For Real Property**

Trustor shall procure and keep in force during the time period any Indebtedness shall remain outstanding, property insurance insuring the Improvements and all other insurable elements of the Property against loss or damage by those risks included under coverage of the type now known as the Causes of Loss – Special Form, including without limitation additional endorsements covering losses sustained by reason of increased costs of construction, earthquakes, fire, lightning, windstorm, vandalism, malicious mischief, hail, explosion, collapse, riot, riot attending a strike, civil commotion, aircraft, vehicles, flood, vandalism, malicious mischief, and smoke, and broad form extended coverage endorsement, rental loss endorsement (which shall have a limit equal to or greater than the expected annual income from the Real Property and which shall be for a period of at least 12 months) and in an amount never less than



the remaining principal balance, against any other risk insured against by persons operating like properties in the locality of the Real Property. The property insurance policy and all endorsements thereto except the rental loss endorsement shall all be in amounts approved from time to time by Beneficiary (such amount as may be required to prevent Trustor from becoming a co-insurer under the terms of the applicable policy). All policies of property insurance must have an Agreed Amount Endorsement. All property insurance policies must contain a standard mortgagee endorsement, naming Trustor as an additional insured, with losses payable to Beneficiary as its interest appears.

(c) Liability Insurance

Trustor shall obtain and keep in force for the benefit of itself and Beneficiary, commercial general liability insurance against claims for bodily injury, including death, property damage and personal liability, in which Trustor and Beneficiary are named as insureds with initial limits of not less than \$1,000,000. If Trustor's commercial general liability insurance policy does not extend to Trustor's tenants, then Trustor shall cause each of its tenants to obtain and keep in force commercial general liability insurance in which the tenant is the insured and Trustor and Beneficiary are each named as additional insureds with initial limits of not less than \$1,000,000.

(d) Flood Insurance

In the event the Real Property is within a 100 year flood zone as determined by applicable governmental agencies or departments, Trustor shall obtain flood insurance on the Improvements, with such policy and coverage and in such amount as shall be acceptable to Beneficiary.

(e) Use of Insurance Proceeds

Within ten (10) days after the initial occurrence thereof, Trustor shall provide Beneficiary with notice (both written and oral) of any damage to the Property or any portion thereof having a cost to repair of more than five (5%) percent of the initial principal balance of the loan secured hereby, together with reasonable details about any such damage. Beneficiary, after consultation with Trustor, may adjust any loss covered by insurance. Trustor shall do all things necessary to obtain prompt settlement of each loss or claim covered by insurance. All insurance compensation, awards, proceeds, damages, claims, rights of action and payments and all causes of action and proceeds thereof of all types for any damage or injury to any of the Property to which Trustor may become entitled shall be paid over to Beneficiary, and Trustor hereby absolutely and irrevocably assigns to Beneficiary all of Trustor's rights to collect and receive such monies. Beneficiary may deduct and retain from such monies, the amount of all expenses (including litigation costs and reasonable attorneys' fees and expenses) incurred by it in connection with the settlement of any insurance claim or any cause of action relating to any of the Property, or any litigation resulting therefrom. After deduction of such expenses, Beneficiary, at its sole option, shall release, pay, or apply the balance of said monies in such order and proportion as it may determine in its sole discretion and without regard to the adequacy of its security hereunder: (i) to Trustor for the repair, alteration or restoration of the Improvements or for the erection of new Improvements in their place, or for any other purpose or object, in all cases in accordance with such procedures as Beneficiary deems appropriate in its



sole and absolute discretion, but Beneficiary shall not be obligated to see to the proper application of any amount paid over to Trustor; or (ii) on account of any item of Indebtedness, without premium, any such prepayment applied against principal under the Note to be applied in whatever order Beneficiary elects against the Indebtedness. Any such monies released to Trustor or paid or applied on the cost of restoration, repair or alteration shall in no event be deemed a payment of the Indebtedness. Beneficiary shall be under no obligation to question the amount of such insurance proceeds and may accept the same in the amount in which the same shall be paid.

If Beneficiary elects to make available any insurance proceeds to defray the cost of restoration, repair or alteration of all or any of the Property, same shall be distributed as determined by Beneficiary, provided that, in all instances, such insurance proceeds shall not be released for any portion of the subject work until all such work is completed and paid for, appropriate lien waivers have been received by Beneficiary and are acceptable to Beneficiary, and Trustor has satisfied such further requirements with respect to said distribution as Beneficiary may determine, which further requirements may include, without limitation, a date down title insurance endorsement in all respects acceptable to Beneficiary.

(f) Evidence of Insurance

Evidence satisfactory to Beneficiary of the payment of premiums for at least a twelve (12) month period for each policy, shall be timely deposited with Beneficiary not less than thirty (30) days prior to the expiration date of each policy required of Trustor pursuant to this Section 1.4. Upon any renewal or replacement, Trustor will deliver to Beneficiary a renewal or replacement policy or policies, marked "premium paid" or accompanied by other evidence of payment satisfactory to Beneficiary, at least thirty (30) days prior to the expiration of any expiring policy.

(g) Miscellaneous

In the event of a foreclosure under this Deed of Trust, the purchaser of the Property shall succeed to all rights of Trustor, including all rights to unearned premiums, in and to all policies of insurance assigned and delivered to Beneficiary pursuant to the provisions of this Section 1.4. Notwithstanding the foregoing, in the event Trustor insures the Property, under a blanket policy, Beneficiary shall accept a certified copy of such policy or policies instead of an original copy of such policy or policies. However, an Agreed Amount Endorsement in form and amount acceptable to Beneficiary in its sole discretion shall be required as to any blanket policy, and evidence thereof must be provided by Trustor to Beneficiary. Regardless of the types or amounts of insurance required and approved by Beneficiary, Trustor does hereby assign and will deliver to Beneficiary all policies of insurance obtained by or on behalf of Trustor which insure against any loss or damage to any of the Property, as collateral and further security for the payment of the Indebtedness.

**1.5 CONDEMNATION**

(a) Application of Proceeds

Trustor shall provide Beneficiary with written notice of and reasonable details concerning the institution of any proceedings for the condemnation of the Property or any portion thereof,



within ten (10) days after Trustor first learns of any such proceedings. Beneficiary may participate in any condemnation proceedings and Trustor shall do all things necessary to obtain prompt settlement of any condemnation proceedings. All condemnation (including without limitation any conveyance in lieu thereof) compensation, awards, proceeds, damages, claims, rights of action and payments and all causes of action and proceeds thereof of all types to which Trustor may become entitled shall be paid over to Beneficiary and Trustor hereby absolutely and irrevocably assigns to Beneficiary all of Trustor's rights to collect and receive any such monies. Beneficiary may deduct and retain from said monies the amount of all expenses (including litigation costs and reasonable attorneys' fees and expenses) incurred by it in connection with the settlement of any condemnation proceedings or any cause of action relating to any of the Property or any litigation resulting therefrom. After deduction of such expenses, Beneficiary at its sole option, shall release, pay or apply the balance of said monies in such order and proportion as it may determine in its sole discretion and without regard to the adequacy of its security hereunder: (i) to Trustor for the repair, alteration or restoration of the Property or for the erection of new Improvements in their place, or for any other purpose or object, in all cases in accordance with such procedures which are satisfactory to Beneficiary, but Beneficiary shall not be obligated to see to the proper application of any amount paid over to Trustor; or (ii) on account of any item of Indebtedness, without premium, any such prepayment to be applied in whatever order Beneficiary elects against any Indebtedness. Any monies released to Trustor or paid or applied on the cost of restoration, repair or alteration, shall in no event be deemed a payment of the Indebtedness. Beneficiary shall be under no obligation to question the amount of such monies and may accept the same in the amount in which the same shall be paid.

(b) After Foreclosure

Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of any of the Property by any public or quasi-public authority or corporation, Trustor shall continue to pay interest on the entire principal sum evidenced by the Note until any such award or payment shall have been actually received by Beneficiary. If prior to the receipt by Beneficiary of such award or payment, the Property shall have been sold through foreclosure of this Deed of Trust, Beneficiary shall have the right to receive said award or payment to the extent of any deficiency in the full payment of the Indebtedness due Beneficiary following such sale, with legal interest thereon (whether or not a deficiency judgment on this Deed of Trust or the Note is expressly herein or therein negated or shall have been sought or recovered or denied), plus all reasonable attorneys fees and expenses incurred by Beneficiary in connection with the collection of such award or payment.

**1.6 FINANCIAL INFORMATION**

(a) Books and Records

Trustor will keep adequate and accurate books and records of account in accordance with generally accepted accounting principles and will permit Beneficiary and its agents, accountants and attorneys, to visit and inspect the Real Property and, to the extent related to Trustor's ownership or operation of the Real Property, examine Trustor's records and books of account and to discuss Trustor's affairs, finances and accounts with the officers or principals of Trustor at

such reasonable times as may be requested by Beneficiary.

(b) Cash Flow Statements

Trustor shall provide to Beneficiary annual income and expense statements as to the operation and leasing of the Property. As to each such category, current cash flow and up-to-date payables and receivables shall be provided. All such statements are to be in form and content satisfactory to Beneficiary, and all are to be received by Beneficiary within ninety (90) days of the close of Trustor's fiscal year. The first such statement shall be due on April 1, 2007. All such statements must be prepared by Trustor's chief financial officer and certified by Trustor and such chief financial officer as being true, complete and correct and showing, in detail, all such income and expenses since the last such annual statement.

(c) Annual Statements

Trustor shall deliver to Beneficiary within ninety (90) days after the close of each fiscal year of Trustor, in form and detail satisfactory to Beneficiary, (i) an annual income and expense/operating statement for the operation and leasing of the Property. As to each such category, current cash flow and up-to-date payables and receivables shall be provided. All such statements are for the prior fiscal year, including a balance sheet for the Property, prepared and certified by an independent certified public accountant acceptable to Beneficiary, and supported by the affidavit of an appropriate principal in the ownership of Trustor.

(d) Intentionally Omitted

(e) Rent Rolls

Trustor shall provide to Beneficiary such annual rent rolls as are required in Section 1.8 hereof.

(f) Information Related To Statements

All information (income and expense statements, etc.) required to be furnished to Beneficiary pursuant to this Section 1.6 shall be delivered to all parties entitled to receive notices given to Beneficiary under this Deed of Trust. All such statements and information with regard to the Property shall only include data concerning the Property and not information concerning any property not included within the Property.

(g) Late Charge Upon Default

If Grantor is in default of its obligations under this Section 1.6 and all applicable grace, notice and cure periods, if any, have expired, then retroactive to the first day of such default and for so long as the default shall remain uncured, a late charge of \$1,000.00 shall be due from Grantor to Beneficiary, for each month during which the default continues, to be payable first on the day the applicable grace, notice or cure period, if any, expires (or if no such period is applicable, then on the day of the default) and thereafter on the first day of each calendar month during which the default continues without further notice, until the default is fully cured.

## **1.7 MANAGEMENT**

Trustor shall cause to be performed all agreements, undertakings and functions necessary to the continuing operation and management of the Property. The Property shall at all times be managed by a professional property manager satisfactory to Beneficiary. Beneficiary hereby approves Jericho Enterprises. Any and all property management contracts must contain a provision making them terminable by Beneficiary without cause on thirty (30) days notice, in the event either (a) an Event of Default occurs and is continuing, or (b) Beneficiary takes possession or control of the Property. Under no circumstances may any change in management of the Property or the management contract take place without the prior approval of Beneficiary, which approval shall not be unreasonably withheld. Without limiting the terms of the immediately preceding sentence, it shall be reasonable for Beneficiary to withhold approval of a proposed management company which does not have (i) at least five (5) years of commercial management experience in the metropolitan area in which the Property is located, managing comparable buildings, or (ii) financial resources which are clearly sufficient for it to undertake the subject management responsibility when all other financial responsibilities of said entity are considered. Trustor shall cause (A) the management contract in effect from time to time to be subordinated to this Deed of Trust and collaterally assigned to Beneficiary through a document satisfactory to Beneficiary, and (B) the property manager to execute a consent whereby the said property manager consents to the subordination and collateral assignment of the property management contract to Beneficiary, and further consents to the termination of said management contract in the event that this Deed of Trust is foreclosed, which termination shall be at the sole option of the purchaser at such foreclosure sale.

## **1.8 REGARDING LEASES**

### **(a) In General**

All future Leases shall be on a standard form of lease hereafter approved by Beneficiary in writing (the "Standard Form Lease"). Any future Lease that makes material changes to the form of the Standard Form Lease must be submitted to and approved by Beneficiary in its sole discretion before such Lease becomes effective. In addition, any future Lease having either (i) a lease term of ten (10) years or more; and/or (ii) a demised premises constituting twenty-five percent (25%) or more of the total net rentable square footage of the Improvements must also be submitted to and approved by Beneficiary in its sole discretion before such lease becomes effective. Each future Lease (and any existing lease which is renewed or modified) is (and shall be deemed): (A) subject to the condition that in the event of any foreclosure sale or sales hereunder, such lease shall, at the sole option of Beneficiary, continue in full force and effect and the tenant thereunder will, upon request, attorn to and acknowledge the foreclosure purchaser as landlord thereunder unless Beneficiary or such foreclosure purchaser shall, within sixty (60) days after such sale, notify the tenant in writing to vacate and surrender the leased space within ninety (90) days from the date of sale, in which case such lease shall fully terminate and expire at the end of the said period of ninety (90) days; (B) subject to the further condition that if such Lease shall so continue in full force and effect, the tenant shall not be credited as against such purchaser with any rent allocable to the period after such foreclosure sale and paid more than sixty (60) days in advance of its due date; (C) to contain a provision that neither Beneficiary nor any other

successor to Trustor as landlord shall ever be liable or responsible: (1) for any breach of a covenant contained in the lease that occurred before such party acquired its interest in the Property; or (2) for any continuing breach thereof, except to the extent such breach continues to occur after such acquisition and Beneficiary or its successor, as applicable, has received at least thirty (30) days' prior written notice thereof and the right to cure such breach; or (3) for any security deposits held by Trustor as landlord thereunder which have not been actually received by Beneficiary or such successor to Beneficiary; (D) not to be subordinate to any lien or charge other than the lien of this Deed of Trust, or depend in any manner upon property not subject to the lien of this Deed of Trust; (E) to require the tenants to pay their prorata share of real estate taxes and assessments, insurance and common area maintenance; and (F) to contain a provision for notice to Beneficiary of any default by landlord under the Lease and the right of Beneficiary, prior to tenant's termination of the Lease, to cure such default within sixty (60) days after receipt of such notice or in the event such cure requires more than sixty (60) days, or that Beneficiary be the owner of the Property, then within a reasonable time after such time period or after Beneficiary acquires title to the Property, as the case may be, provided Beneficiary proceeds diligently to effect such cure. Trustor will not execute any lease of all or a substantial portion of the Improvements except for actual occupancy by the lessee thereunder.

(b) Trustor's Duties As Lessor

Trustor shall faithfully perform the obligations of Trustor as lessor or lessee under any present and future Leases (including without limitation all ground leases and all space leases) affecting all or any portion of the Property, and shall neither do nor neglect to do, nor permit to be done, anything which may cause the termination of said leases, or any of them, except with the prior consent of Beneficiary, or which may diminish or impair their value, or the rents provided for therein, or the interest of Trustor or Beneficiary therein or thereunder.

(c) Beneficiary's Consent Required

In addition to the matters requiring Beneficiary's written consent under Section 1.8(a), Trustor, without first obtaining the written consent of Beneficiary thereto, shall not (i) assign the Rents and Profits, or any part thereof, from any of the Property, (ii) make any amendment, change, or concession to any lease or with any tenant which has the effect of reducing the annual rentals collected by the Trustor by more than five percent (5%), or (iii) allow any such Lease to be subordinate to a lien or charge other than this Deed of Trust or the other Loan Documents.

(d) Tenant Estoppel Statements

To the extent Leases then in effect require a tenant to provide an estoppel statement or certificate, then Trustor shall procure and deliver to Beneficiary at any time within fifteen (15) days after notice and demand, such estoppel statement or certificate as is required under each respective Lease. To the extent that then effective Leases do not so provide, then Trustor shall use its best efforts to procure and deliver to Beneficiary at any time within fifteen (15) days after notice and demand, estoppel letters or certificates from each lessee, tenant or occupant in possession of the Real Property, as required by, and in form and substance satisfactory to, Beneficiary. Trustor shall procure and deliver to (i) each lessee a copy of the recorded assignment of leases given as part of the closing of the loan secured hereby and any supplements





to same, and (ii) Beneficiary, within five (5) days of notice and demand, proof of due service on each lessee of such recorded copy and supplement(s), either personally or by prepaid registered mail, return receipt requested.

(e) Assignment of Leases and Rents and Profits

Trustor hereby assigns to Beneficiary all its right, title and interest in all Leases, present and future, of the Property or any portion thereof and all Rents and Profits. This assignment is a present, absolute and complete assignment from Trustor to Beneficiary and is not merely the granting of a security interest. The parties hereto further intend that the Rents and Profits (and any payments made in lieu of rents) be hereby absolutely assigned, so that such Rents and Profits are no longer the property of Trustor during the term of this Deed of Trust and do not constitute any of the assets of any estate of Trustor as defined by 11 USC §541 of the U.S. Bankruptcy Code and that such Rents and Profits will not constitute collateral, cash or otherwise, of Beneficiary. The acceptance of this assignment of leases by Beneficiary is subject to the following: so long as there shall exist no Event of Default, Trustor shall have a revocable license from Beneficiary to collect, when due, all Rents and Profits and to retain and use the same (subject first to payment of any installment then due under the Note and any other payments then due under any of the other Loan Documents). Upon the occurrence of an Event of Default, Trustor's license shall automatically terminate without regard to the adequacy of Beneficiary's other security for the Indebtedness and without notice to or demand upon Trustor. Beneficiary shall not exercise any of the rights or powers conferred upon it under this Section until an Event of Default shall occur and be continuing, but upon the occurrence and during the continuance of any such Event of Default, Beneficiary shall be entitled to all Rents and Profits and other amounts then due under the Leases and thereafter accruing, and this assignment shall constitute a direction to and full authority to the subject lessees and each of them, to pay all such amounts to Beneficiary without proof of the Event of Default relied upon. Said lessees are hereby irrevocably authorized to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may be or thereafter become due under the leases, or for the performance of any of said lessee's undertakings under the leases and shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is continuing.

(f) Rent Rolls

Trustor shall provide to Beneficiary, on an annual basis, current rent rolls and current leasing activity reports for the Property, both in form and substance satisfactory to Beneficiary, which shall reflect then-current tenant leasing. Such rent rolls must be certified by an appropriate principal in the ownership of Trustor and are to be received by Beneficiary by the first (1<sup>st</sup>) day of ~~November~~ <sup>April</sup>. The first such statement shall be due on or before April 1, 2007. Each such rent roll shall contain, at a minimum, each of the following as to each tenant: tenant's name; suite number or space number (as applicable); the number of net rentable square feet; commencement date; termination date; current rental rate; CAM charges and CPI Increases.

(g) Submissions Regarding New Leases

Trustor shall provide the following regarding each Lease entered into after the date of this



Deed of Trust, to be submitted with the next due rent roll as provided above:

- (i) Intentionally Omitted.
- (ii) Complete and correct copies of each new Lease;
- (iii) The written certification of one of Trustor's principals acceptable to Beneficiary for said purpose, that the delivered copy of such Lease is complete and correct and includes all amendments, addendums, riders, subleases and other documentation relative thereto; that such lease(s) have been examined, are in full force and effect and are binding on the respective tenant(s) and contain no offsets or concessions; that no rents have been collected for more than two (2) months in advance relative thereto; and that all tenant(s) are in actual physical occupancy of their demised premises and are paying rent; and
- (iv) A subordination, non-disturbance and attornment agreement on Beneficiary's current form from the tenant under each of the said Leases, which shall provide, among other things, that if Beneficiary acquires title to the Project through foreclosure or otherwise, Beneficiary shall not be: (i) liable for any prior act or omission of lessor or obligated to cure any defaults of the lessor under the lease which occur prior to the time that Beneficiary or any successor or assign of Beneficiary succeeded to the interest of the lessor in the demised premises; (ii) subject to any offsets or defenses which the lessee may be entitled to assert against the prior lessor; (iii) bound by any payment of rent or additional rent by the lessee to the prior lessor for more than two (2) months in advance; (iv) bound by any amendment or modification of the lease made without the written consent of Beneficiary or its successor and assign; or (v) liable or responsible for or with respect to the retention, application and/or return to the lessee of any security deposit paid to the prior lessor, whether or not still held by the prior lessor, except to the extent Beneficiary or its successor or assign has actually received for its own account as lessor the full amount of such security deposit.

#### **1.9 CONDITION AND OPERATION OF THE PROPERTY**

Trustor shall do all things necessary to the satisfaction of Beneficiary, based on the character and nature of use of the Property, to: (a) keep the Property (including without limitation, all landscaping) in good condition and repair and to prevent any waste and deterioration thereof; (b) operate the Property in a first class manner for the purpose for which it is constructed; (c) keep all Improvements free of termites, dry rot, wood borers and all similar destructive pests; (d) prevent any change to, or in the use of, the Property which will in any way increase the risk of fire or other hazard arising from the use thereof; and (e) prevent, except with Beneficiary's prior written consent, any material changes in the nature of the occupancy or use of the whole or any part of the Property, from such nature for which the Property or such part is intended on the date hereof. Trustor shall continuously (i) maintain not less than the number of parking spaces required by law; (ii) comply with the minimum parking requirements of all leases affecting any portion of the Property; and (iii) comply with all zoning and other municipal ordinances and regulations governing parking (including without limitation, those concerning





handicap parking). Trustor shall at all times maintain in the Improvements in good condition.

#### **1.10 COMPLIANCE OF PROPERTY**

Trustor will do all things necessary to: (a) comply with, or cause to be complied with, all statutes, laws, ordinances, regulations, rules and requirements of any and all governmental authorities having jurisdiction relating to any portion of the Property or the use or operation thereof, including without limitation, all applicable zoning and subdivision laws and the Americans with Disabilities Act; (b) keep in effect and comply with the requirements of all easements, covenants, conditions and restrictions in any way affecting the Property; (c) prevent any change in any private restrictive covenant, any zoning ordinance, any easement, or any other public or private restrictions, where such change may have the effect of limiting the uses which may be made of the Property or any part thereof; and (d) prevent any use of the Property or any part thereof that could with the passage of time result in the creation of any right or claim of adverse possession or prescriptive easement or similar right or claim on, to or against the Property or any part thereof in favor of any person or the public. If at any time the then existing use or occupancy of the Real Property shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, Trustor will not cause or permit such use or occupancy to be discontinued without the prior written consent of Beneficiary. In the event any governmental authority having jurisdiction adopts any law, ordinance or regulation which imposes a limitation on the uses to which any of the Property can be devoted should it be sold, assigned or transferred or in any manner disposed of, Trustor shall not consummate any such sale, assignment, transfer or disposition without first fully disclosing to Beneficiary, in writing, all aspects of such use limitation and receiving the prior written consent of Beneficiary relative thereto. A default under this Section 1.10 shall be governed by the notice and cure provisions of Section 3.1(h).

#### **1.11 ENVIRONMENTAL MATTERS**

##### **(a) Hazardous Materials**

For purposes of this Deed of Trust, "Hazardous Substances" shall mean the following: any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous or toxic substance, pollutant, contaminant, petroleum or petroleum products, or other similar term, by any Federal, state, or local environmental statute, regulation, or ordinance presently in effect, or that may be promulgated in the future, as such statutes, regulations and ordinances may be amended from time to time, as well as oil, fuels, gasses, pesticides, paints and solvents, lead, cyanide, DDT, acids, ammonium compounds and other chemicals, trash, garbage, other solid wastes, asbestos and asbestos-containing material, and PCB substances. Trustor covenants and agrees with Beneficiary (i) that Trustor shall not use (or permit the use of) Hazardous Substances on, from or affecting the Real Property in any manner that violates any applicable governmental law, rule or regulation, or that gives rise to any governmental notice, reporting or remedial requirements, and (ii) that Trustor will not permit or suffer any violation of applicable governmental laws, rules and regulations with regard to Hazardous Substances affecting the Real Property. Trustor's liability under this Section 1.11 shall not include Hazardous Substances identified to be affecting the Real Property on October



14, 2005 in that certain Phase One Environmental Report prepared by Geocon Consultants, Inc.

(b) Site Review

Trustor shall permit such persons as Beneficiary may designate ("Site Reviewers") to visit the Property and perform environmental site investigations and assessments, and monitor existing conditions and environmental facilities (collectively, "Site Assessments") from time to time, on the Property or any portion thereof for the purpose of determining whether there exists on the Property any environmental condition which could result in any liability, cost or expense to the owner or occupier of the Property. Such Site Assessments may include both above and below ground testing for environmental damage or for the presence of Hazardous Substances and such other tests on the Property or any portion thereof as may be necessary in the opinion of the Site Reviewers to conduct the Site Assessments. Such Site Assessments shall also include, without limitation, taking such air, water, ground and other environment related samples as the Site Reviewers may deem appropriate or necessary. Trustor will supply to the Site Reviewers such historical and operational information regarding the Property as may be available to Trustor and reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters.

**1.12 MODIFICATIONS, CONSTRUCTION, ALTERATIONS, REPAIRS, REMOVAL, DEMOLITION**

There shall be no (a) modifications to the structure, accessibility, HVAC and other building systems of the Property or any portion thereof or any other material alterations to any of the Property; or (b) changes to the appearance of the Property or any portion thereof having a value in excess of \$100,000; or (c) construction, alterations, repairs, removal or demolition of any Improvement or Equipment (such modifications, changes and alterations referred to in clauses (a), (b) and (c) being herein referred to collectively as the "Work") (other than repairs and maintenance in the ordinary course of business), without the prior written approval of Beneficiary, after submission of plans and specifications for such Work to Beneficiary, which plans and specifications must be reasonably acceptable to Beneficiary. All such approved Work shall be: (i) done in full compliance with all applicable laws, promptly, in a good, workmanlike manner and in conformance with such approved plans and specifications; and (ii) completed with any portion of the Property which may be damaged or destroyed relative thereto fully restored. Any such approval and consent of Beneficiary shall not be deemed to constitute any warranty or representation by Beneficiary as to the adequacy, correctness or completeness, compliance with laws, fitness for any purpose or otherwise, of said plans and specifications, or said modifications or Work. Trustor will pay when due all claims for work performed or materials furnished on or in connection with all or any part of the Property and all charges, liens or encumbrances thereon which are or appear to be prior or superior hereto.

**1.13 EQUIPMENT REPLACEMENT**

Trustor shall have the right, without Beneficiary's consent, to remove and dispose of, free of this Deed of Trust, such Equipment as from time to time may become worn out or obsolete, provided that (a) simultaneously with or prior to such removal any such Equipment shall be



replaced with other equipment fully owned by Trustor of a value and quality at least equal to that of the replaced Equipment and free from any title retention or other security agreement or other liens, claims of title (contingent or otherwise), encumbrances, or charges of any kind and by such removal and replacement, Trustor shall be deemed to have subjected such new equipment to this Deed of Trust; and (b) any net cash proceeds received from such disposition shall be paid over promptly to Beneficiary to be applied to the last installment due on the Indebtedness, without premium for prepayment. Trustor agrees to execute such further documentation as may be requested by Beneficiary to reflect any and all of the foregoing provisions of this Section. In addition, at the option of Beneficiary, Trustor shall provide at no cost to Beneficiary a satisfactory opinion of counsel to the effect that this Deed of Trust constitutes a valid and subsisting lien on such replacement Equipment and is not subject to being subordinated in priority under any applicable law, including without limitation the provisions of Article 9, of the Uniform Commercial Code.

#### **1.14 FURTHER ASSURANCES**

Trustor shall execute and deliver to Beneficiary, upon demand, any further instrument or instruments, including without limitation, security instruments, security agreements, financing statements, assignments and renewal and substitution notes, so as to reaffirm, correct or perfect the evidence of, and securing of, the obligations hereby secured and the legal title to all or any part of the property intended to be hereby conveyed, whether now conveyed, later substituted for, or acquired subsequent to the date of this Deed of Trust or modifications thereof.

#### **1.15 CERTIFICATION OF INDEBTEDNESS**

Trustor upon ten (10) days' request shall certify in writing to Beneficiary and to any proposed assignee of the Note and any other Indebtedness, the amount of principal and interest then owing on the Note and all other Loan Documents and whether any offsets or defenses exist against the Indebtedness.

#### **1.16 INDEMNIFICATION FOR REASONABLE EXPENSES**

Trustor will pay for and indemnify and save harmless Beneficiary (and any participant or agent of Beneficiary) and Trustee from and against any and all expenses relating to or arising out of the enforcement of any rights or obligations, the review of any consent requests and/or otherwise relating to the administration of the Indebtedness or any of the Loan Documents. Further, if at any time Beneficiary (or its loan servicing agent) or Trustee take any action or perform any act requested by Trustor to accommodate Trustor with regard to the Property or the Loan Documents, and the accomplishment thereof requires the services of any professional, such as an engineer, architect or attorney, for which any fees or costs will be incurred by Beneficiary (or its loan servicing agent) or Trustee, and Beneficiary (or its loan servicing agent) or Trustee takes such action or performs such act, then Trustor will pay all such reasonable fees and costs for such professionals within thirty (30) days of receipt of a statement therefor. Such expenses may include without limitation, claims for brokerage commissions and expenses; leasing commissions; survey costs; title insurance costs; credit report costs; appraisal costs; environmental audit costs; attorneys' fees and expenses; escrow fees; documentary transfer taxes; recording taxes; Deed of Trust taxes; and all recording costs. If Trustor requests that Beneficiary



take any action or perform any act to accommodate Trustor with regard to the loan secured hereby, any of the Property and/or any of the Loan Documents, and the accomplishment thereof requires the services of any of Beneficiary's employees, and Beneficiary determines (in its sole discretion) to have its employees provide such services, then Trustor will also pay to Beneficiary a processing fee, in an amount acceptable to Beneficiary, prior to the commencement of any such work by Beneficiary's employees, in consideration of such services being provided.

#### **1.17 REPLACEMENT FINANCING**

Trustor shall proceed with diligence during the six months immediately prior to the scheduled maturity of the Note to obtain replacement financing for the Indebtedness from third parties. Trustor acknowledges and agrees that Beneficiary shall be under no obligation whatsoever to provide any refinancing relative to the Indebtedness.

#### **1.18 USE OF FUNDS FROM THE REAL PROPERTY**

Trustor covenants and agrees that all funds generated from the Property or any part thereof must be utilized for the payment of all current expenses of the Property, including mandatory debt service payments on the Indebtedness, and operating expenses, before any such funds are diverted for use to any other properties or for any other purposes of Trustor.

#### **1.19 DUTY TO NOTIFY**

Trustor agrees to give Beneficiary immediate notice of any hereafter filed or threatened litigation affecting Trustor or the Property.

#### **1.20 INTENTIONALLY OMITTED**

#### **1.21 LIMITATIONS ON SUBORDINATE FINANCING**

There shall be no subordinate financing secured by the Property or any portion thereof, without the prior written consent of Beneficiary, which may be granted or withheld in Beneficiary's sole discretion. Trustor covenants, acknowledges and agrees that if any mortgage, Deed of Trust of trust or security Deed of Trust on any of the Property subordinate to this Deed of Trust (any such subordinate document, the "Subordinate Lien") is permitted pursuant to the express terms hereby on any of the Property, such Subordinate Lien shall specifically provide (or if it does not so provide, shall be deemed to provide) that:

(a) If Trustor shall grant any Subordinate Lien on the Property, such Subordinate Lien shall be subject to, in addition to all tenancies now or hereafter affecting the Property, all renewals and extensions, modifications, releases, increases, increase in interest rate, future advances, changes or exchanges, effected or to be effected relative to this Deed of Trust, or any other Loan Document, without the joinder or consent of such Subordinate Beneficiary and without any obligation on Beneficiary's part to give notice of any kind thereto;

(b) The Subordinate Lien is subject and subordinate to any and all advances made and expenses incurred, with interest thereon, pursuant to this Deed of Trust;



(c) The lender under the Subordinate Lien (the "Subordinate Beneficiary") shall release insurance proceeds and condemnation awards, to be applied to the restoration of the Property or to the Indebtedness, in the same manner as Beneficiary, under the terms and provisions of this Deed of Trust, so that no conflicts are created by and among Beneficiary, the Subordinate Beneficiary, or others in the application of insurance proceeds or condemnation awards;

(d) The Subordinate Beneficiary shall give nondisturbance agreements to tenants if required by Beneficiary;

(e) The Subordinate Beneficiary shall not acquire, by subrogation (for example, by payment of real estate taxes), or otherwise, any lien, estate, right or other interest in the Property that is or may be prior in right to this Deed of Trust or Beneficiary's lien, estate, rights or interests, therein;

(f) The Subordinate Beneficiary shall give Beneficiary notice of any default, copies of all notices relating to any default and copies of any foreclosure or similar documents relating to the Subordinate Lien;

(g) No rents will be collected on behalf of the Subordinate Beneficiary except by a receiver, and all rents collected by the receiver will go first to service the Indebtedness;

(h) If the Subordinate Beneficiary brings a foreclosure proceeding, no tenant will be named as a party defendant, and no action will be taken that would terminate any leases or other rights held by or granted by third parties with respect to the Property or any portion thereof;

(i) If Beneficiary forecloses this Deed of Trust, all Rents and Profits shall thereafter belong to the purchaser at foreclosure;

(j) Upon request from Beneficiary, the Subordinate Beneficiary shall provide such further evidence as Beneficiary may require as to the subordination of the Subordinate Lien to this Deed of Trust and also to further evidence the agreement of Subordinate Beneficiary to the provisions of this Section; and

(k) A default under the Subordinate Lien shall constitute an Event of Default under this Deed of Trust.

## **1.22 REGARDING SUBORDINATE INTERESTS**

Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien affecting all or any portion of the Property, Beneficiary may release the obligation of anyone at any time liable for any of the Indebtedness or any part of the security held for such Indebtedness and may extend the time of payment or otherwise modify the terms of the Note and/or this Deed of Trust without, as to the security or the remainder thereof, in anywise impairing or affecting Beneficiary's interests evidenced hereby (lien and otherwise) or the priority of such interests, as security for the payment of the Indebtedness as it may be so



extended or modified, over any subordinate lien. The holder of any subordinate lien shall have no right to terminate any lease affecting any portion of the Property whether or not such lease be subordinated to this Deed of Trust. Beneficiary may resort for the payment of the Indebtedness to any other security therefor held by Beneficiary in such order and manner as Beneficiary may elect.

### **1.23 LIMITATIONS ON TRANSFERS**

As an inducement to Beneficiary to make the loan evidenced by the Note, Trustor covenants and agrees that during the term of such loan, title to the Property and to every portion thereof shall be vested solely in Trustor, except as Beneficiary shall otherwise in its sole discretion specifically consent in writing. Trustor shall not, without the express prior written consent of Beneficiary cause, permit, or consent to the sale, transfer, encumbrance, pledge or other disposition of the Property or any portion thereof (including without limitation the creation of any easements encumbering all or any portion of the Property) or to any change in the direct or indirect composition of Trustor. For example, but not by way of limitation, it shall constitute an Event of Default if, without Beneficiary's prior written consent (a) any stock, membership interest, beneficial interest or partnership interest of any corporation, limited liability company trust or partnership comprising Trustor shall be transferred, assigned, pledged, hypothecated, mortgaged or encumbered; or (b) if any such corporation, limited liability company, trust or partnership is dissolved or terminated, by operation of law or voluntarily. Trustor understands that the present ownership of the Property and of Trustor has been a material inducement to Beneficiary in the making of the loan secured hereby. All transfers shall be subject to Beneficiary's prior express, written consent and may be conditioned upon payment of a reasonable fee, upon an increase in the Interest Rate under the Note and/or upon changing other terms and conditions of this Deed of Trust, the Note or the other Loan Documents to reflect the then-current market conditions. Furthermore, any such consent by Beneficiary to a change in ownership shall be conditioned upon Beneficiary's receipt of such opinions of counsel, resolutions and organization filings as Beneficiary deems necessary, and a writing by and between Trustor and the proposed assignee, assigning all of Trustor's interest under the Loan Documents to the proposed assignee, with the proposed assignee assuming all of the duties and obligations of Trustor under the Loan Documents, which writing must be acceptable, in form and substance, to Beneficiary. Such writing must specify, in addition to the foregoing, that the proposed assignee shall execute such further documentation as Beneficiary may reasonably require, including without limitation, new U.C.C. financing statements and a new indemnification with regard to environmental matters in form and substance consistent with the similar indemnity given by Trustor to Beneficiary on even date herewith. Trustor shall give Beneficiary prior written notice of each and every proposed transaction which requires Beneficiary's consent under this Section 1.22, and shall furnish to Beneficiary such information as Beneficiary may reasonably require relative thereto. The foregoing notwithstanding, an assignment of ownership interests of Trustor to family members of Jerry F. Rosenstock shall be permitted, provided that Jerry F. Rosenstock shall at all times remain the beneficial interest holder of greater than 50% of the ownership interests of the Trustor.

### **1.24 ERISA**





Trustor, having had the benefit of legal counsel, covenants, represents and warrants that (a) no assets of any employee benefit plan, as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), as now or hereafter amended, will be used in the satisfaction, exercise or performance of any of the obligations, rights or transactions specified or contemplated herein or in the Note or in any of the other Loan Documents; (b) the Property (and each portion thereof) does not now, and will not, constitute an asset of any such employee benefit plan; and (c) notwithstanding any other provisions of this Deed of Trust, Trustor will not sell, convey or transfer the Property (or any portion thereof) to any person or entity which at the time of such transfer does not satisfy the representations set forth in clauses (a) and (b) above, regardless of whether any of the above described conditions arises by operation of law or otherwise. Without limitation on the rights and remedies of Beneficiary arising under this Deed of Trust, in the event that Trustor or any subsequent owner of the Property or any part thereof shall at any time sell, convey or transfer or attempt to sell, convey or transfer the Property or any part thereof in violation of the provisions of this Section 1.24, then Beneficiary shall, in addition to any other rights and remedies it may have at law or in equity or under this Deed of Trust, be entitled to a decree or order restraining and enjoining such sale, conveyance or transfer, and Trustor or such subsequent owner shall not plead in defense thereof that there would be an adequate remedy at law (it being hereby expressly acknowledged and agreed that damages at law would be an inadequate remedy for breach or threatened breach of the provisions of this Section 1.24).

#### **1.25 ACTIONS BY TRUSTEE**

At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement, and without affecting the personal liability of any person for payment of the Indebtedness or the effect of this Deed of Trust upon the remainder of the Property, Trustee may take such actions as Beneficiary may request and which are permitted by this Deed of Trust or by applicable law, and Trustor and Beneficiary hereby irrevocably waive any conflict of interest which may arise from any such relationship between Trustee and Beneficiary.

#### **1.26 RIGHT OF SUBSTITUTION**

(a) Beneficiary shall have, and is hereby granted by Trustor with warranty of further assurances, the irrevocable power, in its sole discretion, with or without cause, for any reason whatsoever, to appoint a substitute or additional Trustee or Trustees hereunder and to remove the Trustee or Trustees or any one or more of them from time to time acting hereunder without notice and without specifying any reason therefor, by filing for record in the office where this instrument is recorded a substitution of trustee, Deed of Trust of appointment or other instrument required by the law of the State wherein the Real Property is located, and Trustor hereby agrees that the Trustee or Trustees or any successor or substitute Trustee or Trustees may heretofore and/or hereafter be an officer, employee, agent, or attorney of, or enjoy any other business relationship with, Beneficiary. Said power of removal and appointment may be exercised as often and whenever Beneficiary deems it advisable, and the exercise of said power, no matter how often, shall not be an exhaustion thereof. Upon the recordation of such substitution of trustee, Deed of Trust of appointment or other instrument, the Trustee or Trustees

so appointed shall thereupon, without any further act or Deed of Trust or conveyance, be fully vested with identically the same title and estate in and to the Property and with all of the rights, powers, trusts and duties of their, his or its predecessor or predecessors in the trust hereunder with like effect as if originally named as Trustee or one of the Trustees hereunder. Whenever in this Deed of Trust reference is made to Trustee or Trustees, it shall be construed to mean the Trustee or Trustees for the time being, whether original or successor or successors in trust. All title, estate, rights, powers, trusts and duties hereunder given, appertaining to or evolving upon Trustee or Trustees shall be in each of the persons of whom the Trustee is composed, so that any action hereunder or purporting to be hereunder by any one of the original or any successor Trustee or Trustees shall for all purposes be considered to be, and effective as, the action of all Trustees.

(b) Trustee shall have the right to resign as Trustee hereunder at any time upon not less than ten (10) days' prior written notice to Trustor and Beneficiary, in which event Beneficiary shall exercise the right to appoint a successor Trustee pursuant to paragraph (a) of this Section 1.26 before such resignation becomes effective.

#### **1.27 INDEMNIFICATION OF TRUSTEE**

Trustee, by acceptance hereof, hereby covenants faithfully to perform and fulfill the trusts herein created; provided, however, that Trustee shall be liable hereunder only for gross negligence, willful misconduct or bad faith. In any event, Trustee shall be indemnified and forever held harmless by Beneficiary from all loss or damage of any kind which Trustee may incur in acting as Trustee hereunder, except for such loss or damage as may result from the gross negligence, willful misconduct or bad faith of Trustee. Trustee may rely on any document believed by it in good faith to be genuine. All money received by Trustee shall, until used or applied as herein provided, be held in trust, but need not be segregated (except to the extent required by law), and Trustee shall not be liable for interest thereon.

#### **1.28 INSPECTIONS.**

That Beneficiary, or its agents, representatives or employees, are authorized to enter, at any reasonable time and upon reasonable notice to Trustor, upon or in any part of the Real Property for the purpose of inspecting the same and any other portion of the Property and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents.

#### **1.29 MECHANICS' LIENS.**

Trustor shall not permit any mechanic's, laborer's or materialmen's liens to stand against the Property or any part thereof. If any such lien shall at any time be recorded against the Property or any part thereof then Trustor shall: (i) give written notice thereof promptly to Beneficiary; and (ii) cause the same to be discharged of record within thirty (30) days after the date of recording of the same, either by payment, deposit or bond. If Trustor fails to discharge any such lien within such period, then Beneficiary, in addition to any other right or remedy hereunder, shall have the option (but not the obligation) to procure the discharge of such lien either by depositing the amount claimed to be due in court, or by bonding. Any amount paid or

deposited by Beneficiary to discharge such lien, and all costs and other expenses, including all reasonable attorneys' fees, incurred in defending any action to foreclose such lien, shall be deemed a part of the indebtedness secured hereby and shall be due and payable, without demand, immediately.

### **1.30 DESTRUCTION OF NOTE.**

Trustor will, in the event the Note shall be mutilated, destroyed, lost or stolen, deliver to Beneficiary, in substitution therefor, a new promissory note containing the same terms and conditions as the Note with a notation thereof of the unpaid principal and accrued but unpaid interest. Trustor shall be furnished with satisfactory evidence of the mutilation, destruction, loss or theft of the Note, and all such security or indemnity as may be reasonably requested by Trustor.

## **2. SECURITY AGREEMENT/UNIFORM COMMERCIAL CODE**

### **2.1 SECURITY AGREEMENT**

(a) This Deed of Trust shall cover, and the Real Property shall include, all property now or hereafter affixed or attached to or incorporated upon the Land, other than the moveable trade fixtures of Trustor's tenants, which, to the fullest extent permitted by law, shall be deemed fixtures and a part of the Land. To the extent any of the Property consists of rights in action or personal property covered by the Uniform Commercial Code, this Deed of Trust shall also constitute a security agreement, and Trustor hereby grants to Beneficiary, as secured party, a security interest in such property, including all proceeds thereof, for the purpose of securing the Indebtedness. To the extent any of the Property or Personal Property, as hereinafter defined, may be or have been acquired with funds advanced by Beneficiary, this security interest is a purchase money security interest. In addition, for the purpose of securing the Indebtedness, Trustor hereby grants to Beneficiary, as secured party, a security interest in all of the property described below in, to, or under which Trustor now has or hereafter acquires any right, title or interest, whether present, future, or contingent: all equipment, inventory, accounts, general intangibles, instruments, documents, and chattel paper, as those terms are defined in the Uniform Commercial Code, and all other personal property of any kind (including, without limitation, money and rights to the payment of money), whether now existing or hereafter created, that are now or at any time hereafter: (i) in the possession or control of Beneficiary in any capacity; (ii) erected upon, attached to, or appurtenant to, the Land; (iii) located or used on the Land or identified for use on the Land (whether stored on the Land or elsewhere); or (iv) used in connection with, arising from, related to, or associated with the Land or any of the personal property described herein, the construction of any improvements on the Land, the ownership, development, maintenance, leasing, management, or operation of the Land, the use or enjoyment of the Land, or the operation of any business conducted on the Land; including, without limitation, all such property more particularly described as follows:

- (1) Buildings, structures and improvements, and building materials, fixtures and equipment to be incorporated into any buildings, structures or improvements;
- (2) Goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings,



including, without limitation, all such items used for: (i) generation, storage or transmission of air, water, heat, steam, electricity, light, fuel, refrigeration or sound; (ii) ventilation, air-conditioning, heating, refrigeration, fire prevention and protection, sanitation, drainage, cleaning, transportation, communications, maintenance or recreation; (iii) removal of dust, refuse, garbage or snow; (iv) transmission, storage, processing or retrieval of information; and (v) floor, wall, ceiling and window coverings and decorations;

(3) Income, receipts, revenues, rents, issues and profits, including, without limitation, room rents, minimum rents, additional rents, percentage rents, occupancy and user fees and charges, license fees, parking and maintenance charges and fees, tax and insurance contributions, proceeds of the sale of utilities and services, cancellation premiums, and claims for damages arising from the breach of any leases;

(4) Water and water rights, ditches and ditch rights, reservoirs and reservoir rights, stock or interest in irrigation or ditch companies, minerals, oil and gas rights, royalties, and lease or leasehold interests;

(5) Plans and specifications prepared for the construction of any improvements, including, without limitation, all studies, estimates, data, and drawings;

(6) Documents, instruments and agreements relating to, or in any way connected with, the operation, control or development of the Land, including, without limitation, any declaration of covenants, conditions and restrictions and any articles of incorporation, bylaws and other membership documents of any property owners association or similar group;

(7) All of Trustor's rights of every kind under or pursuant to any declaration of covenants, conditions and restrictions or similar documents or instruments, which shall hereafter be filed in order to govern the Land or any portion thereof, and any modifications thereof or supplements thereto (collectively, the "Declaration"), and all of Trustor's rights under or pursuant to any and all other documents which may hereafter be executed or otherwise made effective with respect to the creation of an association to govern or administer such Land, including, without limitation, all development rights, special declarant rights, rights with respect to any design or architectural review committees, and other rights of Trustor as declarant under the Declaration;

(8) Claims and causes of action, legal and equitable, in any form whether arising in contract or in tort, and awards, payments and proceeds due or to become due, including, without limitation, those arising on account of any loss of, damage to, taking of, or diminution in value of, all or any part of the Land or any personal property described herein;

(9) Sales agreements, escrow agreements, deposit receipts, and other documents and agreements for the sale or other disposition of all or any part of the Land or any of the personal property described herein, and deposits, proceeds and benefits arising from the sale or other disposition of all or any part of the Land or any of the personal property described herein;

(10) Policies or certificates of insurance, contracts, agreements or rights of indemnification, guaranty or surety, and awards, loss payments, proceeds, and premium refunds that may be payable with respect to such policies, certificates, contracts, agreements or rights;





(11) Contracts, agreements, permits, licenses, authorizations and certificates, including, without limitation, all architectural and engineering contracts, construction contracts and subcontracts, management contracts, service contracts, maintenance contracts, franchise agreements, license agreements, building permits, operating licenses, and plans and specifications for the improvements;

(12) Trade names, trademarks, and service marks (subject to any franchise or license agreements relating thereto);

(13) Refunds and deposits due or to become due from any utility companies or governmental agencies;

(14) Books, records, correspondence, files and electronic media, and all information stored therein; and

(15) Replacements and substitutions for, modifications of, and supplements, accessions, addenda and additions to, all of the personal property described herein;

together with all products and proceeds of all of the foregoing, in any form, including all proceeds received, due or to become due from any sale, exchange or other disposition thereof, whether such proceeds are cash or non-cash in nature, and whether represented by checks, drafts, notes or other instruments for the payment of money. The personal property described or referred to in this Section 2.1 is hereinafter called the "Personal Property." The security interests granted in this Section 2.1 are hereinafter severally and collectively called the "Security Interest."

(b) The Security Interest shall be self-operative with respect to the Personal Property, but Trustor shall execute and deliver on demand such additional security agreements, financing statements and other instruments as may be requested in order to impose the Security Interest more specifically upon the Personal Property. Trustor authorizes Beneficiary to file (including electronic or facsimile) financing statements describing the Personal Property, including descriptions broader than are set forth in this Deed of Trust. The Security Interest, at all times, shall be prior to any other interests in the Personal Property except any lien or security interest granted in connection with any Permitted Exception. Trustor shall act and perform as necessary and shall execute and file all security agreements, financing statements, continuation statements and other documents requested by Beneficiary to establish, maintain and continue the perfected Security Interest. Trustor, on demand, shall promptly pay all costs and expenses of filing and recording, including the costs of any searches, deemed necessary by Beneficiary from time to time to establish and determine the validity and the continuing priority of the Security Interest.

(c) Grantor shall not sell, transfer, assign or otherwise dispose of any Personal Property or any interest therein without obtaining the prior written consent of Beneficiary, which consent shall not be unreasonably withheld, except Personal Property that Grantor is obliged to replace pursuant to the terms hereof. Unless Beneficiary then agrees otherwise in writing, all proceeds from any permitted sale or disposition in excess of that required for replacements shall be paid to Beneficiary to be applied to the Obligation, whether or not then due. Grantor shall keep the Personal Property free of all security interests or other encumbrances, except the

Security Interest and any security interests and encumbrances granted in connection with any Permitted Exception. Although proceeds of Personal Property are covered hereby, this shall not be construed to mean that Beneficiary consents to any sale of the Personal Property.

(d) Grantor shall keep and maintain the Personal Property in good condition and repair, and shall promptly replace any part thereof that from time to time may become obsolete, badly worn or in a state of disrepair. All such replacements shall be free of any other security interest or encumbrance, except any security interest or encumbrance granted in connection with any Permitted Exception.

(e) Except for purposes of replacement and repair, Grantor, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld, shall not remove, or permit the removal of, any Personal Property from the Premises.

(f) Grantor hereby warrants, covenants and agrees that: (i) the Personal Property is or will be used primarily for business (other than farm) purposes; (ii) the Personal Property will be kept at the Premises; and (iii) Grantor's records concerning the Personal Property will be kept at Grantor's address as set forth in the beginning of this Deed of Trust.

(g) Grantor represents and warrants that the name specified above for Grantor is the true and correct legal name of Grantor; and the address specified in the initial paragraph of this Deed of Trust is the address of Grantor's principal place of business, or if Grantor has more than one principal place of business, its chief executive office. Grantor shall give Beneficiary immediate written notice of any change in: (i) the location of Grantor's principal place of business, as set forth in the beginning of this Deed of Trust; (ii) Grantor's mailing address, as set forth in the beginning of this Deed of Trust, (iii) the location of the Personal Property or any part thereof; or (iii) the location of Grantor's records concerning the Personal Property. Grantor shall give Beneficiary immediate written notice of any change in the name, identity or structure of Grantor, or any change in Grantor's state of organization.

(h) All covenants and warranties of Grantor contained in this Deed of Trust shall apply to the Personal Property whether or not expressly referred to in this Section 2.1. The covenants and warranties of Grantor contained in this Section 2.1 are in addition to, and not in limitation of, those contained in the other provisions of this Deed of Trust.

(i) Upon its recording or registration in the real estate records of the proper office, this Deed of Trust shall be effective as a financing statement filed as a fixture filing executed by Grantor as "debtor" and Beneficiary as "secured party," for purposes of the Uniform Commercial Code. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder. Beneficiary may elect to exercise or enforce any of its rights, remedies or interests under this Deed of Trust as Beneficiary may from time to time deem appropriate.

## **2.2 WARRANTIES, REPRESENTATIONS AND ADDITIONAL COVENANTS OF TRUSTOR**

Trustor hereby warrants, represents and covenants as follows:





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

(b) Trustor will not lease, sell, convey or in any manner transfer the Personal Property without the prior written consent of Beneficiary, except for transfers as described in clause (d) below.

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

(d) The Personal Property will be kept on or at the Real Property and Trustor will not remove the Personal Property from the Real Property without the prior written consent of Beneficiary, except such portions or items of Personal Property which are consumed or worn out in ordinary usage or which become obsolete, all of which shall be promptly replaced by Trustor with new items of equal or greater quality and value in accordance with Section 1.13 above.

(e) Trustor maintains a place of business in the State of in which the Real Property is located and Trustor will immediately notify Beneficiary in writing of any change in its place of business as set forth in the beginning of this Deed of Trust.

(f) At the request of Beneficiary, Trustor will join Beneficiary in executing one or more financing statements and continuations, renewals and amendments thereof pursuant to the Uniform Commercial Code of the State in which the Real Property is located in form satisfactory to Beneficiary, and will pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary to be necessary or desirable.

(g) All covenants and obligations of Trustor contained herein relating to the Property shall be deemed to apply to the Personal Property whether or not expressly referred to herein.

(h) This Deed of Trust constitutes a Security Agreement as that term is used in the Uniform Commercial Code of the State in which the Real Property is located.

(i) This Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the county in which the Real Property is located with respect to any and all fixtures included within the term "Property" as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder. Certain UCC-1 financing statement information is set forth on Exhibit "C" to this Deed of Trust.

### 3. DEFAULT AND REMEDIES



### 3.1 EVENTS OF DEFAULT

Any of the following shall be deemed to be a material breach of Trustor's covenants herein and shall constitute a default hereunder (an "Event of Default"):

(a) Subject to Section 3.1(b) below, the failure of Trustor to pay any installment of principal or interest under the Note, and the continuance of such failure for a period of ten (10) days thereafter without a complete cure thereof (including payment of any late charge or increased interest as provided in the Note);

(b) The failure of Trustor to pay the outstanding principal balance under the Note and all other sums secured by this Deed of Trust upon the maturity of the Loan, whether pursuant to the stated terms of the Note, by acceleration or otherwise.

(c) The failure of Trustor to pay any other sum required to be paid under the terms of the Loan Documents, whether to Beneficiary or otherwise, within ten (10) days after written notice from Beneficiary to Trustor that such amounts have not been paid;

(d) The failure of Trustor to keep all insurance required by this Deed of Trust, in full force and effect and the continuance of such failure for a period of ten (10) days thereafter without a complete cure thereof;

(e) The failure of Trustor to provide to Beneficiary such evidence of insurance as may be required hereunder, within ten (10) days after written notice from Beneficiary to Trustor that such evidence has not been provided;

(f) The occurrence of waste, removal or demolition of the Property or any part thereof;

(g) Trustor's assignment of the whole or any part of the Rents and Profits, without the prior written consent of Beneficiary;

(h) The failure of Trustor to perform or observe any other term, provision, covenant, condition or agreement under any Loan Document, and (i) if such failure is capable of being cured within thirty (30) days, the failure of Trustor to cure such failure within thirty (30) days after Trustor's receipt of notice thereof from Beneficiary; or (ii) if such failure is not capable of being cured within thirty (30) days, but is capable of being cured within a longer period of time not to exceed ninety (90) days, the failure of Trustor (A) to commence the curing thereof within thirty (30) days after Trustor's receipt of notice thereof from Beneficiary, or (B) to proceed diligently with the curing thereof, or (C) to complete the curing thereof within a reasonable time (not to exceed ninety (90) days) after Trustor's receipt of notice thereof from Beneficiary;

(i) Trustor (or the managing partner or member of Trustor, if any) shall (i) have an order for relief entered in a proceeding under any bankruptcy, insolvency or debtor's relief laws of the United States or any state thereof, whether such order shall result from a voluntary or involuntary petition, (ii) seek or consent to (or have imposed upon it) the

appointment of a receiver or trustee for itself or for any of the Property, (iii) file a petition or initiate a proceeding under the bankruptcy, insolvency, or debtor's relief laws of the United States or any state thereof, (iv) make a general assignment for the benefit of creditors, or (v) be unable to pay its debts as they mature;

(j) If any warranty, representation, certification, financial statement or other information made or furnished to Beneficiary at any time pursuant to the terms of the Loan Documents or otherwise, by or on behalf of Trustor, or by any person or entity otherwise liable under any Loan Document, shall be false or misleading in any material respect, and Trustor fails to take whatever remedial action is required to cause such false or misleading matter to no longer be false or misleading in any material respect within thirty (30) days after Trustor's receipt of notice thereof from Beneficiary.

### **3.2 WAIVER**

No consent or waiver expressed or implied by Beneficiary to or of any default by Trustor hereunder shall be deemed to be a consent or waiver to or of any further default by Trustor. No failure by Beneficiary to insist upon the strict performance by Trustor of any of the terms and provisions hereof or any other term, covenant, condition or provision of or under any of the obligations secured hereby shall be deemed a waiver of any of the terms and provisions hereof or thereof, and Beneficiary, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Trustor of any and all of the terms and provisions of this Deed of Trust and any of the other Loan Documents to be performed by Trustor. No waiver or consent shall be deemed or construed to exist by reason of any course of conduct or in any other manner whatsoever except by a writing duly executed by Beneficiary and then only to the single occasion to which such writing is addressed.

### **3.3 RIGHT TO PERFORM UPON A DEFAULT**

Beneficiary and/or Trustee may, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof: (a) make or do any payment or act which Trustor has failed to make or do hereunder, and to such extent as Beneficiary may deem necessary to protect the security hereof, Beneficiary and/or Trustee is authorized to enter upon the Property for such purposes; (b) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary and/or Trustee; (c) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Beneficiary appears to be prior or superior hereto; and, (d) in exercising any such powers, pay necessary expenses, fee's and costs including reasonable attorney's fees and fees of other consultants. All such sums and expenses so expended by Beneficiary and/or Trustee shall be secured by this Deed of Trust and shall be immediately due and payable without demand or notice, with interest from the date of expenditure at a rate equal to the Augmented Rate stated in the Note.

### **3.4 REMEDIES**

Upon the occurrence and during the continuance of any Event of Default, Beneficiary and Trustee shall have each and all of the following rights and remedies (in addition to any other



rights or remedies under any of the other Loan Documents or by operation of law or in equity), which may be exercised individually, collectively or cumulatively:

(a) **Increase in Interest Rate/Late Charges.** In addition to all other rights and remedies provided for under the Loan Documents, but subject to the usury provisions thereof, if Trustor is in default of any of its obligations under any of the Loan Documents and such default is not cured within the applicable grace, notice and cure periods, except in the case of a default under Section 3.1(f), in which case no grace, notice or cure periods shall apply, then retroactive to the first day of such default and for so long as the default shall remain uncured (a) as to any and all defaults in the payment of Principal Amount and/or interest due thereon, interest will accrue on such overdue amount at an Augmented Rate of fifteen percent (15%) per annum; (b) as to any and all defaults in the payment of any other sums due under the Loan Documents, interest will accrue at the Augmented Rate on the amount of money necessary to fully cure such other monetary default; and (c) as to each default in the performance of the covenants and obligations of Trustor under the Loan Documents not involving the payment of money, a late charge of \$1,000 shall be due and payable for the month in which the default first occurred, on the day the applicable grace, notice or cure period, if any, expires or if none, then on the day of the default. An additional \$1,000 late charge shall be due without further notice on the first day of each calendar month thereafter during which the default continues, until the default is fully cured. All late charges shall be assessed automatically (subject to applicable grace, notice and cure periods except defaults governed by Section 3.1(h)) by Beneficiary without notice to the Trustor, and any failure to invoice Trustor therefor shall not be deemed waiver thereof.

(b) **Interest on Beneficiary's Advances/Expenses.** Any sums, advances, expenses or other monies incurred by Beneficiary in connection with any right or remedy conferred upon Beneficiary under this Deed of Trust or under any other Loan Document, shall accrue interest thereon from the date of incurrence at the Augmented Rate stated in Section 3.4(a) above.

(c) **Acceleration of Secured Indebtedness.** If the Trustor or any successor in interest to the Trustor of the Real Property sells, enters into a contract of sale, conveys or alienates the Real Property or any part thereof, or suffers his title or any interest therein to be divested, whether voluntarily or involuntarily, or leases the Real Property or any part thereof for a term of one (1) year or more, or changes or permits to be changed the character or use of the Real Property, Beneficiary, at its option, may declare all Indebtedness to be due and payable immediately, and notwithstanding the stated maturity in the Note or any other term or provision to the contrary, including, without limitation, the principal amount of the Note and the accrued but unpaid interest thereon, together with all other sums owing hereunder or under any of the other Loan Documents, and such amounts shall, as of the date of such declaration, become and be immediately due and payable. In the event of any acceleration of the Indebtedness, if Trustor, or anyone acting on Trustor's behalf, thereafter elects to pay Beneficiary the amount of the accelerated Indebtedness, whether or not prior to or at any sale held hereunder.

(d) **Possession of Property.** Irrespective of whether Beneficiary has elected to cause the foreclosure sale of the Property as provided herein, Beneficiary at any time, without demand or regard to the adequacy of any security for the Indebtedness, in person, or by any agent





or employee, or by a receiver appointed by court, may enter upon and take possession of all or any part of the Property, and Trustor shall on demand surrender possession thereof to Beneficiary, and Beneficiary may in its own name or in the name of Trustor rent, lease, operate, maintain, repair and make alterations, additions and improvements to the same or any part thereof to such extent as Beneficiary deems advisable, and sue for or otherwise collect any or all of the Rents and Profits, including those past due and unpaid. Beneficiary may then either (i) apply, in such order and proportion and upon such items of the Indebtedness hereby secured as Beneficiary may determine, the amount of all such Rents and Profits actually so collected by Beneficiary, less all reasonable costs or expenses paid or incurred by it in making such collection or in renewing, leasing, operating, maintaining, repairing, altering and improving the Property, less fees for collecting said rentals not exceeding five percent (5%) of the sums collected which Beneficiary may pay to itself or its agent or (ii) continue to hold such sums as additional collateral for the payment of the Indebtedness. Upon request of Beneficiary, Trustor shall assemble and make available to Beneficiary at the Real Property any of the Property which has been removed therefrom. No act or acts referred to in this Section 3.4(d) shall cure or waive any default or notice of default hereunder, or invalidate any act done pursuant to such notice, or any action to foreclose the lien of this Deed of Trust, and notwithstanding continuance in possession of the Property or any part thereof by Beneficiary, Trustee or a receiver, and the collection, receipt and application of rents, issues, profits, revenues, income or other benefits, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law or in equity upon or after the occurrence of a default, including without limitation the right to exercise the power of sale contained in this Deed of Trust.

(e) Appointment of Receiver. Upon the occurrence of any Event of Default, Beneficiary shall be entitled, as a matter of absolute right and without regard to the value or condition of any security for the amount due or the solvency of any person liable therefor, to the appointment of a receiver for the Property upon ex parte application to any court of competent jurisdiction. To the extent allowed by law, Trustor waives any right to any hearing or notice of hearing prior to the appointment of a receiver. Such receiver and his agents shall be empowered (i) to take possession of the Property, and any businesses conducted by Trustor or any other person thereon and any business assets used in connection therewith to the fullest extent permitted by law and, if the receiver deems it appropriate, to operate the same; (ii) to exclude Trustor and Trustor's agents, servants, and employees from the Property; (iii) to collect the rents, issues, profits, and income therefrom, including security deposits; (iv) to complete any construction which may be in progress; (v) to do such maintenance and make such repairs and alterations as the receiver deems necessary; (vi) to use all stores of materials, supplies, and maintenance equipment on the Property and replace such items at the expense of the receivership estate, (vii) to pay all taxes and assessments against the Property, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance, (viii) to lease or rent all or portions of the Property on terms and conditions satisfactory to the receiver and Beneficiary and to undertake such refurbishment or repair as reasonably required for such leasing and to pay leasing commissions, if applicable, and (ix) generally to do anything which Trustor could legally do if Trustor were in possession of the Property. All expenses incurred by the receiver or his agents shall constitute a part of the indebtedness evidenced by the Note. Any revenues collected by the receiver shall be applied to





the payment of or the account of the following, in such order as Beneficiary may determine:

(A) To the payment of the operating expenses of the Property, including costs of management and leasing thereof (which shall include compensation to the receiver and its agent or agents, if management be delegated to an agent or agents, and shall also include leasing commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(B) To the payment of taxes, special assessments or insurance premiums now due or which may hereafter become due on the Property;

(C) To the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements reasonably necessary for the continued operation of the Property, including the cost from time to time of installing or replacing refrigeration and gas or electric heating therein, and of placing the Property in such condition as will, in the judgment of the Beneficiary, make it readily rentable; and

(D) To the payment of any Indebtedness or any deficiency which may result from any foreclosure sale.

Unless sooner terminated with the express consent of Beneficiary, any such receivership will continue until all amounts remaining due under the Note have been discharged in full, or until title to the Property has passed after foreclosure sale and all applicable periods of redemption have expired, and in either case, the court has discharged the receiver.

(f) Other Remedies. Beneficiary and Trustee may exercise such other remedies as may be permitted by law or in equity in the jurisdiction in which the Real Property is located, including without limitation, the remedies set forth in the Addendum attached hereto.

### **3.5 RECEIPT OF MONIES AFTER EVENT OF DEFAULT**

If Trustor tenders a payment under the Note subsequent to the occurrence of, and during the continuance of, an Event of Default, same may be received by Beneficiary and may be used for any of the following purposes, in such order and amounts as Beneficiary may determine in its sole discretion to pay down the outstanding Indebtedness: (a) to be applied to any portion of the Indebtedness (including without limitation, any tax escrows, and any other escrows related to the Indebtedness which are deficient) other than interest and principal; (b) to be applied against all accrued but unpaid interest or late charges; and/or (c) to principal reduction, even though Beneficiary has declared Trustor to be in default hereunder and even though Beneficiary has accelerated the Indebtedness. Any such receipt and application of funds shall in no way be deemed to cure the Event of Default or to constitute a waiver of any of the rights and remedies of Beneficiary. Further, Beneficiary shall not be obligated, if it has already sent out any notices of default or acceleration, to send another default and/or acceleration notice unless required by applicable law, it being understood and agreed by the parties hereto that any previous notice of default and/or acceleration shall remain in full force and effect even upon such receipt and



application of funds. The parties hereto acknowledge and agree that such receipt of money shall be deemed as Beneficiary's attempt to mitigate Beneficiary's damages caused by Trustor and not be deemed as any reinstatement of the Indebtedness, or an accord and satisfaction, or as any waiver of Beneficiary's rights whatsoever.

### **3.6 CUMULATIVE REMEDIES**

The remedies, rights, privileges and discretions of Beneficiary arising under this Deed of Trust shall be separate, distinct and cumulative and one of them shall not be to the exclusion of others, but rather shall be in addition to, and not in limitation of, those available in equity or under any general or local law now or hereafter in effect relating to like security instruments in the state wherein the Real Property is located. Upon the occurrence of an Event of Default and during the continuance thereof, Beneficiary and Trustee shall have the right from time to time to enforce any legal or equitable remedy against Trustor, without regard to whether or not the principal sum evidenced by the Note or any other sums secured by this Deed of Trust shall be due and without prejudice to the right of Beneficiary and Trustee thereafter to enforce any other appropriate remedy against Trustor, including any action of foreclosure or any other action, for any other Event of Default existing at the time such earlier action was commenced. Beneficiary's or Trustee's selection of one remedy shall not preclude the selection of another or of other remedies until Beneficiary shall have recovered all sums due it, together with the appropriate interest thereon and all costs of collection, including attorneys' fees and appellate attorneys' fees.

### **3.7 LIMITATION OF TRUSTOR REMEDIES**

Trustor acknowledges and agrees to look solely to the actual assets of Beneficiary for redress in the event of any suit at law or claim based upon, growing out of or arising out of the subject indebtedness and any transactions related thereto. Trustor agrees that in no event shall any of the policyholders, shareholders, employees, attorneys, accountants, officers or directors of Beneficiary, whether actual parties to this or any other instrument evidencing or securing the Indebtedness, or otherwise, have a personal responsibility or obligation pursuant hereto or to any of the other Loan Documents.

### **3.8 PROTECTION/ENFORCEMENT OF BENEFICIARY'S RIGHTS**

If Beneficiary or Trustee shall incur or expend any sums, including reasonable attorneys' fees, whether in connection with any action, proceeding or appeal or not, to sustain the lien and security title of this Deed of Trust or its priority, or to protect or enforce any of its rights hereunder, or to recover any Indebtedness, or for any title examination or title insurance policy relating to title to Property, all such sums shall on notice and demand be paid by Trustor, together with the interest thereon at the Augmented Rate set forth in Section 3.4(a) above, and 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 and security title of this Deed of Trust, and shall be deemed to be secured by this Deed of Trust; and in any action or proceeding to foreclose this Deed of Trust or to recover or collect the debt secured hereby, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.



### 3.9 PROTECTION OF THE PROPERTY

Trustor agrees that if at any time any of the Improvements or the Equipment now or hereafter located on or in the Real Property be unprotected or unguarded, or the Real Property be allowed to remain vacant or deserted for more than one day, Beneficiary may, at its option but without any obligation to do so, employ watchmen for the Real Property and Equipment and expend any monies deemed by it necessary to protect the Real Property, Equipment and all other personal property therein from waste, vandalism and other hazards, depredation or injury, and the amount of any monies expended for such purpose with interest at the Augmented Rate set forth in the Note shall be due and payable by Trustor to Beneficiary on demand and shall be added to the Indebtedness.

### 4. MISCELLANEOUS PROVISIONS

#### 4.1 Notice

Any notice which any party hereto may desire or be required to give to the other party shall be in writing and shall be forwarded either by certified mail — return receipt requested, in the U.S. mails, correct postage prepaid or by a nationally recognized overnight courier service, and shall be addressed as follows:

TO BENEFICIARY: TILLMAN CENTER, LLC  
1300 Buckeye Road  
Minden, Nevada 89423

WITH A COPY TO: Woodburn and Wedge  
Attention: Gordon H. DePaoli  
6100 Neil Road, Suite 500  
Reno, Nevada 89511

TO TRUSTOR: Bing Kimmerling, LLC  
a Nevada limited liability company  
7754 "A" Balboa Boulevard  
Van Nuys, California 91406  
Attention: Jerry F. Rosenstock

WITH A COPY TO: Tillman Kimmerling Center, LLC  
a Nevada limited liability company  
7754 "A" Balboa Boulevard  
Van Nuys, California 91406  
Attention: Jerry F. Rosenstock

TO TRUSTEE: First American Title Insurance Company  
National Commercial Services  
1674 Highway 395, Suite 206



Any notice given in the manner provided herein shall be deemed delivered upon receipt (or attempted delivery if delivery is refused). Any party may change its address for notices hereunder by written notice to the other parties given in accordance with this Section 4.1.

#### **4.2 REGARDING CHANGES TO LOAN DOCUMENTS**

Subject to the provisions of this Section 4.2, this Deed of Trust and other Loan Documents cannot be changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought. Trustor, its successors and assigns and all holders of junior liens on the Property, hereby consent(s) to any and all renewals and extensions in the time of payment of the indebtedness secured hereby, and agrees further that, at any time and from time to time without notice (a) the terms of payment provided for in the Note may be modified or (b) the security described in this Deed of Trust may be released (in whole or in part) or increased, changed or exchanged by agreement between Beneficiary and any owner of the Real Property without in anywise affecting the liability of any party to the Note, or any person liable or to become liable with respect to the Indebtedness or the priority of the lien of this Deed of Trust. Trustor agrees that no sale of the Property, no forbearance on the part of Beneficiary and no extensions, whether oral or in writing, of the time for the payment of the whole or any part of the Indebtedness, or any other indulgence given by Beneficiary, shall operate to relieve or, in any manner, affect the original liability of Trustor or the priority of this Deed of Trust or to limit, prejudice or impair any right of Beneficiary, notice of any such extension, indulgence and forbearance being likewise waived by Trustor and all those claiming by, through and under Trustor.

#### **4.3 TERMINOLOGY**

Wherever used in this Deed of Trust, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Deed of Trust" shall mean this Deed of Trust (including the Addendum and all Exhibits attached hereto) and any supplements or amendments hereto, the word "Trustor" shall mean Trustor and/or any subsequent owner or owners of the Real Property, the word "Beneficiary" shall mean Beneficiary or any subsequent holder or holders of this Deed of Trust, the word "Trustee" shall mean Trustee and any successor Trustee as provided in this Deed of Trust, the word "Note" shall mean the Note secured by this Deed of Trust and any amendments or extensions thereof, the word "person" shall mean an individual, corporation, partnership or unincorporated association, and pronouns of any gender shall include the other genders, and either the singular or plural shall include the other.

#### **4.4 TIME OF THE ESSENCE**

Trustor agrees that where, by the terms of this Deed of Trust or the Note or any other Loan Document, a date or day is named or a time is fixed for the payment of any sum of money or the performance of any obligation, the time stated entered into the consideration and is of the essence of this Deed of Trust.





#### 4.5 JOINT AND SEVERAL LIABILITY

If Trustor consists of more than one party, all such parties shall be jointly and severally liable under any and all obligations, covenants and agreements of Trustor contained herein.

#### 4.6 NON-MERGER

Notwithstanding that fee simple title to the Property or any portion thereof may be held, now or hereafter, directly or indirectly by or for any person or entity who shall be or become, directly or indirectly, Beneficiary or shall otherwise have rights to enforce the lien and security title of this Deed of Trust, the interest of the holder of said fee title and the interest of the holder of said lien shall at all times be separate, distinct and apart, and shall in no event be merged; and no such merger of estates shall occur by operation of law or otherwise unless and until all persons at the time having an interest in the Property and in this Deed of Trust shall join in the execution of a written instrument effecting such merger of estates.

#### 4.7 APPLICABLE LAWS; WAIVER OF JURY TRIAL

This Deed of Trust and the other Loan Documents shall be governed by, and construed in accordance with, and enforced under, the laws of the State in which the Real Property is located (without regard to the choice of law rules thereof). Venue for any action brought in connection with this Deed of Trust and any of the other Loan Documents shall be in the County in which the Real Property is located. Trustor hereby waives any right to trial by jury with respect to any action or proceeding (a) brought by the Trustor, the Beneficiary or any other party or entity relating to (i) the Loan and/or any understandings or prior dealings between the parties hereto or (ii) the Loan Documents, or (b) to which the Beneficiary is a party. Each of Trustor and Beneficiary hereby (i) irrevocably waives any right it may have to a trial by jury in respect of any litigation directly or indirectly at any time arising out of, under or in connection with this Deed of Trust, the Loan Documents, or any transaction contemplated hereby or thereby; (ii) certifies that neither any representative, agent nor counsel for Beneficiary has represented, expressly or otherwise, or implied that Beneficiary would not, in the event of litigation, seek to enforce the foregoing waivers, and (iii) acknowledges that it has been induced to enter into this Agreement, the other Loan Documents and the transactions contemplated hereby and thereby by, among other things, the mutual waivers and certifications contained in this Section.

INITIALS: 

#### 4.8 RELATIONSHIP OF PARTIES

Trustor acknowledges and agrees that Beneficiary is not, has never been, and shall not be deemed to be a partner or a joint venturer of Trustor with respect to the loan that is secured hereby, any of the Property or otherwise and that the relationship of Beneficiary to Trustor is, has always been, and shall continue to strictly be that of a lender to a Trustor. Trustor hereby waives and relinquishes all claims, demands, counterclaims and/or defenses alleging the existence of any

partnership, joint venture or other fiduciary relationship between Beneficiary and Trustor and Trustor shall hold Beneficiary, its successors and assigns, harmless against any and all losses, damages, penalties, fines, forfeitures, legal fees and related costs, judgments and any other fees, costs and expenses that Beneficiary may sustain as a result of any such allegation by any person or entity whatsoever.

#### 4.9 RULES OF DOCUMENT CONSTRUCTION

*IN EVENT of a default,*

Neither this Deed of Trust nor any other Loan Document shall be construed more strictly against one party than against the other party merely because it has been prepared by counsel for one of the parties, it being recognized and agreed that all parties are thoroughly familiar with the terms and provisions of this Deed of Trust and of all the other Loan Documents and, together with the respective legal counsel, have actively participated in the preparation of this Deed of Trust and the other Loan Documents.

#### 4.10 ENFORCEABILITY

Trustor and Beneficiary intend that all of the provisions hereof shall be valid and enforceable as specifically set forth. As to any portion that is actually determined by a competent court having jurisdiction to be invalid, it is the intention of Trustor and Beneficiary that the remainder of the document (or if applicable), clause, paragraph, or article shall be enforced as written and the declaration of invalidity shall apply only to the clause, paragraph or article in question.

#### 4.11 COVENANTS RUNNING WITH THE PROPERTY; SUCCESSORS AND ASSIGNS; ASSIGNABILITY

All of the grants, obligations, covenants, agreements, terms and provisions of this Deed of Trust shall run with the Property and shall bind and inure to the benefit of the heirs, successors and permitted assigns of the parties hereto. Beneficiary may endorse, convey, transfer and assign, in whole or in part, any and all of its right, title and interest in the Indebtedness and the Loan Documents, without restriction.

#### 4.12 USURY SAVINGS CLAUSE

All agreements between Trustor and Beneficiary are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance hereof, or otherwise, shall the amount paid or agreed to be paid to Beneficiary for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under the laws of the State wherein the Real Property is located. If, from any circumstances whatsoever, fulfillment of any provision of the Note or of this Deed of Trust or any other Loan Document, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any



circumstance, Beneficiary shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest. This provision shall control every other provision of all agreements between Trustor and Beneficiary. In addition to the foregoing, Beneficiary may, to the maximum extent permitted under applicable law: (a) characterize any nonprincipal payment as an expense, fee or premium rather than as interest, (b) exclude voluntary prepayments and the effects thereof; (c) "spread" the total amount of interest throughout the entire term of the Note so that the interest rate payable on the Note is uniform throughout the entire terms of the Note; or (d) refund any amount which may be deemed to be interest in excess of the maximum rate permitted by applicable law. All references in the Note and in any other Loan Document to the highest lawful rate permissible under the laws of the State in which the Real Property is located shall be construed to include the highest lawful rate to which parties may agree by written agreement.

#### **4.13 REPORT OF REAL ESTATE TRANSACTION**

Trustor has made or provided for making, or will make or provide for making, on a timely basis, any reports or returns required under Section 6045(e) of the Internal Revenue Code of 1986 (and any similar reports or returns required by state or local law) relating to the fact that the primary reporting responsibility may fall on the Beneficiary, counsel for the Beneficiary, or other party. Trustor's obligations under this Section 4.13 will be deemed to be satisfied if proper and timely reports and returns required under this Section 4.13 are filed by a title company or real estate broker involved in the real estate transaction relating to the Property, but nothing contained herein shall be construed to require such returns or reports to be filed by Beneficiary or counsel for Beneficiary.

#### **4.14 ATTORNEYS' FEES; PAYMENT OF BENEFICIARY'S COSTS**

(a) If Trustor fails to perform any of its obligations under this Deed of Trust or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Deed of Trust, then the non-prevailing party shall pay any and all costs and expenses incurred by Beneficiary on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Deed of Trust shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Deed of Trust and to survive and not be merged into any such judgment.

(b) Without limiting the terms of Section 4.14(a) above, to the extent Trustor is in default hereunder, Trustor agrees to pay all costs, including, without limitation, attorneys' fees and expenses, incurred by the Beneficiary in defending or enforcing the terms hereof and/or the terms of any of the Loan Documents, whether or not suit is filed. Trustor hereby agrees to indemnify and hold the Beneficiary harmless from any and all liability, loss, damage or expense (including, without limitation, attorneys' fees) that it may or might incur hereunder, or in



connection with the making of any of the loans or financial arrangements secured hereby, the enforcement of any of the Beneficiary's rights or remedies hereunder, any action taken by the Beneficiary hereunder, or by reason or in defense of any and all claims and demands whatsoever that may be asserted against the Beneficiary arising out of the Property.

#### 4.15 COMMERCIAL LOAN

Trustor acknowledges and confirms that neither the Property nor the proceeds of the Note are or will be used principally or primarily for agricultural, farming, residential, household or consumer purposes.

#### 4.16 COUNTERPARTS

This Deed of Trust may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together, shall constitute but one instrument.

#### 4.17 ADDENDUM

The Addendum and each of the Exhibits that are attached hereto are hereby incorporated herein in their entirety. In the event of any conflict between the terms of the Addendum and any other term of this Deed of Trust, the terms of the Addendum shall control.

IN WITNESS WHEREOF, this Deed of Trust is made effective as of the date first above written.

TRUSTOR: BING KIMMERLING, LLC, a  
a Nevada limited liability company

By: 

Name: Harry F. Rosenstock

Title: Manager

TILLMAN KIMMERLING CENTER, LLC, a  
a Nevada limited liability company

By: 

Name: Harry F. Rosenstock

Title: Manager





STATE OF ~~NEVADA~~ <sup>CA</sup> )  
 ) ss.  
COUNTY OF ~~DOUGLAS~~ <sup>Los Angeles</sup> )

This instrument was acknowledged before me on 9<sup>th</sup> day of November, 2005, by JERRY F. ROSENSTOCK, as Manager of Bing Kimmerling, LLC, a Nevada limited liability company, and as Manager of Tillman Kimmerling Center, LLC.

Joongok Shin  
Notary Public  
(My commission expires: 5/22/2008)

[seal]



*COOPER*



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

This Addendum, consisting of EIGHT (8) pages is attached to and incorporated into the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("Deed of Trust") executed as of November 9<sup>th</sup>, 2005, by Trustor and Beneficiary.

**1. NOTE TERMS**

The Note as defined in the Deed of Trust is in the principal amount of Two Million Two Hundred Fifty Thousand and No/100 Dollars (\$2,250,000.00 U.S.). The Note, which may subsequently be amended by the written consent of the parties without affecting the priority of the lien created by this Deed of Trust as provided in the Deed of Trust, contains the following provisions relating to the following matters, among others:

- (a) Payment of interest on the principal balance outstanding from time to time;
- (b) Payment of the entire outstanding principal together with all accrued interest and other sums due on November 1 2010;
- (c) Payment of the outstanding balance of the Note upon (i) transfer of title or ownership of all, or a portion of, the Property or other Collateral, (ii) refinancing or subordinate financing not approved by Beneficiary, (iii) default, and/or (iv) maturity, whether by acceleration or otherwise;
- (d) Late charges;
- (e) The relationship between the parties being intended and declared to be restricted to that of creditor and debtor; and
- (f) Limitations on liability and recourse.

**2. ADDITIONAL REMEDIES UPON DEFAULT**

In addition to the remedies set forth in the Deed of Trust and as otherwise provided for in law and in equity, Beneficiary shall have the following rights or remedies:

- (a) Foreclosure and Sale of Property
  - (i) Judicial Foreclosure. Beneficiary may commence an appropriate action or proceeding in any court of competent jurisdiction to foreclose the lien of this Deed of Trust as a mortgage or to enforce specifically any of the covenants and agreements contained in the Deed of Trust or in any other Loan Document.



(ii) Power of Sale Foreclosure. Beneficiary may deliver to Trustee, or any successor trustee, a notice (in the form required by applicable law) of election and demand for the sale of the Property pursuant to the power of sale granted to Trustee pursuant to terms of this Deed of Trust and Beneficiary shall deposit the Deed of Trust with Trustee. Immediately upon receipt of such notice from Beneficiary, Trustee shall promptly notify Trustor and all interested parties, advertise the Property for sale, conduct the sale of the Property, distribute the proceeds of sale and issue a deed to the Property to the purchaser without any covenant or warranty, express or implied, all in strict compliance and in accordance with the provisions required by applicable governmental laws, rules and regulations. The recitals in such deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers. Beneficiary may credit bid at any such sale all obligations secured hereby, including, without limitation, all principal, interest and accrued interest due under the Note.

(iii) Property Subject to UCC. Should Beneficiary elect to cause the sale of the Property as provided above, all personal and other property subject to the Uniform Commercial Code in the State in which the Real Property is located (the "UCC") may be sold in any manner permitted under the UCC or other applicable law, including, without limitation, in a unified sale by Trustee with the Real Property subject to this Deed of Trust as provided by the UCC.

(iv) Application of Sale Proceeds. The purchase money, proceeds or avails of any foreclosure sale made under or by virtue of this Deed of Trust together with all other sums which then may be held by Trustee or Beneficiary hereunder shall be applied as follows:

(A) Costs and Expenses of Sale. First, to the payment of the costs and expenses of sale, including all reasonable fees, charges, costs of conducting the sale and advertising the Property and attorneys' fees as herein provided, and also including reasonable compensation to Trustee and Beneficiary, their agents and counsel and of any judicial proceeding wherein the same may be made and payment of all expenses, liabilities and advances made or incurred by Beneficiary or Trustee under this Deed of Trust, together with interest at a rate equal to the lesser of the Augmented Rate stated in the Note or the maximum rate permitted to be charged hereunder by the laws of the State in which the Real Property is located, and all taxes or assessments, except for any taxes, assessments or other charges not yet due and payable, and further including all costs of publishing, recording, mailing and posting notice, the costs of revenue stamps on any deed or instrument of conveyance, and any appraisers' fees, environmental audit and/or inspection, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after foreclosure sale or entry of the decree) of procuring all such abstracts of title, title searches and examinations, trustee's sale guarantees, title insurance policies, and similar data and assurances with respect to title as Beneficiary may deem

reasonably necessary either to prosecute such suit or trustee's sale or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Property.

(B) Advances Under Deed of Trust. Second, to the payment of any and all sums expended under the terms hereof, not then repaid, and all other sums required to be paid by Trustor pursuant to any provisions of this Deed of Trust or the Note or any instrument, agreement or assignment securing the Note, including without limitation all expenses, liabilities and advances made or incurred by Beneficiary under this Deed of Trust or in connection with the enforcement thereof, together with interest thereon at a rate equal to the lesser of the Augmented Rate stated in the Note or the maximum rate permitted to be charged hereunder by the laws of the State in which the Property is located.

(C) Payment of Note. Third, to the payment of the whole amount then due, owing or unpaid upon the Indebtedness including, but not limited to, principal, interest, and late charges due under the Note, this Deed of Trust and/or any other Loan Document and any other sums advanced by Beneficiary to Trustor secured hereby.

(D) Balance. Fourth, the remainder, if any, to the person or persons legally entitled thereto, as provided by applicable law in the State in which the Real Property is located.

### **3. MODIFICATION OF CERTAIN LOAN DOCUMENT PROVISIONS**

(a) Notwithstanding anything to the contrary contained in the Deed of Trust, the Deed of Trust, the Assignment of Lessor's Interests of even date herewith made by Trustor in favor of Beneficiary, and the other Loan Documents securing the Indebtedness shall secure the obligations of the Trustor under the Certificate and Indemnity Regarding Hazardous Substances only to the extent expressly set forth in Section 5 (b) thereof.

(b) Section 3.1 is hereby amended by adding thereto the following:

(k) the occurrence of an uncured event of default under that certain Guaranty, dated of even date herewith, made by Jerry F. Rosenstock for the benefit of Beneficiary.

(c) Notwithstanding, the provisions of Sections 1.6 (b) and (c), the Annual Statements need not be audited or certified by an independent certified public accountant, but shall be certified as accurate by the Manager of the Borrower.

### **4. STATE SPECIFIC PROVISIONS – STATE OF NEVADA.**

(a) To the extent permitted by applicable law, Trustor waives all rights, legal and equitable, it may now or hereafter have to require marshaling of assets or to require foreclosure sale of assets in a particular order, including any rights provided by Nevada Revised Statutes §§





100.040 and 100.050. Each successor and assign of Trustor, including any holder of a lien or security interest subordinate to this Deed of Trust, by acceptance of its interest or lien or security interest, agrees that it shall be bound by the above waiver, as if it had given the waiver itself.

(b) The provisions of Section 1.3 are modified to the extent required to comply with the provisions of Nevada Revised Statutes §§ 100.091 and 106.105, as amended from time to time, with respect to impound accounts.

COOPER



EXHIBIT "A-1"

LEGAL DESCRIPTION OF BING LAND

**Parcel 2:**

A parcel of land located within a portion of the Northwest One-Quarter (NW 1/4) of Section 21, Township 12 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

Commencing at the Northeast corner of Parcel 1 as shown on the Parcel Map for Valley Investments West recorded September 23, 1987 in the office of the recorder, Douglas County, Nevada as Document No. 162769, The Point Of Beginning; thence along the westerly right-of-way of Tillman Lane South 00°08'37" East, 262.19 feet; thence South 89°51'23" West 14.36 feet; thence North 00°01'30" West, 96.93 feet; thence North 45°00'00" West, 86.75 feet; thence South 89°58'30" West, 234.68 feet; thence North 00°01'30" West, 103.09 feet to the Southerly right-of-way line of Kimmerling Road; thence along said right-of-way line North 89°49'14" East, 309.81 feet to The Point Of Beginning

The above described land is also designated as Adjusted Parcel 1 on the Record of Survey filed March 31, 2000 as File No. 489118.

NOTE: The above meets and bounds legal descriptions appeared previously in that certain document recorded June 21, 2005 as Instrument no. 0647443.

**Parcel 3:**

Lot 1, as shown on the Final Map of Tillman Estates, filed in the Office of the County Recorder of Douglas County, Nevada on April 12, 1994 in Book 494, Page 2192, as Document No. 334956.



EXHIBIT "A-2"

LEGAL DESCRIPTION OF TILLMAN LAND

**Parcel 1:**

A parcel of land located within a portion of the Northwest One-Quarter (NW 1/4) of Section 21, Township 12 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

Commencing at the Northeast corner of Parcel 1 as shown on the Parcel Map for Valley Investments West recorded September 23, 1987 in the Office of the Recorder, Douglas County, Nevada, as Document No. 162769, said point falling on the Southerly right-of-way line of Kimmerling Road;  
thence along said right-of-way South 89°49'14" West, 309.81 feet to the Point of Beginning;  
thence South 00°01'30" East, 103.09 feet;  
thence North 89°58'30" East, 234.68 feet;  
thence South 45°00'00" East, 86.75 feet;  
thence South 00°01'30" East, 96.93 feet;  
thence North 89°51'23" East, 14.36 feet to the Westerly right-of-way line of Tillman Lane;  
thence along said right-of-way line South 00°08'37" East, 232.99 feet;  
thence South 89°51'23" West, 956.55 feet;  
thence North 00°00'47" East, 232.44 feet;  
thence South 89°59'13" East, 323.13 feet;  
thence North 00°00'47" East, 261.42 feet to said Southerly right-of-way line;  
thence non-tangent to the preceding course along the arc of a curve to the right having a radius of 1860.00 feet, central angle of 02°31'47", arc length of 82.12 feet, and a chord bearing and length of North 88°33'21" East, 82.11 feet;  
thence continuing along said Southerly right-of-way line North 89°49'14" East, 240.17 feet to the Point of Beginning.

The above described land is also designated as Adjusted Parcel 2 on the Record of Survey filed March 31, 2000 as File No. 489118.



EXHIBIT "B"

PERMITTED ENCUMBRANCES

1. Impositions being contested in accordance with Section 1.2(b) of this Deed of Trust.
2. This Deed of Trust.
3. Tenant leases approved by Beneficiary in writing.
4. The following matters which are listed on Schedule B to the commitment to issue an ALTA lender's policy of title insurance to Beneficiary, Commitment No. 142-2226825, dated effective as of September 22, 2005, issued by First American Title Insurance Company.





EXHIBIT "C"

FINANCING STATEMENT INFORMATION

The Beneficiary/Secured Party is:

TILLMAN CENTER, LLC  
a Nevada limited liability company  
1300 Buckeye Road  
Minden, Nevada 89423

The Debtor is:

Bing Kimmerling, LLC  
a Nevada limited liability company  
7754 "A" Balboa Boulevard  
Van Nuys, California 91406  
Attention: Jerry F. Rosenstock  
Nevada Secretary of State Organizational ID No.: E0680162005-9

Tillman Kimmerling Center, LLC  
a Nevada limited liability company  
7754 "A" Balboa Boulevard  
Van Nuys, California 91406  
Attention: Jerry F. Rosenstock  
Nevada Secretary of State Organizational ID No.: E0680282005-3

