

Recording requested by and
when recorded return to:

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attention: Brian C. Eades, Esq.

ATTENTION: COUNTY CLERK – THIS DEED OF TRUST ALSO CONSTITUTES AND IS FILED AS A FIXTURE FILING UNDER THE TEXAS UNIFORM COMMERCIAL CODE. AS SUCH, THIS DEED OF TRUST SHOULD BE APPROPRIATELY INDEXED, NOT ONLY AS A DEED OF TRUST, BUT ALSO AS A FINANCING STATEMENT COVERING GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN. THE MAILING ADDRESSES OF BORROWER (DEBTOR) AND BENEFICIARY (SECURED PARTY) ARE SET FORTH IN THIS DEED OF TRUST.

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS DEED OF TRUST BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER’S LICENSE NUMBER.

AMENDED AND RESTATED LEASEHOLD DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING

This AMENDED AND RESTATED LEASEHOLD DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING (hereinafter referred to as this “Deed of Trust”) is made and entered into as of the __ day of _____, 20__, by **WATERS AT WATERCHASE, LP**, a Texas limited partnership, (hereinafter referred to as “Borrower”), whose address is 4770 Iberia Ave, Suite 100, Dallas, TX 75207, to _____, as trustee (together with any successor deed of trust trustee hereunder, the “Trustee”), whose address is _____, for the benefit of **ZIONS BANCORPORATION, N.A.**, a national banking association, in its capacity as fiscal agent (the “Fiscal Agent”) and, together with its successors and assigns, hereinafter referred to as “Beneficiary”), whose address is 15950 North Dallas Parkway, Suite 200, Dallas, Texas 75248, Attention: Corporate Trust Services.

This Deed of Trust amends and restates in its entirety that certain [Leasehold Deed Of Trust, Assignment of Leases and Rents, Security Agreement, Financing Statement and Fixture Filing] dated as of _____, 2026, executed by Borrower, to _____, as trustee, for the benefit of the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas (the “Governmental Lender”), and recorded as Instrument No. _____ of Dallas County, Texas and assigned to the Fiscal Agent pursuant to that certain [Assignment of Leasehold Deed Of Trust, Assignment of Leases and Rents, Security Agreement, Financing Statement and Fixture Filing] dated as of [_____], executed by the Governmental Lender, to the Mortgagee, recorded as Instrument No. _____ of Dallas County, Texas.

RECITALS

A. AHF-Waterchase, LLC, a Delaware limited liability company (the “Fee Owner”), is the owner of a fee interest in certain real property described on Exhibit A hereto (the “Premises”) upon which has been constructed a multifamily residential development known as “Waters at Waterchase” and comprised of 130 rental units and including related personal property and equipment and other Improvements (as hereinafter defined), located in Dallas, Texas (collectively, the “Project”), which has been rehabilitated and leased with the proceeds of that certain Project Loan (as defined below).

B. Pursuant to that certain Funding Loan Agreement dated as of _____, 1, 2026 (the “Funding Loan Agreement”), by and among by and among Fifth Third Bank, a national banking association, in its capacity as Initial Funding Lender (the “Initial Funding Lender”), the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas (the “Governmental Lender”) and Zions Bancorporation, N.A., a national banking association, in its capacity as fiscal agent (together with its successors and assigns, the “Fiscal Agent”), the Initial Funding Lender made a loan to the Governmental Lender in the maximum aggregate principal amount of \$[FUNDING LOAN AMOUNT] (the “Initial Funding Loan”). The obligation of the Governmental Lender to repay the Initial Funding Loan was evidenced by that certain Multifamily Housing Revenue Note (Waters at Waterchase) Series 2026, dated as of _____, 1, 2026 (together with all riders and addenda thereto, the “Governmental Note”), executed and delivered by Governmental Lender and payable to the Initial Funding Lender, in the original principal amount of \$[FUNDING LOAN AMOUNT].

C. Pursuant to the Project Loan Agreement dated as of _____, 1, 2026 (the “Project Loan Agreement”) by and among the Governmental Lender, the Fiscal Agent and the Borrower, the Governmental Lender made a mortgage loan to the Borrower in the maximum aggregate principal amount of \$[PROJECT LOAN AMOUNT] (the “Project Loan”) to provide a portion of the financing of the Project located on the Premises. The Borrower covenanted to use the proceeds of the Project Loan to pay a portion of the costs of the acquisition, rehabilitation, equipping and improvement of the Improvements and the Project and to pay certain costs of issuance and closing costs with respect to the Initial Funding Loan and Project Loan.

D. The Initial Funding Lender, pursuant to the terms and subject to the conditions of the Funding Loan Agreement and that certain [Construction Loan Agreement] dated as of _____, 2026 (the “Construction Loan Agreement”) by and between the Initial Funding Lender and the Borrower, and the other Construction Loan Documents (as hereinafter defined), originated and funded the Initial Funding Loan to the Governmental Lender and the proceeds of the Initial Funding Loan were used by the Governmental Lender to fund the Project Loan to the Borrower pursuant to the Project Loan Agreement.

E. The Borrower’s repayment obligations under and pursuant to the Project Loan Agreement and the Construction Loan Agreement are evidenced and secured by that certain Promissory Note dated _____, 2026, in the principal amount of \$[PROJECT LOAN AMOUNT] (the “Initial Project”).

Note”) executed and delivered by the Borrower to the Governmental Lender, which Initial Project Note was assigned and endorsed by the Governmental Lender to the Fiscal Agent as security for the Initial Funding Loan and the Governmental Note. To secure the Borrower’s obligations under the Initial Project Note, the Borrower executed and delivered to a deed of trust trustee for the benefit of the Governmental Lender the Construction Phase Deed of Trust with respect to the Project, which Construction Phase Deed of Trust was assigned by the Governmental Lender to the Fiscal Agent as security for the Initial Funding Loan and Project Loan.

F. The Borrower is the owner of the Improvements and the holder of a leasehold estate in the Premises, created by virtue of that certain Ground Lease, dated as of [REDACTED], 2026, by and between the Fee Owner, as lessor, and the Borrower, as lessee (as the same may be amended, modified or supplemented from time to time, the “Ground Lease”), and all rights and privileges created thereunder.

G. Barings Affordable Housing Mortgage Fund III LLC, a Delaware limited liability company (“Permanent Lender”), Borrower, and Initial Funding Lender entered into that certain Forward Loan Purchase Agreement, dated as of [REDACTED], 2026 (the “Forward Loan Purchase Agreement”), whereby following completion of the Improvements and satisfaction of the other Conversion Conditions (as defined in the Forward Loan Purchase Agreement), Permanent Lender agreed to purchase the Initial Funding Loan and the Governmental Note in an aggregate amount equal to the Permanent Lender Purchase Price (as provided in the Forward Loan Purchase Agreement) at Conversion and make the permanent loan (the “Permanent Loan” and, together with the Initial Funding Loan, the “Funding Loan” or “Loan”) governed by that certain Continuing Covenant Agreement dated as of [REDACTED], 2026 by and between Borrower and Permanent Lender (“Loan Agreement”).

H. Upon satisfaction of the Conversion Conditions, on the Conversion Date, the Project Loan shall convert from the Construction Phase to the Permanent Phase (as each of those terms are defined in the Funding Loan Agreement), and the Funding Loan, as evidenced by the Governmental Note, will convert to bear interest at the Permanent Phase Interest Rate (as defined in the Funding Loan Agreement). In addition, effective as of the Conversion Date, the Construction Phase Deed of Trust is to be amended and restated in the form of this Deed of Trust executed, attested and delivered by the Borrower effective as of the Conversion Date, in favor of Beneficiary and to secure the Governmental Note and the Permanent Loan.

I. As of the Effective Date, the Conversion Conditions have been satisfied and the Governmental Note and Initial Funding Loan are being purchased by Permanent Lender and simultaneously therewith the Initial Project Note is amended and restated in an original principal amount equal to the Permanent Lender Purchase Price pursuant to that certain Amended and Restated Promissory Note executed and delivered by the Borrower effective as of the Effective Date and this Deed of Trust is hereby executed, acknowledged and delivered to amend and restate the Construction Phase Deed of Trust.

AGREEMENT

Section 1.01 Grant of Rights and Interests. THAT FOR AND IN CONSIDERATION of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Borrower hereinafter set forth, Borrower does hereby irrevocably and unconditionally grant, bargain, sell, convey, assign, transfer, pledge and set over unto Trustee, its substitutes or successors, in trust, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, for the benefit of Beneficiary, its successors and assigns, all of the following described land and interests in land, estates, easements, rights, Improvements (as hereinafter defined), Personal Property (as hereinafter defined), fixtures, equipment,

furniture, furnishings, appliances and appurtenances and other property interests and rights described in this Section 1.01 (hereinafter referred to collectively as the “Premises”):

(a) All leasehold interest in the land more particularly described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter collectively referred to as the “Land”);

(b) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, including all minerals, oil, gas, other hydrocarbons and associated substances, sulfur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Land, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversion and reversions, remainder and remainders, whatsoever, in any way belonging, relating or appertaining to the Premises or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower;

(c) All buildings, structures, surface parking and other improvements of every kind and description now or hereafter erected or placed on the Land, all additions, alterations and replacements thereto or thereof, and all materials now owned or hereafter acquired by the Borrower and intended for the operation, construction, reconstruction, alteration and repair thereof, all of which materials shall be deemed to be included within the Premises (hereinafter defined) immediately upon the delivery thereof to the Land (all of which are hereinafter called collectively the “Improvements”);

(d) All machinery, equipment, fixtures (including to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), engines, boilers, water heaters, appliances, furnishings, furniture, carpeting and floor coverings, materials and supplies, books and records, chattels, inventory, accounts, farm products, consumer goods, general intangibles and other property of every kind and nature, whether tangible or intangible, including all property subject to the Uniform Commercial Code as enacted in the State of Texas (the “Uniform Commercial Code”), owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Premises, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises, including the proceeds of any sale or transfer of the foregoing, and, without limiting the generality of the foregoing, if any of the foregoing is subject to any prior security interest or prior security agreement, as such terms are defined in the Uniform Commercial Code, then the Premises shall include all of the right, title and interest of Borrower in and to any same, together with all deposits and payments now or hereafter made by Borrower with respect to same;

(e) All tradenames, trademarks, servicemarks, logos and goodwill related to the Premises which in any way now or hereafter belong, relate or appertain to the Premises or any part thereof or are now or hereafter acquired by Borrower;

(f) To the extent assignable, all right, title and interest of the Borrower in and to, and remedies under (a) any and all leases, subleases, license agreements, concessions, tenancies and other use or occupancy agreements (whether oral or written), or any part thereof, now or hereafter existing, covering or affecting any or all of the Premises (as hereinafter defined), all extensions and renewals thereof, and all modifications, amendments and guaranties thereof (each of which is hereinafter called a “Lease”), and (b) any and all rents, income, receipts, revenues, royalties, issues, profits, contract rights, accounts receivable, or general intangibles growing out of or in connection with the Leases (whether from residential or non-residential space) and other payments, payable to the Borrower pursuant to any Lease, including, without limitation, cash or securities deposited under any Lease to secure performance by the tenants of their obligations under the Leases, whether such cash or securities are to be held until the expiration of the term

of such Leases or are to be applied to one or more of the installments of rent coming due prior to the expiration of such terms and further including subsidy payments received from any source including all “Rents” and “Proceeds” (each as defined in Chapter 64 – Assignments of Rents to Lienholder – Texas Property Code (the “Texas Assignment of Rents Act”)) now or hereafter derived from the leases or the Premises (collectively, the “Rents”), subject, however, to the provisions hereof;

(g) All proceeds of, and any unearned premiums on, any insurance policies covering the Premises, including the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Premises;

(h) The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Premises and to commence any action or proceeding to protect the interest of Beneficiary in the Premises;

(i) Any and all judgments, awards of damages (including but not limited to severance and consequential damages), payments, proceeds, settlements or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, in connection with, or in lieu of (a) any condemnation, either temporarily or permanently, (b) any change or alteration of the grade or widening of any street or road, and (c) any other damage, destruction, or injury to, or decrease in value of, the Land or the Improvements or any part thereof, to the extent of all Secured Obligations at the date of receipt by the Beneficiary of any such judgment, award of damages, payment, proceeds, settlement or other compensation, including interest thereon, and of the reasonable counsel fees, costs and disbursements, if any, incurred by the Beneficiary in connection with the collection of such judgment, award of damages, payment, proceeds, settlement or other compensation, including interest thereon;

(j) All other property or collateral of any nature whatsoever, now or hereafter given as additional security for the payment of the Secured Obligations (as hereinafter defined), including, to the extent assignable, property management agreements now or hereafter entered into with any person or entity providing management services to the Premises, service contracts, common area agreements, licenses, permits, construction warranties and other contracts, agreements and instruments relating to the Premises (including agreements pursuant to which Borrower acquired any of the Premises, and including any security or indemnities given in connection therewith), security deposits, royalties, refunds, expense reimbursements, reserve or escrow deposits or accounts related to the Premises or any lease and all documents relating to each of the foregoing;

(k) To the extent assignable, all contract rights (including any contract deposits), but not any contract obligations or liabilities, relating to or arising out of any agreement to sell, transfer, assign, convey or encumber the Land, the Improvements, any portion thereof, any interest therein;

(l) To the extent assignable, all Borrower’s rights and interests in all agreements now or hereafter in existence providing for or relating to the rehabilitation, construction, alteration, maintenance, repair, operation or management of the Premises or any part thereof, as well as the plans and specifications therefor, and all copies thereof (together with the right to amend or terminate the same or waive the provisions of the foregoing) and any amendments, renewals and replacements thereof; to the extent permitted by the relevant authorities, all licenses, permits and approvals for the ownership, rehabilitation, construction, maintenance, operation, use and occupancy of the Premises or any part thereof and any amendments, renewals and replacements thereof; all Borrower’s rights and interests in all warranties and guaranties from contractors, subcontractors, suppliers and manufacturers to the maximum extent permissible relating to the Premises or any part thereof;

(m) All plans and specifications, surveys, reports, diagrams, drawings, service contracts, accounting records, invoices, change orders, licenses, authorizations, certificates, variances, approvals and other permits necessary or appropriate to permit the rehabilitation, construction, reconstruction, repair or alteration, addition, improvement, use, operation and management of the Land and the Improvements; and

(n) All of the Borrower's cash, bank accounts, notes and other instruments, documents, accounts receivable, contract rights, permits, receipts, sales and promotional literature and forms, advertising materials and the like, trademarks, names, logos, copyrights and other items of intangible personal property now or hereafter owned by the Borrower relating to the ownership, operation, development, leasing or management of the Land or the Improvements.

TO HAVE AND TO HOLD the Premises and all parts, rights, members and appurtenances thereof, unto the Trustee and its substitutes or successors, for the benefit of Beneficiary and the successors, successors-in-title and assigns of Beneficiary, and Borrower covenants that Borrower is lawfully seized and possessed of the Premises as aforesaid, and has good right to convey the same, that there are no easements, restrictions, or prior liens or encumbrances except for those matters (hereinafter referred to as the "Permitted Encumbrances") expressly set forth in Exhibit B attached hereto and by this reference made a part hereof, and that Borrower does warrant and will forever defend the title thereto against the claims of all persons whomsoever, except as to the Permitted Encumbrances.

This Deed of Trust is given to secure the payment of the following described indebtedness (hereinafter referred to collectively as the "Secured Obligations"):

(a) The debt evidenced by that certain Promissory Note of even date herewith made by Borrower to the order of Beneficiary, in the original principal face amount of _____ Dollars (\$ _____), together with any and all renewals, amendments, modifications, extensions, restatements and consolidations of the Promissory Note (as so renewed, amended, modified, extended, restated and consolidated, the "Permanent Note" and, together with the Governmental Note, the "Note"). The maturity date of the Permanent Note is _____, 20__ (the "Maturity Date").

(b) Any and all advances and disbursements now or hereafter made pursuant to the Project Loan Agreement or by Permanent Lender to Borrower under the terms of that certain Continuing Covenant Agreement dated as of _____, 2026 by and between Permanent Lender and Borrower (as amended, restated and/or supplemented from time to time, the "Continuing Covenant Agreement" and, together with the Project Loan Agreement, the "Loan Agreement"), and/or under the terms of any of the other Financing Documents (such term as used herein to have the meaning assigned to it in the Funding Loan Agreement) or Permanent Loan Documents (as defined in the Continuing Covenant Agreement), regardless of the total amount of such advances and disbursements and regardless of whether such total amount of advances and disbursements should exceed the aggregate face amount of the Note;

(c) Any and all additional advances made by Beneficiary or Permanent Lender to protect or preserve the Premises or the security title, lien and security interest created hereby on the Premises, or for taxes, assessments or insurance premiums as hereinafter provided, or for performance of any of Borrower's obligations hereunder, under the Financing Documents or for any other purpose provided herein (whether or not the original Borrower remains the lessee of the Premises at the time of such advances); and

(d) Any and all other indebtedness now owing or which may hereafter be owing by Borrower to Beneficiary under this Deed of Trust, the Loan Agreement, the other Permanent Loan Documents and/or the other Financing Documents, whether now existing or hereafter coming into existence, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, due

or to become due, and all renewals, modifications, consolidations and extensions of or to any of the foregoing.

Should the Secured Obligations be paid according to the tenor and effect thereof when the same shall become due and payable, and should Borrower perform all covenants herein contained in a timely manner, then this Deed of Trust shall be canceled and surrendered, and Beneficiary shall execute and deliver a release of this Deed of Trust for recording in the appropriate public records.

IMPORTANT NOTICE TO LIEN CLAIMANTS:

Any lien attaching to the Premises after the date hereof (each, a “Junior Lien”) shall be subject and subordinate to all of the Secured Obligations (as defined below), including any modification to this Deed of Trust, any other Loan Document, or the Secured Obligations after the date of recording of this Deed of Trust, including, without limitation, increases in the amount of the Secured Obligations, increases in interest rates with respect to any Secured Obligation, and changes to the maturity date of any secured modification, notwithstanding that such modification may occur after the date such Junior Lien attaches or may adversely affect or prejudice the rights of any Junior Lien claimant. Nothing herein shall be deemed an approval or consent by Beneficiary to, or waiver of Beneficiary’s right to object to, any such Junior Lien. This clause shall serve as notice to all persons who may seek or obtain a Junior Lien on the Premises subsequent to the date of recording of this Deed of Trust, that until this Deed of Trust is released, any debt owed to the Beneficiary, including advances and re-advances made under this Deed of Trust or any other Permanent Loan Document subsequent to the recording of this Deed of Trust, shall be secured with the priority afforded this Deed of Trust as recorded.

Borrower hereby further covenants and agrees with Beneficiary as follows:

ARTICLE II

COVENANTS, AGREEMENTS AND REPRESENTATIONS AND WARRANTIES

Section 2.01. Payment of Indebtedness. Borrower shall pay and perform when due all of the Secured Obligations, including all of the Borrower’s obligations under the Note, the Loan Agreement and all of the other Permanent Loan Documents and Financing Documents, in accordance with the terms thereof. Borrower shall pay the Note according to the tenor thereof and the remainder of the Secured Obligations promptly as the same shall become due. All sums payable by the Borrower under this Deed of Trust shall be paid without notice, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of the Borrower hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein or in any of the Permanent Loan Documents) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Premises or any part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Premises or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Beneficiary, or any action taken with respect to this Deed of Trust by a trustee or receiver of the Beneficiary, or by any court, in any such proceeding; (v) any claim which the Borrower has or might have against the Beneficiary; or (vi) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not the Borrower has notice or knowledge of any of the foregoing.

Section 2.02. Taxes, Liens and Other Charges.

(a) Borrower shall pay, on or before the due date thereof, all taxes, assessments, levies, license fees, permit fees and all other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever (including all penalties and interest thereon) now or hereafter levied, assessed, confirmed or imposed on, or in respect of, or which may be a lien upon, the Premises, or any part thereof, or any estate, right or interest therein, or upon the rents, issues, income or profits thereof, and shall submit to Beneficiary such evidence of the due and punctual payment of all such taxes, assessments and other fees and charges as Beneficiary may require. The payment of real property taxes with respect to the Premises are subject to the additional requirements of Section 2.03.

(b) Excluding state and federal income taxes and ad valorem taxes imposed on Beneficiary, Borrower shall pay, on or before the due date thereof, all taxes, assessments, charges, expenses, costs and fees which may now or hereafter be levied upon, or assessed or charged against, or incurred in connection with, the Note, the other Secured Obligations, this Deed of Trust or any other Permanent Loan Document or any other instrument now or hereafter evidencing, securing or otherwise relating to the Secured Obligations, and shall submit to Beneficiary such evidence of the due and punctual payment of all such taxes, assessments, charges, expenses, costs and fees as Beneficiary may require.

(c) Borrower shall pay, on or before the due date thereof, (i) all premiums on policies of insurance covering, affecting or relating to the Premises, as required pursuant to Section 2.04, and (ii) all ground rentals, other lease rentals and other sums, if any, owing by Borrower and becoming due under any lease or rental contract affecting the Premises. Borrower shall submit to Beneficiary such evidence of the due and punctual payment of all such premiums, rentals and other sums as Beneficiary may require.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages, deeds of trust, or security agreements or debts secured thereby or the manner of collecting such taxes so as to adversely affect Beneficiary with respect to this Deed of Trust, excluding state and federal income taxes and ad valorem taxes imposed on Beneficiary, Borrower will pay any such tax on or before the due date thereof or upon demand by Beneficiary. If Borrower fails to make such prompt payment or if, in the reasonable opinion of Beneficiary, any such state, federal, municipal, or other governmental law, order, rule or regulation prohibits Borrower from making such payment or would penalize Beneficiary if Borrower 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 applicable law, then the entire balance of the Secured Obligations and all interest accrued thereon shall, at the option of Beneficiary, become immediately due and payable.

(e) Except for Permitted Encumbrances, the Borrower shall not create, incur, or permit to exist any lien, encumbrance or charge upon the Premises, or any portion thereof or interest therein (individually, a "Lien" or "Encumbrance" and collectively, "Liens or Encumbrances"). If the Borrower fails to remove and discharge any Lien or Encumbrance or contest the same in good faith after the same shall have been bonded over to the satisfaction of the Beneficiary, then, in addition to any other right or remedy of the Beneficiary, (i) the Beneficiary may, but shall not be obligated to, take such action at the direction of the Beneficiary as the Beneficiary deems warranted to discharge any Lien or Encumbrance either by paying the amount claimed to be due, or by procuring the discharge of such Lien or Encumbrance by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law and (ii) the Beneficiary shall have the absolute right, at the Beneficiary's direction, without prior demand or notice, to declare all of the Secured Obligations for which the Borrower is then liable to be immediately due and payable. The Borrower shall, immediately upon demand therefor by the Beneficiary, pay to the Beneficiary an amount equal to all reasonable costs and expenses incurred by the Beneficiary in connection with the exercise by the

Beneficiary of the foregoing right to discharge any such Lien or Encumbrance, together with interest thereon from the date of such expenditure to the date of payment at the Default Rate.

Section 2.03. Proof of Payment of Real Property Taxes; Monthly Deposits. Borrower shall provide Beneficiary with proof of Borrower's payment of all real property taxes levied upon the Premises within fifteen (15) days following the due date for each installment of such taxes.

Section 2.04. Insurance.

(a) The Borrower shall at all times provide, maintain and keep in force, or cause to be provided, maintained and kept in force, at no expense to the Beneficiary, policies of insurance in form and amounts, issued by such insurance companies, associations or organizations, and covering such casualties, risks, perils, liabilities and other hazards as are required under the Loan Agreement.

(b) Beneficiary is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies maintained pursuant to this Section 2.04, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Beneficiary, instead of to Borrower and Beneficiary jointly. In the event any insurance company fails to disburse directly and solely to Beneficiary but disburses instead either solely to Borrower or to Borrower and Beneficiary jointly, Borrower agrees immediately to endorse and transfer such proceeds to Beneficiary. Upon the failure of Borrower to endorse and transfer such proceeds as aforesaid, Beneficiary may execute such endorsements or transfers for and in the name of Borrower and Borrower hereby irrevocably appoints Beneficiary as Borrower's agent and attorney-in-fact so to do.

(c) Article 3 of the Continuing Covenant Agreement shall govern the collection, holding and disbursement of proceeds of casualty insurance and the restoration of the Premises following a casualty.

(d) In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Premises in extinguishment or partial extinguishment of the Secured Obligations, all right, title and interest of Borrower in and to all insurance policies then in force with respect to any property encumbered by this Deed of Trust shall pass to the purchaser or to Beneficiary, as the case may be, including any right to unearned premiums, and Beneficiary is hereby irrevocably appointed by Borrower as attorney-in-fact for Borrower to assign any such policy to said purchaser or to Beneficiary, as the case may be, without accounting to Borrower for any unearned premiums thereon.

(e) TEXAS FINANCE CODE §307.052 COLLATERAL PROTECTION INSURANCE NOTICE:

(i) BORROWER IS REQUIRED TO: (A) KEEP THE PREMISES INSURED AGAINST DAMAGE IN THE AMOUNT BENEFICIARY SPECIFIES, (B) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (C) NAME BENEFICIARY AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS;

(ii) BORROWER MUST, IF REQUIRED BY BENEFICIARY, DELIVER TO BENEFICIARY A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND

(iii) IF BORROWER FAILS TO MEET ANY REQUIREMENT LISTED IN PARAGRAPH (i) OR (ii), BENEFICIARY MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF BORROWER AT BORROWER'S EXPENSE AS AND TO THE EXTENT EXPLICITLY PERMITTED IN THE PERMANENT LOAN DOCUMENTS.

Section 2.05. Condemnation. If all or any portion of the Premises shall be damaged or taken through condemnation (which term when used in this Deed of Trust shall include any damage or taking by any governmental or quasi-governmental authority and any transfer by private sale in lieu thereof), or if any portion of the Premises shall be damaged or taken through condemnation so that the value or operation of the remaining portion of the Premises shall, in the reasonable judgment of Beneficiary, be materially diminished or impeded, then the terms of Section 3.3 of the Continuing Covenant Agreement shall apply.

Section 2.06. Care of Premises.

(a) Borrower will keep the buildings, parking areas, roads and walkways, recreational facilities, landscaping and all other improvements of any kind, if any, now or hereafter erected on the Land or any part thereof in good condition and repair, normal wear and tear excepted, will not commit or suffer any waste and will not do or suffer to be done anything which would or could increase the risk of fire or other hazard to the Premises or any other part thereof or which would or could result in the cancellation of any insurance policy carried with respect to the Premises. Borrower will manage the Premises or cause the Premises to be managed in a professional manner.

(b) Except as otherwise expressly permitted in the Loan Agreement, no part of the Premises, including, but not limited to, any building, structure, parking lot, driveway, landscape scheme, timber or other ground improvement, equipment or other property, now or hereafter subjected to the security title, lien of or security interest under this Deed of Trust, shall be removed, demolished, or materially altered without the prior written consent of Beneficiary, which shall not be unreasonably withheld, delayed or conditioned, except for the replacement of obsolete or worn out assets in the normal course of Borrower's business with items of equal value to the original.

(c) If the Premises or any part thereof is damaged by fire or other cause, Borrower will give immediate written notice thereof to Beneficiary.

(d) The Borrower shall pay or cause to be paid prior to delinquency all utility charges incurred by the Borrower for the benefit of the Premises or which may become a charge or lien against the Premises for gas, electricity, water or sewer services furnished to the Premises and all other assessments or charges of a similar nature, whether public or private, affecting or related to the Premises or any portion thereof, whether or not such taxes, assessments or charges are or may become liens thereon. The Borrower may contest any such change in good faith and by appropriate proceedings promptly initiated and diligently conducted if (i) such proceedings do not in the reasonable opinion of the Beneficiary involve the risk of the sale, forfeiture or loss of the Premises subject to such lien or interfere with the operation of the Premises, (ii) the Borrower shall have established a reserve or made other appropriate provision as requested by and satisfactory to the Beneficiary, and (iii) any foreclosure, distraint, sale or other similar proceedings shall have been effectively stayed.

(e) Beneficiary or its representative is hereby authorized to enter upon and inspect the Premises at any time during normal business hours, upon reasonable written notice to Borrower and without unreasonable disruption to Borrower or its tenants. If an Event of Default occurs and is continuing (provided that the Beneficiary shall have no obligation to accept a cure of any Event of Default) (or prior to an Event of Default if the Beneficiary determines in its sole judgment that the same is necessary to preserve the Premises or the lien of this Deed of Trust or on any other collateral securing the Secured Obligations, the

Beneficiary in its reasonable discretion, without obligation to do so and without releasing the Borrower from any obligation, and, except as provided in the next succeeding sentences, may make any such payment, or perform any other act or take any appropriate action, including, without limitation, entry on the Premises and performance of work thereon, or direct the Beneficiary to do the same in such manner and to such extent as it may deem necessary to protect the security hereof. The Beneficiary shall use reasonable efforts to notify the Borrower prior to making any such payment or doing any such act; provided, however, that the failure to provide such notice shall not in any way affect the Borrower's obligation to reimburse the Beneficiary or the Beneficiary in accordance with this Section nor shall the Beneficiary incur any liability to the Borrower as a result of such failure. In connection therewith (without limiting its general powers, whether conferred herein, or by law), the Beneficiary shall have and is hereby given the right, but not the obligation, at any time after the occurrence and during the continuance of an Event of Default (provided that the Beneficiary shall have no obligation to accept a cure of any Event of Default) (i) to make additions, alterations, repairs and improvements to the Premises which it may consider necessary or proper to keep the Premises in good condition and repair; (ii) to appear and participate in any action or proceeding affecting or which may affect the security of this Deed of Trust or the rights or powers of the Beneficiary; (iii) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in its judgment may affect the security of this Deed of Trust or be prior or superior hereto; and (iv) in exercising such powers, to pay necessary expenses, including reasonable attorneys' fees and costs or other necessary or desirable consultants. The Borrower shall, promptly upon demand therefor by the Beneficiary, pay to the Beneficiary an amount equal to all reasonable costs and expenses incurred in connection with the exercise by the Beneficiary of the foregoing rights, including reasonable costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's, and attorneys' fees, together with interest thereon from the date of such expenditures to the date of payment at the Default Rate.

(f) Borrower will promptly comply in all material respects with and will furnish Beneficiary evidence of such compliance in form reasonably satisfactory to Beneficiary, all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Premises or any part thereof.

(g) Except as may be set forth in the Loan Agreement, if all or any part of the improvements on the Premises shall be damaged by fire or other casualty, Borrower will promptly restore such improvements to the equivalent of its original condition or to such other condition contemplated by the Loan Agreement; and if a part of the improvements shall be damaged through condemnation, Borrower will promptly restore, repair or alter the remaining portions of the Premises in a manner necessary to allow for the continued operation thereof.

(h) Except for the Tax Credit Regulatory Agreement (as defined in the Continuing Covenant Agreement) and the Regulatory Agreement (as defined in the Funding Loan Agreement), Borrower shall not initiate, join in, or consent to the granting or filing of, or to any modifications to, any private restrictive covenant, zoning ordinance, or other public or private restrictions limiting or defining the uses which may be made of the Premises or any part thereof, without the express prior written consent of Beneficiary.

Section 2.07. Leases, Contracts, Etc.

(a) As part of the consideration for the Secured Obligations, and not as additional security therefor, the Borrower hereby irrevocably, absolutely, presently, and unconditionally assigns to the Beneficiary all of the Rents and hereby gives to and confers upon the Beneficiary the right, power and authority to collect such Rents, such assignment effective only upon an Event of Default that continues beyond the expiration of all applicable notice, grace and cure periods. The Borrower irrevocably appoints the Beneficiary its true and lawful attorney-in-fact, acting at the written direction of the Beneficiary, at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue in its name or in the name of the Borrower, for all such Rents, and apply the same

to the payment of the Secured Obligations; provided, however, that the Borrower shall have and is hereby granted the right, in the form of a revocable license, to enforce payment, give satisfactions, sue for and collect such Rents (but not more than one month in advance unless the written approval of the Beneficiary has first been obtained), and to retain and enjoy the same, so long as an Event of Default shall not have occurred hereunder and be continuing (provided that the Beneficiary shall have no obligation to accept a cure of any Event of Default). The assignment of the Rents in this Article 2 is intended to be an absolute assignment from the Borrower to the Beneficiary and not merely the passing of a security interest. The Borrower and the Beneficiary further agree that, solely for the purposes of any bankruptcy of the Borrower or its general partners, during the term of this Deed of Trust, the Rents shall not constitute property of the Borrower (or of any estate of the Borrower) within the meaning of 11 U.S.C. §541, as amended from time to time. Upon the occurrence and during the continuation of an Event of Default hereunder (provided that the Beneficiary shall have no obligation to accept a cure of any Event of Default), the license granted to the Borrower in Section 2.01 shall be automatically revoked without notice. Except as provided by applicable law, the Beneficiary may, at any time without notice, upon the written direction of the Beneficiary, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Secured Obligations, enter upon and take possession of the Premises, or any part thereof, and, with or without taking possession of the Premises or any part hereof, in its own name sue for or otherwise collect such Rents (including those past due and unpaid, and all prepaid rents and all other monies which may have been or may hereafter be deposited with the Borrower by any lessee or tenant of the Borrower to secure the payment of any rent or for any services thereafter to be rendered by the Borrower for any other obligation of any tenant to the Borrower arising under any Lease). The Borrower agrees that, upon the occurrence of any Event of Default hereunder, the Borrower shall promptly deliver all such Rents and monies to the Beneficiary. The Beneficiary shall apply such Rents and monies (other than security deposits), less costs and expenses of operation and collection (including reasonable attorneys' fees whether or not suit is brought or prosecuted to judgment), at the written direction of the Beneficiary, to the payment of any Secured Obligations, in such order as the Beneficiary may determine, notwithstanding that said indebtedness or the performance of said obligation may not then be due. The collection of such Rents, or the entering upon and taking possession of the Premises, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default or be deemed or construed to make the Beneficiary a mortgagee-in-possession of the Premises or any portion thereof. Upon written demand of the Beneficiary, the Borrower shall, from time to time hereafter, execute and deliver to the Beneficiary recordable assignments of any and all Leases or other agreements relating to, or affecting the use, occupancy, management or maintenance of, or services provided to, the Premises or now or hereafter affecting the Premises or any portion thereof.

(b) Rents collected subsequent to any Event of Default shall be applied to the costs, if any, of taking possession and control of and managing the Premises and collecting such amounts, including to pay reasonable attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Premises, premiums on insurance policies, taxes, assessments and other charges on the Premises, and the costs of discharging any obligation or liability of Borrower with respect to the Leases and to the sums secured by this Deed of Trust, all in such order as Beneficiary may, in its sole discretion, determine, except as otherwise required by the Texas Assignment of Rents Act. Texas Property Code Sections 64.001, 64.002, and 64.051-64.062 shall apply to the assignment of rents and leases provided in the Deed of Trust. The assignment of the Rents in this Section is intended to be an absolute assignment from the Borrower to the Beneficiary and not merely the passing of a security interest. The Borrower and the Beneficiary further agree that, solely for the purposes of any bankruptcy of the Borrower or its general partners, during the term of this Deed of Trust, the Rents shall not constitute property of the Borrower (or of any estate of the Borrower) within the meaning of 11 U.S.C. §541, as amended from time to time. To the extent that specific terms and requirements of this Deed of Trust or any other Permanent Loan Document, conflict with the specific terms and requirements of the Texas Assignment of Rents Act, as codified in Tex. Prop. Code, Chapter 64, as the same may be amended, modified or supplemented from time to time ("TARA"), (a) to the extent such terms

and requirements of TARA may be superseded by an agreement between the parties, the specific terms and requirements of this Deed of Trust or the other Permanent Loan Documents hereby supersedes such specific terms and requirements of TARA; and (b) to the extent that such terms and requirements of TARA cannot be superseded by an agreement between the parties, the specific terms and requirements of TARA shall control, and the parties further agree that all other terms and requirements of this Deed of Trust or the other Permanent Loan Documents shall not otherwise be impaired or superseded thereby and shall remain in full force and effect.

(c) As additional collateral and further security for the Secured Obligations, to the extent assignable, Borrower does hereby assign to Beneficiary Borrower's interest in any and all franchise agreements, management contracts, construction contracts, contracts of sale, and other contracts, licenses and permits now or hereafter affecting the Premises or any part thereof, and Borrower agrees to execute and deliver to Beneficiary such additional instruments, in form and substance reasonably satisfactory to Beneficiary, as may hereafter be reasonably requested by Beneficiary further to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by Beneficiary to any franchise agreement, management contract, construction contract, contract of sale, or other contract, license or permit, or to impose upon Beneficiary any obligation with respect thereto unless and until Beneficiary shall take possession of the Premises or a receiver is appointed therefor.

(d) Except as allowed pursuant to the terms of the other Permanent Loan Documents, without first obtaining on each occasion the written approval of Beneficiary, Borrower shall not cancel or permit the cancellation of any such lease, franchise agreement, management contract, construction contract, contract of sale, or other contract, license or permit, or modify any of said instruments, or accept or permit to be made, any prepayment of any charges or fees thereunder. Borrower shall faithfully keep and perform, or cause to be kept and performed, all of the covenants, conditions and agreements contained in each of said instruments, now or hereafter existing, on the part of Borrower to be kept and performed, and shall at all times do all things necessary to compel performance by each other party to said instruments of all obligations, covenants and agreements by such other party to be performed thereunder.

(e) Except as expressly permitted in accordance with the Loan Agreement, Borrower shall not execute an assignment of the income, rents, issues or profits, or any part thereof, from the Premises, to any party other than Beneficiary, unless Beneficiary shall first consent to such assignment and unless such assignment shall expressly provide that it is subordinate to the assignment contained in this Deed of Trust and any assignment executed pursuant hereto or concerning the Secured Obligations.

(f) Borrower shall furnish to Beneficiary, within fifteen (15) days after a written request by Beneficiary to do so, a sworn statement setting forth the names of any lessees and tenants of the Premises, the terms of their respective leases, tenant contracts or rental agreements, the space occupied, and the rentals payable thereunder, and stating whether any defaults, off-sets or defenses exist under or in connection with any of said leases, tenant contracts or rental agreements.

Section 2.08. Security Agreement and Financing Statement.

(a) The Borrower hereby grants to the Beneficiary, as security for the Secured Obligations, a "security interest" (as such term is defined in the Uniform Commercial Code in the State of Texas) in all of the Borrower's right, title and interest in, to and under the following property, whether now owned or hereafter acquired or arising: (i) that portion of the Premises that constitutes personal property under the Uniform Commercial Code, (ii) any accounts, chattel paper, inventory, equipment, instruments, investment property, documents, deposit accounts, commercial tort claims, letter-of-credit rights, goods, general intangibles, money, oil, gas and other minerals before extraction, and supporting obligations (each term in this clause (ii) having the meaning given to it under the Uniform Commercial Code), (iii) all renewals,

replacements of any of the aforementioned items, or articles in substitution therefor or in addition thereto and (iv) all proceeds and products of the foregoing (said property described in clauses (i) through (iv) is hereinafter referred to collectively as the “Personal Property”). The foregoing sentence is intended to grant in favor of the Beneficiary a continuing lien and security interest in all of the Borrower’s assets. The Borrower authorizes the Beneficiary and its counsel to file UCC financing statements in form and substance satisfactory to the Beneficiary, describing the collateral as “all assets of the debtor, whether now owned or existing or hereafter acquired or arising, and all proceeds and products thereof, including, without limitation, all fixtures on the Premises” or words to that effect, and any limitations on such collateral description, notwithstanding that such collateral description may be broader in scope than the Personal Property. By executing and delivering this Deed of Trust, the Borrower has granted, in the same manner and with the same effect described in the Granting Clause hereof, to the Beneficiary, as additional security, a security interest in the Personal Property which are subject to the Uniform Commercial Code. If any Event of Default shall occur, the Beneficiary shall have, in addition to any and all other rights and remedies set forth in this Deed of Trust, and may exercise without demand, any and all rights and remedies granted to a secured party under the Uniform Commercial Code, including, but not limited to, the right to take possession of the Personal Property, or any part thereof, and the right to advertise and sell the Personal Property, or any part thereof, pursuant to and in accordance with the provisions of Section 3.06 hereof. The Borrower agrees that any notice of sale or other action intended by the Beneficiary with respect to the Personal Property, or any part thereof, shall constitute reasonable notice if it is sent to the Borrower not less than ten (10) days prior to any such sale or intended action.

(b) Borrower and Beneficiary agree that with respect to all portions of the Premises which are or will become fixtures on the Land or the improvements thereon, this Deed of Trust, upon recording in the real estate records of the county in which the Premises are located, shall constitute a “financing statement” within the meaning of the Uniform Commercial Code. The following information is provided in order that this Deed of Trust shall comply with the requirements of the Uniform Commercial Code for deeds of trust or mortgages to be effective as financing statements filed as a fixture filing: The name of the “Debtor” is the Borrower named herein and the address of the Debtor is the address of Borrower set forth in the first paragraph hereof. The name of the “Secured Party” is the Beneficiary named herein and the address of the Secured Party is the address of Beneficiary set forth in the first paragraph hereof. The collateral covered hereby is that portion of the Premises that now or hereafter constitutes fixtures. Such fixtures are related to the real property described on Exhibit A attached to this Deed of Trust and the Debtor is the record owner of the leasehold interest in such real property. The fixture filing covers all goods that are or are to become affixed to the Land or the improvements thereon. The goods are described by item or type in the granting clauses of this Deed of Trust.

(c) Borrower agrees to furnish Beneficiary with notice of any change in the name, identity, organizational structure, residence, state of incorporation, state of organization or state of formation or principal place of business or mailing address of Borrower at least thirty (30) days prior to the effective date of any such change.

(d) Unless the portions of the Premises that consist of property subject to the Uniform Commercial Code or threatens to decline in value or a type customarily sold on a recognized market, Beneficiary shall give Borrower at least three (3) days prior written notice of the time and place of any public or private sale of said collateral or other intended disposition thereof to be made, subject to the other terms of this Deed of Trust, such notice shall be mailed to Borrower at the address set forth above.

Section 2.09. Further Assurances; After-Acquired Property. At any time, and from time to time, upon reasonable request by Beneficiary, Borrower will make, execute and deliver, or cause to be made, executed and delivered, to Beneficiary and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or filed at such time and in such offices and places as

shall reasonably be required by Beneficiary, any and all such other and further deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may in, the reasonable opinion of Beneficiary, be necessary in order to effectuate, complete or perfect, or to continue and preserve (a) the obligations of Borrower under the Note, this Deed of Trust and the other Permanent Loan Documents and (b) the security title, lien and security interest created by this Deed of Trust as a first and prior lien and security interest (subject only to the Permitted Encumbrances) upon and security title in and to all of the Premises, whether now owned or hereafter acquired by Borrower. Upon any failure by Borrower so to do, Beneficiary may make, execute, record, file, re-record and/or refile any and all such deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Beneficiary the agent and attorney-in-fact of Borrower so to do. The lien of this Deed of Trust and the security title and security interest created hereby will automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Premises or any part thereof.

Section 2.10. Expenses. Borrower will pay or reimburse Beneficiary or Trustee, as the case may be, upon demand therefor, for all reasonable attorneys' fees, costs of documentary evidence, abstracts and title reports, and other costs and expenses incurred by Beneficiary or Trustee in any suit, action, legal proceeding or dispute of any kind in which Beneficiary or Trustee is made a party or appears as party plaintiff or defendant, affecting the Secured Obligations, this Deed of Trust or the interest created herein, or the Premises, including, but not limited to, the exercise of the power of sale contained in this Deed of Trust, any condemnation action involving the Premises or any action to protect the security hereof, and any such amounts paid by Beneficiary or Trustee shall be added to the Secured Obligations and shall be secured by this Deed of Trust.

Section 2.11. Estoppel Affidavits. Borrower, upon ten (10) days prior written notice, shall furnish Beneficiary a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Secured Obligations, stating whether or not, to Borrower's knowledge, any offsets or defenses exist against the Secured Obligations, or any portion thereof, and, if, to Borrower's knowledge, such offsets or defenses exist, stating in detail the specific facts relating to each such offset or defense.

Section 2.12. Subrogation. To the full extent of the Secured Obligations, Beneficiary is hereby subrogated to the liens, claims and demands, and to the rights of the owners and holders of each and every lien, claim, demand and other encumbrance on the Premises which is paid or satisfied, in whole or in part, out of the proceeds of the Secured Obligations, and the respective liens, claims, demands and other encumbrances shall be, and each of them is hereby, preserved and shall pass to and be held by Beneficiary as additional collateral and further security for the Secured Obligations, to the same extent they would have been preserved and would have been passed to and held by Beneficiary had they been duly and legally assigned, transferred, set over and delivered unto Beneficiary by assignment, notwithstanding the fact that any instrument providing public notice of the same may be satisfied and canceled of record.

Section 2.13. No Default Affidavits. If at any time during the term of the Loan, an Event of Default occurs in any one (1) instance, and even if such Event of Default is subsequently cured, at any time thereafter, at Beneficiary's request, all payments made under the Note or hereunder shall be accompanied by the affidavit of Borrower or a principal financial or accounting officer of Borrower, dated within five (5) days of the delivery of such payment to Beneficiary, swearing that s/he knows of no Event of Default, nor of any circumstances which after notice or lapse of time or both would constitute an Event of Default, which has occurred and is continuing, specifying the nature and period of existence thereof and the action Borrower has taken or proposes to take with respect thereto and, except as otherwise specified, stating that, to the knowledge of the affiant, Borrower has fulfilled all of Borrower's obligations under this Deed of Trust which are required to be fulfilled on or prior to the date of such affidavits.

Section 2.14. Due on Sale; Encumbrances; Transfers.

(a) **Generally.** Borrower hereby acknowledges to Beneficiary that the identity and expertise of Borrower were and continue to be material circumstances upon which Beneficiary has relied in connection with, and which constitute valuable consideration to Beneficiary for, the extending to Borrower of the Loan, and any change in such identity or expertise could materially impair or jeopardize the security for the repayment of the Loan granted to Beneficiary by this Deed of Trust. Borrower therefore covenants and agrees with Beneficiary, as part of the consideration for Beneficiary making the Loan to Borrower, that, unless the prior written consent and approval of Beneficiary shall have been obtained (in Beneficiary's sole and absolute discretion), and except as otherwise expressly permitted by the Financing Documents, including, without limitation, as set forth in Section 8.1 of the Continuing Covenant Agreement, (i) Borrower shall not (A) further encumber, pledge or grant a security interest in the Premises or any portion thereof or interest therein, or (B) grant, convey, sell, transfer or assign the Premises or any portion thereof or interest therein, to secure an indebtedness or otherwise, or (C) with the exception of residential lease agreements, enter into any lease, license or other agreement allowing any party to occupy all or any portion of the Premises, or grant, enter into, acquiesce in, consent to, or allow the recording of, any easement, restrictive covenant, regulatory agreement, declaration, subdivision plat or other similar instrument burdening or benefitting the Premises; and (ii) if Borrower or any entity owning a direct or indirect ownership interest in Borrower is a corporation, partnership, limited partnership, limited liability company or other entity, there shall be no encumbrance, pledge, sale, conveyance, transfer or assignment of any legal or beneficial interest whatsoever in Borrower or any such entity owning a direct or indirect ownership interest in Borrower; and (iii) without limiting the generality of the foregoing, there shall be no transfer of the interest of any general partner of Borrower (if Borrower is a limited or general partnership) or of the interest of any manager or General Partner of Borrower (if Borrower is a limited liability company) or change in the identity of any general partner or manager, as applicable, of Borrower, except as set forth in Section 2.14(b) below. The consent or approval of Beneficiary to any transaction or event described in this Section may be given or withheld by Beneficiary at its sole discretion. In the event any one or more of the covenants set forth in clauses (i), (ii) or (iii) above are violated, THEN Beneficiary, in its sole discretion, may at any time thereafter declare all of the Secured Obligations immediately due and payable.

Section 2.15. Acquisition of Collateral. Borrower shall not acquire any portion of the personal property covered by this Deed of Trust subject to any security interest, conditional sales contract, title retention arrangement or other charge or lien taking precedence over the security title, lien and security interest of this Deed of Trust.

Section 2.16. Hazardous Materials.

(a) Borrower represents, warrants and agrees that (i) neither Borrower nor, to the best knowledge of Borrower, any other person, has used or installed any Hazardous Material (as hereinafter defined) on, from or affecting the Premises (except for the storage and use of cleaning and other products used in connection with the routine maintenance or repair of the Premises in full compliance with Environmental Laws, and consumer products used by tenants of the Premises in full compliance with Environmental Laws) or received any notice from any governmental agency, entity or other person with regard to Hazardous Materials on, from or affecting the Premises; (ii) neither Borrower nor, to the best knowledge of Borrower, any other person has violated any applicable Environmental Laws (as hereinafter defined) relating to or affecting the Premises; (iii) the Premises are presently in compliance with all Environmental Laws, and there are no facts or circumstances presently existing upon or under the Premises, or relating to the Premises, which may violate any applicable Environmental Laws, and there is not now pending or, to the best knowledge of Borrower, threatened, any action, suit, investigation or proceeding against Borrower or the Premises (or against any other party relating to the Premises) seeking to enforce any right or remedy under any of the Environmental Laws; (iv) the Premises shall be kept free of Hazardous

Materials which violate applicable Environmental Laws, and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce, or process Hazardous Materials (except for the storage and use of cleaning and other products used in connection with the routine maintenance or repair of the Premises in full compliance with Environmental Laws, and consumer products used by tenants of the Premises in full compliance with Environmental Laws); (v) Borrower shall not knowingly cause or permit the installation of Hazardous Materials in, on, over or under the Premises or a Release (as hereinafter defined) of Hazardous Materials onto or from the Premises or suffer the presence of Hazardous Materials in, on, over or under the Premises except in accordance with applicable Environmental Laws; (vi) Borrower shall comply with, and ensure compliance by all other parties with, all applicable Environmental Laws relating to or affecting the Premises, and Borrower shall keep the Premises free and clear of any liens imposed pursuant to any applicable Environmental Laws, all at Borrower's sole cost and expenses; (vii) Borrower has obtained and will at all times continue to obtain and/or maintain all licenses, permits and/or other governmental or regulatory actions (collectively, the "Permits") necessary to comply with Environmental Laws and Borrower is and will continue to be and at all times remain in full compliance with the terms and provisions of the Permits; (viii) to the best knowledge of Borrower, there has been no Release of any Hazardous Materials on or from the Premises, whether or not such Release emanated from the Premises or any contiguous real estate; and (ix) Borrower shall immediately give Beneficiary oral and written notice in the event that Borrower receives any notice from any governmental agency, entity, or any other party with regard to Hazardous Materials on, from or affecting the Premises and Borrower shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Premises in accordance with all applicable Environmental Laws.

(b) In the event Beneficiary has reasonable grounds to believe Borrower has violated any of the covenants, warranties, or representations contained in this Section, or that the Premises are not in compliance with the Environmental Laws, Borrower shall take such steps as Beneficiary requires by written notice to Borrower in order to confirm or deny such occurrences, including, without limitation, the preparation of environmental studies, surveys or reports. In the event that Borrower fails to take such action, Beneficiary may take such action as Beneficiary deems necessary, and the cost and expense of all such actions taken by Beneficiary, including, without limitation, Beneficiary's reasonable attorneys' fees, shall be added to the Secured Obligations.

(c) For purposes of this Deed of Trust: (i) "Hazardous Material" or "Hazardous Materials" means and includes petroleum products, flammable explosives, radioactive materials, asbestos or any material containing asbestos, polychlorinated biphenyls, and/or any hazardous, toxic or dangerous waste, substance or material defined as such or defined as a Hazardous Substance or any similar term, by, in or for the purposes of the Environmental Laws, including, without limitation Section 101(14) of CERCLA (as hereinafter defined); (ii) "Release" shall have the meaning given such term, or any similar term, in the Environmental Laws, including, without limitation, Section 101(22) of CERCLA; and (iii) "Environmental Law" or "Environmental Laws" shall mean any Super Funds or Super Lien law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials as may now or at any time hereafter be in effect, including, without limitation, the following, as same may be amended or replaced from time to time, and all regulations promulgated thereunder or in connection therewith: the Super Fund Amendments and Reauthorization Act of 1986 (SARA); The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA); The Clean Air Act (CAA); the Clean Water Act (CWA); The Toxic Substances Control Act (TSCA); the Solid Waste Disposal Act (SWDA), as amended by the Resource Conservation and Recovery Act (RCRA); and the Occupational Safety and Health Act of 1970 (OSHA). The obligations and liabilities of Borrower under this Section shall survive the foreclosure, including through exercise of the power of sale, under this Deed of Trust, the delivery of a deed in lieu of such foreclosure, the cancellation or release of record of this Deed of Trust, and/or the repayment and

cancellation of the Note. Notwithstanding anything herein to the contrary, (i) the obligations of Borrower under this Section are not secured by this Deed of Trust, and (ii) Borrower's liability under this Section shall not extend to cover the presence or release of any Hazardous Materials that occurs (a) solely and exclusively as a result of Beneficiary or Beneficiary's parties or (b) following foreclosure of this Deed of Trust or acquisition of the Premises by a Deed in Lieu of Foreclosure.

(d) In the event any inspection of the Premises or report based thereon shall reveal any Release or the presence of any Hazardous Material on the Premises, Beneficiary shall have the option, but not the obligation, to disclose the report of such Release and/or Hazardous Material to the proper governmental authority.

Section 2.17. Business Purpose. Borrower hereby represents, warrants and covenants that the Secured Obligations will be used to further the business purposes and business objectives of Borrower in connection with a parcel of real estate leased and operated by it in the State of Texas.

ARTICLE III

EVENTS OF DEFAULT; REMEDIES; WAIVERS

Section 3.01. Events of Default. The terms "Event of Default" or "Events of Default", wherever used in this Deed of Trust, shall mean any one or more of the following events:

(a) Failure by Borrower to pay when due any sums payable under this Deed of Trust, or Borrower's failure to pay any sums payable to any third party as required under this Deed of Trust, which failure continues for five (5) days following written notice from Beneficiary; or

(b) Failure by Borrower duly to observe or perform any term, covenant, condition or agreement of this Deed of Trust. If any such failure is not curable, such failure shall constitute an immediate Event of Default. If such failure is curable, such failure shall not constitute an Event of Default unless such failure continues for thirty (30) days after written notice from Beneficiary (or, if such failure is of a nature that it cannot reasonably be cured within such thirty (30) day period, then such cure period shall be extended by Beneficiary for such additional time as is reasonably necessary to effectuate cure provided Borrower diligently and continuously pursues such cure, which additional time shall not extend beyond sixty (60) additional days, for a total cure period of ninety (90) days); or

(c) Borrower violates Section 2.14 (Due on Sale; Encumbrances; Transfers) or Section 2.16 (Hazardous Materials), and such violation continues beyond the expiration of any notice and cure period set forth therein; or

(d) The occurrence of an Event of Default under and as defined in the Note, the Continuing Covenant Agreement, or any other Financing Document or Permanent Loan Document, beyond any applicable grace or cure period (or if "Event of Default" is not defined therein, a breach or default beyond any applicable grace or cure period); or

(e) Any warranty of Borrower contained in this Deed of Trust proves to be untrue or misleading in any material respect when made; or

(f) Should the Premises be subject to actual waste, or any part thereof be removed, demolished, or materially adversely altered so that the value of the Premises is materially diminished, except as permitted under Section 2.06; or

(g) Should any Lien (including, without limitation, any federal tax lien or claim of lien for labor or material) or Encumbrance be filed of record against Borrower or against the Premises and not be released or removed by payment or bond within thirty (30) days from date of recording; or

(h) Should a third party successfully assert the priority of a lien, security interest, mortgage or deed of trust over that of this Deed of Trust; or

(i) Should any third party accelerate any debt owed by Borrower to such third party, the acceleration of which would materially adversely affect Borrower's ability to pay when due any amounts owed to Beneficiary.

If an Event of Default occurs pursuant to this Deed of Trust for which Beneficiary is required to give notice, Beneficiary shall give Governmental Lender, Borrower, the Equity Investor, and the General Partner simultaneous written notice of the Event of Default. Beneficiary further agrees that any cure of any default made or tendered by the Equity Investor or the General Partner within the time for cure required herein shall be deemed to be a cure tendered by Borrower and shall be accepted or rejected by Beneficiary on the same basis as if made or tendered by Borrower on its own behalf.

Section 3.02. Acceleration of Maturity. If an Event of Default shall occur, then the entire Secured Obligations shall, except as expressly provided in the Permanent Loan Documents, at the option of Beneficiary, immediately become due and payable without notice or demand, time being of the essence of this provision; and no omission on the part of Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

Section 3.03. Right to Enter and Take Possession.

(a) If an Event of Default shall have occurred, Borrower, upon demand of Beneficiary, shall forthwith surrender to Beneficiary the actual possession of the Premises and if, and to the extent, permitted by law, Beneficiary itself, or by such officers or agents as it may appoint, may enter and take possession of all of the Premises without the appointment of a receiver, or an application therefor, and may exclude Borrower and its agents and employees wholly therefrom, and may have joint access with Borrower to the books, papers and accounts of Borrower. For purposes of clarification, Beneficiary and Borrower hereby agree that, if the rights granted under this Section 3.03(a) are not permitted by applicable law, Beneficiary shall not enter and take possession of the Premises pursuant to this Section 3.03(a) without a court order, appointment of a receiver or other lawful process.

(b) If Borrower shall for any reason fail to surrender or deliver the Premises or any part thereof after such demand by Beneficiary, Beneficiary may obtain a judgment or decree conferring upon Beneficiary the right to immediate possession or requiring Borrower to deliver immediate possession of the Premises to Beneficiary. Borrower will pay to Beneficiary, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Beneficiary, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Secured Obligations and shall be secured by this Deed of Trust.

(c) Upon every such entering upon or taking of possession, Beneficiary may hold, store, use, operate, manage and control the Premises and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and complete any incomplete construction and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Premises insured; (iii) manage and operate the Premises and exercise all the rights and powers of Borrower to the same extent as Borrower could in its own name or otherwise act with respect to the same; and (iv) enter into any and all

agreements with respect to the exercise by others of any of the powers herein granted to Beneficiary, all as Beneficiary from time to time may determine to be in its best interest. Beneficiary may collect and receive all the income, rents, issues, profits and revenues from the Premises, including those past due as well as those accruing thereafter, and Beneficiary may apply any moneys and proceeds received by Beneficiary, in whatever order or priority Beneficiary in its sole discretion may determine, to the payment of (A) all expenses of taking, holding, managing and operating the Premises (including compensation for the services of all persons employed for such purposes); (B) the cost of such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other similar charges as Beneficiary may at its option pay; (E) other proper charges upon the Premises or any part thereof; (F) the reasonable compensation, expenses and disbursements of the attorneys and agents of Beneficiary; (G) accrued interest; (H) deposits required to be paid under this Deed of Trust; or (I) overdue installments of principal. Anything in this Section 3.03 to the contrary notwithstanding, Beneficiary shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as the result of any exercise by Beneficiary of its rights under this Deed of Trust, and Beneficiary shall be liable to account only for the rents, incomes, issues, profits and revenues actually received by Beneficiary.

(d) In the event that all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Deed of Trust shall be paid and all Events of Default shall be cured, and as a result thereof Beneficiary surrenders possession of the Premises to Borrower, the same right of taking possession shall continue to exist if any subsequent Event of Default shall occur.

Section 3.04. Performance by Beneficiary. If Borrower shall fail to pay, perform or observe any term, covenant or condition of this Deed of Trust which constitutes an Event of Default after applicable notice and cure periods have expired, Beneficiary may, at its option, pay, perform or observe the same, and all payments made or reasonable costs or expenses incurred by Beneficiary in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Borrower to Beneficiary with interest thereon at the Default Rate provided in the Note. Beneficiary shall be the sole judge of the necessity for any such actions and of the amounts to be paid. If an Event of Default occurs, Beneficiary is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Borrower or any person in possession holding under Borrower.

Section 3.05. Receiver. If an Event of Default shall have occurred, Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the adequacy or value of any security for the Secured Obligations or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Premises and to collect and apply the incomes, rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the State of Texas. Borrower will pay to Beneficiary upon demand all expenses actually incurred, including receiver's fees, reasonable attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this Section 3.05, and any such amounts paid by Beneficiary shall be added to the Secured Obligations and shall be secured by this Deed of Trust.

Section 3.06. Enforcement.

(a) If an Event of Default shall have occurred, Beneficiary may require the Trustee to sell all or part of the Premises at public auction to the highest bidder for cash at the county courthouse of the county in Texas in which the Premises or any part thereof is situated, or, if the Premises is located in more than one county, such sale may be made at the courthouse in any county in which the Premises is situated. After notice of the time, place and terms of sale (including the earliest time at which such sale shall occur) and

of the property to be sold shall have been given in the manner hereinafter described, the sale may take place between the hours of 10:00 o'clock a.m. and 4:00 o'clock p.m. on the first Tuesday of the month designated in such notice at the area of the courthouse properly designated for such sales by the commissioners court of the specified county (or, if no area is so designated, at such other area in the courthouse as may be provided in the notice of sale hereinafter described). If required by applicable law, the sale shall begin within three (3) hours after the time designated in the notice of sale as the earliest time at which the sale shall occur. Notice of a sale of all or part of the Premises by the Trustee shall be given by posting written notice thereof at the courthouse door (or other area in the courthouse as may be designated for such public notices) of the county in which the sale is to be made, and by filing a copy of the notice in the office of the county clerk of the county in which the sale is to be made, at least twenty one (21) days preceding the date of the sale, and if the property to be sold is in more than one county a notice shall be posted at the courthouse door (or other area in the courthouse as may be designated for such public notices) and filed with the county clerk of each county in which the property to be sold is situated. In addition, Beneficiary shall, at least twenty-one (21) days preceding the date of sale, serve written notice of the proposed sale by certified mail on Borrower and each debtor obligated to pay the debt secured hereby according to the records of Beneficiary. Service of such notice shall be completed upon deposit of the notice, with the proper postage paid, properly addressed to such debtor at the most recent address as shown by the records of Beneficiary, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service. Any notice that is required or permitted to be given to Borrower may be addressed to Borrower at Borrower's address as stated herein. Any notice that is to be given by certified mail to any other debtor may, if no address for such other debtor is shown by the records of Beneficiary, be addressed to such other debtor at the address of Borrower as is shown by the records of Beneficiary. Trustee may sell all or any portion of the Premises, together or in lots or parcels, and may execute and deliver to the purchaser or purchasers of such property good and sufficient deeds of conveyance of fee simple title with covenants of general warranty made on behalf of Borrower. In no event shall Trustee be required to exhibit, present or display at any such sale any of the personalty described herein to be sold at such sale. Payment of the purchase price to Trustee shall satisfy the obligation of the purchaser at such sale therefor, and such purchaser shall not be responsible for the application thereof. The sale or sales by Trustee of less than the whole of the Premises shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Premises shall be sold; and if the proceeds of such sale or sales of less than the whole of the Premises shall be less than the aggregate of the Secured Obligations and the expenses thereof, this Deed of Trust and the lien, security interest and assignment hereof shall remain in full force and effect as to the unsold portion of the Premises just as though no sale or sales had been made; provided, however, that Borrower shall never have any right to require the sale or sales of less than the whole of the Premises, but Beneficiary shall have the right, at its sole election, to request Trustee to sell less than the whole of the Premises. Notwithstanding the foregoing provisions of this paragraph, any sale and notice of any sale that complies with the requirements of the applicable laws of the State of Texas in effect at the time of such sale shall satisfy the requirements of this Deed of Trust. If Beneficiary so elects, Beneficiary may sell the Personal Property covered by this Deed of Trust at one or more separate sales in any manner permitted by the Texas Uniform Commercial Code, and one or more exercises of the powers herein granted shall not extinguish nor exhaust such powers, until the entire Premises are sold or the Secured Obligations is paid in full. With respect to any notices required or permitted under the Uniform Commercial Code, Borrower agrees that five (5) days' prior written notice shall be deemed commercially reasonable. If the Secured Obligations is now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of leases or other Deed of Trusts, Beneficiary may at its option exhaust the remedies granted under any of said Deed of Trusts either concurrently or independently, and in such order as Beneficiary may determine.

Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of sale, of Section 51.002 of the Texas Property Code, or, if and to the extent such statute is not then in

force, with the applicable requirements, at the time of the sale, of the successor statute or statutes, if any, governing sales of Texas real property under powers of sale conferred by deeds of trust. Notwithstanding anything herein to the contrary, service of such notice of sale pursuant to Section 51.002(b)(3) of the Texas Property Code shall be completed upon deposit of a copy of the notice, enclosed in a postpaid certified mail wrapper, properly addressed to Borrower and each other debtor entitled to notice of such sale pursuant to Section 51.002 of the Texas Property Code, at such debtor's last known address as determined pursuant to Sections 51.0001(2) and 51.0021 of the Texas Property Code, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service of notice of sale to each debtor was completed shall be prima facie evidence of the fact of service. In this respect and to the full extent it may legally do so, Borrower also expressly covenants, stipulates, and agrees that: (i) the address of Borrower set out in the first paragraph of this Deed of Trust shall be deemed and considered conclusively to be and remain at all times the most recent address of all debtors obligated to pay the Secured Obligations as shown by the records of Beneficiary, provided such address may be changed to some other address within the United States of America from time to time only by express written notice of change thereof signed by all debtors then obligated to pay such indebtedness and actually delivered to and received by Beneficiary at its address for notices then applicable under this Deed of Trust, (ii) the records of Beneficiary (and its mortgage servicer for the Secured Obligations) shall not be deemed to reflect any change in the name or identity of the debtors obligated to pay the Secured Obligations (to whom notice of a proposed sale shall be required to be mailed as provided for above) unless and until express written notice of such change signed by all debtors obligated to pay such indebtedness shall have been actually delivered to and received by Beneficiary at its address for notices then applicable under this Deed of Trust, and it is Borrower's obligation to confirm that Beneficiary has received any change of notice sent by it pursuant to Section 51.0021 of the Texas Property Code, and (iii) no notice of such sale or sales other than the notices hereinabove provided shall be required to be given to Borrower or any other persons, and any other notice requirement is expressly waived, other than the posting and filing of a duplicate copy of such notice of sale pursuant to Sections 51.002(b)(1) and (2) of the Texas Property Code.

In the event an interest in any of the Premises is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale, Borrower agrees as follows: Notwithstanding the provisions of Sections 51.003, 51.004, and 51.005 of the Texas Property Code (as the same may be amended from time to time), and to the extent permitted by law, Borrower agrees that Beneficiary shall be entitled to seek a deficiency judgment from Borrower and any other party owing on the Secured Obligations equal to the difference between the amount owing on the Secured Obligations and the amount for which the Premises was sold pursuant to judicial or nonjudicial foreclosure sale. Borrower expressly recognizes that this section constitutes a waiver of the above-cited provisions of the Texas Property Code which would otherwise permit Borrower and other persons against whom recovery of deficiencies is sought to present competent evidence of fair market value of the Premises as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Borrower further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Premises for purposes of calculating deficiencies owed by Borrower and others against whom recovery of a deficiency is sought. Alternatively, in the event the waiver provided for in this section is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Premises sold as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 or 51.005 of the Texas Property Code: (a) the Premises shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Premises will be repaired or improved in any manner before a resale of the Premises after foreclosure; (b) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Premises for cash promptly (but not later than twelve (12) months) following the foreclosure sale; (c) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Premises, including,

without limitation, brokerage commissions, title insurance, a survey of the Premises, tax prorations, attorneys' fees, and marketing costs; (d) the gross fair market value of the Premises shall be further discounted to account for any estimated holding costs associated with maintaining the Premises pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (c) above), and other maintenance, operational and ownership expenses; and (e) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Premises must be given by persons having at least five years' experience in appraising property similar to the Premises and who have conducted and prepared a complete written appraisal of the Premises taking into consideration the factors set forth above.

(b) If an Event of Default shall have occurred, Beneficiary, may in addition to and not in abrogation of the rights covered under Section 3.06(a), either with or without entry or taking possession as herein provided or otherwise, proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy (i) to enforce payment of the Note and/or the other Permanent Loan Documents or the performance of any term, covenant, conditions or agreement of this Deed of Trust or the other Permanent Loan Documents or any other right, (ii) to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property, and (iii) to pursue any other remedy available to it, all as Beneficiary at its sole discretion shall elect.

(c) Beneficiary and Trustee shall have all powers, rights and remedies under applicable law whether or not specifically or generally granted or described in this Deed of Trust. Nothing contained herein shall be construed to impair or to restrict such powers, rights and remedies or to preclude any procedures or process otherwise available to holders of mortgages or beneficiaries under deeds of trust in the state in which the Land is located. Beneficiary and Trustee shall be entitled to enforce the payment and performance of the Secured Obligations and to exercise all rights and powers under this Deed of Trust or under the other Permanent Loan Documents or any other agreement or any laws now or hereafter in force, notwithstanding the fact that some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by deed of trust, mortgage, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or other powers contained herein, shall prejudice or in any manner affect Beneficiary's or Trustee's right to realize upon or enforce any other rights or security now or hereafter held by Beneficiary. Beneficiary shall be entitled to enforce this Deed of Trust and any other rights or security now or hereafter held by Beneficiary in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Beneficiary is intended to be exclusive of any other remedy contained herein or by law provided or permitted, but each shall to the extent permitted by law be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. Every power or remedy given by any of the foregoing to Beneficiary, or to which Beneficiary may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Beneficiary, and it may pursue inconsistent remedies.

Section 3.07. Purchase by Beneficiary. Upon any foreclosure sale or sales of all or any portion of the Premises under the power herein granted, Beneficiary may bid for and purchase the Premises and shall be entitled to apply all or any part of the Secured Obligations as a credit to the purchase price.

Section 3.08. Application of Proceeds of Sale. In the event of a foreclosure or a sale of all or any portion of the Premises under the power herein granted, the proceeds of said sale shall be applied, first to pay the reasonable expenses of Trustee and a reasonable Trustee's fee or commission (not to exceed 5% of the proceeds of said sale or sums so received), and thereafter, in whatever order Beneficiary in its sole discretion may decide, to the expenses of such sale and of all proceedings in connection therewith, including reasonable attorneys' fees, to insurance premiums, liens, assessments, taxes and charges including utility charges advanced by Beneficiary, to payment of the outstanding principal balance of the Secured

Obligations, or to the accrued interest on all of the foregoing; and the remainder, if any, shall be paid to Borrower, or to the person or entity lawfully entitled thereto.

Section 3.09. Borrower as Tenant Holding Over. In the event of any such foreclosure sale or sales under power herein, Borrower shall be deemed a tenant at sufferance and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants at sufferance.

Section 3.10. Waiver of Appraisalment, Valuation, etc. Borrower agrees, to the full extent permitted by law, that in case of an Event of Default hereunder, neither Borrower nor anyone claiming through or under Borrower will set up, claim or seek to take advantage of any moratorium, reinstatement, forbearance, appraisalment, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, or the absolute sale of the Premises, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Borrower, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the lien, security title and security interest of this Deed of Trust marshaled upon any foreclosure or sale under the power herein granted. Borrower expressly waives and relinquishes any right or remedy which it may have or be able to assert by reason of the provisions of Chapter 43 and Section 17.001 of the Texas Civil Practice and Remedies Code and Texas Rule of Civil Procedure 31, including without limitation, notice, discharge, levy and subrogation, and Chapter 34 of the Business and Commerce Code of the State of Texas, pertaining to the rights and remedies of sureties. Borrower further waives, to the extent permitted by law, the benefit of all laws now existing or that hereafter may be enacted providing for (a) any appraisalment before sale of any portion of the Premises, commonly known as Appraisalment Laws, and (b) the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement of the collection of the debt secured hereby or creating or extending a period of redemption from any sale made in collection of said debt, commonly known as Stay Laws and Redemption Laws.

Section 3.11. Leases. Beneficiary, at its option, is authorized to direct Trustee to foreclose this Deed of Trust subject to the right of any tenants of the Premises, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Borrower, a defense to any proceedings instituted by Beneficiary or Trustee to collect the Secured Obligations.

Section 3.12. Discontinuance of Proceedings. In case Beneficiary or Trustee shall have proceeded to enforce any right, power or remedy under this Deed of Trust by foreclosure, entry or otherwise, and such proceeding shall have been withdrawn, discontinued or abandoned for any reason, or shall have been determined adversely to Beneficiary or Trustee, then in every such case, (a) all rights, powers and remedies of Beneficiary and Trustee shall continue as if no such proceeding had been taken, (b) each and every Event of Default declared or occurring prior to or subsequent to such withdrawal, discontinuance or abandonment shall and shall be deemed to be a continuing Event of Default, and (c) neither this Deed of Trust, nor the other Permanent Loan Documents, nor the Secured Obligations, nor any other instrument concerned therewith, shall be or shall be deemed to have been reinstated or otherwise affected by such proceeding or the withdrawal, discontinuance or abandonment thereof; and Borrower hereby expressly waives the benefit of any statute or rule of law now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the above.

Section 3.13. Remedies Cumulative. No right, power or remedy conferred upon or reserved to Beneficiary or Trustee by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition

to any other right, power and remedy given hereunder or now or hereafter existing at law, in equity or by statute.

Section 3.14. Waiver.

(a) No delay or omission by Beneficiary, Trustee or by any holder of the Note to exercise any right, power or remedy accruing upon any breach or Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such breach or Event of Default, or acquiescence therein, and every right, power and remedy given by this Deed of Trust to Beneficiary and Trustee may be exercised from time to time and as often as may be deemed expedient by Beneficiary. No consent or waiver, expressed or implied, by Beneficiary to or of any breach or Event of Default by Borrower in the performance of the obligations of Borrower hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or Event of Default in the performance of the same or any other obligations of Borrower hereunder. Failure on the part of Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Beneficiary of its rights hereunder or impair any rights, powers or remedies of Beneficiary or Trustee hereunder.

(b) No act or omission by Beneficiary or Trustee shall release, discharge, modify, change or otherwise affect the original liability under the Note, this Deed of Trust, any other Permanent Loan Document or any other obligation of Borrower or any subsequent purchaser of the Premises or any part thereof, or any maker, co-signer, endorser, surety or guarantor, or preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in the event of any Event of Default then made or of any subsequent Event of Default, or alter the lien, security title and security interest of this Deed of Trust except as expressly provided in an instrument or instruments executed by Beneficiary. Without limiting the generality of the foregoing, Beneficiary may (i) grant forbearance or an extension of time for the payment of all or any portion of the Secured Obligations; (ii) take other or additional security for the payment of the Secured Obligations; (iii) waive or fail to exercise any right granted hereunder or in the Note; (iv) release any part of the Premises from the security interest, security title or lien of this Deed of Trust or otherwise change any of the terms, covenants, conditions or agreements of the Note or this Deed of Trust; (v) consent to the filing of any map, plat or replat affecting the Premises; (vi) consent to the granting of any easement or other right affecting the Premises; (vii) make or consent to any agreement subordinating the security interest, security title or lien hereof; or (viii) take or omit to take any action whatsoever with respect to the Note, this Deed of Trust, the other Permanent Loan Documents, the Premises or any document or instrument evidencing, securing or in any way related to the Secured Obligations; all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Beneficiary or Trustee from exercising any such right, power or privilege or affecting the security interest, security title or lien of this Deed of Trust. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Premises, Beneficiary and Trustee, without notice, are hereby authorized and empowered to deal with any such vendee or transferee with reference to the Premises or the Secured Obligations, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing and/or discharging any liabilities, obligations or undertakings; provided that the foregoing provisions of this sentence are not intended to constitute Beneficiary's consent to or approval of any such sale or transfer of all or any part of the Premises.

Section 3.15. Suits to Protect the Premises. Beneficiary shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Premises by any acts which may be unlawful or constitute an Event of Default under this Deed of Trust, (b) to preserve or protect its interest in the Premises and in the incomes, rents, issues, profits and revenues arising therefrom, and/or (c) to restrain the enforcement of or compliance with any legislation or other

governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Beneficiary.

Section 3.16. Proof of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower, its creditors or its property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claim of Beneficiary allowed in such proceedings for the entire amount of the Secured Obligations at the date of the institution of such proceedings and for any additional amount of the Secured Obligations after such date.

Section 3.17. Representations and Warranties of Borrower. The Borrower represents and warrants to the Beneficiary as follows:

(a) Borrower is the holder of a leasehold interest in the Land and the owner of the Improvements thereon, and the holder of a leasehold interest of the remainder of the Premises free and clear of any lien, security interest, charge or encumbrance, except for the lien and charge of this Deed of Trust and the Permitted Encumbrances and will warrant and defend title to the Premises against all claims and demands (subject to the Permitted Encumbrances).

(b) The Borrower has good, right and lawful authority to encumber the Premises with and grant the lien and charge created by this Deed of Trust, and the execution, delivery and performance by the Borrower of this Deed of Trust have been duly authorized by all necessary parties and do not and will not (i) violate the partnership agreement, articles of incorporation, charter or by-laws of the Borrower or any direct or indirect constituent partner of the Borrower or any provision of any law, rule or regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Borrower, or (ii) result in a breach of or constitute a default under any material indenture or loan or credit agreement or any other material agreement, lease or instrument to which the Borrower is a party or by which the Borrower or its properties may be bound or affected. The Borrower will warrant and defend its title to the Premises against claims of all persons and entities whomsoever (other than Permitted Encumbrances), and the Borrower will maintain and preserve the lien and charge of this Deed of Trust so long as any of the Secured Obligations are outstanding.

(c) No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body, other than the recordation of this Deed of Trust in the official records of the city, town or county in which the Premises is located, is required (i) for the grant by the Borrower of the lien created hereby or for the execution, delivery and performance by the Borrower of this Deed of Trust, or (ii) for the perfection of the security interests granted hereunder or the exercise by the Beneficiary of the rights and remedies conferred hereunder (except as may be required by the express terms of this Deed of Trust).

Section 3.18. WAIVER OF BORROWER'S RIGHTS. BY EXECUTION OF THIS DEED OF TRUST, BORROWER EXPRESSLY (A) ACKNOWLEDGES THE RIGHT OF BENEFICIARY TO ACCELERATE THE INDEBTEDNESS EVIDENCED BY THE NOTE AND ANY OTHER SECURED OBLIGATIONS AND THE POWER OF SALE GRANTED HEREIN ALLOWING TRUSTEE TO SELL THE PREMISES BY NON-JUDICIAL FORECLOSURE UPON AN EVENT OF DEFAULT WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS DEED OF TRUST OR APPLICABLE LAW; (B) WAIVES ANY AND ALL RIGHTS WHICH BORROWER MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES OF AMERICA (INCLUDING, WITHOUT LIMITATION, THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), THE

VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, (1) TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY BENEFICIARY OR TRUSTEE OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO BENEFICIARY OR TRUSTEE, EXCEPT SUCH NOTICE (IF ANY) AS IS SPECIALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS DEED OF TRUST AND APPLICABLE LAW, AND (2) CONCERNING THE APPLICATION, RIGHTS OR BENEFITS OF ANY STATUTE OF LIMITATION OR ANY MORATORIUM, REINSTATEMENT, MARSHALING, FORBEARANCE, APPRAISEMENT, VALUATION, STAY, EXTENSION, HOMESTEAD, EXEMPTION OR REDEMPTION LAWS; (C) ACKNOWLEDGES THAT BORROWER HAS READ THIS DEED OF TRUST AND ANY AND ALL QUESTIONS OF BORROWER REGARDING THE LEGAL EFFECT OF THIS DEED OF TRUST AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO BORROWER, AND BORROWER HAS CONSULTED WITH COUNSEL OF BORROWER'S CHOICE PRIOR TO EXECUTING THIS DEED OF TRUST; AND (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF BORROWER HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY BORROWER AS PART OF A BARGAINED-FOR LOAN TRANSACTION AND THAT THIS DEED OF TRUST IS VALID AND ENFORCEABLE BY BENEFICIARY AGAINST BORROWER IN ACCORDANCE WITH ALL THE TERMS AND CONDITIONS HEREOF. TO THE EXTENT NOW OR HEREAFTER APPLICABLE, BORROWER HEREBY WAIVES BORROWER'S RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., TEXAS BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF BORROWER'S OWN SELECTION, BORROWER VOLUNTARILY CONSENTS TO THIS WAIVER. IN FURTHERANCE OF THE FOREGOING, BORROWER REPRESENTS THAT IT HAS KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT ENABLE IT TO EVALUATE THE MERITS AND RISKS OF THE TRANSACTION THAT IS THE SUBJECT OF THIS DEED OF TRUST. BORROWER REPRESENTS THAT IT IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION IN RELATION TO BENEFICIARY. THE FOREGOING WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY BORROWER, AND BORROWER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL LICENSED IN TEXAS AND SELECTED OF ITS OWN FREE WILL IN CONNECTION WITH THE NEGOTIATIONS AND EXECUTION OF THIS DEED OF TRUST AND THIS WAIVER AND HAS HAD THE OPPORTUNITY TO DISCUSS THE FOREGOING WAIVER AND ITS MEANING WITH SUCH COUNSEL. BORROWER UNDERSTANDS THE LEGAL CONSEQUENCES OF SIGNING THIS WAIVER. THE PROVISIONS OF THIS WAIVER SHALL SURVIVE THE TERMINATION OF THIS DEED OF TRUST AND THE CLOSING.

ARTICLE IV

GROUND LEASE PROVISIONS

Section 4.01. Ground Lease Provisions.

(a) The Borrower represents that it has delivered to the Beneficiary a true, correct and complete copy of the Ground Lease, together with all amendments, supplements, modifications, assignments or transfers thereto, if any, and the Borrower represents that the Ground Lease has not been amended, supplemented, modified, assigned or transferred. The Borrower further represents that the Borrower holds the sole leasehold estate in the Land pursuant to the Ground Lease, subject to no subleases (other than those previously disclosed in writing by the Borrower to the Beneficiary).

(b) The Borrower agrees to perform all its obligations and agreements under the Ground Lease; and the Borrower agrees not to take any action or omit to take any action which would permit the termination of the Ground Lease or the leasehold interest granted thereunder. Without limiting the generality of the foregoing, the Borrower agrees, subject to any right of offset (as limited herein) under the Ground Lease: (i) to perform promptly all obligations, agreements, covenants, terms and conditions imposed upon or assumed by it under the Ground Lease; (ii) not to take any action or omit to take any action which would effect or permit the termination of the Ground Lease; and (iii) to pay, when due, all basic rent and all other payments and charges under the Ground Lease, including, without limitation, insurance, taxes and assessments.

(c) The Borrower shall not, without the prior written consent of the Beneficiary: (i) surrender the Borrower's leasehold estate and interest under the Ground Lease; (ii) terminate or cancel the Ground Lease; (iii) fail to renew or exercise any options to renew the Ground Lease; or (iv) sublease, assign or transfer all or any portion of the Borrower's leasehold estate and interest under the Ground Lease, except for leases to residential tenants in accordance with the Land Use Restriction Agreement. The Borrower shall not, without the prior written consent of the Beneficiary: (x) consent or refuse to consent to any action that the landlord under the Ground Lease desires to take under or with respect to the Ground Lease which requires the consent of the Beneficiary; (y) modify, change, supplement, alter or amend the Ground Lease, either orally or in writing; or (z) waive or release the landlord under the Ground Lease from any obligations or conditions to be performed by the Ground Lessor under the Ground Lease. Consent to one modification, alteration, amendment or sublease shall not be deemed to be a waiver of the right to require consent to other, future or successive modifications, alterations, amendments, subleases, assignments or transfers. The Borrower shall promptly deliver to the Beneficiary a true, correct and complete copy of any modification, alteration or amendment to the Ground Lease.

(d) The Borrower shall not subordinate or consent to the subordination of its interest in the Ground Lease to any mortgage, security deed, deed of trust, lease or other interest in all or any part of the Premises other than to this Deed of Trust and the Land Use Restriction Agreement, without the written consent of the Beneficiary.

(e) The Borrower shall advise the Beneficiary in writing of the receipt of any communication or notice (written or otherwise) within two (2) Business Days of receipt, (i) given by the Ground Lessor to the Borrower of any default in the performance or observance of any of the terms, covenants or conditions of the Ground Lease on the part of the Borrower, as lessee thereunder, to be performed and/or observed, or (ii) any summons, notice or legal process which may affect the validity of the Ground Lease, or the terms thereof, or which may affect either the Borrower's or the Beneficiary's interest in or possession of the Premises or any part thereof, and will contemporaneously therewith deliver to the Beneficiary a true copy of each such notice when such communication or notice is written. The Borrower will furnish to the Beneficiary, promptly upon written request, any and all information concerning the Borrower's performance of its duties and obligations under the Ground Lease. The Borrower shall deliver to the Beneficiary true and complete copies of any and all notices, agreements and other documentary evidence showing the Borrower's compliance with the terms of the Ground Lease.

(f) The Ground Lessor agrees that the Beneficiary shall be entitled, but shall not be obligated, to take all actions necessary to cure any default by the Borrower under the Ground Lease within the time provided by the terms of the Ground Lease for such purpose, or such additional time as the Beneficiary deems appropriate. Upon receipt by the Beneficiary from the Ground Lessor of any written notice of default by the Borrower under the Ground Lease, the Beneficiary may rely thereon and may, but shall not be obligated to, take any action to cure such default even though the existence of such default or the nature thereof is questioned or denied by the Borrower or by any other party. The Borrower hereby expressly grants to the Beneficiary and agrees that the Beneficiary shall have the absolute and immediate

right to enter in and upon the Premises or any part thereof to such extent and as often as the Beneficiary, in its reasonable discretion, deems necessary or desirable in order to cure any such default with respect to the Ground Lease. The Beneficiary may, but shall not be obligated to, pay and expend such sums of money as the Beneficiary in its reasonable discretion deems necessary to cure such default, and the Borrower hereby agrees to pay to the Beneficiary within five (5) days after demand, all such sums so paid and expended by the Beneficiary, together with interest thereon from the date of such payment. All sums so paid and expended by the Beneficiary and the interest thereon shall be added to and be secured by the lien of this Deed of Trust.

(g) Unless the Beneficiary shall otherwise expressly consent in writing, the fee title to the Land and the leasehold estate demised by the Ground Lease shall not merge but shall always remain separate and distinct, notwithstanding the union of such estates either in the Ground Lessor or in the Borrower, or in a third party by purchase or otherwise. If the Borrower acquires the fee title or any other estate, title or interest in the Land, or any part thereof, the lien of this Deed of Trust shall attach to, cover and be a lien upon such acquired estate, title or interest and the same shall thereupon be and become a part of the Premises with the same force and effect as if specifically encumbered herein. The Borrower agrees to execute all instruments and documents which the Beneficiary may require to ratify, confirm and further evidence the Beneficiary's lien on the acquired estate, title or interest. If the Beneficiary shall acquire such fee title and leasehold estate by foreclosure of this Deed of Trust or otherwise, then such estates shall not merge as a result of such acquisition but shall remain separate and distinct for all purposes after such acquisition unless and until the Beneficiary elects to merge such estates.

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

(i) The provisions hereof shall be deemed to be obligations of the Borrower in addition to the Borrower's obligations under the Ground Lease and shall be interpreted to the maximum extent possible consistently with the obligations of the Borrower under the Ground Lease. The inclusion in this Deed of Trust of any covenants and agreements relating to similar matters under which the Borrower is obligated under the Ground Lease shall not restrict or limit the Borrower's duties and obligations to keep and perform promptly all of its covenants, agreements and obligations under the Ground Lease.

(j) The Borrower does hereby assign, transfer, set over and deliver to the Beneficiary, for collateral purposes only, all of the Borrower's rights, title and interest in, to and under the Ground Lease. By its acceptance hereof, the Beneficiary hereby covenants and agrees that so long as there exists no Event of Default under the Permanent Loan Documents, the Borrower shall have the right to possess and enjoy the Premises, subject to the terms and conditions contained herein. The Beneficiary shall be liable for the obligations of the tenant arising under the Ground Lease for only the period of time during which the Beneficiary is in actual possession of the leased premises or has acquired, by foreclosure or otherwise, and is holding all of the Borrower's right, title and interest therein, and shall not be liable for any periods before or after such period.

(k) Effective upon the occurrence of an Event of Default (subject to any applicable cure periods), the Borrower hereby constitutes and appoints the Beneficiary the true and lawful attorney-in-fact, coupled with an interest, of the Borrower, empowered and authorized in the name, place and stead of the Borrower to exercise all rights of the Borrower under the Ground Lease. The foregoing appointment

is irrevocable and continuing and such rights, powers and privileges shall be exclusive in the Beneficiary, its successors and assigns, so long as any part of the Secured Obligations remains unpaid or undischarged.

(l) Upon foreclosure, the exercise of the power of sale, deed in lieu of foreclosure or the exercise of the power of sale of the leasehold estate, the Beneficiary, as a “Permitted Leasehold Mortgagee” (as defined in the Ground Lease) shall have the right to, at its option, (i) to acquire the fee and leasehold interests in the Premises by exercise of remedies set forth herein, or (ii) to acquire the leasehold interests in the Premises subject to the Ground Lease in its own name or the name of a nominee without consent or approval of the Ground Lessor. In the event that the Borrower’s leasehold interest under the Ground Lease is acquired by the Beneficiary, or its nominee or designee, then such leasehold mortgagee, or its nominee or designee, shall also have the right to further assign or sublet the leasehold interest under the Ground Lease to a third party without the consent or approval of the Ground Lessor. In addition, upon the Beneficiary’s notice to the Ground Lessor of the commencement of a foreclosure, the exercise of the power of sale, deed in lieu of foreclosure or the exercise of the power of sale of the leasehold estate, at the election of the Beneficiary, the Ground Lessor, or an affiliate thereof, shall promptly enter into an agreement of limited partnership or other agreement the form of which is reasonably satisfactory to the Ground Lessor with the Beneficiary, or its nominee or designee, to form a new tenant (the “New Tenant”) on substantially the same terms as the Partnership Agreement. Upon the Beneficiary’s foreclosure, the exercise of the power of sale, deed in lieu of foreclosure or the exercise of the power of sale of the leasehold estate, the Ground Lessor shall promptly enter into a new ground lease with the New Tenant on substantially the same terms as the Ground Lease.

(m) Foreclosure or exercise of the power of sale under this Deed of Trust upon the leasehold interest of the Borrower, or any sale hereunder, whether by judicial proceedings or by virtue of any power contained herein, or in lieu of, foreclosure or other appropriate proceeding in the nature thereof, shall not require the consent of the Ground Lessor or constitute a breach of any provision of, or a default under, the Ground Lease, and upon such foreclosure, sale or conveyance of the leasehold estate, the Ground Lessor shall recognize the purchaser or other transferee in connection therewith as the transferee (the “New Transferee”) under the Ground Lease. Following such foreclosure, sale or conveyance in lieu thereof, the New Transferee shall have the right to further assign or sublet the leasehold estate to a third party without the consent or approval of the Ground Lessor.

(n) If, upon the occurrence of an Event of Default, the Beneficiary or its designee shall acquire or obtain a new Ground Lease covering any portion of the property covered by the Ground Lease (a “New Ground Lease”), then the Borrower shall have no right, title or interest whatsoever in or to such New Ground Lease, or any proceeds or income arising from the estate arising under such New Ground Lease, including from any sale or other disposition thereof. The Beneficiary or its designee shall hold such New Ground Lease free and clear of any right or claim of Borrower.

(o) If there shall be filed by or against the Borrower a petition under the United States Bankruptcy Code, Title 11 of the United States Code (the “Bankruptcy Code”), then the lien of this Deed of Trust shall attach to all of the Borrower’s rights and remedies at any time arising under or pursuant to the Bankruptcy Code, including, but not limited to, Section 365 thereof. Upon the filing of any petition by or against the Borrower under the Bankruptcy Code, the Borrower shall immediately provide copies of all pleadings and notices related thereto to the Beneficiary. The Borrower irrevocably assigns to the Beneficiary all of the Borrower’s rights to remain in possession of the Premises following the filing of any bankruptcy petition by or against the Borrower and acknowledges that the Beneficiary may file any pleading in furtherance thereof. This assignment constitutes a present, irrevocable, and unconditional assignment of the foregoing claims, rights, and remedies of the Borrower, and shall continue in effect until all of the Secured Obligations shall have been satisfied and discharged in full. Furthermore, the Borrower hereby irrevocably constitutes and appoints the Beneficiary as the Borrower’s attorney in fact for the purpose of

filing any pleading, making an appearance and prosecuting such pleadings in the court in which the initial petition was filed or any court to which the action thereon may be removed, transferred, or assigned (the “Bankruptcy Court”) that the Beneficiary determines in its sole discretion is necessary or appropriate to protect the Beneficiary’s interests in and to the Premises, including but not limited to a motion to extend any applicable time period for the filing of any motion related to the assumption of the Ground Lease. The Beneficiary may proceed in its name or in the name of Borrower in any proceeding in connection therewith.

(i) The Borrower shall not, without the prior written consent of the Beneficiary, file any motion or other pleading to reject or otherwise elect to treat the Ground Lease as terminated under Section 365 of the Bankruptcy Code. Any such motion, pleading, or election made without such prior written consent shall be void ab initio, and this Deed of Trust may be pled in bar thereof. If, notwithstanding the foregoing, the Borrower does file such a motion seeking to reject the Ground Lease under Section 365 of the Bankruptcy Code, the Borrower hereby acknowledges and agrees that, unless the Beneficiary consents in writing to such rejection, the Borrower may not reject the Ground Lease. If the Borrower, as lessee under the Ground Lease and as debtor under the Bankruptcy Code, shall desire to reject the Ground Lease pursuant to Section 365 of the Bankruptcy Code, the Borrower shall give the Beneficiary not less than thirty (30) days’ prior written notice of the date on which the Borrower intends to file a motion in or otherwise apply to the Bankruptcy Court for authority to reject the Ground Lease. In such event, the Beneficiary shall have the right, but not the obligation, to serve upon the Borrower within such thirty (30) day period a notice stating that the Beneficiary demands that the Borrower assume the Ground Lease and assign the Ground Lease to the Beneficiary or the Beneficiary’s designee pursuant to Section 365 of the Bankruptcy Code. If the Beneficiary shall serve upon the Borrower the notice described in the preceding sentence, the Borrower shall not seek to reject the Ground Lease and shall comply with the demand provided for in the preceding sentence.

(ii) If the Borrower shall desire to assume the Ground Lease, then the Borrower shall give the Beneficiary not less than thirty (30) days’ prior written notice of the date on which the Borrower intends to file a motion in, or otherwise apply to, the Bankruptcy Court for authority to assume the Ground Lease. The Borrower shall inform the Beneficiary as a part of such notice whether or not the Borrower intends to assign the Ground Lease following assumption thereof. The Beneficiary shall have the right, but not the obligation, to serve upon the Borrower within such thirty (30) day period a notice stating that the Beneficiary demands that the Borrower assume the Ground Lease and assign the Ground Lease to the Beneficiary or the Beneficiary’s designee pursuant to Section 365 of the Bankruptcy Code, and such election by the Beneficiary shall be binding upon the Borrower. Should the Borrower file a motion to assume the Ground Lease, the Beneficiary shall have the sole right to determine what terms and conditions will provide the Beneficiary with “adequate assurance of future performance,” within the meaning of Section 365 of the Bankruptcy Code.

(p) The Borrower acknowledges that pursuant to Section 365 of the Bankruptcy Code it is possible that a trustee in bankruptcy of the Ground Lessor (or other fee owner) under the Ground Lease, or the Ground Lessor (or other fee owner) under the Ground Lease as a debtor-in-possession, could reject the Ground Lease, in which case Borrower, as tenant, would have the election described in Section 365(h) of the Bankruptcy Reform Act (which election, as it may be amended, revised or recodified from time to time, and together with any comparable right under any other state or federal law relating to bankruptcy, reorganization or other relief for debtors, whether now or hereafter in effect, is called the “Election”) to treat the Ground Lease as terminated by such rejection or, in the alternative, to remain in possession for the balance of the term of the Ground Lease and any renewal or extension thereof that is enforceable by the tenant under applicable non-bankruptcy law. In connection with an Election:

(i) The Borrower agrees not to terminate or permit termination of the Ground Lease by exercise of the Election without the prior written consent of the Beneficiary. Any such election

made without the Beneficiary's prior written consent shall be null and void and of no effect. The Borrower acknowledges that because the Ground Lease is a significant part of the Beneficiary's security for the obligations secured under this Deed of Trust, the Beneficiary does not anticipate that it would consent to termination of the Ground Lease and shall not under any circumstances be obliged to give such consent.

(ii) In order to secure the covenant made in subparagraph (p)(i) of this Section 4.01 and as security for the other obligations secured under this Deed of Trust, the Borrower hereby irrevocably assigns the Election to the Beneficiary under this Deed of Trust. The Borrower acknowledges and agrees that this assignment of the Election is one of the rights which the Beneficiary may use at any time in order to protect and preserve the other rights and interests of the Beneficiary under this Deed of Trust, since exercise of the Election in favor of terminating the Ground Lease would constitute waste hereunder. The Borrower hereby further unconditionally assigns, transfers, and sets over to the Beneficiary (i) all rights and remedies held by or granted to Borrower as Lessee under the Ground Lease, under the Bankruptcy Code or other applicable law including, but not limited to, all rights and remedies at any time arising under or pursuant to Section 365(h) or Sections 363(e) or (f) of the Bankruptcy Code and (ii) all of the Borrower's claims and rights to the payment of damages, compensation or any other claim arising from any (A) rejection of the Ground Lease by the Ground Lessor or any other fee owner of the Premises, (B) sale of the fee estate in the Land and Improvements or (C) payment of any amount or claim associated with the Ground Lease in any proceeding under the Bankruptcy Code. The Beneficiary shall have the right to proceed in its own name or in the name of the Borrower in respect to any claim, suit, action or proceeding relating to the rejection of the Ground Lease, including, without limitation, the right to file and prosecute, to the exclusion of the Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the Ground Lessor under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights, and remedies.

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

(iv) The Borrower shall, upon demand, pay to the Beneficiary all costs and expenses (including attorneys' fees and expenses) paid or incurred thereby in connection with the prosecution or conduct of any such proceedings. Any such costs or expenses not paid by the Borrower as aforesaid shall be secured by the lien of this Deed of Trust and shall be added to the principal amount of the indebtedness secured hereby. The Borrower shall not commence any action, suit, proceeding, or case, or file any application or make any motion, in respect of the Ground Lease in any such case under the Bankruptcy Code without the prior written consent of the Beneficiary (which consent may be granted or withheld in the absolute discretion of the Beneficiary). The Borrower shall promptly make, execute, acknowledge, and deliver, in form and substance satisfactory to the Beneficiary, a UCC Financing Statement (Form UCC-1), and all such additional instruments, agreements and other documents, as may at any time hereafter be required by the Beneficiary to effectuate and carry out the assignment made pursuant to this Section.

(v) If the Borrower shall seek to offset against the rent reserved in the Ground Lease the amount of any damages caused by the nonperformance by the Ground Lessor or any fee owner of the Property of any of its obligations under the Ground Lease after the rejection by the Ground Lessor or any fee owner of the Premises under the Bankruptcy Code, the Borrower shall, prior to effecting such offset, notify the Beneficiary of its intent to do so, setting forth the amounts proposed to be so offset and

the basis therefor. The Beneficiary shall have the right to object to all or any part of such offset that, in the reasonable judgment of the Beneficiary, would constitute a breach of the Ground Lease, and in the event of such objection, the Borrower shall not effect any offset of the amounts so objected to by the Beneficiary.

(vi) The Borrower further acknowledges and agrees that if the Election is exercised in favor of the Borrower remaining in possession, then Borrower's resulting right under the Ground Lease to possession and use of (and rents and profits from a portion of) the Land, as adjusted by the effect of Section 365 of the Bankruptcy Code, shall be part of the Premises and shall be subject to the lien created by this Deed of Trust. However, the Borrower acknowledges and agrees that the rights under the Ground Lease to possession and use of a portion of the Land as so adjusted is not equivalent to the leasehold interest which is the subject property at the time of execution of this Deed of Trust. Therefore, the Borrower agrees that rejection of the Ground Lease under the Bankruptcy Code by a trustee in bankruptcy of the Ground Lessor under the Ground Lease or by the Ground Lessor under the Ground Lease as a debtor-in-possession shall constitute a default under this Deed of Trust and shall entitle the Beneficiary to all rights and remedies under this Section 4.01.

(q) Borrower as Lessee under the Lease Agreement shall not file or initiate any action to sell, transfer or convey the Premises or any portion thereof free and clear of the Ground Lease pursuant to Section 363 of the Bankruptcy Code or pursuant to any plan of reorganization under Section 1123 of the Bankruptcy Code.

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 5.01. Future Advances. Until this Deed of Trust is released of record, the Beneficiary may advance or re-advance additional sums of money to the Borrower from time to time and such advances or re-advances shall become part of the Secured Obligations secured hereby to the fullest extent permitted by law.

Section 5.02. Trade Names. At the request of the Beneficiary, the Borrower shall execute a certificate in form reasonably satisfactory to the Beneficiary listing all of the trade names and fictitious business names under which the Borrower operates, or intends to operate, any portion of the Premises or any business located thereon and representing and warranting that the Borrower does business under no other trade names or fictitious business names with respect to any portion of the Premises. The Borrower shall immediately notify the Beneficiary and the Beneficiary in writing of any change in said trade names or fictitious business names, and will, upon request of the Beneficiary, execute any additional financing statements and other certificates necessary to reflect any change in said trade names or fictitious business names.

Section 5.03. Replacement of Note. Upon receipt of evidence reasonably satisfactory to Borrower of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Borrower, or in the case of any such mutilations, upon surrender and cancellation of the Note, Borrower will execute and deliver, lieu thereof, a replacement Note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in this Deed of Trust to the Note shall be deemed to refer to any such replacement Note.

Section 5.04. Rights Absolute and Unconditional. All rights of Beneficiary hereunder and all obligations of Borrower hereunder shall be absolute and unconditional and shall not be affected by (a) any lack of validity or enforceability as to any other person or any of the Permanent Loan Documents or

Financing Documents, (b) any change in the time, manner or place of payment of, or any other term of the secured obligations, (c) any amendment or waiver of any of the provisions of the Permanent Loan Documents or Financing Documents as to any other person, and (d) any exchange, release or non-perfection of any other collateral or any release, termination or waiver of any guaranty, for any of the secured obligations.

Section 5.05. Notices. All notices and communications provided for hereunder will be in writing and sent in accordance with the notice provisions of the Project Loan Agreement and Continuing Covenant Agreement. NOTWITHSTANDING THE FOREGOING, NOTICE OF FORECLOSURE SHALL BE GIVEN AND DEEMED TO BE RECEIVED AS REQUIRED BY SECTION 51.002 OF THE TEXAS PROPERTY CODE, AS AMENDED OR SUCCEEDED FROM TIME TO TIME AND SUCH NOTICES OF FORECLOSURE SHALL BE DEEMED GIVEN UPON DEPOSIT OF THE SAME IN THE U.S. MAIL, CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND NEED NOT OTHERWISE BE GIVEN AS MAY BE REQUIRED BY THE TERMS OF ANY OF THE PERMANENT LOAN DOCUMENTS.

Section 5.06. Successors and Assigns. This Deed of Trust shall inure to the benefit of Beneficiary and its successors and assigns and shall be binding upon Borrower and its successors and assigns. Borrower may not assign its rights or obligations under this Deed of Trust without the prior written consent of Beneficiary. All of Beneficiary's right, title and interest hereunder may be assigned by Beneficiary and the term "Beneficiary" as used herein includes any assignee of Beneficiary.

Section 5.07. Entire Agreement; Amendment. This Deed of Trust constitutes the complete agreement of the parties with respect to the subject matter hereof and all prior and contemporaneous understandings and agreements, oral or written, between the parties hereto, other than the Permanent Loan Documents, are merged herein. None of the terms or provisions of this Deed of Trust may be waived, altered, modified, limited or amended except by an agreement expressly referring hereto and which Borrower executes and to which Beneficiary consents in writing duly signed by Beneficiary or its authorized agent.

Section 5.08. Partial Invalidity. The unenforceability or invalidity of any provision of this Deed of Trust shall not affect the enforceability or validity of any other provision herein and any such unenforceable or invalid provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the invalidity or unenforceability of any provision of any Permanent Loan Document to any Person or circumstance shall not affect the enforceability or validity of such provision as it may apply to other Persons or circumstances.

Section 5.09. Construction. Neither this Deed of Trust nor any uncertainty or ambiguity herein shall be automatically construed or resolved against Beneficiary or Borrower, whether under any rule of construction or otherwise. On the contrary, this Deed of Trust has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of Borrower and Beneficiary.

Section 5.10. Strict Compliance. Borrower hereby covenants and agrees that it shall strictly comply with the terms and conditions of this Deed of Trust and the other Permanent Loan Documents.

Section 5.11. No Partnership or Joint Venture. Neither anything contained in this Deed of Trust nor any acts of the parties hereto shall be construed to create a partnership or joint venture of any kind between Beneficiary and Borrower, and Borrower shall indemnify Beneficiary and hold Beneficiary harmless from and against any loss, cost, expense, liability or claim arising out of any allegation that the relationship between Beneficiary and Borrower is other than that of lender and obligor. The relationship

between Borrower, on the one hand, and Beneficiary, on the other hand, is solely that of debtor and creditor, and Beneficiary does not have a fiduciary or other special relationship with Borrower, and no term or condition of this Deed of Trust or any of the Permanent Loan Documents shall be construed so as to deem the relationship between Borrower and Beneficiary to be other than that of debtor and creditor. Borrower and Beneficiary acknowledge and agree that the relationship between Borrower, on the one hand, and Beneficiary, on the other hand, arose entirely pursuant to and in accordance with the Permanent Loan Documents.

Section 5.12. No Third Party Beneficiary. This Deed of Trust is solely for the benefit of Beneficiary and its respective successors and assigns and may not be relied on by any other Person.

Section 5.13. Joint and Several Liability. To the extent more than one party executes this Deed of Trust as the Borrower, each of the parties executing the Deed of Trust as a Borrower agrees that Beneficiary, in its discretion, may (a) bring suit against all such parties jointly and severally or against any one or more of them, (b) compound or settle with any one or more of such parties for such consideration as Beneficiary may deem proper, and/or (c) release any one or more of such parties from liability hereunder, and that no such actions shall impair the rights of Beneficiary against the party or parties constituting Borrower not so sued, settled with or released.

Section 5.14. Counterparts. To the extent this Deed of Trust is executed by more than one party, this Deed of Trust may be executed in any number of counterparts, and all such counterparts shall constitute but one and the same executed and delivered document.

Section 5.15. Definitions. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

Section 5.16. Captions. The section and subsection captions contained herein are for convenience of reference only, are not a part of this Deed of Trust and shall not affect the interpretation hereof.

Section 5.17. Time of the Essence. Time is of the essence of this Deed of Trust.

Section 5.18. Governing Law, Waiver of Jury Trial and Consent to Jurisdiction.

(a) WITH RESPECT TO (1) MATTERS RELATING TO THE CREATION, TRANSFER, PERFECTION OR NATURE OF AN INTEREST IN REAL PROPERTY (INCLUDING THE PREMISES AND ALL FIXTURES), LEASES, RENTS OR OTHER PREMISES COVERED BY THIS DEED OF TRUST AND LOCATED IN THE STATE OF TEXAS (THE "TEXAS PROPERTY"), (2) PROCEDURES RELATING TO THE RECORDATION, FORECLOSURE OR ENFORCEMENT OF THIS DEED OF TRUST, AND (3) LIEN PRIORITIES AND RIGHTS OF STATUTORY LIEN CLAIMANTS IN AND TO THE TEXAS PROPERTY, INCLUDING WITH RESPECT TO MECHANICS' AND MATERIALMEN'S LIENS, THIS DEED OF TRUST SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICTS OF LAW PRINCIPLES. WITH RESPECT TO ALL OTHER PROVISIONS OF THIS DEED OF TRUST, THIS DEED OF TRUST SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICTS OF LAW PRINCIPLES.

(b) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND BY ITS ACCEPTANCE HEREOF, BENEFICIARY, EACH AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED UPON OR ARISING OUT OF THIS DEED OF TRUST, AND ALL OTHER DOCUMENTS

ENTERED INTO BY THE PARTIES HERETO IN CONNECTION HERewith. IT IS HEREBY ACKNOWLEDGED THAT THE WAIVER OF A JURY TRIAL IS A MATERIAL INDUCEMENT FOR BENEFICIARY TO MAKE THE LOAN AND BENEFICIARY TO ACT AS BENEFICIARY HEREUNDER AND THAT THE EXECUTION AND DELIVERY OF THIS DEED OF TRUST BY BORROWER AND IF APPLICABLE, BENEFICIARY, IS MADE IN RELIANCE UPON SUCH WAIVER. BORROWER AND BY ITS ACCEPTANCE HEREOF, BENEFICIARY, EACH FURTHER WARRANT AND REPRESENT THAT SUCH WAIVER HAS BEEN KNOWINGLY AND VOLUNTARILY MADE BY EACH PARTY HERETO, FOLLOWING CONSULTATION WITH THEIR RESPECTIVE LEGAL COUNSEL.

(c) The parties hereby consent to and agree that venue for any suit under this Deed of Trust or any of the Permanent Loan Documents shall be in the courts of the State sitting in the County.

(d) The covenants and waivers made pursuant to this Section shall be irrevocable and unmodifiable, whether in writing or orally, and shall be applicable to any subsequent amendments, renewals, supplements or modifications of this Deed of Trust. In the event of litigation, this Deed of Trust may be filed as a written consent to a trial by the court.

Section 5.19. Substitute Trustee. If, for any reason, Beneficiary prefers to appoint a substitute Trustee hereunder, Beneficiary may, from time to time, by written instrument, appoint one or more substitute Trustees, who shall succeed to all the estate, rights, powers, and duties of the original Trustee named herein. Such appointment may be executed by anyone acting in a representative capacity, and such appointment shall be conclusively presumed to have been executed with appropriate authority. The name and street address of such Trustee or substitute Trustee shall be disclosed on the notice of sale as required by Section 51.002 of the Texas Property Code.

Section 5.20. Indemnification of Trustee. Except for gross negligence or willful misconduct, Trustee shall not be liable for any act or omission or error of judgment. Trustee may rely on any document believed by him 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. Borrower hereby indemnifies Trustee against all liability and expenses that it may incur in the performance of his duties hereunder. WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY WITH RESPECT TO MATTERS WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF, OR ARE CLAIMED TO BE CAUSED BY OR ARISE OUT OF, THE NEGLIGENCE OR STRICT LIABILITY OF TRUSTEE. HOWEVER, SUCH INDEMNITY SHALL NOT APPLY TO THE EXTENT THAT THE SUBJECT OF THE INDEMNIFICATION IS CAUSED BY OR ARISES OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF TRUSTEE.

Section 5.21. Insurance. TEXAS FINANCE CODE SECTION 307.052 COLLATERAL PROTECTION INSURANCE NOTICE: (A) BORROWER IS REQUIRED TO: (1) KEEP THE PREMISES INSURED AGAINST DAMAGE IN THE AMOUNT SPECIFIED IN THE PERMANENT LOAN DOCUMENTS (OR TO THE EXTENT NOT SPECIFIED IN THE PERMANENT LOAN DOCUMENTS, IN THE AMOUNT BENEFICIARY SPECIFIES); (2) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (3) NAME BENEFICIARY AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS AS AND TO THE EXTENT REQUIRED UNDER THE PERMANENT LOAN DOCUMENTS; (B) BORROWER MUST, IF REQUIRED BY BENEFICIARY PURSUANT TO THE PERMANENT LOAN DOCUMENTS, DELIVER TO BENEFICIARY A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND (C) IF BORROWER FAILS TO MEET ANY REQUIREMENT LISTED IN PARAGRAPH (A) OR (B),

BENEFICIARY MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF BORROWER AT BORROWER'S EXPENSE.

Section 5.22. Texas Labor Code Liens and Wage Claims. Borrower represents and warrants that (a) no wage claim is currently pending with the Texas Workforce Commission against Borrower pursuant to Chapter 61 of the Texas Labor Code and (b) no lien exists against the Premises pursuant to Chapter 61 of the Texas Labor Code. Borrower shall not permit any lien to attach to the Premises pursuant to Chapter 61 of the Texas Labor Code. Borrower covenants and agrees to provide Beneficiary with copies of any notices or orders received by Borrower from the Texas Workforce Commission or any court in connection with any wage claim under Chapter 61 of the Texas Labor Code.

Section 5.23. Express Negligence Rule. IT IS THE EXPRESS INTENTION OF BORROWER AND BORROWER HEREBY AGREES THAT EACH AND EVERY INDEMNITY SET FORTH IN THIS DEED OF TRUST OR IN ANY OF THE OTHER LOAN DOCUMENTS WILL APPLY TO AND FULLY PROTECT EACH INDEMNIFIED PARTY EVEN THOUGH ANY CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, CAUSES OF ACTION, JUDGMENTS, PENALTIES, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES) THEN THE SUBJECT OF INDEMNIFICATION MAY HAVE BEEN CAUSED BY, ARISE OUT OF, OR ARE OTHERWISE ATTRIBUTABLE TO, DIRECTLY OR INDIRECTLY, THE NEGLIGENCE (EXCLUDING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) IN WHOLE OR IN PART OF SUCH INDEMNIFIED PARTY.

Section 5.24. Entire Agreement – Section 26.02 Notice. IN ACCORDANCE WITH SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE, THIS DEED OF TRUST AND THE LOAN AGREEMENT AND THE OTHER PERMANENT LOAN DOCUMENTS TOGETHER CONSTITUTE A WRITTEN AGREEMENT AND REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

Section 5.25. Nonrecourse. Subject to the provisions of Section 11.1 of the Continuing Covenant Agreement, in any action or proceedings brought on this Deed of Trust in which a money judgment is sought, Beneficiary will look solely to the Premises and other property described in the Financing Documents and Permanent Loan Documents (including any Rents) for payment of the Secured Obligations and, specifically and without limitation, Beneficiary agrees to waive any right to seek or obtain a deficiency judgment against Borrower or any of its managers. Notwithstanding any provisions of this Section 5.25, Beneficiary shall have full recourse to Borrower and Guarantor (as defined in the Continuing Covenant Agreement) and Borrower and Guarantor shall be personally liable to Beneficiary, as more particularly set forth in Section 11.1 of the Continuing Covenant Agreement.

Section 5.26. Security Intended. Notwithstanding any provision of this Deed of Trust to the contrary, the parties intend that this document is security for the payment and performance of the Obligations and will be a "deed of trust" as defined by the laws of the State of Texas. If, despite that intention, a court of competent jurisdiction determines that this document does not qualify as a "trust deed" or "deed of trust", then, ab initio, this instrument will be deemed a realty mortgage and will be enforceable as a realty mortgage, Borrower will be deemed a "mortgagor", Beneficiary will be deemed a "mortgagee", and Trustee will be disregarded and all references to the "Trustee" will be deemed to refer to the "mortgagee" to the extent not inconsistent with interpreting this instrument as though it were a realty mortgage. As a realty mortgage, Borrower, as mortgagor, will be deemed to have conveyed as security the Premises ab initio to the Beneficiary as mortgagee, the conveyance as a security to be void upon condition that Borrower pay and perform all of the Secured Obligations.

Section 5.27. Counterparts; Electronic Signature; Electronically Signed Document.

(a) This Deed of Trust may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

(b) For purposes hereof, “electronic signature” means a manually signed original signature that is then transmitted by electronic means; “transmitted by electronic means” means sent in the form of a facsimile or sent via the Internet as a pdf (portable document format) or other replicating image attached to an email message; and, “electronically signed document” means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature. The parties agree that the electronic signature of a party to this Deed of Trust (or any amendment or supplement of this Deed of Trust) shall be as valid as an original signature of such party and shall be effective to bind such party to this Deed of Trust. The parties agree that any electronically signed document (including this Deed of Trust) shall be deemed (i) to be “written” or “in writing,” (ii) to have been signed, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files.

Section 5.28. Beneficiary’s Rights. Notwithstanding anything herein to the contrary, (A) the applicable and necessary provisions of the Funding Loan Agreement are incorporated herein by reference, including the rights, protections, immunities and indemnities afforded Beneficiary in its capacity as Fiscal Agent thereunder; and (B) Beneficiary will be entitled to request and receive written instructions from Governmental Lender, who will direct in writing all remedies and other actions which may be exercised by Beneficiary under this Deed of Trust, and Beneficiary will have no responsibility or liability for any losses or damages of any nature that may arise from any action taken or not taken by Beneficiary in accordance with such written direction.

[remainder of page left blank intentionally]

EXHIBIT A - LEGAL DESCRIPTION OF LAND

EXHIBIT B - LIST OF TITLE EXCEPTIONS

Those certain items appearing in Schedule B, Part I of that certain lender's title insurance policy issued by _____ to Beneficiary, with an effective date equal to the date and time of recording of this Deed of Trust, insuring the lien of this Deed of Trust