



Countrywide®

COMMERCIAL REAL ESTATE FINANCE

A Countrywide Capital Markets Company

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OFFICIAL RECORD
Requested By:
FIRST AMERICAN TITLE COMPANY

APN: 1320-32-801-030

Douglas County - NV
Werner Christen - Recorder

Page: 1 of 24 Fee: 37.00
BK-0906 PG-0649 RPTT: 0.00

PREPARED BY AND
WHEN RECORDED MAIL TO:



LeClair Ryan, A Professional Corporation
Riverfront Plaza, East Tower
951 East Byrd Street, 8th Floor
Richmond, Virginia 23219
Attn: Steven D. Delaney, Esquire

Send Tax Notices To:
Countrywide Commercial Real Estate Finance, Inc.
4500 Park Granada
Calabasas, California 91302
Attention: Marlyn Marincas

172 2285399MIC

Space above this line for recorder's use only

\$3,300,000.00	9/1/2006	9/8/2016	06-0406 / 5205
Loan Amount	Closing Date	Maturity Date	Loan No. / Note Id.

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

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust"), dated as of the Closing Date set forth above, is made by HUSSMAN AVENUE, LLC, a Nevada limited liability company ("Trustor"), to FIRST AMERICAN TITLE COMPANY, a Nevada corporation ("Trustee"), in favor of COUNTRYWIDE COMMERCIAL REAL ESTATE FINANCE, INC., a California corporation (together with its successors and assigns, "Beneficiary").

ARTICLE 1
GRANT AND ASSIGNMENT

In consideration of the making of a loan by Beneficiary to Trustor in the original principal amount of the Loan Amount set forth above (the "Loan") evidenced by that certain Promissory Note dated as of the date hereof (the "Note"), for the purpose of securing the payment of the principal amount of the Loan from time to time (the "Principal Indebtedness"), all interest thereon, and all other sums due and payable, and the performance of all obligations owing by Trustor under all documents executed in connection with the Loan (as amended, the "Loan Documents") (all such amounts, including the Principal Indebtedness, are referred to as the "Indebtedness"), and all obligations of Trustor thereunder (collectively with the Indebtedness, the "Loan Obligations"), Trustor hereby irrevocably grants, conveys, assigns, transfers, mortgages, and pledges (as applicable) to Trustee and its successors and assigns, in trust for the benefit of Beneficiary and its successors and assigns, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of Trustor's right, title and interest in and to the following property, rights, and interests, whether now existing or hereafter coming into existence (collectively, the "Property"): (i) the land described in Exhibit A attached hereto (the "Land"); (ii) the reserve accounts described in Section 3.1 (together with all cash and instruments held therein, and all interest and other property receivable in respect thereof); (iii) all easements, rights-of-way, sewer, water, air, mineral and development rights, and all other appurtenant rights (including reversions and remainders) relating to the Land; (iv) all contract, warranty, and guaranty rights of Trustor; (v) all improvements on the Land ("Improvements"); (vi) all

licenses, registrations, permits, approvals and certificates relating to the Property; (vii) all leases and other use or occupancy agreements affecting the Property (and any guarantees thereof) ("Leases"); (viii) all rents, receipts, issues, income, royalties, profits, revenues, proceeds, bonuses, deposits, payments, damages, fees and other sums receivable with respect to the Property ("Rents"); (ix) all fixtures, appliances, machinery, furniture, furnishings, decorations, tools, supplies, beds, linens, radios, televisions, carpeting, telephones, cash registers, computers, office equipment, lamps, glassware, restaurant and kitchen equipment, building equipment, heating, lighting, incinerating, waste removal and power equipment, engines, pipes, tanks, motors, conduits, switchboards, security and alarm systems, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigeration, washing machines, dryers, stoves, refrigerators, ventilating, and communications apparatus, air cooling and air conditioning apparatus, escalators, elevators, ducts, and compressors, materials and supplies, and all additions, replacements, parts, fittings, accessions, attachments, accessories, modifications and alterations of any of the foregoing; (x) Trustor's accounts, deposit accounts, equipment, instruments (including all writings evidencing a right to the payment of money), inventory, general intangibles (including all intangible personal property, choses in action, settlements, judgments, refunds of real estate taxes and assessments, copyrights, trademarks, and patents, and all applications for any of the foregoing), payment intangibles, supporting obligations, tangible and/or electronic chattel paper, commercial tort claims, documents, goods, investment property, letter of credit rights, and software (each as defined in the UCC (as such term is defined below)); (xi) all cash and non-cash, movable and immovable, tangible and intangible proceeds (as defined in the UCC) from the Property; and (xii) all other rights or property which is or hereafter may become subject to a lien in favor of Beneficiary pursuant to any Loan Document. "UCC" means the Uniform Commercial Code in effect in the jurisdiction in which the Property is located.

TO HAVE AND TO HOLD the Property and all parts thereof unto and to the use and benefit of Beneficiary, its successors and assigns forever.

ARTICLE 2 SECURITY AGREEMENT AND FIXTURE FILING

This Deed of Trust is intended to be and shall be effective as a security agreement and "fixture filing" under the UCC with respect to any Property as to which a security interest can be created or perfected under the UCC, now existing or hereafter coming into existence, and all substitutions replacements, renewals and additions to and all products and proceeds of the foregoing (collectively, the "Security Interest Property"). This Deed of Trust shall constitute a financing statement under the UCC with Trustor, as debtor, and Beneficiary, as secured party. To the extent permitted by law, Trustor hereby authorizes Beneficiary to file financing and continuation statements necessary to continue the lien of and security interest evidenced by this Deed of Trust with respect to the Security Interest Property (and Trustor hereby confirms that Beneficiary is a person entitled to file a record, and that Trustor has authorized all such filings, within the meaning of Section 9-509 of the UCC). The principal places of business and mailing addresses of Trustor, as debtor, and Beneficiary, as secured party, respectively, are as set forth in Section 9.5 below. Trustor's location, for purposes of Section 9-307 of the UCC, is Trustor's state of organization as set forth in the first paragraph hereof. Information relative to the security interest created hereby may be obtained by application to Beneficiary. Trustor is a "registered organization" within the meaning of the Uniform Commercial Code in effect in the State where Trustor is organized, and Trustor's organizational identification number issued by such State is set forth under its signature hereto.

ARTICLE 3 RESERVE ACCOUNTS

3.1. Establishment. On the date hereof, Beneficiary shall establish the following accounts:

(a) an account into which Trustor shall deposit the following: (i) on the date hereof, \$3,302.07 with respect to property taxes and assessments and \$ 8,346.75 with respect to insurance premiums, and (ii) beginning on the first Payment Date (as defined in the Note) and on each Payment Date thereafter, the amount reasonably estimated by Beneficiary to be one-twelfth (1/12th) of the annual amount of property taxes and assessments (which amount shall initially be \$ 3,302.07), and insurance

premiums for policies required pursuant to this Deed of Trust (which amount shall initially be \$ 1,261.92). Beneficiary may re-calculate the foregoing monthly amounts from time to time to assure that funds are reserved in sufficient amounts to enable the payment of property taxes and assessments and insurance premiums thirty (30) days prior to their respective due dates. Beneficiary shall make payments of property taxes and assessments and insurance premiums out of such account before the same shall be delinquent to the extent that there are funds available therein and Beneficiary has received appropriate documentation to establish the amount(s) due and the due date(s) as and when provided above;

(b) an account into which Trustor shall deposit \$0.00 on the date hereof, which amounts shall be used for payment of costs incurred by Trustor in connection with any deferred maintenance or remediation required pursuant to Section 4.13;

(c) an account into which Trustor shall deposit \$ 1,041.67 beginning on the first Payment Date and on each Payment Date thereafter (which amount shall be increased by two percent (2%) on each anniversary of the date hereof), which amounts shall be used for payment of costs incurred by Trustor in connection with capital improvements to the Property approved by Beneficiary; and

(d) Intentionally Omitted.

3.2. Reserve Accounts Generally. Each of the reserve accounts described in Section 3.1 shall be a custodial account established by Beneficiary, shall not constitute a trust fund, and may be commingled with other money held by Beneficiary or its servicer. Trustor acknowledges and agrees that such accounts are subject to the sole dominion, control and discretion of Beneficiary, its authorized agents or designees, subject to the terms hereof. Trustor shall not have the right to make any withdrawal from any such account. Notwithstanding anything to the contrary contained herein, if an Event of Default has occurred and is continuing, any amounts deposited into or remaining in any such account may be applied in any manner as Beneficiary may elect in Beneficiary's discretion. Trustor shall not be entitled to any earnings or interest on funds deposited into any of such accounts.

3.3. Disbursements. Not more frequently than once in any 30-day period, and provided that no Event of Default has occurred and is continuing, Trustor may request in writing that Beneficiary release to Trustor funds from one or more of the accounts described in Sections 3.1(b), (c) or (d) to the extent funds are available therein, for payment of costs incurred by Trustor in connection with the expenses for which such account is maintained. Together with each such request, Trustor shall furnish Beneficiary with copies of bills and other documentation reasonably required by Beneficiary to establish that such costs are reasonable and are substantially in accordance with market rates, that the work relating thereto has been completed and that such amounts are then due or have been paid. Beneficiary shall approve or disapprove such request within ten (10) Business Days after Beneficiary's receipt of such request and, if approved, Beneficiary shall release the funds to Trustor or Trustor's designee within ten (10) Business Days after Beneficiary's approval.

ARTICLE 4 REPRESENTATIONS, WARRANTIES AND COVENANTS OF TRUSTOR

4.1. Trustor and the Loan Documents. Trustor is duly organized and validly existing in good standing under the laws of the State of its formation, and is duly qualified to do business in the State where the Property is located. The execution and delivery by Trustor of the Loan Documents have been duly authorized by all requisite action on the part of Trustor. There are no actions, suits or proceedings at law or in equity by or before any governmental authority or other agency now pending and served or, to Trustor's knowledge, threatened, involving or concerning Trustor, any person or entity executing a guaranty or indemnity in connection with the Loan (collectively, "Guarantor"), or the Property.

4.2. The Property. Except as disclosed in the engineering report(s) and survey(s) delivered to Beneficiary in connection with the Loan, or in Beneficiary's title insurance policy, to Trustor's knowledge, the Property (a) and the present use thereof comply in all material respects with all applicable laws, (b) is not the subject of a pending or proposed condemnation or special or other assessments for public

improvements or otherwise, (c) has adequate rights of access to public ways and is served by all utilities required for the current use thereof, (d) is comprised of one or more parcels which constitute separate tax lot(s) and none of which constitutes a portion of any other tax lot, (e) is not located in a flood hazard area as designated by the Federal Emergency Management Agency, and (f) is free of material structural defects, and all building systems contained therein are in good working order in all material respects (subject to ordinary wear and tear).

4.3. Liens. Trustor owns good, indefeasible, marketable and insurable title to the Property, free and clear of all liens and encumbrances, other than (a) the lien created by the Loan Documents, (b) all liens, encumbrances, and other matters disclosed in the title insurance policy insuring this Deed of Trust, or any part thereof which have been approved by Beneficiary, and (c) liens, if any, for taxes not yet due or delinquent. The Deed of Trust creates a valid and enforceable first lien on and first priority security interest in the Property, subject only to the foregoing permitted liens and encumbrances.

4.4. Compliance with Anti-Terrorism Laws. Trustor, Guarantor, Trustor's property manager, and to the best of Trustor's knowledge, after having made reasonable inquiry, each person or entity owning a direct or indirect interest in Trustor, Guarantor, such property manager (if an affiliate of Trustor) is not currently identified on the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control (currently is accessible through the internet website at www.treas.gov/ofac/t11sdn.pdf.) or any other similar restricted list and is not a person or entity subject to any other trade restriction or prohibition.

4.5. ERISA. Neither Trustor nor any affiliate thereof nor any holder of direct or indirect equity interest therein is, maintains, has any obligation to contribute to, has any direct or indirect liability with respect to, or has any assets that constitute, any "employee benefit plan," "multiemployer plan," "governmental plan," any other "plan" (within the meaning of Employee Retirement Income Security Act of 1974, as amended or re-codified from time to time, and the regulations promulgated thereunder, or the Internal Revenue Code of 1986, as amended, and any successor statutes thereto) or "plan assets" (within the meaning of 29 C.F.R. Section 2510.3-101 or otherwise). Trustor shall take or refrain from taking, as the case may be, such actions as may be necessary to cause the representations and warranties in this Section 4.5 to remain true and accurate throughout the term of the Loan.

4.6. Foreign Person. Trustor is not a "foreign person" within the meaning of § 1445(f)(3) of the Internal Revenue Code of 1986, as amended, and any successor statutes thereto.

4.7. Full and Accurate Disclosure. No statement of fact made by or on behalf of Trustor in the Loan Documents or in any other document or certificate delivered to Beneficiary by Trustor contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading.

4.8. Taxes. Except to the extent that Beneficiary is obligated to pay taxes, assessments and insurance premiums pursuant to the terms of Section 3.1(a), Trustor shall pay all taxes, assessments, charges, excises, levies, duties, imposts, dues, common area charges, and fees of every character imposed by any governmental authority or other person or entity in respect of the Property, Trustor, this Deed of Trust or any other Document, and all premiums for insurance required hereunder in accordance with the terms hereof, including taxes arising from the passage of any laws governing the taxation of mortgages/deeds of trust or notes or the manner of collecting such taxes so as to adversely affect Beneficiary, this Deed of Trust, or the lien hereof. If Trustor fails to make such prompt payment or if, in the reasonable opinion of Beneficiary, any such law prohibits Trustor from making such payment or would penalize Beneficiary if Trustor makes such payment or if, in the reasonable opinion of Beneficiary, the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then the entire balance of the Loan Obligations shall, at the option of Beneficiary, become due and payable on the date that is one hundred twenty (120) days after the later of the passage of such law or the date Beneficiary provides written notice to Trustor of its exercise of its option to accelerate the due date as provided herein; provided, however, that any such prepayment made under this Section 4.8 shall be made without the payment of any Yield Maintenance Premium (as defined in the Note).



4.9. Compliance with Laws. Trustor shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises necessary for the conduct of its business and comply in all respects with all applicable laws and private covenants, conditions and restrictions that at any time apply to Trustor or the Property.

4.10. Maintenance; Alterations. Trustor shall at all times keep the Property in good repair, working order and condition, except for reasonable wear and use. Trustor shall not permit the Property to be removed or demolished or otherwise altered. Trustor may not, without Beneficiary's approval (which approval shall not be unreasonably withheld), perform alterations to the Property that exceed \$25,000.

4.11. Fundamental Changes. Without Beneficiary's prior written consent (which shall not be unreasonably withheld), Trustor will not change (a) the current property manager for the Property, (b) its chief executive office or the jurisdiction in which it is organized, or (c) the Property's use or zoning. Either (i) there is no management agreement in effect with respect to, and no property management fee is or will be payable in connection with, the management of the Property, the Property is managed solely by at will employees of Trustor or by the tenant under the Lease, as applicable, and no manager shall be retained or appointed without the prior written consent of Lender (which consent shall not be unreasonably withheld), or (ii) Trustor has caused any such manager of the property to execute Beneficiary's form of consent and subordination agreement.

4.12. Financial and Other Reporting; Inspections. Trustor shall furnish to Beneficiary the following reports: (a) within ninety (90) days following the end of each fiscal year of Trustor, and (b) within twenty (20) days following the end of each calendar quarter, a true, complete, correct and accurate copy of Trustor's unaudited financial statement for such period, including a statement of and a balance sheet and rent roll/occupancy report. Trustor shall furnish to Beneficiary, within ten (10) Business Days after request, such further information with respect to Trustor and the operation of the Property as may be reasonably requested by Beneficiary. All financial statements and other documents to be delivered pursuant to this Deed of Trust shall (i) be in form and substance acceptable to Beneficiary in Beneficiary's reasonable discretion, and (ii) be certified by Trustor as being complete and accurate in all material respects. Trustor shall permit agents, representatives and employees of Beneficiary (at Beneficiary's cost and expense if no Event of Default has occurred), to inspect (y) the Property or any part thereof, and (z) such books, records and accounts of Trustor and to make such copies or extracts thereof as Beneficiary shall desire, in each case at such reasonable times as may be requested by Beneficiary upon reasonable advance notice, subject to the rights of tenants under Leases.

4.13. Deferred Maintenance and Environmental Remediation. Trustor shall perform the deferred maintenance work and environmental remediation to the Property itemized on Exhibit B hereto within the time periods set forth on said Exhibit B.

4.14. Single-Purpose Entity. Trustor shall (a) not engage in any business unrelated to the ownership, management, leasing, financing and operation of the Property, (b) not own any asset or property other than the Property and incidental personal property necessary for the ownership, management, leasing, financing and operation thereof, (c) not incur, create, assume, allow to exist, become or be liable in any manner with respect to any other indebtedness or monetary obligations, except for the Indebtedness and unsecured trade payables in the ordinary course of business relating to the ownership and operation of the Property which (i) do not exceed, at any time, a maximum amount of two percent (2%) of the Principal Indebtedness and (ii) are paid within sixty (60) days of the date incurred, (d) maintain its books, records, financial statements, accounting records, bank accounts and other entity documents in its own name and separate from any other person or entity, and (e) hold itself out to the public as a legal entity under its own name separate and distinct from any other person or entity.

4.15. Transfer. Trustor will not allow any Transfer of the Property or any direct or indirect equity interest in Trustor to occur other than the following Transfers (in each case provided that no Event of Default then exists): (a) Transfers of direct or indirect equity interests in Trustor which (i) in the aggregate during the term of the Loan do not exceed forty-nine percent (49%) of the total direct or indirect legal or beneficial ownership interests in Trustor, and (ii) do not result in a change in control of Trustor;



(b) Transfers of (i) more than forty-nine percent (49%) of the total direct or indirect equity interests in Trustor, or (ii) all or substantially all of the Property, in each case to another party, provided that in each case with respect to clauses (i) and (ii), (A) Trustor shall pay to Beneficiary a transfer fee in the amount of one percent (1%) of the Principal Indebtedness, (B) the transferee and replacement guarantors shall be reasonably approved by Beneficiary, (C) Trustor, Guarantor, and the transferee and replacement guarantors shall execute and deliver any and all documentation as may be reasonably required by Beneficiary (including assumption documents, opinions, and title endorsements) in form and substance reasonably satisfactory to Beneficiary, and (D) Trustor pays all reasonable expenses incurred by Beneficiary in connection with such Transfer, including Beneficiary's reasonable attorneys fees and expenses; and (c) Transfers of a direct or indirect ownership interest in Trustor by devise or bequest, operation of law upon the death of a natural person, or directly or in trust or conservatorship, in each case to or for the benefit of immediate family members of such interest holder, provided that if such Transfer would result in a change of control of Trustor, Trustor shall have obtained Beneficiary's consent to such Transfer within thirty (30) days after such Transfer, which consent shall not be unreasonably withheld. For purposes hereof, (A) "Transfer" means any conveyance, transfer, sale, Lease, assignment, pledge, mortgage, grant in trust, security interest, easement, lien or encumbrance, whether by operation of law or otherwise, (B) "control" means the power to direct the management and policies of a person or entity, and (C) "immediate family members" means the spouse, children and grandchildren and any lineal descendants.

ARTICLE 5 INSURANCE, CASUALTY, CONDEMNATION AND RESTORATION

5.1. Types of Insurance. At all times during the term of the Loan, Trustor shall maintain, at its sole cost and expense, for the mutual benefit of Trustor and Beneficiary, the following policies of insurance: (a) Insurance against any peril included within the classification "All Risks of Physical Loss" with extended coverage in amounts at all times sufficient to prevent Trustor from becoming a co-insurer within the terms of the applicable policies, but in any event such insurance shall be maintained in an amount equal to the full insurable value of the Property (and in all cases where any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses under applicable laws, the policy referred to in this Section 5.1(a) must include "Ordinance and Law Coverage" in form and amount of coverage reasonably acceptable to Beneficiary); (b) comprehensive general liability insurance with a combined limit of not less than \$2,000,000 in the aggregate and \$1,000,000 per occurrence, plus \$1,000,000 umbrella coverage, plus motor vehicle liability coverage for all owned and non-owned vehicles (including rented and leased vehicles) containing minimum limits per occurrence, including umbrella coverage, of \$1,000,000; (c) statutory workers' compensation insurance; (d) business interruption and/or loss of "rental value" insurance for the Property in an amount equal to twelve (12) months' estimated gross Rents attributable to the Property and based on gross Rents for the immediately preceding year and otherwise sufficient to avoid any co-insurance penalty, together with an extended period of indemnity endorsement which provides that after the physical loss to the Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of six (6) months from the date the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; (e) If all or any portion of the Property is located within a federally designated flood hazard zone, flood insurance in an amount equal to the maximum allowed under the related federal flood insurance program; and (f) such other insurance with respect to the Property against loss or damage as requested by Beneficiary provided such insurance is of the kind for risks from time to time customarily insured against and in such amounts as are generally required by institutional lenders for properties comparable to the Property or which Beneficiary may deem necessary in its reasonable discretion.

5.2. General Insurance Requirements. Trustor agrees that all insurance policies shall: (a) be in such form and with such endorsements and in such amounts as may be satisfactory to Beneficiary; (b) name Beneficiary as an additional insured/loss payee and provide that all insurance proceeds be payable to Beneficiary; (c) contain a "Non Contributory Standard Beneficiary Clause;" (d) provide for an aggregate deductible per loss for all policies not in excess of \$10,000.00; (e) contain a provision that such



policies shall not be canceled or amended in any adverse manner, including any amendment reducing the scope or limits of coverage, without at least thirty (30) days prior notice to Beneficiary in each instance; and (f) be issued by companies acceptable to Beneficiary and with a claims paying ability of not less than "BBB" or its equivalent by Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc., or "A : VIII" or its equivalent by A.M. Best, and that are authorized to issue insurance in the state where the Property is located. The insurance coverage required under Section 5.1 may be effected under a blanket policy or policies covering the Property and other property and assets not constituting a part of the Property; provided that any such blanket policy shall provide coverage in an amount and scope which is at least equal to what would be provided if the required coverage was purchased on an individual basis and which shall in any case comply in all other respects with the requirements of this Article 5. The insurance required under Sections 5.1(a) and (d) above shall cover perils of terrorism and acts of terrorism and Trustor shall maintain commercial property insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under said Sections at all times during the term of the Loan. Notwithstanding the foregoing, for so long as the Terrorism Risk Insurance Act of 2002 is in effect (including any extensions), Beneficiary shall accept terrorism insurance which covers against "covered acts" as defined therein. In the event of foreclosure of the lien of this Deed of Trust or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the Indebtedness, all right, title and interest of Trustor in and to all policies of casualty insurance covering all or any part of the Property shall inure to the benefit of and pass to the successors in interest to Beneficiary or the purchaser or grantee of the Property or any part thereof.

5.3. Certificates of Insurance and Delivery of Policies. Upon Beneficiary's request, certified copies of all insurance policies required pursuant to this Article 5 shall be promptly delivered to Beneficiary (except for blanket policies as to which certificates of same only need to be provided). Certificates of insurance with respect to all renewal and replacement policies shall be delivered to Beneficiary not less than ten (10) days prior to the expiration thereof, which certificates shall bear notations evidencing payment of applicable premiums. If Trustor fails to maintain and deliver to Beneficiary the certificates of insurance required by this Deed of Trust, Beneficiary may, at its option, after notice to Trustor, procure such insurance, and Trustor shall reimburse Beneficiary for the amount of all premiums paid by Beneficiary thereon promptly, after demand by Beneficiary, with interest thereon at the Default Rate from the date paid by Beneficiary to the date of repayment, and such sum shall be a part of the Indebtedness secured by the Loan Documents. Beneficiary shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or the carriers' or Trustor's payment or defense of lawsuits, and Trustor hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto. Trustor represents that no claims have been made under any of such insurance policies, and no party, including Trustor, has done, by act or omission, anything which would impair the coverage of any of such insurance policies.

5.4. Proceeds. Beneficiary shall be entitled to receive and collect, and to participate in any adjustment or settlement of, all awards, compensation, reimbursement, damages, proceeds, settlements, and other payments or relief arising from (a) insurance policies maintained by or on behalf of Trustor, or (b) any temporary or permanent taking/condemnation of all or part of the Property. Trustor shall not adjust or settle any such claims without the prior written approval of Beneficiary. Trustor shall instruct and cause the issuer of each insurance policy and any applicable governmental authority to deliver all such sums to Beneficiary. Notwithstanding the foregoing, if such proceeds, less the amount of Beneficiary's costs (including reasonable attorneys' fees) incurred in collecting the same, are \$25,000 or less, provided no Event of Default then exists, Beneficiary shall disburse such proceeds to Trustor. Provided no Event of Default then exists, all business interruption insurance proceeds and temporary condemnation proceeds (less such Beneficiary costs) shall be disbursed monthly to Borrower based on Beneficiary's good faith estimate of the number of months required for Borrower to restore the damage caused by such casualty or replace the cash flow interrupted by such temporary condemnation, as applicable. Unless Trustor satisfies (or Beneficiary waives, in its sole discretion) the conditions set forth in Section 5.5, Beneficiary may, at its option, apply all insurance or condemnation proceeds to the full or partial payment

or prepayment of the Indebtedness (provided, so long as no Event of Default then exists, no Yield Maintenance Premium shall be due in connection therewith).

5.5. Restoration and Repair. Trustor shall restore and repair the Property or any part thereof now or hereafter damaged or destroyed by any casualty or affected by any condemnation regardless as to whether insurance or condemnation proceeds are available. Beneficiary agrees to make insurance and condemnation proceeds (other than business interruption insurance and temporary taking proceeds, which shall be held and disbursed as provided in Section 5.4) available to Trustor for Trustor's restoration and repair of the Property affected by the casualty or condemnation on the following terms and conditions (provided that Beneficiary shall have the right to waive any of the following conditions in its sole discretion): (a) no Event of Default shall then exist; (b) the Property shall be capable of being restored (including replacements) to substantially the same condition, utility, quality and character as existed immediately prior to such casualty or condemnation in all material respects with a fair market value and projected cash flow equal to or greater than prior to such casualty or condemnation; (c) Trustor shall demonstrate to Beneficiary's reasonable satisfaction Trustor's ability to pay the Indebtedness coming due during such repair or restoration period (including from business interruption insurance proceeds), (d) the actual or constructive loss to the fair market value of the Property is less than fifty percent (50%) from a casualty or ten percent (10%) from a condemnation (and less than ten percent (10%) of the Land is condemned, such condemned Land is located along the perimeter or periphery of the Property, and no portion of the Improvements is the subject of such condemnation); (e) if requested by Beneficiary, Trustor shall deliver and collaterally assign to Beneficiary (pursuant to documents acceptable to Beneficiary): (i) an architect's contract with an architect reasonably acceptable to Beneficiary and complete plans and specifications for the restoration or repair of the Property lost or damaged; (ii) fixed-price or guaranteed maximum cost construction contracts with contractors reasonable acceptable to Beneficiary for completion of the restoration or repair work in accordance with the aforementioned plans and specifications; (iii) such additional funds (if any) as are necessary from time to time, in Beneficiary's reasonable opinion, to complete the restoration or repair (which funds shall be held by Beneficiary as additional collateral securing the Indebtedness and shall be disbursed, if at all, pursuant to this Article 5); and (iv) copies of all permits and licenses necessary to complete the restoration or repair in accordance with the plans and specifications and all applicable laws; (f) Trustor shall commence such work within one hundred twenty (120) days after such casualty or condemnation and shall diligently pursue such work to completion; (g) the restoration or repair can be completed on or before the earliest to occur of (i) six (6) months prior to the Maturity Date, (ii) such time as may be required under applicable law in order to repair and restore the Property to the condition it was in immediately prior to such casualty or such condemnation, and (iii) six (6) months prior to the expiration of any business insurance coverage; and (h) the Property and the use thereof after the restoration or repair will be in compliance with all applicable laws. Provided no Event of Default then exists, and the restoration or repair of the Property has been completed in accordance with this Deed of Trust, the balance of any insurance or condemnation proceeds available to Trustor not used for such restoration or repair shall be paid to Trustor.

5.6. Disbursement. Each disbursement by Beneficiary of such insurance and condemnation proceeds shall be funded subject to conditions and in accordance with disbursement procedures which a commercial construction lender would typically establish in the exercise of sound banking practices, including requiring lien waivers and any other documents, instruments or items which may be reasonably required by Beneficiary.

ARTICLE 6 EVENTS OF DEFAULT; REMEDIES

6.1. Event of Default. The occurrence of one or more of the following events shall be an "Event of Default" hereunder: (a) if Trustor fails to (i) make any scheduled payment of principal, interest, or amounts due under Article 3 on any Payment Date, or (ii) pay any other amount payable pursuant to the Loan Documents within five (5) days after written notice from Beneficiary; (b) if Trustor fails to pay the outstanding Indebtedness on the Maturity Date; (c) the occurrence of the events identified elsewhere in this Deed of Trust or the other Loan Documents as constituting an "Event of Default" hereunder or thereunder; (d) the occurrence of a non-permitted Transfer (as defined in Section 4.15); (e) if any

representation or warranty made herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished by Trustor in connection with this Deed of Trust or any other Loan Document shall be false in any material respect as of the date such representation or warranty was made or remade; (f) if Trustor or Guarantor (i) makes an assignment for the benefit of creditors, (ii) has a receiver, liquidator or trustee appointed for it, (iii) is adjudicated as bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law or any similar federal or state law shall be filed by or against, consented to, solicited by, or acquiesced in by it, or (iv) has any proceeding for its insolvency, dissolution or liquidation instituted against it; provided, however, that if such action described in clauses (f)(i) through (f)(iv) was involuntary and not consented to by Trustor or Guarantor, as applicable, the same shall not be an Event of Default unless the same is not discharged, stayed or dismissed within ninety (90) days after the filing or commencement thereof; (g) the failure of Trustor to maintain the insurance required pursuant to Article 5; (h) if any guaranty given in connection with the Loan shall cease to be in full force and effect or any guarantor shall deny or disaffirm its obligations thereunder; or (i) a default shall be continuing under any of the other obligations, agreements, undertakings, terms, covenants, provisions or conditions of this Deed of Trust not otherwise referred to in this Section 6.1, or under any other Loan Document, for thirty (30) days after notice to Trustor (and Guarantor, if applicable) (unless otherwise provided herein or in such other Loan Document); provided, however, that if such default under this clause (i) is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Trustor (or Guarantor, if applicable) shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Trustor (or Guarantor, if applicable) in the exercise of due diligence to cure such default, but in no event shall such period exceed ninety (90) days after the original notice.

6.2. Remedies. If an Event of Default shall have occurred, then:

(a) The entire Indebtedness and all other Loan Obligations shall, at the option of Beneficiary, become due and payable without notice or demand, time being of the essence; and any omission on the part of Beneficiary to exercise such option when entitled to do so shall not be considered as a waiver of such right. Notwithstanding anything contained to the contrary herein, the outstanding Indebtedness shall be accelerated and immediately due and payable, without any election by Beneficiary upon the occurrence of any of the actions described in Section 6.1(f).

(b) This Deed of Trust may, to the maximum extent permitted by law, be enforced, and Beneficiary may exercise any right, power or remedy permitted to it hereunder or under any of the other Loan Documents or at law or in equity, and, without limiting the generality of the foregoing, Beneficiary may, personally or by its agents (including Trustee), to the maximum extent permitted by law: (i) enter into and take possession of the Property or any part thereof, exclude Trustor and all persons or entities claiming under Trustor whose claims are junior to this Deed of Trust, wholly or partly therefrom, and use, operate, manage and control the Property or any part thereof either in the name of Trustor or otherwise as Beneficiary shall deem best, and (ii) personally or by agents, with or without entry: (A) invoke the power of sale and pursuant to the procedures prescribed by law as a result thereof, sell the Property (or adjourn such sale) or any part thereof, in such manner as required by law; (B) enforce Beneficiary's rights by suit for specific performance or for the foreclosure of this Deed of Trust and the sale of the Property or any part thereof under the judgment or decree of a court (provided that in the event of a sale of less than all of the Property this Deed of Trust shall continue as a lien on, and security interest in, the remaining Property; or (C) exercise any or all of the remedies available to a secured party under the UCC, including: (1) either personally or by means of a court appointed receiver, take possession of all or any of the Security Interest Property (as defined in Article 2) and exclude therefrom Trustor and all persons or entities claiming under Trustor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to the Security Interest Property; (2) without further notice to or demand upon Trustor, make such payments and do such acts as Beneficiary may deem necessary to protect its security interest in the Security Interest Property (and all expenses incurred in connection therewith shall become part of the Loan Obligations); (3) require Trustor to assemble and deliver the Security Interest Property to Beneficiary or its



agent; (4) sell, lease or otherwise dispose of the Security Interest Property (and Beneficiary may be a purchaser at any such sale), provided, however, that Beneficiary may dispose of the Security Interest Property in accordance with Beneficiary's rights and remedies in respect of the Property pursuant to the provisions of this Deed of Trust in lieu of proceeding under the UCC; and (5) unless the Security Interest Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Beneficiary, as the case may be, shall give Trustor at least ten (10) days prior notice of the time and place of any sale of the Security Interest Property or other intended disposition thereof, which notice Trustor agrees is commercially reasonable.

(c) Beneficiary, to the maximum extent permitted by law, shall be entitled, as a matter of right, to the appointment of a receiver of the Property, without notice or demand, and without regard to the adequacy of the security for the Loan Obligations or the solvency of Trustor. Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry and shall continue as such and exercise all such powers until the date of confirmation of sale of the Property, unless such receivership is sooner terminated.

(d) In any sale under any provision of this Deed of Trust or pursuant to any judgment or decree of court, the Property, to the maximum extent permitted by law, may be sold in one or more parcels or as an entirety and in such order as Beneficiary may elect, without regard to the right of Trustor or any person or entity claiming under Trustor to the marshalling of assets.

6.3. Application of Proceeds. All proceeds of any repayment of or recoveries on the Loan shall be applied to pay the Indebtedness in such order and in such manner as Beneficiary shall elect in Beneficiary's discretion. No sale or other disposition of all or any part of the Property pursuant to this Section 6.3 shall be deemed to relieve Trustor of its obligations under any Loan Document except to the extent the proceeds thereof are applied to the payment of such obligations. If the proceeds of sale, collection or other realization of or upon the Property are insufficient to cover the costs and expenses of such realization and the payment in full of the Loan Obligations, Trustor shall remain liable for any deficiency, subject to Section 9.23.

6.4. Right to Sue. Beneficiary shall have the right from time to time to sue for any sums required to be paid by Trustor under the terms of this Deed of Trust as the same become due, without regard to whether or not the entire Loan Obligations shall be, or have become, due and without prejudice to the right of Beneficiary thereafter to bring any action or proceeding of foreclosure or any other action upon the occurrence of any Event of Default existing at the time such earlier action was commenced.

6.5. Powers of Beneficiary. Beneficiary may at any time or from time to time renew or extend this Deed of Trust or (with the agreement of Trustor) alter or modify the same in any way, or waive any of the terms, covenants or conditions hereof or thereof, in whole or in part, and may release or reconvey any portion of the Property or any other security, and grant such extensions and indulgences in relation to the Loan Obligations, or release any person or entity liable therefor as Beneficiary may determine without the consent of any junior lienor or encumbrancer, without any obligation to give notice of any kind thereto, without in any manner affecting the priority of the lien and estate of this Deed of Trust on or in any part of the Property, and without affecting the liability of any other person or entity liable for any of the Loan Obligations.

6.6. Remedies Cumulative. No right or remedy herein conferred upon or reserved to Beneficiary is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Deed of Trust, or under applicable law, whether now or hereafter existing; the failure of Beneficiary to insist at any time upon the strict observance or performance of any of the provisions of this Deed of Trust or to exercise any right or remedy provided for herein or under applicable law, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof. To the maximum extent permitted by law, Beneficiary shall be entitled to enforce payment and performance of any of the obligations of Trustor and to exercise

all rights and powers under this Deed of Trust or under any Loan Document or any laws now or hereafter in force, notwithstanding that some or all of the Loan Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise.

6.7. Waivers. Trustor, for itself and all who may claim under it, hereby waives, to the maximum extent permitted by law, all (a) rights and equities of redemption from sale under the power of sale created hereunder or from sale under any foreclosure of this Deed of Trust, (b) notices of seizure, (c) rights to have the Property marshaled, to a sale in inverse order of alienation, or to require Beneficiary to pursue or exhaust its rights or remedies as against any other part of the Property or to have Beneficiary proceed in any particular order, (d) homestead and exemption rights provided for by the Constitution and the laws of the United States and of any state, in and to the Property as against the collection of the Loan Obligations, (e) rights to plead, or in any manner whatsoever claim or take any benefit or advantage of, any applicable present or future stay, extension or moratorium law, that may affect observance or performance of the provisions of this Deed of Trust, and (f) rights to take or insist upon any benefit or advantage of any present or future law providing for the valuation or appraisal of the Property or any portion thereof prior to any sale or sales thereof that may be made under or by virtue of Section 6.2.

6.8. No Assumption by Beneficiary. Except as otherwise expressly set forth in any Loan Document, Beneficiary will not be deemed in any manner to have assumed any liabilities or obligations relating to the Property or any portion thereof. Trustor agrees that the exercise by Beneficiary of one or more of its rights and remedies under this Deed of Trust shall in no way be deemed or construed to make Beneficiary a mortgagee-in-possession.

6.9. Discontinuance of Proceedings. If Beneficiary shall have proceeded to enforce any right, power or remedy under this Deed of Trust by foreclosure, power of sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Beneficiary, then in every such case, Trustor and Beneficiary shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Beneficiary shall continue as if no such proceedings had occurred.

6.10. Beneficiary Appointed Attorney-in-Fact. Trustor hereby irrevocably and unconditionally constitutes and appoints Beneficiary as Trustor's true and lawful attorney-in-fact, with full power of substitution, at any time after the occurrence and during the continuance of an Event of Default to execute, acknowledge and deliver any documents, agreements or instruments and to exercise and enforce every right, power, remedy, option and privilege of Trustor under all Loan Documents, and do in the name, place and stead of Trustor, all such acts, things and deeds for and on behalf of and in the name of Trustor under any Loan Document, which Trustor could or might do or which Beneficiary may deem necessary or desirable to more fully vest in Beneficiary the rights and remedies provided for under the Loan Documents and to accomplish the purposes thereof. The foregoing powers of attorney are irrevocable and coupled with an interest.

6.11. Beneficiary's Right to Perform. If Trustor fails to perform any covenant or obligation contained herein for a period of five (5) Business Days after Trustor's receipt of notice thereof from Beneficiary, without in any way limiting Section 6.1, Beneficiary may, but shall have no obligation to, perform, or cause performance of, such covenant or obligation, and the expenses of Beneficiary incurred in connection therewith shall be payable by Trustor to Beneficiary upon demand, together with interest thereon at the Default Rate. Notwithstanding the foregoing, Beneficiary shall have no obligation to send notice to Trustor of any such failure.

ARTICLE 7 ENVIRONMENTAL PROVISIONS

7.1. Environmental Representations and Warranties. Trustor represents, warrants and covenants, as to itself and the Property, other than as disclosed to Beneficiary in the environmental report(s) delivered to Beneficiary in connection with the Loan, to Trustor's knowledge: (a) there are no hazardous substances or underground storage tanks in, on, or under the Property, except those that are

both (i) in compliance with all environmental laws and with permits issued pursuant thereto and (ii) which do not require remediation; (b) there are no past, present or threatened releases of hazardous substances in, on, under, from or affecting the Property which have not been fully Remediated in accordance with environmental law; (c) there is no release or threat of any release of hazardous substances which has or is migrating to the Property; (d) there is no past or present non-compliance with environmental laws, or with permits issued pursuant thereto, in connection with the Property which has not been fully remediated in accordance with environmental law; (e) Trustor does not know of, and has not received, any written or oral notice or other communication from any person or entity (including a governmental authority) relating to hazardous substances or the remediation thereof, of possible liability of any person or entity pursuant to any environmental law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; and (f) Trustor has truthfully and fully provided to Beneficiary, in writing, any and all information relating to conditions in, on, under or from the Property that is known to Trustor and that is contained in files and records of Trustor, including any reports relating to hazardous substances in, on, under or from the Property and/or to the environmental condition of the Property.

For purposes hereof, (A) "hazardous substance" means, without limitation, any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, toxic or hazardous wastes, toxic or hazardous substances, toxic or hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future environmental laws or that may have a negative impact on human health or the environment, including petroleum and petroleum products, mold or fungus, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives; (B) "environmental law" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to hazardous substances, relating to liability for or costs of other actual or threatened danger to human health or the environment, including the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act; (C) "release", with respect to any hazardous substance, includes but is not limited to any presence, release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of hazardous substances; and (D) "remediation" includes but is not limited to any activity to (i) clean up, detoxify, decontaminate, disinfect, contain, treat, remove, respond to, correct, dispose of, transport, or otherwise remediate, prevent, cure or mitigate any release of any hazardous substance; any action to comply with any environmental laws or with any permits issued pursuant thereto; or (ii) inspect, investigate, study, monitor, assess, audit, sample, test, or evaluate any actual, potential or threatened release of hazardous substances.

7.2. Environmental Covenants. Trustor covenants and agrees that: (a) all uses and operations on or of the Property, whether by Trustor or any other person or entity, shall be in compliance with all environmental laws and permits issued pursuant thereto; (b) there shall be no hazardous substances used, present or released in, on, under or from the Property, except those that are (i) in compliance with all environmental laws and with permits issued pursuant thereto; (ii) fully disclosed to Beneficiary in writing; and (iii) which do not require remediation; (c) Trustor shall, at its sole cost and expense, (i) fully and expeditiously cooperate in all activities pursuant to Section 7.3, including providing all relevant information and making knowledgeable persons available for interviews, and (ii) effectuate remediation of any condition (including a release of a hazardous substance or violation of environmental laws) in, on, under or from the Property for which remediation is legally required; and (d) Trustor shall immediately upon Trustor becoming aware notify Beneficiary in writing of (A) any unlawful releases or threatened releases of hazardous substances in, on, under, from or migrating towards the Property;

(B) any non-compliance with any environmental laws related in any way to the Property; (C) any actual or potential lien or encumbrance imposed on Trustor or the Property pursuant to any environmental law, whether due to any act or omission of Trustor or any other person; (D) any required remediation of environmental conditions relating to the Property; and (E) any written notice or other communication of which any Trustor becomes aware from any source whatsoever relating in any way to an actual or threatened release of hazardous substances in violation of environmental laws or the remediation thereof.

7.3. Environmental Cooperation and Access. In the event any indemnified party has a reasonable basis for believing that an environmental condition exists on the Property in violation of environmental laws, upon reasonable notice from Beneficiary, Trustor shall, at Trustor's sole cost and expense, promptly cause an engineer or consultant reasonably satisfactory to Beneficiary to conduct any environmental assessment or audit (the scope of which shall be determined in the sole and absolute discretion of Beneficiary) and take any samples of soil, groundwater or other water, air, or building materials or any other invasive testing reasonably requested by Beneficiary and promptly deliver the results of any such assessment, audit, sampling or other testing; and provided, further, that the indemnified parties and any other person or entity designated by the indemnified parties, may at its option, enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use. For purposes hereof, "indemnified party" means each of Beneficiary, each of its affiliates and their respective successors and assigns, any person or entity who is or will have been involved with the servicing of the Loan, persons or entities who may hold or acquire or will have held a full or partial interest in the Loan (including the persons and entities described in Section 8.3 below, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefit of third parties), and the respective officers, directors, and employees, agents, affiliates, successors and assigns of any and all of the foregoing.

7.4. Environmental Indemnity. Trustor covenants and agrees, at its sole cost and expense, to protect, defend, indemnify, release and hold indemnified parties (as defined in Section 7.3) harmless from and against any and all Losses (as defined below) imposed upon or incurred by or asserted against any indemnified parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any past, present or threatened release of hazardous substances in, on, above, under, from or affecting the Property, or any remediation thereof; (b) the imposition, recording or filing or the threatened imposition, recording or filing of any lien or encumbrance encumbering the Property; (c) any misrepresentation or inaccuracy in any representation or warranty concerning hazardous substances; and (d) any breach of Sections 7.1 or 7.2 of this Deed of Trust. Upon request by any indemnified party, Trustor shall defend same (if requested by any indemnified party, in the name of the indemnified party) by attorneys and other professionals reasonably approved by the indemnified parties. For purposes hereof, "Losses" means any losses, actual damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including strict liabilities), obligations, debts, diminutions in value, fines, penalties, charges, costs of remediation (whether or not performed voluntarily), amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, reasonable attorneys' fees, engineers' fees, environmental consultants' fees, and investigation costs (including costs for sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards.

ARTICLE 8 SECONDARY MARKET TRANSACTIONS

8.1. General. Trustor hereby acknowledges that Beneficiary may in one or more transactions (a) sell or securitize the Loan or portions thereof in one or more transactions through the issuance of securities, which securities may be rated by one or more rating agencies, (b) sell or otherwise transfer the Loan or any portion thereof one or more times (including selling or assigning its duties, rights or obligations hereunder or under any Loan Document in whole, or in part, to a servicer and/or a trustee), (c) sell participation interests in the Loan one or more times, (d) re-securitize the securities issued in connection with any securitization, and/or (e) further divide the Loan into two or more separate notes or components and/or reallocate a portion of the Loan to a mezzanine loan to be secured by direct and/or

indirect equity interests in Trustor (the transactions referred to in clauses (a) through (e) above, each a "Secondary Market Transaction"). With respect to any Secondary Market Transaction described in clause (e) above, (i) such notes, note components, and mezzanine loans may be assigned different principal amounts and interest rates, so long as immediately after the effective date of such modification, the aggregate amount of, and the weighted average of the interest rates payable under, the Loan and such component note(s) or mezzanine loan, equal the outstanding Principal Indebtedness and Interest Rate, respectively, immediately prior to such modification, and (ii) Trustor agrees to (A) modify its organizational structure to create one or more new single-purpose entities to be the mezzanine borrower(s) (and to be otherwise satisfactory to Beneficiary) and cause the same and any other owners of direct or indirect equity interest in Trustor to enter into such agreements deemed reasonably necessary by Beneficiary to evidence and secure such mezzanine loan, and (B) execute and deliver to Beneficiary such amendments to the Loan Documents, title insurance endorsements, legal opinions and other customary loan documentation as Beneficiary may reasonably require in connection therewith.

8.2. Trustor Cooperation. Trustor shall execute and deliver to Beneficiary such documents, instruments, certificates, financial statements, assignments and other writings, do such other acts and provide such information, and participate in such meetings and discussions, in each case that are necessary to facilitate the consummation of each Secondary Market Transaction.

8.3. Dissemination of Information. If Beneficiary determines at any time to participate in a Secondary Market Transaction, Beneficiary may forward to each purchaser, transferee, assignee, servicer, participant or investor in such securities, any rating agency rating such securities, any organization maintaining databases on the underwriting and performance of commercial loans, trustee, counsel, accountant, and each prospective investor, all documents and information which Beneficiary now has or may hereafter acquire relating to the Loan, Trustor, any direct or indirect equity owner of Trustor, any guarantor, any indemnitor and the Property, which shall have been furnished by Trustor, any affiliate of Trustor, any guarantor, any indemnitor, or any party to any Loan Document, or otherwise furnished in connection with the Loan, as Beneficiary in its discretion determines necessary or desirable. For purposes of this Agreement and the other Loan Documents, "affiliate" of any specified person or entity means any other person or entity controlling, controlled by or under common control with such specified person or entity.

ARTICLE 9 MISCELLANEOUS

9.1. Survival. All covenants, agreements, representations and warranties made in the Loan Documents shall continue in full force and effect so long as any portion of the Indebtedness is unpaid; provided, however, that the representations, warranties and covenants set forth in Sections 4.4 and 7.1 shall survive in perpetuity and shall not be subject to Section 9.23. All covenants, promises and agreements in the Loan Documents shall inure to the benefit of the respective successors and assigns of Beneficiary. Nothing in the Loan Documents, express or implied, shall give to any person or entity other than the parties and the holder(s) of the Note and the other Loan Documents, and their legal representatives, successors and assigns, any benefit or any legal or equitable right, remedy or claim hereunder.

9.2. Governing Law. The Loan Documents shall be interpreted and enforced according to the laws of the state where the Property is located (without giving effect to rules regarding conflict of laws).

9.3. Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of any Loan Document, or consent to any departure by Trustor therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on Trustor shall entitle Trustor to any other or future notice or demand in the same, similar or other circumstances.

9.4. Delay Not a Waiver. Neither any failure nor any delay on the part of Beneficiary in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege under any Loan Document shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege.

9.5. Notices. All notices required under any Loan Document shall be given in writing and shall be effective for all purposes (a) in the case of hand delivery, at the time of delivery (with proof of attempted delivery); (b) in the case of registered or certified mail, postage prepaid, when delivered or the first attempted delivery on a Business Day (with proof of attempted delivery); (c) in the case of expedited prepaid delivery upon the first attempted delivery on a Business Day (with proof of attempted delivery); or (d) in the case of telecopier, upon receipt of answerback confirmation, provided that such telecopied notice must also be delivered by one of the means set forth in (a), (b) or (c) above, addressed to the parties as follows: (1) if to Beneficiary, to Countrywide Commercial Real Estate Finance, Inc., 4500 Park Granada, Calabasas, California 91302, Attention: Marlyn Marinca, Facsimile No.: (818) 225-3899; and (2) if to Trustor, to the address set forth on the signature page hereto. A party receiving a notice which does not comply with the technical requirements for notice under this Section 9.5 may elect to waive any deficiencies and treat the notice as having been properly given. A party may change its address for notices by delivering notice thereof in accordance with the provisions of this Section 9.5.

9.6. **TRIAL BY JURY. TRUSTOR, BENEFICIARY, AND TRUSTEE, TO THE FULLEST EXTENT THAT THEY MAY LAWFULLY DO SO, HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING, INCLUDING ANY TORT ACTION, BROUGHT BY ANY PARTY HERETO WITH RESPECT TO THE LOAN DOCUMENTS.**

BORROWER INITIALS: JMC JDM

9.7. Severability. If any term or provision of any Loan Document or the application thereof shall to any extent be invalid or unenforceable, the remainder of such Loan Document, or the application of such term or provision other than as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of such Loan Document shall be valid and enforceable to the maximum extent permitted by law.

9.8. Remedies of Trustor. In the event that a claim or adjudication is made that Beneficiary or its agents, has acted unreasonably or unreasonably delayed acting in any case where by law or under any Loan Document, Beneficiary or such agent, as the case may be, has an obligation to act reasonably or promptly, Trustor agrees that neither Beneficiary nor its agents, shall be liable for any monetary damages, and Trustor's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Beneficiary has acted reasonably shall be determined by an action seeking declaratory judgment.

9.9. Offsets, Counterclaims and Defenses. Any assignee of Beneficiary's interest in and to the Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to the Loan, and the Loan Documents which Trustor may otherwise have against any assignor.

9.10. No Joint Venture or Partnership. Trustor and Beneficiary intend that the relationship created hereunder be solely that of borrower and lender. Nothing herein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship among any of Trustor, any contractor or governmental authority, and Beneficiary, nor to grant Beneficiary any interest in the Property other than that of mortgagee or lender.

9.11. Construction of Documents. The parties hereto acknowledge that they were represented by counsel in connection with the negotiation and drafting of the Loan Documents and that the Loan

Documents shall not be subject to the principle of construing their meaning against the party which drafted same.

9.12. Brokers and Financial Advisors. Trustor and Beneficiary hereby represent that they have dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Deed of Trust except as disclosed to Beneficiary. Trustor hereby agrees to indemnify and hold Beneficiary harmless from and against any and all Losses (as defined in Section 7.4) relating to or arising from a claim by any person or entity that such person or entity acted on behalf of Trustor in connection with the transactions contemplated herein. If Trustor has dealt with one or more of foregoing described persons or entities, Trustor acknowledges and agrees that such persons or entities may receive additional compensation and/or fees from Beneficiary. The provisions of this Section 9.12 shall survive the expiration and termination of this Deed of Trust and the repayment of the Indebtedness.

9.13. Counterparts. This Deed of Trust may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

9.14. Estoppel Certificate. Trustor agrees upon not less than fifteen (15) days' prior written notice by Trustor to execute and deliver to the party specified in such notice, a statement certifying that this Deed of Trust is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications hereto), and such other matters as Beneficiary may reasonably request.

9.15. Bankruptcy Waiver. Trustor hereby agrees that, in consideration of the recitals and mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, if Trustor (a) files with any bankruptcy court of competent jurisdiction or be the subject of any petition under Title 11 of the U.S. Code, as amended, (b) is the subject of any order for relief issued under Title 11 of the U.S. Code, as amended, (c) files or is the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or law relating to bankruptcy, insolvency or other relief of debtors, (d) has sought or consents to or acquiesces in the appointment of any trustee, receiver, conservator or liquidator or (e) is the subject of any order, judgment or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency or other relief for debtors, the automatic stay provided by the U.S. Bankruptcy Code shall be modified and annulled as to Beneficiary, so as to permit Beneficiary to exercise any and all of its rights and remedies, upon request of Beneficiary made on notice to Trustor and any other party in interest but without the need of further proof or hearing. Neither Trustor nor any affiliate of Trustor shall contest the enforceability of this Section 9.15.

9.16. Entire Agreement. This Loan Documents and exhibits thereto constitute the entire agreement among the parties hereto with respect to the subject matter contained therein and supersedes all prior agreements, understandings and negotiations between the parties. There are no oral agreements between the parties.

9.17. Indemnification. Trustor shall indemnify and hold the indemnified parties (as defined in Section 7.3) harmless against any and all Losses (as defined in Section 7.4), and reimburse them for any costs and expenses incurred, in connection with, arising out of or as a result of (a) Beneficiary's reasonable out-of-pocket costs and expenses (including attorneys' fees and costs) in connection with (i) the preparation, execution and delivery of the Loan Documents (and any subsequent modifications thereof) and the closing of the Loan, and (ii) the creation, perfection or protection of Beneficiary's liens in the Property, (b) the exercise of any of Beneficiary's remedies under any Loan Document, and (c) any alleged obligations or undertakings to perform or discharge any obligation, duty or liability with respect to the ownership, operation and/or maintenance of the Property, except to the extent that it is finally judicially determined that any such Loss resulted directly and solely from the fraud, gross negligence or

willful misconduct of such indemnified party. If any indemnified party becomes involved in any action, proceeding or investigation in connection with any matter described in clauses (a) through (c) above, Trustor shall periodically reimburse any indemnified party upon demand therefor in an amount equal to its reasonable legal and other expenses (including the costs of any investigation and preparation) incurred in connection therewith to the extent such legal or other expenses are the subject of indemnification hereunder.

9.18. Publicity. Beneficiary shall have the right to issue press releases, advertisements and other promotional materials describing the Loan and Beneficiary's participation therein and the Loan's inclusion in any Secondary Market Transaction (as defined in Section 8.1).

9.19. Time of the Essence. Time shall be of the essence in the performance of all obligations of Trustor under each of the other Loan Documents.

9.20. Taxes. All payments made under the Loan Documents shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, and all liabilities with respect thereto, now or hereafter imposed, levied, collected, withheld or assessed by any governmental authority. If Trustor is required by law to deduct any of the foregoing from any sum payable under the Loan Documents, such sum shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 9.20), Beneficiary receives an amount equal to the sum Beneficiary would have received had no such deductions been made.

9.21. Further Assurances. Trustor shall execute and deliver to Beneficiary such documents, instruments, certificates, assignments and other writings, and do such other acts necessary, to (a) evidence, preserve and/or protect the Property at any time securing or intended to secure the Indebtedness, and/or (b) enable Beneficiary to perfect, exercise and enforce Beneficiary's rights and remedies under any Loan Document, as Beneficiary shall require from time to time in its discretion. Trustor hereby irrevocably authorizes and appoints Beneficiary as its attorney-in-fact, coupled with an interest, for the purpose of exercising and perfecting any and all rights and remedies available to Beneficiary at law and in equity, including such rights and remedies available to Beneficiary pursuant to this Deed of Trust.

9.22. Reconveyance by Beneficiary. Upon payment in full of the Loan Obligations or a complete defeasance with respect to the Property which complies with the Note (if the Note provides for defeasance), Beneficiary shall release the lien of this Deed of Trust, or upon the request of Trustor, and at Trustor's expense, assign this Deed of Trust without recourse to Trustor's designee, or to the person(s) or entity(ies) legally entitled thereto, by an instrument duly acknowledged in proper form for recording.

9.23. Limitation of Interest; Exculpation. This Deed of Trust is subject to the limitations on the payment of interest set forth in Section 8 of the Note, and the limitations on liability set forth in Section 10 of the Note.

9.24. Definitions; Principles of Constructions. Capitalized terms used herein but not defined shall have the meanings set forth in the Note. All uses of the word "including" shall mean "including, without limitation" unless the context shall indicate otherwise. The use of the term "applicable law" includes all laws, regulations, rules, and ordinances of every type.

ARTICLE 10 SPECIAL PROVISIONS

10.1. State Specific Provisions. The terms and conditions set forth on Exhibit C (if any) are hereby incorporated herein by this reference. In the event of any inconsistencies between the terms and conditions of said Exhibit C and the other terms and conditions of this Deed of Trust or the other Loan Documents, the terms and conditions of said Exhibit C shall control and be binding.



10.2. Additional Provisions. The terms and conditions set forth on Exhibit D (if any) are hereby incorporated herein by this reference.

ARTICLE 11
TRUSTEE PROVISIONS

11.1. Successor Trustee. Trustee may resign in writing addressed to Beneficiary or be removed at any time with or without cause by an instrument in writing duly executed by Beneficiary and recorded in the office of the county recorder where the Land is situated. In case of the death, resignation or removal of Trustee, a successor Trustee may be appointed by Beneficiary without other formality than an appointment and designation in writing unless otherwise required by applicable law. Such appointment and designation will be full evidence of the right and authority to make the same and of all facts therein recited, and upon the making of any such appointment and designation, this Deed of Trust will vest in the named successor trustee all the right, title and interest of Trustee in the Property, and said successor will thereupon succeed to all the rights, powers, privileges, immunities and duties hereby conferred upon Trustee; provided, however, that Beneficiary may at its option, appoint and designate several successor trustees, and in such manner, appoint and designate a different successor trustee for each county wherein a portion of the Property is located, as described in such written appointment and designation, and upon the making of any such appointment and designation, this Deed of Trust will vest in each such named successor trustee all of the right, title and interest of Trustee in that portion of the Property ascribed to such named successor trustee, and each such named successor trustee will thereupon succeed to all the rights, powers, privileges, immunities and duties hereby conferred upon Trustee in that portion of the Property ascribed to such named successor trustee. All references herein to Trustee will be deemed to refer to the trustee or trustees from time to time acting hereunder.

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

11.3. Full Reconveyance by Trustee. To the extent Trustee's signature is necessary on any full reconveyance of this Deed of Trust then, upon written request of Beneficiary stating that all sums secured hereby have been paid and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention (or disposal in accordance with applicable law) and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto".

11.4. Trustee's Fees. No fees or expenses shall become payable to Trustee under this Deed of Trust other than those reasonable fees and expenses incurred by Trustee in connection with the reconveyance of the Property, or the exercise by Trustee of any remedy permitted to it hereunder or under any of the other Loan Documents or at law or in equity. Trustor shall pay all such reasonable fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the foregoing and all such costs, fees and expenses shall be secured by this Deed of Trust.

11.5. Indemnity. Trustor shall indemnify Trustee against all claims, actions, liabilities, judgments, costs, attorneys' fees or other charges of whatsoever kind or nature made against or incurred by Trustee, and arising out of the performance by Trustee of the duties of Trustee hereunder, other than those arising solely due to Trustee's gross negligence or willful misconduct.

[Signature on the following page]

IN WITNESS WHEREOF, this Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing has been duly executed by Trustor as of the day and year first above written.

TRUSTOR:

HUSSMAN AVENUE, LLC,
a Nevada limited liability company

BY: [Signature]
JAY MARRIAGE
AUTHORIZED MEMBER

By: [Signature]

Name: PATRICIA D. CLARK
Authorized Member

Organization ID No.: LLC6009-2004

Address for Notices:
PO Box 1923
Minden, NV 89423
Attention: Patricia Clark
Facsimile No.: () _____

STATE OF NEVADA)
COUNTY OF Douglas) ss.

On 8-31, 2006, before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Patricia D. Clark, Authorized Member of Hussman Avenue, LLC, a Nevada limited liability company, who acknowledged that he/she executed the forgoing instrument on behalf of said company. * Jay Marriage

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County of DOUGLAS



My Commission Expires: 11-5-06

Mary Kelsh
Notary Public

County of Douglas, State of Nevada

Notary Seal/Stamp

Exhibit A

DESCRIPTION OF PROPERTY

(See attached)



EXHIBIT "A"

PARCEL 1:

A PARCEL OF LAND LOCATED WITHIN A PORTION OF SECTION 32, TOWNSHIP 13 NORTH, RANGE 20 EAST, MOUNT DIABLO MERIDIAN, DOUGLAS COUNTY, NEVADA DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL NO. 1 AS SHOWN ON THAT RECORD OF SURVEY FOR WILLIAM HUSSMAN AS RECORDED IN BOOK 492, AT PAGE 1331, AS DOCUMENT NO. 275307;

THENCE SOUTH $01^{\circ}13'14''$ EAST, 393.04 FEET TO THE NORTHWEST CORNER OF THAT NORTHERLY PARCEL AS SHOWN ON THE PLAT OF THE C.C. MENELEY PROPERTY AT GARDNERVILLE, DOCUMENT NO. 06345;

THENCE ALONG THE NORTH LINE OF THE NORTHERLY PARCEL PER SAID PLAT, DOCUMENT NO. 06345, SOUTH $89^{\circ}27'31''$ EAST, 61.00 FEET;

THENCE SOUTH $01^{\circ}30'25''$ EAST, 143.07 FEET TO THE SOUTH LINE OF THAT MIDDLE PARCEL PER DOCUMENT NO. 06345;

THENCE ON SAID SOUTH LINE NORTH $89^{\circ}27'04''$ WEST, 61.00 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL;

THENCE NORTH $89^{\circ}55'05''$ WEST, 150.91 FEET;

THENCE NORTH $89^{\circ}46'42''$ WEST, 7.47 FEET;

THENCE NORTH $51^{\circ}02'48''$ WEST, 485.12 FEET;

THENCE NORTH, 46.89 FEET;

THENCE NORTH $70^{\circ}39'00''$ EAST, 554.84 FEET TO THE POINT OF BEGINNING,

REFERENCE IS MADE TO THE RECORD OF SURVEY FILED MAY 19, 2004 AS FILE NO. 613573.

NOTE: THE ABOVE METES AND BOUND DESCRIPTION APPEARED PREVIOUSLY IN THAT CERTAIN DEED TO HUSSMAN AVENUE, LLC., A NEVADA LIMITED LIABILITY COMPANY, RECORDED MARCH 14, 2005, IN BOOK 0305, PAGE 5230, AS INSTRUMENT NO. 638855.

PARCEL 2:

A NON- EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND ACCESS BY AND FOR VEHICULAR AND PEDESTRIAN TRAFFIC AND PRIVILEGE OF INSTALLATION OF UTILITIES AS SET FORTH IN THAT CERTAIN CORRECTED MEMORANDUM OF RECIPROCAL EASEMENT AGREEMENT RECORDED JANUARY 31, 2005 IN BOOK 105, PAGE 10968, AS DOCUMENT NO. 635642 OF OFFICIAL RECORDS, IN THE DOUGLAS COUNTY RECORDERS OFFICE, DOUGLAS COUNTY, NEVADA.



Exhibit B

DEFERRED MAINTENANCE AND ENVIRONMENTAL REMEDIATION

NONE

CORPORATION

Exhibit C

STATE-SPECIFIC PROVISIONS

All notice and cure periods provided herein or in the Loan Documents (if any) shall run concurrently with any notice or cure period provided by law. Without limiting the foregoing, Beneficiary or Trustee shall be entitled to cause a notice of breach and election to sell to be recorded and mailed if any event occurs which, with the giving of notice and/or passage of time, would constitute an Event of Default or would entitle Beneficiary to accelerate the indebtedness secured hereby and the recording and mailing to Trustor of such notice of breach and election to sell shall constitute notice of the failure to perform pursuant hereto or thereto. The foregoing shall not be deemed to limit, modify or impair any rights of Trustor to receive notices and/or any applicable cure periods expressly provided in the Deed of Trust.

The following covenants, Nos. 1; 3; 4 (Default Rate); 5; 6; 7 (a reasonable percentage); 8 and 9 of the Nevada Revised Statutes Section 107.030 are hereby adopted and made a part of this Deed of Trust (provided however that the express covenants of this Deed of Trust shall control to the extent that the same are inconsistent with Covenant Nos. 1, 3, 4, 5, and 9). Except where required by law, the parties intend that if there are contrary provisions in this Deed of Trust and the statutory covenants contained in Nevada Revised Statutes Section 107.030, the provisions in this Deed of Trust will govern.

As used herein, "Personal Property" does not include any gaming device as defined in NRS 463.0155, or any rents, issues, profits, income, or revenue the receipt of which would require a gaming license under Chapter 463, Nevada Revised Statutes.

The definition of "Environmental Law" included in Section 7.1 hereof shall include Nevada Revised Statutes Chapter 459 (Hazardous Materials), Chapter 445B (Air Pollution) and Chapter 590 (Petroleum Products and Antifreeze), and all rules and regulations now or hereafter adopted and guidelines now or hereafter promulgated pursuant to the foregoing.

Exhibit D

ADDITIONAL PROVISIONS

NONE

COPY

