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Skagit County Auditor

8/21/2006 Page 1 of 31 3:49PM

David A. Weill
Kutak Rock LLC
1650 Farnam Street
Omaha, NE 68102

LAND TITLE OF SKAGIT COUNTY

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

Grantor: JOHNNY CARINO'S OF SKAGIT VALLEY, LLC
a Washington limited liability company

Grantees: GE CAPITAL FRANCHISE FINANCE CORPORATION,
A Delaware corporation

LAWYERS TITLE INSURANCE CORPORATION,
A Virginia corporation, Trustee

Legal Description:

Abbreviated: A portion of Lot 3 and a portion of Lot 6, Cascade Mall Binding Site Plan.

Full: See Schedule A attached hereto.

Property Tax
Parcel Number: 340406-4-001-0324; and 340406-4-001-0900

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") is made as of August 18, 2006 among JOHNNY CARINO'S OF SKAGIT VALLEY, LLC, a Washington limited liability company ("Borrower") whose mailing address is 3111 Hunts Point Circle, Hunts Point, Washington 98004, LAWYERS TITLE INSURANCE CORPORATION, a Virginia corporation (or any successor or substitute appointed and designated as herein provided from time to time acting hereunder, being referred to herein as "Trustee"), whose mailing address is 1850 N. Central Ave., Suite 300, Phoenix, AZ 85004, and for the benefit of GE CAPITAL FRANCHISE FINANCE CORPORATION, a Delaware corporation ("Lender"), whose mailing address is 8377 East Hartford Drive, Scottsdale, Arizona 85255.

PRELIMINARY STATEMENT:

The capitalized terms used in this Deed of Trust, if not elsewhere defined herein, are defined as indicated in Article I. Borrower holds a leasehold interest in the Land pursuant to the Ground Lease and holds the fee simple interest in the Improvements, subject to the Permitted Exceptions. Borrower is executing this Deed of Trust for the purpose of granting the interest of Borrower in and to the Trust Estate (as defined in the Granting Clauses below) as security for the payment of the Obligations. The Trust Estate shall be and remain subject to the lien of this Deed of Trust and shall constitute security for the Obligations so long as the Obligations shall remain outstanding.

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GEFF Contract No. 29142
GEFF Property No. 8004-3109
Burlington, WA
5/26/06

GRANTING CLAUSES:

Borrower, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by these presents does hereby create a security interest in, mortgage, grant, bargain, sell, assign, pledge, give, transfer, set over and convey unto Trustee and to its successors and assigns IN TRUST WITH POWER OF SALE AND RIGHT OF ENTRY, for the benefit and security of Lender and its successors and assigns, all of Borrower's estate, right, title and interest in, to and under any and all of the following property (the "Trust Estate"), whether now owned or hereafter acquired, subject only to the Permitted Exceptions:

Ground Lease

The leasehold estate created by the Ground Lease and all other tenancy, term, right, title and interest of Borrower, of whatever character (whether vested or contingent), in and to the Land together with any and all rights, privileges and benefits, of whatever character derived by Borrower, or to which Borrower may be entitled, under or by virtue of the Ground Lease, including, without limitation: (i) any and all rights to exercise options (including, without limitation, options to purchase, renew, extend, terminate, reject or assume), give consents and receive payments, reimbursements and refunds; (ii) any and all rights to modify, change, supplement, alter, amend, terminate, cancel, sever or surrender the Ground Lease and any and all rights to release or discharge the Ground Lessor of or from the obligations, covenants, conditions and agreements by the Ground Lessor to be kept, observed or performed thereunder; (iii) any and all claims and rights to the payment of damages that may presently exist or hereafter arise under or in connection with the Ground Lease or the rights of Borrower thereunder, including, without limitation, any such claim or right that may arise as a result of the rejection or disaffirmance of the Ground Lease by the Ground Lessor, or by any trustee of the Ground Lessor, pursuant to the Code; and (iv) any and all rights, privileges and benefits, of whatever character, to which Borrower may hereafter be entitled pursuant to Section 365 of the Code, including, without limitation, all of Borrower's rights to remain in possession after rejection or disaffirmance of the Ground Lease by the Ground Lessor or by any trustee of the Ground Lessor.

Improvements, Rents and Derivative Interests

The Improvements, all rents, issues, profits, royalties, income and other benefits derived from the property comprising the Premises and the Personal Property (as defined below) or any portion thereof (collectively, the "Rents"); all leases or subleases covering the Premises and the Personal Property or any portion thereof now or hereafter existing or entered into (collectively, "Leases" and individually, a "Lease"), including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature and all guaranties relating to the Leases; all options to purchase or lease the Premises and the Personal Property or any portion thereof or interest therein, and any greater estate in the Premises and the Personal Property or any portion thereof; all interests, estate or other claims, both in law and in equity, with respect to the Premises and the Personal Property or any portion thereof; all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; all land lying within the right-of-way of any street, open or proposed, adjoining the Premises and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Premises;

Personal Property

All tangible personal property now or at any time hereafter located on or at the Premises or used in connection therewith, including, without limitation, all machinery, appliances, furniture, equipment and inventory (the "Personal Property");

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Intangibles

To the extent assignable, all existing and future accounts, contract rights, including, without limitation, with respect to equipment leases, general intangibles, files, books of account, agreements, franchise, license and/or area development agreements, distributor agreements, Indemnity Agreements, permits, licenses and certificates necessary or desirable in connection with the acquisition, ownership, leasing, construction, operation, servicing or management of the property comprising the Premises and the Personal Property or any portion thereof, whether now existing or entered into or obtained after the date hereof, including, without limitation, all construction contracts, architect agreements, plans, specifications, drawings, permits, licenses, agreements, approvals, consents and warranties now or hereafter relating to the construction of the Improvements and all amendments and modifications thereto; all existing and future names under or by which the property comprising the Premises and the Personal Property or any portion thereof may at any time be operated or known, all rights to carry on business under any such names or any variant thereof, and all existing and future telephone numbers and listings, advertising and marketing materials, trademarks and good will in any way relating to the property comprising the Premises and the Personal Property or any portion thereof; and

Claims and Awards

All the claims or demands with respect to the Premises and the Personal Property or any portion thereof, including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto, claims under any indemnity agreement, including, without limitation, any indemnity agreement executed for the benefit of the Premises and the Personal Property or any portion thereof with respect to Hazardous Materials or USTs, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises and the Personal Property, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages. The foregoing, together with any other portion of the Trust Estate as to which a security interest can be granted and perfected under the UCC, is also collectively referred to herein as Personal Property.

The Trust Estate shall include all products and proceeds of the foregoing property.

TO HAVE AND TO HOLD the Trust Estate hereby granted or mortgaged or intended to be granted or mortgaged, unto Trustee, and its successors in trust and assigns, upon the terms, provisions and conditions set forth herein.

THIS DEED OF TRUST SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS (the "Obligations"):

- (i) Payment of indebtedness evidenced by the Note together with all extensions, renewals, amendments and modifications thereof;
- (ii) Payment of indebtedness evidenced by the Equipment Note, together with all extensions, renewals, amendments and modifications of any thereof;
- (iii) Payment of all other indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations and covenants contained in, any Loan Document (other than the Environmental Indemnity Agreement), together with any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby or thereby; and
- (iv) Payment of all indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations and covenants contained in any Other

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Agreement, together with any other instrument given to evidence or further secure the payment and performance of any obligation secured thereby.

It is the intention of the parties hereto that the Trust Estate shall secure all of the Obligations presently or hereafter owed, and that the priority of the security interest created by this Deed of Trust for all such Obligations shall be controlled by the time of proper recording of this Deed of Trust. In addition, this Deed of Trust shall also secure unpaid balances of advances made with respect to the Trust Estate for the payment of taxes, assessments, insurance premiums, costs or any other advances incurred for the protection of the Trust Estate, together with interest thereon until paid at the Default Rate, all as contemplated in this Deed of Trust, all of which shall constitute a part of the Obligations. This paragraph shall serve as notice to all persons who may seek or obtain a lien on the Trust Estate subsequent to the date of recording of this Deed of Trust, that until this Deed of Trust is released, any debt owed Lender by Borrower, including advances made subsequent to the recording of this Deed of Trust, shall be secured with the priority afforded this Deed of Trust as recorded.

Notwithstanding the foregoing or any other provisions of this Deed of Trust to the contrary:

(x) in the event that the Loan becomes the subject of a Securitization, Participation or Transfer, this Deed of Trust shall only secure indebtedness and obligations relating to the Loan and any other loans between any of the Borrower Parties on the one hand and any of the Lender Entities on the other hand which are part of the same Loan Pool as the Loan; and

(y) in the event that any loans between any of the Borrower Parties on the one hand and any of the Lender Entities on the other hand (other than the Loan) become the subject of a Securitization, Participation or Transfer, this Deed of Trust shall not secure any indebtedness and obligations relating to such loans unless the Loan is part of the same Loan Pool as such loans.

IT IS HEREBY COVENANTED, DECLARED AND AGREED that the Note and the other Loan Documents are to be executed, delivered and secured and that the Trust Estate is to be held and disposed of by Trustee, upon and subject to the provisions of this Deed of Trust.

ARTICLE I

DEFINED TERMS

Section 1.01. ***Incorporation of Definitions.*** Initially capitalized terms not otherwise defined in this Deed of Trust shall have the meanings set forth in that certain Loan Agreement dated as of the date of this Deed of Trust between Borrower and Lender, as the same may be amended from time to time (the "Loan Agreement").

Section 1.02. ***Additional Definitions.*** Unless the context otherwise specifies or requires, the following terms shall have the meanings specified (such definitions to be applicable equally to singular and plural nouns and verbs of any tense):

"*Amended and Restated Note*" means the Amended and Restated Note attached as an exhibit to the Loan Agreement and any amendments, extensions or modifications thereto. All references in this Deed of Trust to the Note which are applicable to the time period from and after the execution of the Amended and Restated Note shall mean the Amended and Restated Note.

"*Disbursement Agreement*" means the Disbursement Agreement dated as of the date of this Deed of Trust among Borrower, Lender and Lawyers Title Insurance Corporation, a Virginia corporation with respect to the Premises.

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"*Environmental Indemnity Agreement*" means that certain Environmental Indemnity Agreement dated as of the date of this Deed of Trust executed by Borrower for the benefit of Lender and such other parties as are identified in such agreement with respect to the Premises, as the same may be amended from time to time.

"*Equipment Note*" means the interim promissory note executed by Borrower and payable to Lender and issued pursuant to the Equipment Loan Agreement and any amendments, extensions, modifications or replacements of any thereof. The original principal balance of the Equipment Note is \$1,000,000.

"*Event of Default*" has the meaning set forth in Section 6.01.

"*Ground Lease*" means, collectively, that certain ground lease dated as of July 13, 2005 between Ground Lessor, or a predecessor-in-interest to Ground Lessor, and Borrower, or a predecessor-in-interest to Borrower, and all modifications, amendments and supplements thereto disclosed in the Ground Lease Estoppel Certificate.

"*Ground Lease Estoppel Certificate*" means that certain Lessor Estoppel Certificate and Consent delivered by Ground Lessor to Lender and Borrower in connection with the Loan.

"*Ground Lessor*" means PPR Cascade, LLC.

"*Improvements*" means all buildings, fixtures and other improvements now or hereafter located on the Land (whether or not affixed to the Land).

"*Indemnified Parties*" means Lender, Trustee and any person or entity who is or will have been involved in the origination of the Loan, any person or entity who is or will have been involved in the servicing of the Loan, any person or entity in whose name the encumbrance created by this Deed of Trust is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan (including, but not limited to, investors or prospective investors in any Securitization, Participation or Transfer, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefit of third parties), as well as the respective directors, officers, shareholders, partners, members, employees, lenders, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other person or entity who holds or acquires or will have held a participation or other full or partial interest in the Loan or the Trust Estate, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Lender's assets and business).

"*Land*" means the parcel or parcels of real estate legally described in Exhibit A attached hereto, and all rights, privileges and appurtenances therewith.

"*Lease*" and "*Leases*" has the meaning set forth in the Granting Clause.

"*Loan*" means the loan made by Lender to Borrower, which is evidenced by the Note and secured by this Deed of Trust.

"*Loan Agreement*" has the meaning set forth in Section 1.01.

"*Net Award*" has the meaning set forth in Section 4.01(b)(v).



"*Net Insurance Proceeds*" has the meaning set forth in Section 4.01(a)(iii).

"*Note*" means the promissory note dated as of even date herewith in the amount of \$1,290,000.00 executed by Borrower and payable to Lender which is secured by this Deed of Trust and any amendments, extensions or modifications thereof. Borrower and Lender shall amend and restate the Note in its entirety as of the Final Disbursement Date pursuant to the Amended and Restated Note, and all references in this Deed of Trust to the Note which are applicable to the time period from and after the execution and delivery of the Amended and Restated Note shall mean the Amended and Restated Note.

"*Obligations*" has the meaning set forth in the Granting Clause.

"*Other Agreements*" means, collectively, all agreements and instruments between, among or by (1) any of the Borrower Parties, and, or for the benefit of, (2) any of the Lender Entities, including, without limitation, promissory notes and guaranties; provided, however, the term "Other Agreements" shall not include the agreements and instruments defined in the Loan Agreement as the Loan Documents.

"*Outstanding Obligations*" has the meaning set forth in Section 4.01(b)(iv)(x)(aa).

"*Partial Taking*" has the meaning set forth in Section 4.01(b)(ii).

"*Personal Property*" has the meaning set forth in the Granting Clause.

"*Premises*" means the Land and the Improvements.

"*Rents*" has the meaning set forth in the Granting Clause.

"*Restoration*" means the restoration, replacement or rebuilding of the Premises, or any part thereof, as nearly as possible to its value, condition and character immediately prior to any damage, destruction or Taking.

"*State*" means the State in which the Premises is located.

"*Taking*" has the meaning set forth in Section 4.01(b)(i).

"*Total Taking*" has the meaning set forth in Section 4.01(b)(ii).

"*Trust Estate*" has the meaning set forth in the Granting Clause.

"*UCC*" has the meaning set forth in Section 6.02(c).

ARTICLE II

INCORPORATION OF REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

The representations, warranties and covenants of Borrower set forth in the Loan Agreement are incorporated by reference into this Deed of Trust as if stated in full in this Deed of Trust. All representations and warranties as incorporated herein shall be deemed to have been made as of the date of this Deed of Trust and all representations, warranties and covenants incorporated herein shall survive the execution and delivery of this Deed of Trust.

Additionally, Borrower represents and warrants that the Premises are not used principally for agricultural purposes.

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ARTICLE III

COVENANTS OF BORROWER

In addition to any covenants of Borrower set forth in the Loan Agreement or any other Loan Document, Borrower hereby covenants to Lender and agrees as follows until the Obligations are satisfied in full:

Section 3.01. **Recording.** Borrower shall, upon the execution and delivery hereof and thereafter from time to time, take such actions as Lender may request to cause this Deed of Trust, each supplement and amendment to such instrument and financing statements with respect thereto and each instrument of further assurance (collectively, the "Recordable Documents") to be filed, registered and recorded as may be required by law to publish notice and maintain the first lien or security interest, as applicable, hereof upon the Trust Estate and to publish notice of and protect the validity of the Recordable Documents. Borrower shall, from time to time, perform or cause to be performed any other act and shall execute or cause to be executed any and all further instruments (including financing statements, continuation statements and similar statements with respect to any of said documents) requested by Trustee for carrying out the intention of, or facilitating the performance of, this Deed of Trust. Lender shall be and is hereby irrevocably appointed the agent and attorney-in-fact of Borrower to comply therewith (including the execution, delivery and filing of such financing statements and other instruments), which appointment is coupled with an interest; provided, however, Lender shall not exercise such power of attorney unless Borrower has first failed to comply with this Section, and provided, further, that this sentence shall not prevent any default in the observance of this Section from constituting an Event of Default. To the extent permitted by law, Borrower shall pay or cause to be paid recording taxes and fees incident thereto and all expenses, taxes and other governmental charges incident to or in connection with the preparation, execution, delivery or acknowledgment of the Recordable Documents, any instruments of further assurance and the Note.

Section 3.02. **Use; Maintenance and Repair; Ground Lease; Leases.** (a) The Trust Estate shall be used solely for the operation of a Permitted Concept in accordance with the Franchise Agreement and for no other purpose. Except as set forth below, and except during periods when the Premises is untenable by reason of fire or other casualty or condemnation (provided, however, during all such periods while the Premises is untenable, Borrower shall strictly comply with the terms and conditions of Section 4.01 of this Deed of Trust), Borrower shall at all times while this Deed of Trust is in effect occupy the Trust Estate and, from and after the Completion Date, diligently operate its business on the Trust Estate. Borrower may cease diligent operation of business at the Trust Estate for a period not to exceed 90 days and may do so only once within any five-year period while this Deed of Trust is in effect. If Borrower does discontinue operation as permitted by this Section, Borrower shall (i) give written notice to Lender within 10 days after Borrower elects to cease operation, (ii) provide adequate protection and maintenance of the Trust Estate during any period of vacancy and (iii) pay all costs necessary to restore the Trust Estate to its condition on the day operation of the business ceased at such time as the Trust Estate is reopened for Borrower's business operations or other substituted use. Notwithstanding anything herein to the contrary, Borrower shall pay monthly the principal and interest due under the Note during any period in which Borrower discontinues operation.

Borrower shall not, and shall not permit any tenant to, by itself or through any lease or other type of transfer, convert the Premises to an alternative use while this Deed of Trust is in effect without Lender's consent, which consent shall not be unreasonably withheld. Lender may consider any or all of the following in determining whether to grant its consent, without being deemed to be unreasonable: (i) whether the converted use will be consistent with the highest and best use of the Trust Estate, and (ii) whether the converted use will increase Lender's risks or decrease the value of the Trust Estate.



(b) Borrower shall, (i) maintain the Trust Estate in good condition and repair, subject to reasonable and ordinary wear and tear, free from actual or constructive waste, (ii) operate, remodel, update and modernize the Trust Estate in accordance with those standards adopted from time to time by Franchisor on a system-wide basis for Permitted Concepts, with such remodeling and modernizing being undertaken in accordance with Franchisor's system-wide timing schedules for such activities, and (iii) pay all operating costs of the Premises in the ordinary course of business. Borrower shall not do or allow any tenant or other user of the Premises to do any act that (1) materially increase the dangers to human health or the environment, (2) poses an unreasonable risk of harm to any person or entity (whether on or off the Premises), (3) impairs or is reasonably likely to impair in any material respect the value of the Premises, (4) is contrary to any requirement of any insurer, or (5) violates in any material respect any covenant, condition, agreement or easement applicable to the Premises.

(c) Borrower shall (i) fulfill, perform and observe in all respects each and every condition and covenant of Borrower contained in the Ground Lease; (ii) give prompt notice to Lender of any claim or event of default under the Ground Lease given to Borrower by Ground Lessor or given by Borrower to Ground Lessor, together with a complete copy or statement of any information submitted or referenced in support of such claim or event of default; (iii) at the sole cost and expense of Borrower, enforce the performance and observance of each and every covenant and condition of the Ground Lease to be performed or observed by any other party to the Ground Lease unless such enforcement is waived in writing by Lender; (iv) appear in and defend any action challenging the validity or enforceability of the Ground Lease; and (v) timely exercise any renewal options under the Ground Lease. The Ground Lease shall not be modified, amended, terminated, cancelled or surrendered by Borrower without Lender's prior written consent. Without limiting the generality of the foregoing, Borrower shall not, without Lender's prior written consent, elect to treat the Ground Lease or the leasehold estate created thereunder as terminated under Section 365 of the Code, after rejection or disaffirmance of the Ground Lease by the Ground Lessor (whether as debtor in possession or otherwise) or by any trustee of the Ground Lessor, and any such election made without such consent shall be void and ineffective. Borrower shall not assign, transfer, mortgage, pledge or hypothecate the Ground Lease or any interest therein to any party other than Lender, without first obtaining Lender's prior written consent. Borrower shall not waive or release any person from the observance or performance of any obligation to be performed under the terms of the Ground Lease or liability on account of any warranty given thereunder. Any modification, amendment, termination, cancellation, surrender, assignment, transfer, mortgage, pledge, hypothecation, waiver or release in violation of the foregoing shall be null and void and of no force and effect. Borrower agrees that if Borrower, at any time while the Obligations are outstanding, acquires fee title or any greater estate than it holds as of the date of this Deed of Trust in and to the Land or the Trust Estate, the lien of this Deed of Trust shall automatically attach, extend to, cover and encumber such fee title or other greater estate, and that Borrower shall execute such further documents and take such further actions as Lender may reasonably request to confirm such lien. Without limiting the foregoing sentence, unless Lender otherwise consents or elects, fee title to the Trust Estate and the leasehold interest in the Land created by the Ground Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Borrower, Lender, or any other person by purchase, operation of law, foreclosure of this Deed of Trust, sale of the Trust Estate pursuant to this Deed of Trust or otherwise.

(d) The provisions contained in this Deed of Trust shall be deemed to be obligations of Borrower in addition to Borrower's obligations as tenant with respect to similar matters under which Borrower is obligated under the Ground Lease and shall not restrict or limit Borrower's duties and obligations to keep and perform promptly all of its covenants, agreements and obligations as tenant under such Ground Lease.

(e) If the Ground Lease is cancelled or terminated, and Lender or its nominee shall acquire an interest in any new lease of the property demised thereby, Borrower shall have no right, title or interest in or to the new lease or to the leasehold estate created by such new lease.

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(f) Borrower will use its best efforts to obtain and deliver to Lender within ten (10) days after written request by Lender, an estoppel certificate from Ground Lessor setting forth (i) the name of the tenant thereunder, (ii) that the Ground Lease has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification), (iii) the rent payable under the Ground Lease, (iv) the date to which all rental charges have been paid by tenant under the Ground Lease, (v) whether there are any alleged defaults by Borrower, as tenant under the Ground Lease and, if so, setting forth the nature thereof in reasonable detail, and (vi) such other matters as Lender may reasonably request.

(g) Notwithstanding anything to the contrary contained herein, this Deed of Trust shall not constitute an assumption by Lender of the Ground Lease and Lender shall have no liability or obligation thereunder by reason of its acceptance of this Deed of Trust.

(h) IF THE GROUND LEASE REQUIRES BORROWER TO DELIVER A NOTICE TO THE GROUND LESSOR EXTENDING THE TERM OF THE GROUND LEASE, AND BORROWER FAILS TO DELIVER SUCH NOTICE AT LEAST THIRTY DAYS BEFORE THE DATE BY WHICH THE EXTENSION NOTICE MUST BE DELIVERED, OR IF NO SUCH DATE IS SET FORTH IN THE GROUND LEASE, IF BORROWER FAILS TO DELIVER SUCH NOTICE AT LEAST THIRTY DAYS BEFORE THE EXPIRATION OF THE THEN CURRENT TERM OF THE GROUND LEASE, LENDER SHALL HAVE, AND IS HEREBY GRANTED, A POWER OF ATTORNEY ON BEHALF OF BORROWER TO EXECUTE AND DELIVER SUCH EXTENSION NOTICE, IT BEING STIPULATED THAT SUCH POWER OF ATTORNEY IS COUPLED WITH AN INTEREST AND IRREVOCABLE. UPON THE REQUEST OF LENDER, BORROWER SHALL EXECUTE ANY DOCUMENTS OR INSTRUMENTS REASONABLY REQUIRED BY LENDER OR GROUND LESSOR IN ORDER TO CONFIRM THE EXISTENCE OF THE POWER OF ATTORNEY SET FORTH IN THIS SUBSECTION (H), INCLUDING, WITHOUT LIMITATION, A SEPARATE POWER OF ATTORNEY IN RECORDABLE FORM WITH RESPECT TO THE MATTERS COVERED BY THIS SUBSECTION (H). LENDER SHALL FURTHER HAVE A POWER OF ATTORNEY, IT BEING STIPULATED THAT SUCH POWER OF ATTORNEY IS COUPLED WITH AN INTEREST AND IS IRREVOCABLE, TO EXECUTE ANY AND ALL OTHER DOCUMENTS REQUIRED BY THIS SECTION 3.02, SECTION 6.10 AND SECTION 6.11 WITH RESPECT TO THE GROUND LEASE AND TO PERFORM ANY AND ALL ACTS REQUIRED THEREBY, IF BORROWER SHALL FAIL TO DO SO WITHIN FIVE (5) DAYS AFTER DEMAND BY LENDER.

(i) Borrower shall not without Lender's prior consent (i) enter into any Leases (other than the Ground Lease); (ii) modify or amend the terms of any Lease; (iii) grant any consents under any Lease, including, without limitation, any consent to an assignment of any Lease, a mortgaging of the leasehold estate created by any Lease or a subletting by the tenant under any Lease; (iv) terminate, cancel, surrender, or accept the surrender of, any Lease or waive or release any person from the observance or performance of any obligation to be performed under the terms of any Lease or liability on account of any warranty given thereunder; or (v) assign, transfer, mortgage, pledge or hypothecate any Lease or any interest therein to any party other than Lender. Any lease, modification, amendment, grant, termination, cancellation, surrender, waiver or release in violation of the foregoing provision shall be null and void and of no force and effect. Unless Lender otherwise consents or elects, Borrower's title to the Trust Estate and the leasehold interest in the Trust Estate created by any Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Borrower, Lender or any other person by purchase, operation of law, foreclosure of this Deed of Trust, sale of the Trust Estate pursuant to this Deed of Trust or otherwise.

(j) Borrower shall (i) fulfill, perform and observe in all respects each and every condition and covenant of Borrower contained in any Lease; (ii) give prompt notice to Lender of any claim or event of default under any Lease given to or by Borrower, together with a complete copy or statement of any information submitted or referenced in support of such claim or event of default; (iii) at the sole cost and

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expense of Borrower, enforce the performance and observance of each and every covenant and condition of any Lease to be performed or observed by any other party thereto, unless such enforcement is waived in writing by Lender; (iv) appear in and defend any action challenging the validity, enforceability or priority of the lien created hereby or the validity or enforceability of any Lease; and (v) hold that portion of the Rents which is sufficient to discharge all current sums due under the Note for use in the payment of such sums.

(k) The Trust Estate shall not be used principally for agricultural purposes.

Section 3.03. Alterations and Improvements. From and after the Completion Date, Borrower shall not alter the exterior, structural, plumbing or electrical elements of the Trust Estate in any manner without the consent of Lender, which consent shall not be unreasonably withheld or conditioned; provided, however, Borrower may undertake nonstructural alterations to the Trust Estate costing less than \$100,000 without Lender's consent. For purposes of this Deed of Trust, alterations to the exterior, structural, plumbing or electrical elements of the Trust Estate shall mean:

- (a) alterations which affect the foundation or "footprint" of the Improvements;
- (b) alterations which involve the structural elements of the Improvements, such as a load-bearing wall, structural beams, columns, supports or roof; or
- (c) alterations which materially affect any of the building systems, including, without limitation, the electrical systems, plumbing, HVAC and fire and safety systems.

If Lender's consent is required hereunder and Lender consents to the making of any such alterations, the same shall be made by Borrower at Borrower's sole expense by a licensed contractor and according to plans and specifications approved by Lender and subject to such other conditions as Lender shall require. Any work at any time commenced on the Trust Estate shall be prosecuted diligently to completion, shall be of good workmanship and materials and shall comply fully with all the terms of this Deed of Trust. Upon completion of any alterations for which Lender's consent is required hereunder or any Restoration, Borrower shall promptly provide Lender with (i) evidence of full payment to all laborers and materialmen contributing to the alterations, (ii) an architect's certificate certifying the alterations to have been completed in conformity with the plans and specifications, (iii) a certificate of occupancy (if the alterations are of such a nature as would require the issuance of a certificate of occupancy), and (iv) any other documents or information reasonably requested by Lender.

Section 3.04. After-Acquired Property. All right, title and interest of Borrower in and to all improvements, alterations, substitutions, restorations and replacements of, and all additions and appurtenances to, the Trust Estate, hereafter acquired by or released to Borrower, immediately upon such acquisition or release and without any further granting by Borrower, shall become part of the Trust Estate and shall be subject to the lien hereof fully, completely and with the same effect as though now owned by Borrower and specifically described in the Granting Clauses hereof. Borrower shall execute and deliver to Trustee and/or Lender any further assurances, mortgages, grants, conveyances or assignments thereof as the Trustee may reasonably require to subject the same to the lien hereof.

Section 3.05. Taxes, Assessments, Charges and Other Impositions. (a) Borrower shall do or cause to be done everything necessary to preserve the lien hereof without expense to Trustee and Lender, including, without limitation, paying and discharging or causing to be paid and discharged, whether or not payable directly by Borrower or subject to withholding at the source, (i) all taxes, assessments, levies, fees, water and sewer rents and charges and all other governmental charges, general, special, ordinary or extraordinary, and all charges for utility or communications services, which may at any time be assessed, levied or imposed upon Borrower, the Trust Estate, this Deed of Trust, the Obligations or the Rents or which may arise in respect of the occupancy, use, possession or operation

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thereof, (ii) all income, excess profits, sales, gross receipts and other taxes, duties or imposts, whether similar or not in nature, assessed, levied or imposed by any Governmental Authority on Borrower, the Trust Estate or the Rents, and (iii) all lawful claims and demands of mechanics, laborers, materialmen and others which, if unpaid, might create a lien on the Trust Estate, or on the Rents, unless Borrower shall contest the amount or validity thereof in accordance with subsection (b).

(b) Borrower may, at its own expense, contest or cause to be contested, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any item specified in subsection (a) or lien therefor, provided that (i) Borrower shall provide written notice to Lender of any contest involving more than \$10,000.00, (ii) such proceeding shall suspend the collection thereof from the Trust Estate or any interest therein, (iii) neither the Trust Estate nor any interest therein, would be in any danger of being sold, forfeited or lost by reason of such proceedings, (iv) no Event of Default has occurred and is continuing, and (v) Borrower shall have deposited with Lender adequate reserves for the payment of the taxes, together with all interest and penalties thereon, unless paid in full under protest, or Borrower shall have furnished the security as may be required in the proceeding or as may be required by Lender to insure payment of any contested taxes.

Section 3.06. **Insurance.** (a) Borrower shall maintain with respect to the Trust Estate, at its sole expense, the following types and amounts of insurance (which may be included under a blanket insurance policy if all the other terms hereof are satisfied), in addition to such other insurance as Lender may reasonably require from time to time:

(i) Insurance against loss, damage or destruction by fire and other casualty, including theft, vandalism and malicious mischief, flood (if the Premises is in a location designated by the Federal Emergency Management Administration as a Special Flood Hazard Area), boiler explosion (if there is any boiler upon the Premises), plate glass breakage, sprinkler damage (if the Premises have a sprinkler system), all matters covered by a standard extended coverage endorsement, special coverage endorsement commonly known as an "all risk" endorsement and such other risks as Lender may reasonably require, insuring the Trust Estate for not less than 100% of their full insurable replacement cost.

(ii) Commercial general liability and property damage insurance, including a products liability clause, covering Lender and Borrower against bodily injury liability, property damage liability and automobile bodily injury and property damage liability, including without limitation any liability arising out of the ownership, maintenance, repair, condition or operation of the Trust Estate or adjoining ways, streets or sidewalks and, if applicable, insurance covering Lender, against liability arising from the sale of liquor, beer or wine on the Premises. Such insurance policy or policies shall contain a broad form contractual liability endorsement under which the insurer agrees to insure Borrower's obligations under Section 8.09 hereof to the extent insurable, and a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of either Borrower or Lender because of the negligence or other acts of the other, shall be in amounts of not less than \$2,000,000.00 per injury and occurrence with respect to any insured liability, whether for personal injury or property damage, or such higher limits as Lender may reasonably require from time to time, and shall be of form and substance reasonably satisfactory to Lender.

(iii) Business income insurance equal to 100% of the principal and interest payable under the Note for a period of not less than twelve months.

(iv) State Worker's compensation insurance in the statutorily mandated limits, employer's liability insurance with limits not less than \$500,000 or such greater amount as Lender may from time to time require and such other insurance as may be necessary to comply with applicable laws.

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(b) All insurance policies shall:

(i) Provide for a waiver of subrogation by the insurer as to claims against Lender, its employees and agents and provide that such insurance cannot be unreasonably cancelled, invalidated or suspended on account of the conduct of Borrower, its officers, directors, employees or agents;

(ii) Provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by Lender and that the insurance policy shall not be brought into contribution with insurance maintained by Lender;

(iii) Contain a standard without contribution mortgage clause endorsement in favor of Lender and its successors and assigns as their interests may appear and any other lender designated by Lender;

(iv) Provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least thirty (30) days' prior written notice to Lender and to any lender covered by any standard mortgage clause endorsement;

(v) Provide that the insurer shall not have the option to restore the Premises if Lender elects to terminate this Deed of Trust in accordance with the terms hereof;

(vi) Be issued by insurance companies licensed to do business in the state in which the Premises is located and which are rated A:VIII or better by Best's Key Rating Guide or otherwise approved by Lender; and

(vii) Provide that the insurer shall not deny a claim because of the negligence of Borrower, anyone acting for Borrower or any tenant or other occupant of the Trust Estate.

It is expressly understood and agreed that the foregoing minimum limits of insurance coverage shall not limit the liability of Borrower for its acts or omissions as provided in this Deed of Trust. All liability insurance policies (with the exception of worker's compensation insurance to the extent not available under statutory law) shall designate Lender and its successors and assigns as additional insureds as their interests may appear and shall be payable as set forth in Article IV hereof. All such policies shall be written as primary policies, with deductibles not to exceed \$10,000. Any other policies, including any policy now or hereafter carried by Lender, shall serve as excess coverage. Borrower shall procure policies for all insurance for periods of not less than one year and shall provide to Lender certificates of insurance or, upon Lender's request, duplicate originals of insurance policies evidencing that insurance satisfying the requirements of this Deed of Trust is in effect at all times.

Section 3.07. Impound Account. Upon the occurrence of an Event of Default under this Deed of Trust or any other Loan Document, Lender may require Borrower to pay to Lender sums which will provide an impound account (which shall not be deemed a trust fund) for paying up to the next one year of taxes, assessments and/or insurance premiums. Upon such requirement, Lender will estimate the amounts needed for such purposes and will notify Borrower to pay the same to Lender in equal monthly installments, as nearly as practicable, in addition to all other sums due under this Deed of Trust. Should additional funds be required at any time, Borrower shall pay the same to Lender on demand. Borrower shall advise Lender of all taxes and insurance bills which are due and shall cooperate fully with Lender in assuring that the same are paid. Lender may deposit all impounded funds in accounts insured by any federal or state agency and may commingle such funds with other funds and accounts of Lender. Interest or other gains from such funds, if any, shall be the sole property of Lender. If an Event of Default shall occur subsequent to Lender requiring the establishment of an impound account pursuant to this Section, Lender may apply all impounded funds against any sums due from Borrower to Lender. Lender shall give

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to Borrower an annual accounting showing all credits and debits to and from such impounded funds received from Borrower.

Section 3.08. Advances by Trustee and Lender. Trustee and Lender may make advances to perform any of the covenants contained in this Deed of Trust on Borrower's behalf and all sums so advanced (and all sums advanced pursuant to any other provision hereof) by Trustee or Lender shall be secured hereby. Borrower shall repay on demand all sums so advanced with interest thereon at the Default Rate, such interest to be computed from and including the date of the making of such advance to and including the date of such repayment, and at Lender's election, Lender may add the amount of such advance to the principal balance of the Loan.

Section 3.09. Negative Covenants. Without limiting the terms and conditions of Section 7 of the Loan Agreement, Borrower agrees that Borrower shall not, without the prior written consent of Lender (each, a "Prohibited Transaction"), sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Trust Estate or any part thereof or permit the Trust Estate or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred, other than sales from inventory in the ordinary course of business and the replacement of obsolete Personal Property. A sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer within the meaning of this Section shall be deemed to include, but not limited to, (a) an installment sales agreement wherein Borrower agrees to sell the Trust Estate or any part thereof for a price to be paid in installments, and (b) an agreement by Borrower leasing all or any part of the Trust Estate or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Lease or any Rents.

Lender's consent to a Prohibited Transaction shall be subject to the satisfaction of such conditions as Lender shall determine in its sole discretion, including, without limitation, (i) Borrower having executed and delivered such modifications to the terms of this Deed of Trust and the other Loan Documents as Lender shall request, (ii) the Prohibited Transaction having been approved by each of the rating agencies which have issued ratings in connection with any Securitization of the Loan as well as any other rating agency selected by Lender, and (iii) the proposed transferee having assumed the Note, this Deed of Trust and the other Loan Documents (as modified pursuant to clause (i) above). In addition, any such consent shall be conditioned upon the payment by Borrower to Lender of (x) a fee equal to one percent (1%) of the then outstanding principal balance of the Note and (y) all out-of-pocket costs and expenses incurred by Lender in connection with such consent, including, without limitation, reasonable attorneys' fees. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Obligations immediately due and payable upon Borrower's sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Trust Estate without Lender's consent, as required hereunder. The provisions of this Section shall apply to every sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Trust Estate regardless of whether voluntary or not, or whether or not Lender has consented to any previous sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Trust Estate.

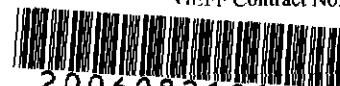
ARTICLE IV

POSSESSION, USE AND RELEASE OF THE TRUST ESTATE

Section 4.01. Casualty or Condemnation. Borrower, immediately upon obtaining knowledge of any casualty to any portion of the Trust Estate or of any proceeding or negotiation for the taking of all or any portion of the Trust Estate in condemnation or other eminent domain proceedings, shall notify Lender of such casualty, proceeding or negotiation. Any award, compensation or other payment resulting from such casualty or condemnation or eminent domain proceeding, as applicable, shall be applied as set forth below (the "Proceeds"). Trustee and Lender may participate in any condemnation or eminent domain

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proceeding, and Borrower will deliver or cause to be delivered to Trustee and Lender all instruments reasonably requested by Trustee and Lender to permit such participation.

(a) *Casualty.* (i) In the event of any material damage to or destruction of the Trust Estate or any part thereof, Borrower will promptly give written notice to Lender, generally describing the nature and extent of such damage or destruction. No damage to or destruction of the Trust Estate shall relieve Borrower of its obligation to pay any monetary sum due under the Loan Documents at the time and in the manner provided in the Loan Documents.

(ii) In the event of any damage to or destruction of the Trust Estate or any part thereof, Borrower, whether or not the Proceeds, if any, on account of such damage or destruction shall be sufficient for the purpose, at its expense, shall promptly cause the Restoration to be commenced and completed.

(iii) Proceeds received by Lender and Borrower on account of any occurrence of damage to or destruction of the Trust Estate or any part thereof, less the costs, fees and expenses incurred by Lender and Borrower in the collection thereof, including, without limitation, adjuster's fees and expenses and attorneys' fees and expenses (the "Net Insurance Proceeds"), shall be paid to (1) Borrower, if the amount of such Net Insurance Proceeds is less than \$100,000 and applied by Borrower toward the cost of the Restoration, and (2) Lender, if the amount of such Net Insurance Proceeds is \$100,000 or greater. Net Insurance Proceeds paid to Lender shall be held and disbursed by Lender, or as Lender may from time to time direct, as the Restoration progresses, to pay or reimburse Borrower for the cost of the Restoration, upon written request of Borrower accompanied by evidence, reasonably satisfactory to Lender, that (aa) the Restoration is in full compliance with all Applicable Regulations and all private restrictions and requirements, (bb) the amount requested has been paid or is then due and payable and is properly a part of such cost, (cc) there are no mechanics' or similar liens for labor or materials theretofore supplied in connection with the Restoration, (dd) if the estimated cost of the Restoration exceeds the Net Insurance Proceeds (exclusive of Proceeds received from Borrower's business income insurance), Borrower has deposited into an escrow satisfactory to Lender such excess amount, which sum will be disbursed pursuant to escrow instructions satisfactory to Lender, and (ee) the balance of such Net Insurance Proceeds, together with the funds deposited into escrow, if any, pursuant to the preceding subsection (dd), after making the payment requested will be sufficient to pay the balance of the cost of the Restoration. Upon receipt by Lender of evidence reasonably satisfactory to it that the Restoration has been completed and the cost thereof paid in full, and that there are no mechanics' or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such Net Insurance Proceeds shall be paid to Borrower. If at the time of the damage or destruction to the Trust Estate or at any time thereafter an Event of Default shall have occurred and be continuing under the Loan Documents, all Net Insurance Proceeds shall be paid to Lender, and Lender may retain and apply the Net Insurance Proceeds toward the Obligations whether or not then due and payable, in such order, priority and proportions as Lender in its discretion shall deem proper, or to cure such Event of Default, or, in Lender's discretion, Lender may pay such Net Insurance Proceeds in whole or in part to Borrower to be applied toward the cost of the Restoration. If Lender shall receive and retain Net Insurance Proceeds, the lien of this Deed of Trust shall be reduced only by the amount received and retained by Lender and actually applied by Lender in reduction of the Obligations.

(b) *Condemnation.* (i) In case of a taking of all or any part of the Trust Estate or the commencement of any proceedings or negotiations which might result in a taking, for any public or quasi-public purpose by any lawful power or authority by exercise of the right of condemnation or eminent domain or by agreement between Lender, Borrower and those authorized to exercise such right ("Taking"), Borrower will promptly give written notice thereof to Lender, generally describing the nature and extent of such Taking. Lender shall file and prosecute on behalf of Lender and Borrower any and all claims for Proceeds, and all Proceeds on account of a Taking shall be paid to Lender.

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(ii) In case of a Taking of the whole of the Trust Estate, other than for temporary use ("Total Taking"), or in case of a Taking of less than all of the Trust Estate ("Partial Taking"), the Loan Documents shall remain in full force and effect. In the case of a Partial Taking, Borrower, whether or not the Proceeds, if any, on account of such Partial Taking shall be sufficient for the purpose (but provided they are made available by Lender for such purpose), at its own cost and expense, will promptly commence and complete the Restoration. In case of a Partial Taking, other than a temporary use, of such a substantial part of the Trust Estate as shall result in the Trust Estate remaining after such Partial Taking being unsuitable for use, such Taking shall be deemed a Total Taking.

(iii) In case of a temporary use of the whole or any part of the Trust Estate by a Taking, the Loan Documents shall remain in full force and effect without any reduction of any monetary sum payable under the Loan Documents. In any proceeding for such Taking, Lender shall have the right to intervene and participate; provided that, if such intervention shall not be permitted, Borrower shall consult with Lender, its attorneys and experts, and make all reasonable efforts to cooperate with Lender in the prosecution or defense of such proceeding. At the termination of any such use or occupation of the Trust Estate, Borrower will, at its own cost and expense, promptly commence and complete the Restoration.

(iv) Proceeds on account of a Taking, less the costs, fees and expenses incurred by Lender and Borrower in connection with the collection thereof, including, without limitation, attorneys' fees and expenses, shall be applied in the following order:

(x) Proceeds received on account of a Total Taking shall be allocated as follows:

(aa) There shall be paid to the Lender an amount up to the sum of the outstanding principal, including all sums advanced by Lender hereunder, and interest under the Note, all as of the date on which such payment is made, such amount shall be applied first against all sums advanced by Lender under this Deed of Trust, second against the accrued but unpaid interest on the Note, and third to the remaining unpaid principal amount of the Note. If the Proceeds received on account of a Total Taking are not sufficient to satisfy the outstanding principal balance of the Note, all accrued but unpaid interest on the Note, all other sums due under the Note, all sums advanced by Lender under this Deed of Trust and all other sums due and payable under this Deed of Trust and the other Loan Documents corresponding to the Premises (collectively, the "Outstanding Obligations"), Borrower shall pay to Lender simultaneously with the payment of such Proceeds to Lender the difference between the amount of such Proceeds and the amount of the Outstanding Obligations.

(bb) Any remaining balance shall be paid to Borrower.

(y) Proceeds received on account of a Partial Taking shall be held and allocated as follows:

(i) first, toward the cost of the Restoration, such application of net awards and other payments to be made substantially in the manner provided in Section 4.01(a)(iii) of this Deed of Trust; and

(ii) then, all or any portion of the balance of such proceeds shall, in Lender's sole discretion, either be paid to:

(1) Lender, as the holder of this Deed of Trust, and applied toward the Outstanding Obligations in such order, priority and proportion, and at such time on or prior to the Maturity Date (as defined in the Note), as Lender shall determine; or



(2) Borrower; provided, however, in Lender's sole discretion, such proceeds shall be pledged to Lender to secure the Outstanding Obligations pursuant to a security agreement reasonably satisfactory to Lender, or, with Lender's consent, Borrower shall provide Lender with alternative security satisfactory to Lender in its sole discretion.

Lender may deposit any funds held by it in accounts insured by any federal or state agency and may commingle such funds with other funds and accounts of Lender. Interest or gains from such funds, if any, shall be the sole property of Lender.

(z) Proceeds received on account of a Taking for temporary use shall be held by Lender and applied to the payment of the monthly installments of combined interest and principal becoming due under the Note, until such Taking for temporary use is terminated and the Restoration, if any, has been completed; provided, however, that, if any portion of any such award or payment is made by reason of any damage to or destruction of the Trust Estate, such portion shall be held and applied as provided in Section 4.01(a)(iii) hereof. The balance, if any, of such awards and payments shall be paid to Borrower.

(v) Notwithstanding the foregoing, if at the time of any Taking or at any time thereafter an Event of Default shall have occurred and be continuing under the Loan Documents, Lender is hereby authorized and empowered, in the name and on behalf of Borrower and otherwise, to file and prosecute Borrower's claim, if any, for an award on account of any Taking and to collect such award and apply the same, after deducting all costs, fees and expenses incident to the collection thereof (the "Net Award"), toward the Obligations whether or not then due and payable, in such order, priority and proportions as Lender in its discretion shall deem proper, or to cure such Event of Default, or, in Lender's discretion, Lender may pay the Net Award in whole or in part to Borrower to be applied toward the cost of the Restoration. If Lender shall receive and retain the Net Award, the lien of this Deed of Trust shall be reduced only by the amount received and retained by Lender and actually applied by Lender in reduction of the Obligations.

Section 4.02. **Conveyance in Anticipation of Condemnation, Granting of Easements, Etc.** If no Event of Default shall have occurred and be continuing, Borrower may, from time to time with respect to its interest in the Trust Estate, and with Lender's prior written consent, (a) sell, assign, convey or otherwise transfer any interest therein to any person legally empowered to take such interest under the power of eminent domain, (b) grant easements and other rights in the nature of easements, (c) release existing easements or other rights in the nature of easements which are for the benefit of the Trust Estate, (d) dedicate or transfer unimproved portions of the Trust Estate for road, highway or other public purposes, (e) execute petitions to have the Trust Estate annexed to any municipal corporation or utility district, and (f) execute and deliver to any person any instrument appropriate to confirm or effect such grants, releases, dedications and transfers.

Section 4.03. **Lender's Power.** At any time, or from time to time, without liability therefor, Lender, without affecting the personal liability of any person for payment of the Obligations or the effect of this Deed of Trust upon the remainder of said Trust Estate, may from time to time without notice (a) release any part of said Trust Estate, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, (d) join in any extension agreement or any agreement subordinating the lien or charge hereof, (e) release any person so liable, (f) extend the maturity or alter any of the terms of any Obligations, (g) grant other indulgences, (h) take or release any other or additional security for any Obligations, (i) make compositions or other arrangements with debtors in relation thereto, or (j) advance additional funds to protect the security hereof or to pay or discharge the Obligations in the event Borrower fails to do so, and all amounts so advanced shall be secured hereby and shall be due and payable upon demand by Lender.

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ARTICLE V

SECURITY INTEREST

Section 5.01. **Security Agreement.** With respect to the Personal Property or any portion of the Trust Estate which constitutes fixtures or other property governed by the UCC, this Deed of Trust shall constitute a security agreement between Borrower, as the debtor, and Lender, as the secured party, and Borrower hereby grants to Lender a security interest in such portion of the Trust Estate. Cumulative of all other rights of Lender hereunder, Lender shall have all of the rights conferred upon secured parties by the UCC. Borrower authorizes Lender to file financing statements with respect to the security interest of Lender, continuation statements with respect thereto, and any amendments to such financing statements which may be necessitated by reason of any of the changes described in Section 6.C of the Loan Agreement. Furthermore, at any time, and from time to time, Borrower will execute and deliver to Lender all financing statements that may from time to time be required by Lender to establish and maintain the validity and priority of the security interest of Lender, or any modification thereof. Lender may exercise any or all of the remedies of a secured party available to it under the UCC with respect to such property. If, upon the occurrence and during the continuance of an Event of Default, Lender proceeds to dispose of such property in accordance with the provisions of the UCC, 10 days' notice by Lender to Borrower shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Lender may at its option dispose of such property in accordance with Lender's rights and remedies with respect to the real property pursuant to the provisions of this Deed of Trust, in lieu of proceeding under the UCC. Borrower represents that its exact legal name and state of formation or organization are as set forth in the first paragraph of this Deed of Trust. Borrower agrees that, notwithstanding any provision in the UCC to the contrary, Borrower shall not file a termination statement of any financing statement filed by Lender in connection with any security interest granted under this Deed of Trust if Lender reasonably objects to the filing of such termination statement.

Section 5.02. **Effective as a Financing Statement and Fixture Filing.** This Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Trust Estate and is to be filed for record in the real estate records of each county where any part of the Trust Estate (including said fixtures) is situated. This Deed of Trust shall also be effective as a financing statement covering any other portion of the Trust Estate and may be filed in any other appropriate filing or recording office. The mailing address of Borrower is the address of Borrower set forth in the introductory paragraph of this Deed of Trust, and the address of the Lender from which information concerning the security interests hereunder may be obtained is the address of Lender as set forth in the introductory paragraph of this Deed of Trust. A carbon, photographic or other reproduction of this Deed of Trust or of any financing statement relating to this Deed of Trust shall be sufficient as a financing statement for any of the purposes referred to in this Section.

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

Section 6.01. **Events of Default.** Each of the following shall be an event of default under this Deed of Trust (each an "Event of Default"):

(a) Subject to the provisions of Section 3.05(b) of this Deed of Trust, if Borrower fails to pay, prior to delinquency, any taxes, assessments or other charges the failure of which to pay will result in the imposition of a lien against the Trust Estate pursuant to Applicable Regulations.

(b) If Borrower shall fail to maintain insurance in accordance with the requirements of Section 3.06 of this Deed of Trust.



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(c) If Borrower fails to observe or perform any of the covenants, conditions, or obligations of this Deed of Trust, provided, however, if any such failure does not involve the payment of any principal, interest or other monetary sum due under the Note, is not willful or intentional, does not place any rights or interest in collateral of Lender in immediate jeopardy, and is within the reasonable power of Borrower to promptly cure after receipt of notice thereof, all as determined by Lender in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Lender shall have given Borrower notice thereof and a period of 30 days shall have elapsed, during which period Borrower may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure cannot reasonably be cured within such 30-day period, as determined by Lender in its reasonable discretion, and Borrower is diligently pursuing a cure of such failure, then Borrower shall have a reasonable period to cure such failure beyond such 30-day period, which shall in no event exceed 90 days after receiving notice of the failure from Lender. If Borrower shall fail to correct or cure such failure within such 90-day period, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required.

(d) If there is an "Event of Default" under the Loan Agreement.

Section 6.02. **Remedies.** Upon the occurrence and during the continuance of an Event of Default and subject to the limitations set forth in Section 6.01, Lender may declare all or any part of the Obligations to be due and payable, and the same shall thereupon become due and payable without any presentment, demand, protest or notice (including notice of intent to accelerate and notice of acceleration) of any kind except as otherwise expressly provided herein. Furthermore, upon the occurrence and during the continuance of an Event of Default, Lender may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate or any part thereof and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, take any action described herein, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including reasonable attorneys' fees, upon any Obligations, all in such order as Lender may determine. The entering upon and taking possession of the Trust Estate, the taking of any action described herein, the collection of such Rents, and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of default or invalidate any act done in response to such Event of Default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Trust Estate or the collection, receipt and application of Rents, Lender shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon any Event of Default, including the right to exercise the power of sale herein conferred;

(b) Commence an action to foreclose this Deed of Trust in a single parcel or in several parcels, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code as adopted in the State ("UCC"), including, without limitation:

(i) Either personally or by means of a court appointed receiver, commissioner or other officer, take possession of all or any of the Personal Property and exclude therefrom Borrower and all others claiming under Borrower, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements,



alterations, additions and improvements to and exercise all rights and powers of Borrower in respect of the Personal Property or any part thereof. In the event Lender demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Documents, Borrower promises and agrees to promptly turn over and deliver complete possession thereof to Lender;

(ii) Without notice to or demand upon Borrower, make such payments and do such acts as Lender may deem necessary to protect its security interest in the Personal Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder and, in exercising any such powers or authority, to pay all expenses incurred in connection therewith;

(iii) Require Borrower to assemble the Personal Property or any portion thereof, at the Premises, and promptly to deliver such Personal Property to Lender, or an agent or representative designated by it. Lender, and its agents and representatives, shall have the right to enter upon any or all of Borrower's premises and property to exercise Lender's rights hereunder;

(iv) Sell, lease or otherwise dispose of the Personal Property at public sale, with or without having the Personal Property at the place of sale, and upon such terms and in such manner as Lender may determine. Lender may be a purchaser at any such sale;

(v) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give Borrower at least 10 days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof. Such notice may be delivered to Borrower at the address set forth at the beginning of this Deed of Trust and shall be deemed to be given as provided herein; and

(vi) Any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of all or a portion of the other Trust Estate under power of sale as provided herein upon giving the same notice with respect to the sale of the Personal Property hereunder as is required for such sale of the other Trust Estate under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under the UCC.

(d) Exercise all of Borrower's rights and remedies under the Indemnity Agreements, including, without limitation, making demands and claims and receiving payments under the Indemnity Agreements. Borrower hereby grants Lender a power of attorney (which grant shall be deemed irrevocable and coupled with an interest) to exercise such rights and remedies;

(e) Apply any sums then deposited in the impound account described in Section 3.07 toward payment of the taxes, assessment and insurance premiums for the Trust Estate and/or as a credit on the Obligations in such priority and proportion as Lender may determine in its sole discretion;

(f) If held by Lender, surrender the insurance policies maintained pursuant to Section 3.06, collect the unearned insurance premiums and apply such sums as a credit on the Obligations in such priority and proportion as Lender in its sole discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is

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coupled with an interest and is therefore irrevocable) for Lender to collect such insurance premiums; and

(g) Direct Trustee to sell Borrower's interest in the Trust Estate pursuant to the power of sale herein conferred. If Lender elects to sell Borrower's interest in the Trust Estate by exercise of such power of sale, Lender shall notify Trustee in the manner then required by law.

(aa) Upon receipt of such notice from Lender and at the direction of Lender, Trustee shall cause to be recorded, published and delivered such notices of default and notices of sale as may then be required by law and by this Deed of Trust. Trustee shall, only at the direction of Lender and without demand on Borrower, after such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell Borrower's interest in the Trust Estate at the time and place of sale fixed by it in such notice of sale, either as a whole, or in separate lots or parcels or items as Lender shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale, or as otherwise may then be required by law. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Borrower or Lender, to the extent permitted under applicable law, may purchase at such sale; provided however, that Trustee is not permitted to bid at such sale. Trustee or Lender may sell not only the real property but also the Personal Property and other interests which are a part of the Trust Estate, or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Trust Estate separately from the remainder of the Trust Estate. Trustee or Lender shall not be required to take possession of any part of the Trust Estate or to have any of the Personal Property present at any sale of the Trust Estate. Trustee or Lender may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Trustee or Lender, including the posting of notices and the conduct of sale, but in the name and on behalf of Lender. In the event any sale hereunder is not completed or is defective in the opinion of Trustee or Lender, such sale shall not exhaust the power of sale hereunder, and Trustee or Lender shall have the right to cause a subsequent sale or sales to be made hereunder.

(bb) As may be permitted by law, after deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including costs of evidence of title in connection with sale, Trustee or Lender shall apply the proceeds of sale (i) first, to payment of all costs, fees and expenses, including attorneys' fees and expenses incurred by the Lender in exercising the power of sale or foreclosing this Deed of Trust, (ii) second, to the payment of the Obligations (including, without limitation, the principal, accrued interest and other sums due and owing under the Note, the Equipment Note and the amounts due and owing to Lender under this Deed of Trust) in such manner and order as Lender may elect, and (iii) third, the remainder, if any, shall be paid to Borrower, or to Borrower's heirs, devisees, representatives, successors or assigns, or such other persons as may be entitled thereto.

(cc) Trustee may in the manner provided by law postpone sale of all or any portion of the Trust Estate.

Section 6.03. **Appointment of Receiver.** If an Event of Default shall have occurred and be continuing, Lender, as a matter of right and without notice to Borrower or anyone claiming under Borrower, and without regard to the then value of the Trust Estate or the interest of Borrower therein, or the insolvency of Borrower or the then-owner of the Trust Estate, may seek the appointment of a receiver for the Trust Estate upon *ex parte* application to any court of the competent jurisdiction. Borrower waives any right to any hearing or notice of hearing prior to the appointment of a receiver. Such receiver shall be

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empowered (a) to take possession of the Trust Estate and any businesses conducted by Borrower thereon and any business assets used in connection therewith, (b) to exclude Borrower and Borrower's agents, servants and employees from the Trust Estate, or, at the option of the receiver, in lieu of such exclusion, to collect a fair market rental from any such persons occupying any part of the Trust Estate, (c) to collect the Rents, (d) to complete any construction that may be in progress, (e) to continue the development, marketing and sale of the Trust Estate, (f) to do such maintenance and make such repairs and alterations as the receiver deems necessary, (g) to use all stores of materials, supplies and maintenance equipment on the Trust Estate and replace such items at the expense of the receivership estate, (h) to pay all taxes and assessments against the Trust Estate, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance, (i) to request that Lender advance such funds as may reasonably be necessary to the effective exercise of the receiver's powers, on such terms as may be agreed upon by the receiver and Lender, but not in excess of the Default Rate, and (j) generally to do anything that Borrower could legally do if Borrower were in possession of the Trust Estate. All expenses incurred by the receiver or his agents, including obligations to repay funds borrowed by the receiver, shall constitute a part of the Obligations. Any revenues collected by the receiver shall be applied first to the expenses of the receivership, including reasonable attorneys' fees incurred by the receiver and by Lender, together with interest thereon at the highest rate of interest applicable in the Note from the date incurred until repaid, and the balance shall be applied toward the Obligations or in such other manner as the court may direct.

Section 6.04. Remedies Not Exclusive. Lender shall be entitled to enforce payment and performance of any Obligations and to exercise all rights and powers under this Deed of Trust or under any Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Lender in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender, or to which Lender may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Lender. Lender may pursue inconsistent remedies.

The acceptance by Lender of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a subsequent Event of Default as herein provided. The acceptance by Lender of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Borrower to pay the entire sum then due, and failure of Borrower to pay such entire sum then due shall be an Event of Default, notwithstanding such acceptance of such amount on account, as aforesaid. Lender or Trustee shall be, at all times thereafter and until the entire sum then due as contemplated by the Loan Documents shall have been paid, and notwithstanding the acceptance by Lender thereafter of further sums on account, or otherwise, entitled to exercise all rights in this instrument conferred upon them or either of them, and the right to proceed with a sale under any notice of default, or an election to sell, or the right to exercise any other rights or remedies hereunder, shall in no way be impaired, whether any of such amounts are received prior or subsequent to such proceeding, election or exercise. Consent by Lender to any action or inaction of Borrower which is subject to consent or approval of Lender hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions or inactions.

Section 6.05. Possession of Trust Estate. In the event of a trustee's sale or foreclosure sale hereunder and after the time of such sale, Borrower occupies the portion of the Trust Estate so sold, or
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any part thereof, Borrower shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Trust Estate so occupied, such rental to be due and payable daily to the purchaser. An action of unlawful detainer shall lie if the tenant holds over after a demand in writing for possession of such Trust Estate; and this Deed of Trust and a trustee's or sheriff's deed shall constitute a lease and agreement under which the tenant's possession arose and continued. Nothing contained in this Deed of Trust shall be construed to constitute Lender or Trustee as a "mortgagee in possession" in the absence of its taking actual possession of the Trust Estate pursuant to the powers granted herein.

Section 6.06. Waiver of Rights. Borrower waives the benefit of all laws now existing or that hereafter may be enacted (a) providing for any appraisal before sale of any portion of the Trust Estate, or (b) in any way extending the time for the enforcement of the collection of the Obligations or creating or extending a period of redemption from any sale made in collecting the Obligations. Borrower agrees that Borrower will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension, redemption or homestead exemption, and Borrower, for Borrower, Borrower's representatives, successors and assigns, and for any and all persons ever claiming any interest in the Trust Estate, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, homestead exemption, notice of election to mature or declare due the whole of the Obligations and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Section and now in force, of which Borrower, Borrower's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Borrower expressly waives and relinquishes any and all rights, remedies and defenses that Borrower may have or be able to assert by reason of the laws of the State pertaining to the rights, remedies and defenses of sureties.

Section 6.07. Relief From Stay. In the event that Borrower commences a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code, subject to court approval, Lender shall thereupon be entitled and Borrower irrevocably consents to relief from any stay imposed by Section 362 of the Code on or against the exercise of the rights and remedies otherwise available to Lender as provided in the Loan Documents and Borrower hereby irrevocably waives its rights to object to such relief. In the event Borrower shall commence a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code, Borrower hereby agrees that no injunctive relief against Lender shall be sought under Section 105 or other provisions of the Code by Borrower or other person or entity claiming through Borrower, nor shall any extension be sought of the stay provided by Section 362 of the Code.

Section 6.08. Cash Collateral. Borrower hereby acknowledges and agrees that in the event that Borrower commences a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code: (a) that all of the Rents are, and shall for purposes be deemed to be, "proceeds, product, offspring, rents, or profits" of the Premises covered by the lien of this Deed of Trust, as such quoted terms are used in Section 552(b) of the Code; (b) that in no event shall Borrower assert, claim or contend that any portion of the Rents are, or should be deemed to be, "accounts" or "accounts receivable" within the meaning of the Code and/or applicable state law; (c) that the Rents are and shall be deemed to be in any such bankruptcy proceeding "cash collateral" of Lender as that term is defined in Section 363 of the Code; and (d) that Lender has valid, effective, perfected, enforceable and "choate" rights in and to the Rents without any further action required on the part of Lender to enforce or perfect its rights in and to such cash collateral, including, without limitation, providing notice to Borrower under Section 546(b) of the Code.

Section 6.09. Assignment of Rents and Leases. (a) Borrower hereby assigns, transfers, conveys and sets over to Lender all of Borrower's estate, right, title and interest in, to and under the

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Leases, whether existing on the date hereof or hereafter entered into, together with any changes, extensions, revisions or modifications thereof and all rights, powers, privileges, options and other benefits of Borrower as the lessor under the Leases regarding the current tenants and any future tenants, and all the Rents from the Leases, including those now due, past due or to become due. Borrower irrevocably appoints Lender its true and lawful attorney-in-fact, at the option of Lender, at any time and from time to time upon the occurrence and during the continuance of an Event of Default, to take possession and control of the Premises, pursuant to Borrower's rights under the Leases, to exercise any of Borrower's rights under the Leases, and to demand, receive and enforce payment, to give receipts, releases and satisfaction and to sue, in the name of Borrower or Lender, for all of the Rents. The power of attorney granted hereby shall be irrevocable and coupled with an interest and shall terminate only upon the payment of all sums due Lender for all losses, costs, damages, fees and expenses whatsoever associated with the exercise of this power of attorney, and Borrower hereby releases Lender from all liability (other than as a result of the gross negligence or willful misconduct of Lender) whatsoever for the exercise of the foregoing power of attorney and all actions taken pursuant thereto. The consideration received by Borrower to execute and deliver this assignment and the liens and security interests created herein is legally sufficient and will provide a direct economic benefit to Borrower. It is intended by Borrower and Lender that the assignment set forth herein constitutes an absolute assignment and not merely an assignment for additional security. Notwithstanding the foregoing, this assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions of Borrower contained in the Leases or otherwise to impose any obligation upon Lender, and, so long as no Event of Default shall have occurred and be continuing, Borrower shall have a license, revocable upon an Event of Default, to possess and control the Premises and collect and receive all Rents. Upon an Event of Default, such license shall be automatically revoked.

(b) Upon the occurrence and during the continuance of an Event of Default, Lender may, at any time without notice (except if required by applicable law), either in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, and at its sole election (without any obligation to do so), enter upon and take possession and control of the Premises, or any part thereof, to perform all acts necessary and appropriate to operate and maintain the Premises, including, but not limited to, execute, cancel or modify the Leases, make repairs to the Premises, execute or terminate contracts providing for the management or maintenance of the Premises, all on such terms as are deemed best to protect the security of this assignment, and in Lender's or Borrower's name, sue for or otherwise collect such Rents as specified in this Deed of Trust as the same become due and payable, including, but not limited to, Rents then due and unpaid. Lender may so sue for or otherwise collect such Rents with or without taking possession of the Premises. Borrower agrees that upon the occurrence and during the continuance of an Event of Default, each tenant of the Premises shall make its rent payable to and pay such rent to Lender (or Lender's agents) on Lender's written demand therefor, delivered to such tenant personally, by mail, or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of an Event of Default by Borrower.

(c) Rents collected subsequent to any Event of Default shall be applied at the direction of, and in such order as determined by, Lender to the costs, if any, of taking possession and control of and managing the Premises and collecting such amounts, including, but not limited to, 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. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Premises and shall be liable to account only for those Rents actually received.

(d) Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Premises by reason of anything done or left undone by Lender hereunder, except to the extent of Lender's gross negligence or willful misconduct.

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(e) Any entering upon and taking possession and control of the Premises by Lender or the receiver and any application of Rents as provided herein shall not cure or waive any Event of Default hereunder or invalidate any other right or remedy of Lender under applicable law or provided therein.

(f) In the event of a breach or default by Borrower under the Ground Lease, Lender shall have the right to cure such breach or default on behalf of Borrower and all costs and expenses incurred by Lender in connection therewith shall constitute a part of the Obligations and shall be secured by this Deed of Trust.

Section 6.10. Ground Lessor Bankruptcy. (a) In the event that any action, proceeding, application, motion or notice shall be commenced or filed in respect of the Ground Lessor, or in respect of all or any part of the Trust Estate (including, without limitation, suits relating to the rejection or disaffirmance of the Ground Lease), in connection with any case under the Code or any other applicable federal or state law relating to relief for debtors, Lender shall have, and is hereby granted, the right, but not the obligation, to the exclusion of Borrower exercisable upon notice from Lender to Borrower, to conduct and control any such litigation (including, without limitation, the right to file and prosecute any proofs of claim, complaints, motions, applications, notices and other documents) with counsel of Lender's choice. Lender may proceed, in its own name or in the name of Borrower, in connection with any such litigation, and Borrower agrees to execute any and all powers, authorizations, consents and other documents required by Lender in connection therewith. Upon request by Lender, Borrower shall pay to Lender, or to any other person or persons that Lender may designate, all costs, expenses and liabilities (including, without limitation, attorneys' fees and court costs) paid or incurred by Lender in connection with the prosecution or conduct of any such proceedings, together with interest thereon from the date paid or incurred by Lender until the date so paid to, or as directed by, Lender. Borrower shall not, without the prior written consent of Lender, commence any action, suit, proceeding or case, or file any application or motion, in respect of the Ground Lease in any such case under the Code or any other applicable federal or state law relating to relief for debtors.

(b) Borrower shall promptly after obtaining knowledge thereof, notify Lender of any filing by or against the Ground Lessor of a petition under the Code. Borrower shall thereafter forthwith give written notice of such filing to Lender, setting forth any information available to Borrower as to the date of such filing, the court in which such petition was filed, and the relief sought therein. Borrower shall promptly deliver to Lender, following receipt, any and all notices, summonses, pleadings, applications and other documents received by Borrower in connection with any such petition and proceeding related thereto.

Section 6.11. Ground Lease Rejection. (a) Borrower hereby unconditionally assigns, transfers and sets over unto Lender all of Borrower's claims and rights to the payment of damages that may hereafter arise as a result of any rejection or disaffirmance of the Ground Lease by the Ground Lessor (whether as debtor in possession or otherwise), or by any trustee of the Ground Lessor, pursuant to the Code. Lender shall have and is hereby granted the right to proceed, in its own name or in the name of Borrower, in respect of any claim, suit, action or proceeding relating to the rejection or disaffirmance of the Ground Lease (including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents) in any case in respect of the Ground Lessor under the Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until the Obligations shall have been satisfied and discharged in full. Any amounts received by Lender as damages arising out of any such rejection or disaffirmance of the Ground Lease shall be applied first to all costs and expenses of Lender (including, without limitation, attorneys' fees) in connection with the exercise of its rights under this paragraph and then, in such manner as Lender shall determine, to the reduction of the Obligations, whether or not then due, and the balance, if any, shall then be paid to Borrower.



(b) If Ground Lessor rejects the Ground Lease pursuant to the Code, Borrower agrees that it will not elect to treat the Ground Lease as terminated but will elect to remain in possession of the leasehold interest as provided in 11 U.S.C. § 365(h)(1)(A)(ii), make lease payments subject to allowable setoffs under 11 U.S.C. § 365(h) and retain its rights under the Ground Lease.

(c) No release or forbearance of any of Borrower's obligations under the Ground Lease, pursuant to the Ground Lease or otherwise, including, without limitation, Borrower's obligations with respect to the payment of rent as provided for in the Ground Lease and the performance of all the terms, provisions, covenants, conditions and agreements contained in the Ground Lease to be kept, performed or complied with by tenant therein, shall release Borrower from any of Borrower's obligations under this Deed of Trust. The lien of this Deed of Trust attaches to all of Borrower's rights and remedies at any time arising under or pursuant to Subsection 365(h) of the Bankruptcy Code, including, without limitation, all of Borrower's rights to remain in possession of the Trust Estate.

(d) In the event that a petition under the Code shall be filed by or against Borrower and Borrower (whether as debtor in possession or otherwise) or any trustee of Borrower shall decide to reject or disaffirm the Ground Lease pursuant to the Code, Borrower shall give Lender at least 10 days' prior written notice of the date on which application or motion shall be filed with the court for authority to reject or disaffirm the Ground Lease. In that event, or in the event that no affirmative action to assume, reject or disaffirm the Ground Lease pursuant to the Code shall have been taken within 30 days after the date of filing of such petition, then Lender shall have the right, but not the obligation, to serve upon Borrower or such trustee a notice stating that (i) Lender demands that Borrower (whether as debtor in possession or otherwise) or such trustee assume and assign the Ground Lease to Lender pursuant to Section 365 of the Code, and (ii) Lender covenants to cure, or provide adequate assurance of prompt cure of, all defaults and provide adequate assurance of future performance under the Ground Lease. In the event that Lender serves such notice upon Borrower or such trustee, neither Borrower (whether as debtor in possession or otherwise) nor such trustee shall seek to reject or disaffirm the Ground Lease and Borrower (whether as debtor in possession or otherwise) and such trustee shall comply with such demand within 20 days after such notice shall have been given, subject to Lender's performance of such covenant.

(e) Borrower hereby assigns, transfers and sets over to Lender a nonexclusive right to apply to the Bankruptcy Court under Section 365 of the Code for an order extending the period during which the Ground Lease may be rejected, disaffirmed or assumed after the entry of any order for relief in respect of Borrower under Chapter 7 of the Code.

ARTICLE VII
THE TRUSTEE

Section 7.01. **Rights and Obligations of Trustee.** Trustee accepts the trusts hereby created and agrees to perform its duties herein for the benefit of Lender.

Section 7.02. **Resignation of Trustee.** Trustee may resign and be discharged of the trusts by giving notice thereof to the holder of the Note and Borrower (or any subsequent owner of Borrower's interest in the Trust Estate) specifying the date (not less than ninety (90) days after such notice) when such resignation shall take effect. Such resignation shall take effect on the earlier of the date so specified or the appointment and acceptance of a successor trustee pursuant to Section 7.03.

Section 7.03. **Successor Trustee.** (a) Trustee may be removed at any time by notice from the holder of the Note. If Trustee shall have given notice of its intention to resign, shall resign, be removed or otherwise be incapable of acting, or if Trustee shall be taken under the control of any public officer or a receiver appointed by a court, or be adjudged a bankrupt or insolvent, then a successor may be

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appointed by the holder of the Note, provided that Borrower may appoint a successor trustee to act until such successor shall be so appointed. Borrower shall notify the holder of the Note of any such appointment by Borrower, but any successor trustee so appointed by Borrower shall immediately and without further act be superseded by a successor trustee appointed by the holder of the Note as above provided.

(b) Any successor to Trustee shall execute, acknowledge and deliver to its predecessor and Borrower (or any subsequent owner of Borrower's interest in the Trust Estate) an instrument accepting such appointment, and thereupon such successor, without any further act, deed or conveyance, shall become vested with all the estate, properties, rights, powers, duties and trusts of its predecessor in the trusts hereunder with like effect as if originally named as trustee herein; provided, however, that on the written request of Borrower, the holder of the Note or the successor trustee, such predecessor shall execute and deliver an instrument transferring to such successor, upon the trusts expressed in this Deed of Trust, such estate, properties, rights, powers and trusts and shall duly assign, transfer, deliver and pay over to such successor any property and moneys subject to the lien hereof and held by such predecessor.

Section 7.04. **Separate and Co-Trustees.** (a) If it deems such to be necessary or prudent, Trustee shall have the power to appoint one or more persons to act as separate trustees or co-trustees, jointly with Trustee, of any of the property subject to the lien hereof, and any such person shall be such separate trustee or co-trustee, with such powers and duties as shall be specified in such instrument.

(b) Such separate trustee or co-trustee, upon acceptance of such trust, shall be vested with the estates or property specified in such instrument, either jointly with Trustee, or separately as may be provided therein, subject to all the trusts, conditions and provisions of this Deed of Trust; and every such instrument shall be filed with Trustee.

Section 7.05. **Liability of Trustee.** No trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

Section 7.06. **Payment of Trustee's Compensation.** Borrower shall pay or cause to be paid the compensation to which Trustee is entitled hereunder and all proper disbursements and expenses incurred by Trustee hereunder.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. **Satisfaction.** If and when the Obligations shall have become due and payable (whether by lapse of time or by acceleration or by the exercise of the privilege of prepayment), and Borrower shall pay or cause to be paid (provided such payment is permitted or required by the Note) the full amount thereof and shall also pay or cause to be paid all other sums payable by the Borrower Parties to the Lender Entities with respect to the Obligations, then this Deed of Trust shall be void (otherwise it shall remain in full force and effect in law and equity forever) and Lender agrees to execute an instrument evidencing the satisfaction of all obligations under this Deed of Trust and releasing this Deed of Trust which shall be prepared and recorded at Borrower's sole expense.

Section 8.02. **Limitation of Rights of Others.** Nothing in this Deed of Trust is intended or shall be construed to give to any person, other than Borrower, Trustee and the holder of the Note, any legal or equitable right, remedy or claim under or in respect of this Deed of Trust or any covenant, condition or provision herein contained.



Section 8.03. **Severability.** In case any one or more of the provisions contained herein or in the Note shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Deed of Trust shall be construed as if such provision had never been contained herein or therein.

Section 8.04. **Notices; Amendments; Waiver.** All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Deed of Trust (collectively called "Notices") shall be in writing and given by (a) hand delivery, (b) facsimile, (c) express overnight delivery service or (d) certified or registered mail, return receipt requested and shall be deemed to have been delivered upon (i) receipt, if hand delivered, (ii) transmission, if delivered by facsimile, (iii) the next Business Day, if delivered by express overnight delivery service, or (iv) the third Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

If to Borrower: Johnny Carino's of Skagit Valley, LLC
3111 Hunts Point Circle
Hunts Point, WA 98004
Telephone: (425) 503-6694
Telecopy: (425) 868-5187

If to Lender: GE Capital Franchise Finance Corporation
8377 East Hartford Drive
Scottsdale, Arizona 85255
Attention: Collateral Management
Telephone: 480-585-4500
Telecopy: 480-585-2225

If to Trustee: Lawyers Title Insurance Corporation
1850 N. Central Ave., Suite 300
Phoenix, AZ 85004
Telephone: (602) 287-3500
Telecopy: (602) 263-0433

or to such other address or such other person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above. Whenever in this Deed of Trust the giving of Notice is required, the giving thereof may be waived in writing at any time by the person or persons entitled to receive such Notice. Except as in this Deed of Trust otherwise expressly provided, (i) this Deed of Trust may not be modified except by an instrument in writing executed by Borrower and Lender and (ii) no requirement hereof may be waived at any time except by a writing signed by the party against whom such waiver is sought to be enforced, nor shall any waiver be deemed a waiver of any subsequent breach or default.

Section 8.05. **Successors and Assigns.** All of the provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto, to the same extent as if each such successor and assign were in each case named as a party to this Deed of Trust. Wherever used, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders.

Section 8.06. **Headings.** The headings appearing in this Deed of Trust have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Deed of Trust.

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Section 8.07. **Time of the Essence.** Time is of the essence in the performance of each and every obligation under this Deed of Trust.

Section 8.08. **Forum Selection; Jurisdiction; Venue; Choice of Law.** Borrower acknowledges that this Deed of Trust was substantially negotiated in the State of Arizona, this Deed of Trust was delivered in the State of Arizona, all payments under the Loan Documents will be delivered in the State of Arizona and there are substantial contacts between the parties and the transactions contemplated herein and the State of Arizona. For purposes of any action or proceeding arising out of this Deed of Trust, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State of Arizona. Borrower consents that it may be served with any process or paper by registered mail or by personal service within or without the State of Arizona in accordance with applicable law. Furthermore, Borrower waives and agrees not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. The creation of this Deed of Trust and the rights and remedies of Lender with respect to the Trust Estate, as provided herein and by the laws of the State, shall be governed by and construed in accordance with the internal laws of the State without regard to its principles of conflicts of law. With respect to other provisions of this Deed of Trust, this Deed of Trust shall be governed by the internal laws of the State of Arizona, without regard to its principles of conflicts of law. Nothing in this Section shall limit or restrict the right of Lender to commence any proceeding in the federal or state courts located in the State to the extent Lender deems such proceeding necessary or advisable to exercise remedies available under the Deed of Trust or the other Loan Documents.

Section 8.09. **Indemnification.** Borrower shall indemnify and hold harmless each of the Indemnified Parties for, from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement and damages of whatever kind or nature (including, without limitation, attorneys' fees, court costs and other costs of defense) (collectively, "Losses") (excluding Losses suffered by an Indemnified Party arising out of such Indemnified Party's gross negligence or willful misconduct; provided, however, that the term "gross negligence" shall not include gross negligence imputed as a matter of law to any of the Indemnified Parties solely by reason of Borrower's interest in the Trust Estate or Borrower's failure to act in respect of matters which are or were the obligation of Borrower under the Loan Documents) caused by, incurred or resulting from Borrower's operations of, or relating in any manner to, the Trust Estate, whether relating to its original design or construction, latent defects, alteration, maintenance, use by Borrower or any person thereon, supervision or otherwise, or from any breach of, default under or failure to perform any term or provision of this Deed of Trust by Borrower, its officers, employees, agents or other persons. It is expressly understood and agreed that Borrower's obligations under this Section shall survive the expiration or earlier termination of this Deed of Trust for any reason.

Section 8.10. **Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.** LENDER, BY ACCEPTING THIS DEED OF TRUST, AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR ITS SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS DEED OF TRUST, THE RELATIONSHIP OF LENDER AND BORROWER, BORROWER'S USE OR OCCUPANCY OF THE TRUST ESTATE, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. THIS WAIVER BY THE PARTIES HERETO OF ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. FURTHERMORE, BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT

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DAMAGES FROM THE OTHER AND ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER OR ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS DEED OF TRUST OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THE WAIVER BY BORROWER AND LENDER OF ANY RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.

Section 8.11 **Trustor Notice.** Borrower hereby requests a copy of any notice of default under this Deed of Trust, and that any notice of sale under this Deed of Trust, be mailed to it at the address set forth in Section 8.04.

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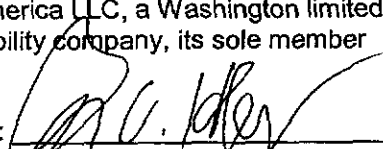
IN WITNESS WHEREOF, Borrower has executed and delivered this Deed of Trust as of the day and year first above written.

BORROWER:

JOHNNY CARINO'S OF SKAGIT VALLEY, LLC, a Washington limited liability company

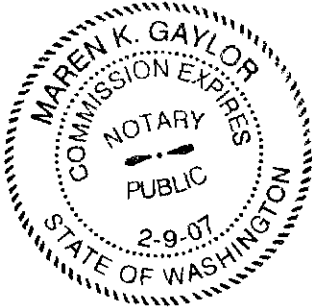
By: Northwest Johnny Carino's L.L.C., a Washington limited liability company, its sole member


By: Restaurant Development Company of America LLC, a Washington limited liability company, its sole member

By: 
Gregory A. Hubert, Manager

STATE OF WASHINGTON)
) SS.
COUNTY OF KING)

The foregoing instrument was acknowledged before me on 2 August, 2006, by Gregory A. Hubert, Manager of Restaurant Development Company of America LLC, a Washington limited liability company, sole member of Northwest Johnny Carino's L.L.C., a Washington limited liability company, sole member of Johnny Carino's of Skagit Valley, LLC, a Washington limited liability company, on behalf of each of the limited liability companies.



Notary Public 
Print Name: Maren K. Gaylor
Residing at: Benton
My Commission Expires: 2/9/2007

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GEFF Contract No. 29142
GEFF Property No. 8004-3109
Burlington, WA
5/26/06



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Exhibit A

PARCEL "A":

Those portions of Lots 3 and 6 as shown on "Cascade Mall Binding Site Plan" recorded in Book 8 of Short Plats, pages 170 through 180, under Auditor's File Number 8910190065, records of Skagit County, more particularly described as follows.

Commencing at the East $\frac{1}{4}$ corner of Section 6, Township 34 North, Range 4 East, W.M.,
thence South $0^{\circ}32'18''$ East along the east line of said section a distance of 1355.19 feet;
thence South $89^{\circ}27'43''$ West a distance of 134.99 feet to the Southeast corner of said Lot 3;
thence North $0^{\circ}25'23''$ East along the east line of said Lot 3 a distance of 274.13 feet to the TRUE POINT OF BEGINNING.
thence South $36^{\circ}32'16''$ West a distance of 12111 feet;
thence North $53^{\circ}27'44''$ West a distance of 118.51 feet;
thence North $0^{\circ}32'18''$ West a distance of 58.76 feet;
thence North $37^{\circ}29'24''$ East a distance of 72.14 feet;
thence South $52^{\circ}30'36''$ East a distance of 58.74 feet the beginning of a curve to the left having a radius of 128.50 feet;
thence along the arc of said curve passing through a central angle of $30^{\circ}57'55''$ an arc distance of 69.45 feet;
thence South $04^{\circ}02'15''$ West a distance of 51.35 feet;
thence South $36^{\circ}32'16''$ West a distance of 79.82 feet to the intersection of the east line of said Lot 3 and the TRUE POINT OF BEGINNING,
Situate in the County of Skagit, State of Washington.

PARCEL "B":

Those certain non-exclusive easements as described in that certain Declaration of Restrictions and Grant of Easements by Pan Pacific Development (Cascade) Inc., recorded July 21, 1989 under Auditor's File No. 8907210046 and amended by instruments recorded October 30, 1997 and May 8, 1998 under Auditor's File Nos. 9710300078 and 9805080072, respectively, affected by Assignment of Reciprocal Easement Agreements dated February 18, 1999, recorded February 24, 1999, under Auditor's File No. 9902240173.

Situate in the County of Skagit, State of Washington.

When recorded mail to:
LandAmerica Financial Group, Inc.
Attn: *KBrown*
1850 N. Central Avenue, Suite 300
Phoenix, AZ, 85004
Escrow No. 05-40907



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