

1-GF# 063361 BKH
RETURN TO HERITAGE TITLE
401 COMMERCE BLVD SUITE 1500
AUSTIN, TEXAS 78701

RECORDING REQUESTED BY
~~AND WHEN RECORDED MAIL TO:~~

Mortgage Loan No.: 06727-02

Cox, Castle & Nicholson LLP
2049 Century Park East, 28th Floor
Los Angeles, California 90067
Attention: Adam B. Weissburg

DEED OF TRUST AND SECURITY AGREEMENT AND FIXTURE FILING

(Junior)

**THE PROMISSORY NOTE SECURED HEREBY PROVIDES FOR A VARIABLE
INTEREST RATE**

Cover Sheet

Date:	As of November 30, 2006
Borrower:	EOS ACQUISITION II, LLC
Borrower's State Of Organization:	Delaware
Borrower's Organizational ID Number:	4247135
Trustee:	R. Bruce Gadd, II
Lender:	MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, a Massachusetts corporation
State:	TEXAS
Record Owner of the Land: (as defined herein)	EOS ACQUISITION II, LLC

THIS DEED OF TRUST IS SECOND AND SUBORDINATE TO A FIRST DEED OF TRUST AND SECURITY AGREEMENT AND FIXTURE FILING RECORDING CONCURRENTLY HEREWITH EXECUTED BY BORROWER IN FAVOR OF LENDER.

**THIS DOCUMENT IS ALSO A FIXTURE FILING IN ACCORDANCE WITH
SECTIONS 9.501(a)(1) AND 9.502(b) AND (c) OF THE TEXAS BUSINESS AND
COMMERCE CODE**

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FILED OF# 20060218AMC

DEED OF TRUST AND SECURITY AGREEMENT AND FIXTURE FILING

(Junior)

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DEED OF TRUST AND SECURITY AGREEMENT AND FIXTURE FILING

(Junior)

THIS DEED OF TRUST AND SECURITY AGREEMENT AND FIXTURE FILING (Junior) (this "Deed of Trust") is made as of November 30, 2006, by and between **EOS ACQUISITION II, LLC**, a Delaware limited liability company having an address at c/o KBS Realty Advisors, LLC, 620 Newport Center Drive, Suite 1300, Newport Beach, CA 92660, Attention: Lori Lewis ("Borrower"), as indexed as Grantor, to **R. BRUCE GADD, II** having an address at c/o Babson Capital Management LLC, Two Galleria Tower, 13455 Noel Road, Suite 950, Dallas, Texas 75240 ("Trustee"), as indexed as Grantee, for the use and benefit of **MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY**, a Massachusetts corporation having an address c/o Babson Capital Management LLC, 1500 Main Street, Suite 2100, Springfield, Massachusetts 01115, Attention: Managing Director, Real Estate Finance Group ("Lender"), as indexed as Grantee.

RECITALS

A. Borrower and Lender are parties to that certain Loan Facility Agreement dated as of November 30, 2006 (the "Loan Facility Agreement"), pursuant to which Lender shall make loans to Borrower (each loan, as the same may be amended, modified, renewed or extended from time to time, a "Property Specific Loan") under the acquisition facility (the "Facility") made pursuant to the Loan Facility Agreement, which Property Specific Loans are to be secured by, among other things, a first priority mortgage, deed of trust, deed to secure debt or similar security instrument (each, a "Senior Security Instrument") on the real property and improvements to be acquired with the proceeds of the Property Specific Loans (each, a Designated Property").

B. Concurrently with the execution of the Loan Facility Agreement, Borrower executed and delivered that certain Promissory Note dated as of November 30, 2006 in the stated principal amount of Seven Million One Hundred Fifty Thousand Dollars and No/100 (\$7,150,000.00) (as such Promissory Note may be amended, replaced, substituted, restated, renewed or extended, the "Floating Rate Note"). All advances under the Floating Rate Note are subject to the terms and conditions set forth in that certain Additional Advance Agreement dated as of November 30, 2006 between Borrower and Lender (the "Additional Advance Agreement").

C. Pursuant to the Loan Facility Agreement and the Floating Rate Note, the advances to be advanced under the Floating Rate Note and all of the Borrower's obligations under the Loan Facility Agreement and the Additional Advance Agreement are to be secured by a second priority mortgage, deed of trust, deed to secure debt or similar security instrument encumbering each Designated Property (each, a "Junior Security Instrument").

D. Concurrently herewith, Lender has agreed to make a loan to Borrower (the "Primary Loan") under the Facility in the original principal amount of Twenty One Million Two Hundred Fifty Five Thousand and No/100 Dollars (\$21,255,000.00). The Primary Loan is evidenced by that certain Promissory Note (as such Promissory Note may be amended, replaced, substituted, restated, renewed or extended, the "Primary Note"). The Primary Note is secured by

that certain Deed of Trust and Security Agreement and Fixture Filing (as such Deed of Trust and Security Agreement and Fixture Filing may be amended, replaced, substituted, restated or renewed, the "Senior Security Instrument") of even date herewith executed by Borrower for the benefit of Lender encumbering the "Mortgaged Property" (as hereinafter defined).

GRANTING CLAUSES

For good and valuable consideration and to secure the payment and performance of all of Borrower's obligations under the Loan Facility Agreement, the Floating Rate Note, the Additional Advance Agreement (collectively, the "Facility Documents") and all of Borrower's obligations in connection with the Property Specific Loans other than the Primary Loan (collectively, the notes relating to such Property Specific Loans other than the Primary Loan, as such notes may be amended, replaced, substituted, restated, renewed or extended, collectively, the "Property Specific Loan Notes") in full (collectively, the "Obligations"), Borrower has created in favor of Lender a security interest in and mortgaged, warranted, granted, bargained, sold, conveyed, assigned, pledged, transferred and set over, and does by these presents create a security interest in and MORTGAGE, WARRANT, GRANT, BARGAIN, SELL, CONVEY, ASSIGN, PLEDGE, TRANSFER and SET OVER unto Trustee, as trustee for the benefit of Lender, to its successors in the trust created by this Deed of Trust, and to its and their respective assigns forever, in trust, with all POWERS OF SALE and RIGHTS OF ENTRY AND POSSESSION and all STATUTORY RIGHTS AND COVENANTS in the State (as hereinafter defined), together with all interest that Borrower now has or may hereafter acquire in the following property:

The parcel or parcels of land described in Exhibit A attached hereto and by this reference made a part hereof (the "Land");

TOGETHER with the buildings, foundations, structures and improvements (including fixtures) now or hereafter located on or in the Land (collectively, the "Improvements");

TOGETHER with all right, power, privilege, option, title and interest, if any, of Borrower in and to the streets and roads, opened or proposed, abutting the Land, all strips and gores within or adjoining the Land, the air space and right to use the air space above the Land, all rights of ingress and egress to and from the Land, all easements, rights of way, reversions, remainders, estates, rights, titles, interests, privileges, servitudes, tenements, hereditaments, and appurtenances now or hereafter affecting the Land or the Improvements, all royalties and rights and privileges appertaining to the use and enjoyment of the Land or the Improvements, including all air, lateral support, streets, alleys, passages, vaults, drainage, water, oil, gas and mineral rights, development rights, all leases and licenses and options to purchase or lease, and all other interests, estates or claims, in law or in equity, which Borrower now has or hereafter may acquire in or with respect to the Land or the Improvements (collectively, the "Appurtenances");

The Land, the Improvements and the Appurtenances are hereinafter collectively referred to as the "Premises";

TOGETHER with all equipment, fittings, furniture, furnishings, appliances, apparatus, and machinery in which Borrower now or hereafter has a possessory or title interest (excluding

personal property owned by tenants) and now or hereafter installed in or located upon the Premises and all building materials, supplies and equipment now or hereafter delivered to the Premises and intended to be installed therein or located thereon; all fixtures, inventory, other goods and personal property of whatever kind and nature now contained on or in or hereafter placed on or in the Premises and used or to be used in connection with the letting or operation thereof, in which Borrower now has or hereafter may acquire a possessory or title interest (excluding personal property owned by tenants) and all renewals or replacements of any of the foregoing property or articles in substitution thereof, including beds, bureaus, chiffonniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, silverware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, ice makers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers, and other equipment used in the operation of the Premises (collectively, the "Equipment");

TOGETHER with all right, power, privilege, option, title and interest of Borrower in and under all present or future accounts, deposit accounts, documents, instruments, chattel paper, and general intangibles (including "payment intangibles"), as the foregoing terms are defined in the Code (as hereinafter defined), all deposits, monies or escrows held by Lender or Lender's agent or any accounts established pursuant hereto or pursuant to any other Facility Documents, and all contract rights, equipment leases, operating leases and licenses, Operating Agreements (as hereinafter defined), derivative investments, letters of credit, and rate cap agreements, including casualty insurance policies and liability insurance policies (irrespective of whether such policies are required to be obtained or maintained in force pursuant to this Deed of Trust or other Facility Documents), trade names, trademarks, servicemarks, logos, copyrights, goodwill, franchises, books, records, plans, specifications, permits, licenses, approvals, actions, claims under the Federal Bankruptcy Code (as hereinafter defined) and causes of action which now or hereafter relate to, are derived from or are used in connection with the Premises or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (collectively, the "Intangibles");

TOGETHER with all right, power, privilege, option, title and interest of Borrower in and under all existing and future leases, lettings, tenancies, occupancy agreements, licenses to occupy and other similar arrangements affecting the Premises or any part thereof now or hereafter entered into and all amendments, extensions, renewals and guaranties thereof, all security therefor, including letter of credit rights, guaranties and other supporting obligations, and all moneys payable thereunder, whether entered into before or after the filing by or against Borrower of any petition for relief under the Federal Bankruptcy Code (collectively, the "Leases");

TOGETHER with all rents, income, accounts, receivables, issues, profits, security deposits, including the proceeds from letters of credit, guarantees and other supporting obligations, all other payments and profits from the Leases and the use and occupation of the Premises, including fixed and additional rents, cancellation payments, option payments, all revenues and credit card receipts collected from restaurants, bars, meeting rooms and recreational facilities and otherwise, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of sale, lease, sublease, license, concession or other grant of the right of the possession, use or occupancy of all or any portion of the Premises, or personalty located thereon, or rendering of services by Borrower or any operator or manager of any commercial space located in the Premises or acquired from others including from the rental of any office space, retail space, commercial space or other space, halls, stores or offices, including any deposits securing reservations of such space, exhibit or sales space of every kind, license, lease, sublease and concession fees and rentals, food and beverage wholesale and retail sales, telephone and television systems, the provision or sale of other goods and services, service charges, vending machine sales, and other payments and benefits to which Borrower may now or hereafter be entitled from the Premises, the Equipment or the Intangibles or under or in connection with the Leases (collectively, the "Property Income"), including the immediate and continuing right to make claim for, receive, collect and receipt for Property Income, including the right to make claim in a proceeding under the Federal Bankruptcy Code and to apply the same to the payment of the Indebtedness, all whether before or after the filing by or against Borrower of any petition for relief under the Federal Bankruptcy Code; and

TOGETHER with all proceeds, judgments, claims, compensation, awards of damages and settlements pertaining to or resulting from or in lieu of any condemnation or taking of the Premises by eminent domain or any casualty loss or damage to any of the Premises, the Equipment, the Intangibles, the Leases or the Property Income, and including also, the right to assert, prosecute and settle claims arising out of or pertaining to such condemnation or taking or such casualty loss under insurance policies constituting an Intangible and to apply for and receive payments of proceeds under such insurance policies and in any condemnation or taking, the right to apply for and receive all refunds with respect to the payment of property taxes and assessments and all other proceeds from the conversion, voluntary or involuntary, of the Premises, the Equipment, the Intangibles, the Leases or the Property Income, or any part thereof, into cash or liquidated claims. Collectively, all of the foregoing, are herein referred to as the "Proceeds".

The Equipment, the Intangibles, the Leases, the Property Income and the Proceeds are hereinafter collectively referred to as the "Collateral". The Premises and the Collateral are hereinafter collectively referred to as the "Mortgaged Property".

TOGETHER WITH ALL POWERS OF SALE AND RIGHTS OF ENTRY AND POSSESSION OF THE MORTGAGED PROPERTY AND ALL STATUTORY RIGHTS AND COVENANTS IN THE STATE OF TEXAS.

TO HAVE AND TO HOLD the Mortgaged Property, with all the privileges and appurtenances to the same belonging, and with the possession and right of possession thereof, unto Trustee, as trustee for the benefit of Lender as beneficiary, to its successors in the trust created by this Deed

of Trust, and to its and their successors and assigns forever, in trust, upon the terms and conditions set forth herein.

Without limiting the foregoing, for so long as this Deed of Trust and the Senior Security Instrument are outstanding, and there are common representations, warranties and covenants in this Deed of Trust and the Senior Security Instrument with respect to the Mortgaged Property, the obligations that arise as a result of such representations, warranties and covenants are secured solely by the Senior Security Instrument and not secured by this Deed of Trust and funds advanced by Lender as a protective advance or otherwise are not secured by this Deed of Trust; provided however, at such time as Senior Security Instrument shall have been reconveyed from the Mortgaged Property, this Deed of Trust shall secure the performance of all obligations and liabilities under this Deed of Trust and the Assignment with respect to the Mortgaged Property. Notwithstanding the foregoing, breach of any such common representations, warranties and covenants shall constitute an Event of Default to the extent provided below.

ARTICLE I.

Definition of Terms

As used in this Deed of Trust, the terms set forth below shall have the following meanings:

“Acquisition Costs” means, with respect to any property owned by an Outside EOS Entity, (a) the proposed purchase price for such property, plus (b) reasonable and customary closing costs including escrow fees, title insurance, and reasonable broker sales commissions and reasonable legal fees, plus (c) fees, costs and reimbursements that such Outside EOS Entity is or was obligated to pay at the closing of the acquisition of such property (including without limitation fees, costs and expenses of legal counsel, title charges and other similar fees and expenses owed by Borrower and any fees paid to any lender financing such acquisition), plus (d) costs of third party reports including MAI appraisals, Phase I and/or Phase II environmental site assessments, soils reports, property condition reports and, if required, seismic reports.

“Advances” means all sums, amounts or expenses advanced or paid and all costs incurred by Lender, as provided in this Deed of Trust, in any other Facility Document or in any Property Specific Loan Document, upon failure of Borrower to pay or perform any obligation or covenant contained herein, in such other Facility Document, or in such Property Specific Loan Document.

“Affiliate” means any Person that is Controlled by, in Control of or under common Control with any other Person.

“Anti-Money Laundering Laws” means the USA Patriot Act of 2001, the Bank Secrecy Act, as amended through the date hereof, Executive Order 13324 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended through the date hereof, and other federal laws and regulations and executive orders administered by the United States Department of the Treasury, Office of Foreign Assets Control (“OFAC”) which prohibit, among other things, the engagement in transactions with, and the provision of services to, certain foreign countries, territories, entities and individuals (such

individuals include specially designated nationals, specially designated narcotics traffickers and other parties subject to OFAC sanction and embargo programs), and such additional laws and programs administered by OFAC which prohibit dealing with individuals or entities in certain countries regardless of whether such individuals or entities appear on any of the OFAC lists.

“Appurtenances” has the meaning assigned in the Granting Clauses.

“Assignment” means the Assignment of Leases and Rents (Junior) from Borrower to Lender of even date herewith.

“Bankruptcy Proceeding” means any proceeding, action, petition or filing under the Federal Bankruptcy Code or any similar state or federal law now or hereafter in effect relating to bankruptcy, reorganization or insolvency, or the arrangement or adjustment of debts.

“Borrower” means the party or parties identified and defined as Borrower on the Cover Sheet and in the preamble of this Deed of Trust, any subsequent owner of the Mortgaged Property, and its or their respective heirs, executors, legal representatives, successors and assigns.

“Business Day” means any day other than a Saturday, Sunday or other day on which national banks in the State are not open for business.

“Code” means the Uniform Commercial Code of the State, as the same may be amended from time to time or any successor statute thereto.

“Collateral” has the meaning assigned in the Granting Clauses.

“Collateral Property Loans” means any “Property Specific Loan” (as defined in the Loan Facility Agreement) other than the Primary Loan.

“Control” means the power to direct the management and policies of Borrower, whether through the ownership of voting securities, by contract or otherwise.

“Debt Service” means the debt service due under the Primary Note for the following 12-month period, assuming that the Contract Rate under the Primary Note is equal to the Contract Rate under the Primary Note in effect on the date of the calculation; provided, however, if such Debt Service is calculated within twelve (12) months of when interest under the Primary Note is scheduled to accrue at the “Floating Rate” (as defined therein), then such Debt Service shall be calculated at the “Fixed Rate” (as defined in the Primary Note) for the portion of such twelve (12) month period when interest accrues at the Fixed Rate and at the Floating Rate as of the date of calculation for the remainder of such twelve (12) month period.

“Debt Service Coverage Ratio” means, as of the date the calculation is made, the ratio, as determined by Lender in its reasonable discretion of (a) Net Operating Income from the Mortgaged Property to (b) Debt Service.

“Default Rate” means (a) with respect to advances made under the Floating Rate Note, the “Default Rate” as defined therein, and (b) with respect to advances made under any “Loan Note” evidencing a Collateral Property Loan, the “Default Rate” as defined in such Loan Note.

“Environmental Law” means any present or future federal, state or local law, statute, regulation or ordinance, and any judicial or administrative order or judgment thereunder, pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Premises, including each of the following as in effect on the date hereof or hereafter amended: the Comprehensive Environmental Response, Compensation and Liability Act 1980, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. §136 et seq.; the Occupational Safety & Health Act of 1970, as amended, 29 U.S.C. § 651 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. §300f et seq.; the National Environmental Policy Act, as amended, 42 U.S.C. §4321 et seq.; the Solid Waste Disposal Act, as amended, 42 U.S.C. §6901 et seq.; the Texas Water Code §26.001 et seq.; the Texas Health & Safety Code §361.001 et seq.; and the Texas Solid Waste Disposal Act, Tex. Civ. Stat. Ann. art. 4477-7.

“Environmental Report” has the meaning assigned in Section 2.20.

“Equipment” has the meaning assigned in the Granting Clauses.

“ERISA” means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

“Event of Default” means any one or more of the events described in Section 4.01.

“Facility” means the One Hundred Million Dollar (\$100,000,000.00) loan commitment facility made by Lender to Borrower pursuant to the Loan Facility Agreement.

“Facility Documents” has the meaning assigned in the Granting Clauses.

“Federal Bankruptcy Code” means Title 11 of the United States Code, as the same may be amended from time to time or any successor statute thereto.

“Fiscal Year” means each fiscal year of January 1 through December 31 during the term of this Deed of Trust, or such other fiscal year of Borrower as Borrower may select from time to time with the prior consent of Lender. During the first year of the term hereof, Borrower’s Fiscal Year shall be deemed to have commenced on the date of this Deed of Trust and shall end on the regular Fiscal Year ending date as indicated in the immediately preceding sentence.

“Floating Rate Note” has the meaning assigned in the Recitals.

“Formation Documents” means (a) as to any corporation, its articles of incorporation and bylaws, (b) as to any limited partnership, its Certificate of Limited Partnership and partnership

agreement, (c) as to any general partnership or joint venture, its Statement of Partnership and partnership agreement, (d) as to any limited liability company, its articles or certificate of organization and operating agreement, and (e) as to any trust, its trust agreement and a certification of the current trustees thereof, each of the foregoing together with all supplements, amendments and modifications thereto.

“Hazardous Substance” means any material, waste or substance which is:

(i) included within the definitions of “hazardous substances”, “hazardous materials”, “toxic substances” or “solid waste” in or pursuant to any Environmental Law, or subject to regulation under any Environmental Law;

(ii) listed in the United States Department of Transportation Optional Hazardous Materials Table, 49 C.F.R. §172.101, as to date or hereafter amended, or in the United States Environmental Protection Agency List of Hazardous Substances and Reportable Quantities, 40 C.F.R. Part 302, as to date or hereafter amended; or

(iii) explosive, radioactive, asbestos, asbestos containing material, Microbial Matter, a hydrocarbon, a polychlorinated biphenyl, oil, or a petroleum product.

“Impositions” means all taxes (including ad valorem taxes) or payments in lieu of taxes of every kind and nature, sewer rents, charges for water, for setting or repairing meters and for all other utilities serving the Premises, and assessments, levies, inspection and license fees and all other charges imposed upon or assessed against the Mortgaged Property or any portion thereof (including the Property Income), and any stamp or other taxes which might be required to be paid, or with respect to any of the Facility Documents or Property Specific Loan Documents, any of which might, if unpaid, affect the enforceability of any of the remedies provided in this Deed of Trust or result in a lien on the Mortgaged Property or any portion thereof, regardless of to whom assessed.

“Improvements” has the meaning assigned in the Granting Clauses.

“Indebtedness” means the payment of all amounts owed by Borrower under the Facility Documents and the Collateral Property Loans.

“Intangibles” has the meaning assigned in the Granting Clauses.

“Land” has the meaning assigned in the Granting Clauses.

“Late Charge” means any charge designated as such and payable by Borrower for tardy performance by Borrower under the Floating Rate Note, this Deed of Trust or any of the other Facility Documents.

“Leases” has the meaning assigned in the Granting Clauses.

“Lender” means Massachusetts Mutual Life Insurance Company, the lender identified as such on the Cover Sheet and in the preamble of this Deed of Trust, and its successors and assigns (including any other holders from time to time of the Floating Rate Note).

“Lender Financed Properties” means, collectively, the Mortgaged Property together with each other real property acquired by Borrower and financed with a Property Specific Loan.

“Loan Facility Agreement” means that certain Loan Facility Agreement dated as of November 30, 2006 by and between Borrower and Lender.

“Loan Note” has the meaning assigned in the Loan Facility Agreement.

“Losses” means claims, suits, liabilities (including strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages of whatever kind or nature (including attorneys’ fees, costs and expenses).

“Major Lease” means a Lease with a tenant that occupies the lesser of 25,000 square feet or one hundred percent (100%) of the Premises.

“Maturity Date” has the meaning assigned in the Floating Rate Note.

“Microbial Matter” means the presence of fungi or bacterial matter which reproduces through the release of spores or the splitting of cells, including mold, mildew and viruses, whether or not such Microbial Matter is living, which poses a threat to the health, safety or welfare of any Person or adversely affects the value of the Mortgaged Property.

“Mortgaged Property” has the meaning assigned in the Granting Clauses.

“Mortgaged Property Release” has the meaning assigned in Section 5.19.

“New Lease” has the meaning assigned in Section 2.19(b).

“Net Operating Income” means an amount equal to Operating Revenue for the Mortgaged Property minus Operating Expenses for the Mortgaged Property.

“Obligations” has the meaning assigned in the Granting Clauses.

“OFAC Prohibited Person” means, a country, territory, individual or Person (i) listed on, included within or associated with any of the countries, territories, individuals or entities referred to on The Office of Foreign Assets Control’s List of Specially Designated Nationals and Blocked Persons or any other prohibited person lists maintained by governmental authorities, or otherwise included within or associated with any of the countries, territories, individuals or entities referred to in or prohibited by OFAC or any other Anti-Money Laundering Laws, or (ii) which is obligated or has any interest to pay, donate, transfer or otherwise assign any property, money, goods, services, or other benefits from the Mortgaged Property directly or indirectly, to any countries, territories, individuals or entities on or associated with anyone on such list or in such laws.

“Operating Agreements” means the management agreements and leasing commission agreements for the Premises and the agreements, licenses and leases set forth in Exhibit C.

“Operating Expenses” means the amount determined by Lender’s own analysis of all projected ordinary and necessary operating expenses applicable to the Mortgaged Property for the immediately following 12-month period, including, but not limited to, expenses for utilities, administration, cleaning, landscaping, security, repairs and maintenance, ground rent payments, if any, management fees, fully assessed (or estimated fully assessed) real estate and other taxes and assessments, insurance premiums, and general and administrative expenses, but excluding from any such expenses any deductions for federal, state and other income taxes, debt service, depreciation or amortization of capital expenditures (including leasing commissions, tenant improvements, and other leasing costs), and other non-cash items. Borrower shall provide Lender with its own proposed calculation of Operating Expenses, certified by the chief financial officer, general partner, managing member or Borrower, or other authorized person, together with all relevant supporting detail required to determine the same.

“Operating Revenue” means the amount determined by Lender’s own analysis and estimate of gross rents, revenues and other income from the operation of the Mortgaged Property, for the immediately following 12-month period, taking into account both (i) the amount of all current rents, revenues and other income derived from Leases which are expected to continue (except for Leases whose terms will end during the 12-month period and in such instance, only the rents to be collected until the end of the Lease will be counted); and (ii) the amount of all rents, revenues and other income to be derived from Leases scheduled either to have increase in rent or to commence by their terms during the immediately following 12-month period. Borrower shall provide Lender with its own proposed calculation of Operating Revenue, certified by the chief financial officer, general partner or managing member of Borrower, together with all relevant supporting detail required to determine the same.

“Outside EOS Entities” means all entities (other than Borrower) owned directly or indirectly by EOS Properties II, LLC, a Delaware limited liability company.

“Permitted Encumbrances” means the liens and security interests created by this Deed of Trust, the Senior Security Instrument, the Assignment, and the Senior Assignment and those exceptions to title set forth in Exhibit B.

“Person” means and includes any individual, corporation, partnership, joint venture, limited liability company, association, bank, joint-stock company, trust, unincorporated organization or government, or an agency or political subdivision thereof.

“Portfolio DSC” has the meaning assigned in the Loan Facility Agreement.

“Portfolio Loan to Value Ratio” has the meaning assigned in the Loan Facility Agreement.

“Portfolio Property” and “Portfolio Properties” have the meanings assigned in the Loan Facility Agreement.

“Premises” has the meaning assigned in the Granting Clauses.

“Principals” means all general partners, controlling members, managing members, managing agents and/or controlling stockholders of Borrower.

“Proceeds” has the meaning assigned in the Granting Clauses.

“Property Income” has the meaning assigned in the Granting Clauses.

“Property Specific Loan Documents” means all documents entered into by Borrower and or any guarantor or surety thereof in connection with any Collateral Property Loan, as the same may be amended from time to time.

“Property Specific Loan Notes” has the meaning assigned in the Granting Clauses.

“Release” means the release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of a Hazardous Substance no matter how or by whom or what caused.

“Release Amount” means Twenty Five Million One Hundred Seventy Nine Thousand and No/100 Dollars (\$25,179,000.00).

“Release Criteria” has the meaning assigned in Section 5.19.

“Remediation” means and includes any response, remedial, removal or corrective action, activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance or underground storage tank, any actions to prevent, cure or mitigate any Release of a Hazardous Substance, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or underground storage tank.

“Restricted REIT Distribution Period” means (i) any period during which Borrower is in breach of Section 2.17 hereof, (ii) any period during which a Bankruptcy Proceeding filed by Borrower or any of its Affiliates is pending against Borrower, (iii) any period following foreclosure hereunder or under the Senior Security Instrument, or upon deed in lieu thereof, and (iv) any period during which an involuntary Bankruptcy Proceeding is pending against Borrower; provided, however, the event identified in subsection (iv) shall not cause a Restricted REIT Distribution Period to be in effect unless such involuntary Bankruptcy Proceeding is not dismissed within 180 days of filing.

“Senior Assignment” means the Assignment of Leases and Rents from Borrower to Lender of even date herewith.

“State” means the State or Commonwealth in which the Land is situated.

“Total Indebtedness” means the sum of the Indebtedness plus the Primary Note.

“Trustee” means the party or parties identified and defined as Trustee on the Cover Sheet and in the preamble of this Deed of Trust, and its or their respective successors in trust created by this Deed of Trust, and its or their respective successors and assigns.

“Upstream Owners” means EOS Properties II, LLC, a Delaware limited liability company, and EOS Investment Fund II, L.P., a Bermuda limited partnership.

ARTICLE II.

Covenants, Warranties and Representations of Borrower

Borrower covenants, warrants, represents and agrees as follows:

Section 2.01. Performance of Obligations. Borrower shall punctually pay and perform the Obligations at the times and in the manner provided in the Facility Documents, this Deed of Trust and the Property Specific Loan Documents, all in lawful money of the United States of America.

Section 2.02. Title to the Mortgaged Property.

(a) Borrower has fee simple title (or such lesser estate therein as may be specified in Exhibit A) to the Premises and good indefeasible title to the balance of the Mortgaged Property, free and clear of liens and encumbrances except Permitted Encumbrances.

(b) Borrower has full power and lawful authority to encumber the Mortgaged Property in the manner and form herein set forth.

(c) This Deed of Trust is and will remain a valid and enforceable lien on and security interest in the Mortgaged Property.

(d) Borrower will preserve such title and will forever warrant and defend the same and the validity and priority of the lien hereof to Trustee and Lender against all claims whatsoever, subject to the Permitted Encumbrances.

Section 2.03. Maintenance of the Mortgaged Property. Borrower shall maintain the Mortgaged Property in good and safe condition, working order and repair, and comply with all existing and future federal, state and local laws, ordinances, rules and regulations and court orders affecting or which may be interpreted as affecting the Mortgaged Property, including the Americans with Disabilities Act and all zoning, subdivision, land use, environmental, traffic, fire, building, and occupational safety and health rules, regulations, codes, acts and statutes to which it is subject, provided that Borrower may contest in good faith any such law, ordinance, rule or regulation so long as such contest operates as a stay to the enforcement of such law, ordinance, rule or regulation. Borrower shall permit Lender and its agents to enter upon and inspect: (a) the areas of the Mortgaged Property which are open to the public at all reasonable hours without prior notice and (b) all other areas of the Mortgaged Property at all reasonable hours with reasonable prior notice (provided that Lender shall in no event be required to provide Borrower with more than 48 hours prior notice), except that no notice shall be required in the event of an emergency. Borrower shall not, without the prior consent of Lender: (a) change the use of the Premises; (b) cause or permit the use or occupancy of any part of the Premises to be discontinued if such discontinuance would violate any zoning or other law, ordinance or regulation; (c) consent to any zoning reclassification, modification or restriction affecting the Premises; (d) threaten, commit or permit any waste, structural or material alteration, demolition

or removal of the Mortgaged Property or any portion thereof (provided that the Equipment included within the Collateral may be removed if replaced with similar items of equal or greater value); or (e) take any steps whatsoever to convert the Mortgaged Property, or any portion thereof, to a condominium or cooperative form of ownership. No provision of this Section 2.03 shall prohibit Borrower from undertaking and completing or permitting a tenant to undertake and complete tenant improvement work authorized under Leases previously approved by Lender or not requiring Lender's prior approval.

Section 2.04. Insurance; Restoration.

(a) Borrower shall keep the Improvements and the Equipment insured against damage by fire, acts of terrorism, boiler and machinery, wind storm, and other hazards covered by a comprehensive all-risk coverage insurance policy (including terrorism insurance) ("Special Form") or "All-Risk", extended coverage property insurance insuring 100% of the full insurable replacement value thereof with no coinsurance or similar penalty (which shall mean the full repair and actual replacement value thereof, without reduction for depreciation). Additionally, such insurance shall insure Borrower against rent loss or business interruption (including extra expense) covering at least 12 months' rental income from all Leases. Unless all improvements comply and continue to comply with all applicable laws, codes, rules and regulations, Borrower shall maintain Ordinance and Law coverage in amounts as follows: Coverage A, 100% of the insurable value; Coverage B, Demolition and Debris removal equal to 10% of the insurable value; and, Coverage C, Increased Cost of Construction equal to 10% of the insurable value. Borrower shall also carry such other insurance, and in such amounts, as Lender may from time to time reasonably require depending on the specific characteristics of the Mortgaged Property, including, without limitation, flood, builder's risk, demolition insurance, and commercial auto; and such additional insurance shall be obtained within 20 days after written demand by Lender. All insurance coverages, limits and deductibles must be satisfactory to Lender in Lender's sole and absolute discretion. In the event Borrower obtains an umbrella or a blanket insurance policy or a separate policy or any other insurance policy affecting the Mortgaged Property hereunder, Borrower shall notify Lender of the same. Any umbrella or blanket insurance policy shall be in amounts as Lender determines to be reasonable from time to time, shall specifically allocate to the Mortgaged Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate policy insuring only the Mortgaged Property in compliance with the provisions of Section 2.04(c), giving Lender all of the rights set forth in this Section 2.04. Except as provided herein, the Proceeds of insurance paid on account of any damage to or destruction of the Premises or any portion thereof shall be paid over to Lender to be applied as hereinafter provided.

(b) Borrower shall also maintain commercial general liability insurance, including contractual liability, with respect to the Premises against personal injury, death and property damage, with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, with a "per location" aggregate endorsement if multiple properties are insured under the same policy.

(c) All insurance policies and endorsements required pursuant to this Deed of Trust shall: (i) be endorsed to name Lender as an insured thereunder, as its interest may appear, with loss payable to Lender, without contribution, under a long-form, non-contributory mortgagee

clause; (ii) be fully paid for and contain such provisions and expiration dates and be in such form and issued by such insurance companies licensed to do business in the State, with a rating of "A-VIII" or better as established by Best's Rating Guide and A or better as established by Standard & Poors, Inc. or an equivalent rating with such other publication of a similar nature as shall be in current use, as shall be approved by Lender; notwithstanding the foregoing, FM Global is acceptable to Lender as long as FM Global maintains an S&P rating of BBB or better and an A.M. Best rating of A+15; (iii) without limiting the foregoing, provide that such policy or endorsement may not be canceled or materially adversely changed except upon 30 days prior written notice of intention of cancellation or material adverse change to Lender, and that no act or thing done by Borrower or Lender shall invalidate the policy as against Lender; and (iv) be in form and content reasonably satisfactory to Lender. At least 5 days prior to the expiration or termination of any insurance policy required hereunder, Borrower shall deliver to Lender one of the following evidences of insurance for approval by Lender: (i) an ACORD 28 Evidence of Property Insurance provided by an authorized insurance agent or, where ACORD 28 is not available, other evidence of insurance confirming the same rights as are provided by ACORD 28 or (ii) an ACORD 25 Certificate of Liability Insurance provided by an authorized insurance agent. Any such evidence of insurance must include a mortgagee clause and a loss payee clause satisfactory to Lender. If the Mortgaged Property is not insured under a blanket policy, Borrower shall cause the insurance carrier to deliver the original policy or a certified copy to Lender not more than 60 days following the date hereof or the expiration or termination of the applicable insurance policy (as applicable). If Borrower fails to maintain insurance in compliance with this Deed of Trust, Lender may (but shall not be obligated to) obtain such insurance and pay the premium therefor and Borrower shall reimburse Lender on demand for all such Advances. Notwithstanding anything to the contrary contained herein or in any provision of law, the Proceeds of insurance policies coming into the possession of Lender shall not be deemed trust funds and Lender shall be entitled to dispose of such Proceeds as hereinafter provided.

(d) In the event of any damage to or destruction of the Premises and/or Equipment, Borrower shall give prompt written notice to Lender and shall promptly commence and diligently continue to completion the repair, restoration and rebuilding of the Premises and/or Equipment so damaged or destroyed in full compliance with all legal requirements and with the provisions of Sections 2.04(h) and (j) below, and free and clear from any and all liens and claims. Such repair, restoration and rebuilding of the Premises are sometimes hereinafter collectively referred to as the "Work". Borrower shall not adjust, compromise or settle any claim for insurance proceeds in excess of \$500,000 without the prior consent of Lender, which consent shall not be unreasonably withheld. Except as provided herein, Lender shall have the option in its sole discretion to apply any insurance Proceeds it may receive pursuant to this Deed of Trust (less any cost to Lender of recovering and paying out such Proceeds, including reasonable attorneys' fees) to the payment of the Indebtedness or to allow all or a portion of such Proceeds to be used for the Work. If any insurance Proceeds are applied to reduce the Indebtedness, provided no Event of Default shall have occurred and be continuing, Lender shall apply the same, without any prepayment fee, to the Total Indebtedness in such amounts and to such of Borrower's obligations comprising the Total Indebtedness as Borrower directs in its sole and absolute discretion. Notwithstanding the foregoing, if an Event of Default shall have occurred and be continuing, Lender, at its option, may apply any insurance Proceeds to the Indebtedness in such order and priority as Lender deems appropriate in its sole discretion (and (i)

any prepayment fee required to be paid under the Property Specific Loan Notes (other than the Primary Note) and (ii) any breakage amounts required to be paid under the Floating Rate Note shall be due and owing).

(e) In the event of the foreclosure of this Deed of Trust or other transfer of title to or assignment of the Mortgaged Property in extinguishment of the Indebtedness in whole or in part, all right, title and interest of Borrower in and to all policies of insurance required by this Deed of Trust and any insurance Proceeds shall inure to the benefit of and pass to Lender or any purchaser or transferee at the foreclosure sale of the Mortgaged Property.

(f) Lender may notify any and all insurers under casualty insurance policies constituting part of the Intangibles that Lender has a security interest pursuant to the provisions of this Deed of Trust in and to such insurance policies and any proceeds thereof, and that any payments under those insurance policies are to be made directly to Lender. Lender's rights under this Section 2.04(f) may be exercised by Lender or a court appointed receiver appointed upon the request of Lender and irrespective of whether or not an Event of Default (or any matter which, after notice or passage of time or both, would constitute an Event of Default) shall have occurred under this Deed of Trust.

(g) Notwithstanding the provisions of Section 2.04(d) above, if in Lender's reasonable judgment (as determined by a contractor selected by Lender, which contractor is reasonably acceptable to Borrower) the cost of the Work shall not exceed fifty percent (50%) of the replacement cost of Mortgaged Property as of the time of the damage or destruction, then Lender shall, upon request by Borrower, permit Borrower to use the Proceeds for the Work (subject to the provisions of, and less Lender's costs described in, Section 2.04(h) below), so long as:

- (i) no Event of Default shall then exist;
- (ii) the Work can be completed by the date which is the earlier to occur of (a) 12 months from the date of the damage to or destruction of the Premises and (b) 6 months prior to the Maturity Date;
- (iii) the Debt Service Coverage Ratio is not less than 1.0:1.0 and the Portfolio DSC is not less than 1.25:1.0;
- (iv) all sums necessary to effect the Work over and above any available Proceeds shall be at the sole cost and expense of Borrower and, at Lender's request, Borrower shall deposit such additional amounts, as estimated by a contractor selected by Lender (which contractor is reasonably acceptable to Borrower), with Lender prior to commencing any Work, to be held and disbursed by Lender pursuant to subsection (h) below;
- (v) at all times during any such Work Borrower shall maintain, at its sole cost and expense, workers' compensation, builders risk and public liability insurance in amounts satisfactory to Lender and in accordance with the provisions of this Section 2.04;

- (vi) Borrower provided evidence satisfactory to Lender that upon completion of such restoration and repairs the net operating income from the Mortgaged Property for the 12-month period following such completion of restoration and repairs will not be less than that which existed during the 12-month period immediately prior to the damage or destruction; and
- (vii) at all times during any such Work, business income and extra expense including rental value insurance shall be in full force and effect and available to cover any loss of business income and rents resulting from the damage to or destruction of the Premises and/or Equipment.

(h) If any insurance Proceeds are used for the Work, then (except as provided herein) such Proceeds shall be held by Lender and shall be paid out from time to time to Borrower as the Work progresses (less any cost to Lender of recovering and paying out such Proceeds, including reasonable attorneys' fees and costs allocable to inspecting the Work and the plans and specifications therefor), subject to each of the following conditions:

- (i) If the Work is structural and if the cost of the Work is reasonably estimated to exceed Two Hundred Thousand Dollars (\$200,000), the Work shall be conducted under the supervision of a certified and registered architect or engineer. Before Borrower commences any Work, other than temporary work to protect property or prevent interference with business, Lender shall have approved the plans and specifications for the Work, which approval shall not be unreasonably withheld or delayed, it being nevertheless understood that such plans and specifications shall provide for Work so that, upon completion thereof, the Premises shall at least equal in value and general utility to the Premises immediately prior to the damage or destruction.
- (ii) Each request for payment shall be made on not less than seven (7) Business Days prior notice to Lender and shall be accompanied by a certificate of the architect or engineer in (i) above (or a certificate given by Borrower if no architect or engineer is so required) stating (A) that all of the Work completed has been done in compliance with the approved plans and specifications, if required under (i) above, (B) that the sum requested is justly required to reimburse Borrower for payments by Borrower, or is justly due to the contractor, subcontractors, materialmen, laborers, engineers, architects or other Persons rendering services or materials for the Work (giving a brief description of such services and materials), and that when added to all sums previously paid out by Lender does not exceed the value of the Work done to the date of such certificate, (C) if the sum requested is to cover payment relating to repair and restoration of Equipment required or relating to the Premises, that title to the items of Equipment covered by the request for payment is vested in Borrower, and (D) that the amount of such Proceeds remaining in the hands of Lender will be sufficient on completion of the Work to pay for the same in full (giving in such reasonable detail as Lender may require an estimate of the

cost of such completion). Additionally, each request for payment shall contain a statement signed by Borrower approving both the Work done to date and the Work covered by the request for payment in question.

- (iii) Each request for payment shall be accompanied by proper and valid waivers of lien covering that part of the Work for which payment or reimbursement is being requested and, if required by Lender, a search prepared by a title company or licensed abstractor, or by other evidence satisfactory to Lender that there has not been filed with respect to the Premises any mechanics' or other lien or instrument for the retention of title relating to any part of the Work not discharged of record. Additionally, as to any Equipment covered by the request for payment, Lender shall be furnished with evidence of payment therefor and such further evidence satisfactory to assure Lender of its valid first lien on the Equipment.
- (iv) Lender shall have the right to inspect the Work at all reasonable times upon reasonable prior notice and may condition any disbursement of Proceeds upon the satisfactory completion, as determined in Lender's reasonable discretion, of any portion of the Work for which payment or reimbursement is being requested. Neither the approval by Lender of the plans and specifications for the Work nor the inspection by Lender of the Work shall make Lender responsible for the preparation of such plans and specifications or the compliance of such plans and specifications, or of the Work, with any applicable law, regulation, ordinance, covenant or agreement.
- (v) Proceeds shall not be disbursed more frequently than once each calendar month.
- (vi) Any request for payment made after the Work has been completed shall be accompanied by (and to the extent issued by the applicable governmental authority) a copy or copies of any certificate or certificates required by law to render occupancy and full operation of the Premises legal.
- (vii) Upon completion of the Work and payment in full therefor, any unexpended Proceeds shall either be paid over to Borrower or shall be applied to the Total Indebtedness in such amounts and to such of Borrower's obligations comprising the Total Indebtedness as Borrower directs in its sole and absolute discretion.

(i) Upon any failure on the part of Borrower to promptly commence the Work or to proceed diligently and continuously to completion of the Work or upon any Event of Default, Lender, at its sole option, shall be entitled to apply at any time all or any portion of insurance Proceeds it then holds to the Indebtedness or to the curing of any Event of Default under this Deed of Trust, the Floating Rate Note, or any other Facility Document, or any Property Specific Loan Document.

(j) Notwithstanding any other provision of this Section 2.04, if no Event of Default shall exist and be continuing (nor any matter has occurred which, after notice or passage of time or both, would constitute an Event of Default) and in Lender's reasonable judgment the cost of the Work is less than \$500,000 as of the date of loss or damage to the Premises and/or Equipment and the Work can be completed in less than 180 days after date of issuance of the permits necessary to commence the Work, then Lender shall, upon request by Borrower, permit Borrower to apply for and receive the insurance Proceeds directly from the insurer (and Lender shall advise the insurer to pay over such Proceeds directly to Borrower), provided that Borrower shall apply such insurance Proceeds solely to the prompt and diligent commencement and completion of such Work.

Section 2.05. Condemnation. Borrower shall notify Lender immediately of the actual or threatened commencement of any proceedings for the condemnation or taking of the Premises or any portion thereof and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in such proceedings and Borrower shall deliver to Lender all instruments requested by Lender to permit such participation. Lender is hereby irrevocably appointed as Borrower's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain the Proceeds of any such condemnation and to make any compromise or settlement in connection with such proceedings, subject to the provisions of this Deed of Trust. Borrower shall not adjust, compromise, settle or enter into any agreement with respect to such proceedings without the prior consent of Lender. All Proceeds of any condemnation, or purchase in lieu thereof, of the Premises or any portion thereof are hereby assigned to and shall be paid to Lender. Borrower hereby authorizes Lender to collect and receive such Proceeds, to give proper receipts and acquittances therefor and, in Lender's sole discretion, to apply such Proceeds (less any cost to Lender of recovering and paying out such Proceeds, including reasonable attorneys' fees, costs and expenses allocable to inspecting any repair, restoration or rebuilding work and the plans and specifications therefor) toward the payment of the Indebtedness or to the repair, restoration or rebuilding of the Premises in the manner and subject to the conditions set forth in Section 2.04(h). If the Proceeds are used to reduce the Indebtedness, they shall be applied to the Total Indebtedness in such amounts and to such of Borrower's obligations comprising the Total Indebtedness as Borrower directs in its sole and absolute discretion, without any prepayment fee. Borrower shall promptly execute and deliver all instruments requested by Lender for the purpose of confirming the assignment of the condemnation Proceeds to Lender.

Section 2.06. Impositions.

(a) Borrower shall pay and discharge all Impositions prior to delinquency and Borrower shall furnish to Lender evidence of the timely payment of such Impositions within 15 days after such payments are made in the form of either validated receipts, or cancelled checks. Borrower's obligation to pay Impositions pursuant to this Deed of Trust shall include, to the extent permitted by applicable law, taxes resulting from future changes in law which impose upon Trustee or Lender an obligation to pay any property taxes or other Impositions or which otherwise adversely affect Trustee's or Lender's interests. Should Borrower default in the payment of any Impositions, Lender may (but shall not be obligated to) pay such Impositions or any portion thereof and Borrower shall reimburse Lender on demand for all such Advances.

Deposits made by Borrower to Lender pursuant to Section 2.07 shall be used for payment of Impositions, subject to the terms and conditions of Section 2.07.

(b) Borrower shall not be required to pay, discharge or remove any Imposition so long as Borrower contests in good faith such Imposition or the validity, applicability or amount thereof by an appropriate legal proceeding which operates to prevent the collection of such amounts and the sale of the Mortgaged Property or any portion thereof; provided, however, that such contest will not result in a tax certificate or other sale of the tax lien and prior to the date on which such Imposition would otherwise have become delinquent Borrower shall have: (i) given Lender prior notice of such contest; and (ii) deposited with Lender in cash or via letter of credit satisfactory to Lender, and shall deposit such additional amounts or letters of credit as are necessary to keep on deposit at all times, an amount equal to at least 110% of the total of: (A) the balance of such Imposition then remaining unpaid (after taking into account any monies previously deposited by Borrower with Lender pursuant to Section 2.07 for such contested Impositions); and (B) all interest, penalties, costs and charges accrued or accumulated thereon. Any such contest shall be prosecuted with due diligence, and Borrower shall promptly pay the amount of such Imposition as finally determined, together with all interest, penalties, costs and charges payable in connection therewith. Lender shall have full power and authority to apply any amount deposited with Lender under this Section 2.06(b) to the payment of any unpaid Imposition to prevent the sale of any tax lien or the sale or forfeiture of the Mortgaged Property for non-payment thereof. Lender shall have no liability, however, for failure to so apply any amount deposited unless Borrower requests the application of such amount to the payment of the particular Imposition for which such amount was deposited. Any surplus retained by Lender after payment of the Imposition for which a deposit was made shall be repaid to Borrower unless an Event of Default shall have occurred and is continuing under the provisions of this Deed of Trust, in which case said surplus may be retained by Lender to be applied to the Indebtedness. Notwithstanding any provision of this Section 2.06(b) to the contrary, Borrower shall pay any Imposition which it might otherwise be entitled to contest if, in the reasonable opinion of Lender, failure to pay will result in a tax certificate or other sale of the tax lien or the Mortgaged Property is in jeopardy or in danger of being forfeited or foreclosed. If Borrower refuses to pay any such Imposition, Lender may (but shall not be obligated to) make such payment and Borrower shall reimburse Lender on demand for all such Advances. Additionally, in such event, if Lender is prevented by law or judicial or administrative order from paying such Imposition, then Lender, at its option, may declare the entire Indebtedness immediately due and payable.

Section 2.07. Deposits. Borrower shall deposit with Lender, monthly, on the due date of each monthly installment under the Primary Note, 1/12th of the annual charges (as estimated by Lender) for Impositions with respect to the Mortgaged Property. If required by Lender, Borrower shall also deposit with Lender, simultaneously with such monthly deposits and/or the execution of this Deed of Trust, a sum of money which together with such monthly deposits will be sufficient to make the payment of each such charge at least 30 days prior to the date initially due. Should such charges not be ascertainable at the time any deposit is required to be made, the deposit shall be made on the basis of the charges for the prior year or payment period, as reasonably estimated by Lender. When the charges are fixed for the then current year or period, Borrower shall deposit any deficiency on demand. All funds deposited with Lender may be commingled with Lender's other funds, and shall be applied in payment of the foregoing charges when and as payable provided that no Event of Default shall have occurred. Except as otherwise

required by applicable law, any interest or earnings on any reserves shall accrue for the benefit of Lender. Should an Event of Default occur, the funds so deposited may be applied in payment of the charges for which such funds shall have been deposited or to the payment of the Indebtedness or any other charges affecting the Mortgaged Property, as Lender in its sole discretion may determine, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Lender as herein provided. Borrower shall furnish Lender with bills and all other documents necessary for the payment of the foregoing charges at least 10 days prior to the date on which each payment thereof shall first become due. Notwithstanding the foregoing, Lender agrees that Borrower shall not be required to make any of the foregoing deposits for Impositions until such time as there exists (a) a default under the terms of the Facility Documents or the Property Specific Loan Documents which remains uncured after the expiration of any applicable grace or cure period, including, without limitation, a delinquency in the payment of either real estate taxes, insurance premiums or ground rents, or (b) a Portfolio DSC that is less than 1.25:1.0. Upon the occurrence of the items in (a) or (b) above, Borrower's obligations to make monthly deposits for Impositions and insurance premiums shall be automatically reinstated for so long as such default remains in existence and/or such Portfolio DSC remains less than 1.25:1.0, as applicable. Notwithstanding anything to the contrary herein contained, deposits for Impositions shall not be collected hereunder if Lender is simultaneously collecting such deposits pursuant to the Senior Security Instrument.

Section 2.08. Mortgage Taxes. Borrower shall pay any and all taxes, charges, filing, registration and recording fees, excises and levies imposed upon Lender by reason of its ownership of, or measured by amounts payable under, the Floating Rate Note, this Deed of Trust or any other Facility Document or Property Specific Loan Document (other than income, franchise and doing business taxes), and shall pay all stamp taxes and other taxes required to be paid on the Floating Rate Note, this Deed of Trust or the other Facility Documents or Property Specific Loan Documents. If Borrower fails to make such payment within five days after notice thereof from Lender, Lender may (but shall not be obligated to) pay the amount due, and Borrower shall reimburse Lender on demand for all such Advances. If applicable law prohibits Borrower from paying such taxes, charges, filing, registration and recording fees, excises, levies, stamp taxes or other taxes, then Lender may declare the Indebtedness then unpaid to be immediately due and payable. In such event, no prepayment fee shall be charged.

Section 2.09. Organization and Authority.

(a) The execution and delivery of this Deed of Trust and the Assignment have been duly authorized and there is no provision in Borrower's organizational documents, as amended, requiring further consent for such action by any other Person.

(b) Borrower is duly organized, validly existing and in good standing under the laws of the state of its formation.

(c) Borrower has all necessary franchises, licenses, authorizations, registrations, permits and approvals and full power and authority to own and operate its properties, including the Mortgaged Property, and carry on its business as now conducted in each jurisdiction where Borrower conducts its business.

(d) The execution and delivery of and performance of its obligations under the Facility Documents and the Property Specific Loan Documents: (i) will not result in Borrower being in default under any provision of its organizational documents, as amended, any court order, or any mortgage, deed of trust or other agreement to which it is a party; and (ii) do not require the consent of or any filing with any governmental authority.

(e) All necessary and required actions have been duly taken by and on behalf of Borrower to make and constitute this Deed of Trust and the Assignment, and this Deed of Trust and the Assignment constitute, legal, valid and binding obligations enforceable in accordance with their respective terms, subject only to the application of bankruptcy and other laws affecting the rights of creditors generally.

Section 2.10. Maintenance of Existence. So long as it owns the Mortgaged Property, Borrower shall do all things necessary to preserve and keep in full force and effect its existence, franchises, licenses, authorizations, registrations, permits and approvals under the laws of the state of its formation and the State, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court now or hereafter applicable to Borrower or to the Mortgaged Property or any portion thereof.

Section 2.11. Payment of Liens. Borrower shall pay when due all payments and charges due under or in connection with any liens and encumbrances on and security interests in the Mortgaged Property or any portion thereof, all rents and charges under any ground leases and other leases forming a part of the Mortgaged Property, and all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in or permit the creation of a lien on the Mortgaged Property or any portion thereof, and shall cause the prompt (but in no event later than 45 days after imposition), full and unconditional discharge (or bonding or insuring by title company endorsement) of all liens imposed on or against the Mortgaged Property or any portion thereof. Borrower shall do or cause to be done, at the sole cost of Borrower, everything necessary to fully preserve the priority of the lien of this Deed of Trust. If Borrower fails to make any such payment or if a lien attaches to the Mortgaged Property or any portion thereof, and Borrower does not provide a bond or a title insurance endorsement to cover such lien within 10 Business Days of the filing of such lien, Lender may (but shall not be obligated to) make such payment or discharge such lien and Borrower shall reimburse Lender on demand for all such Advances.

Section 2.12. Costs of Defending and Upholding the Lien. Lender and, to the extent authorized by Lender, Trustee may, after notice to Borrower: (a) appear in and defend any action or proceeding, in the name and on behalf of either Lender or Borrower, in which Trustee or Lender is named or which Lender in its reasonable judgment determines may adversely affect the Mortgaged Property, this Deed of Trust, the lien hereof or any other Facility Document or Property Specific Loan Document; and (b) institute any action or proceeding which Lender in its reasonable judgment determines should be instituted to protect the interest or rights of Trustee or Lender in the Mortgaged Property or its rights under this Deed of Trust or any other Facility Document or Property Specific Loan Document, including foreclosure proceedings. Borrower agrees to bear and shall pay or reimburse Trustee and Lender on demand for all Advances and expenses (including reasonable attorneys' fees, costs and expenses) relating to or incurred by Lender in connection with any such action or proceeding.

Section 2.13. Costs of Enforcement. Borrower agrees to bear and shall pay or reimburse Trustee and Lender on demand for all Advances and expenses (including reasonable attorneys' and appraisers' fees, costs and expenses and the expenses and reasonable fees of any receiver or similar official) of or incidental to the collection of the Indebtedness, any foreclosure of this Deed of Trust or any other Facility Document or Property Specific Loan Document, any enforcement, compromise or settlement of this Deed of Trust, any other Facility Document or Property Specific Loan Document or the Indebtedness, or any defense or assertion of the rights or claims of Trustee or Lender in respect of any thereof, by litigation or otherwise.

Section 2.14. Interest on Advances and Expenses. All Advances made and any reasonable expenses incurred at any time by Trustee or Lender pursuant to the provisions of this Deed of Trust or the other Facility Documents or Property Specific Loan Documents or under applicable law shall be secured by this Deed of Trust as part of the Indebtedness, with equal rank and priority. All such Advances and expenses shall bear interest at the Default Rate from the date that each such Advance or expenses is made or incurred to the date of repayment and all such Advances and expenses with interest thereon shall be payable to Lender on demand.

Section 2.15. Indemnification. Borrower shall indemnify, defend and hold Trustee and Lender and their respective directors, officers, employees and agents harmless from and against and reimburse them for all Losses which may be imposed upon, asserted against, or incurred or paid by any of them: (a) by reason of, on account of or in connection with any act or occurrence relating to the Mortgaged Property or any bodily injury, death, other personal injury or property damage occurring in, upon or in the vicinity of the Premises from any cause whatsoever; (b) as a result of the failure of Borrower to perform any of its obligations under any of the Facility Documents or Property Specific Loan Documents; or (c) on account of any transaction otherwise arising out of or in any way connected with the Mortgaged Property, this Deed of Trust or the Indebtedness.

Section 2.16. Financial Statements; Records. Borrower shall keep adequate books and records of account in accordance with either (A) generally accepted accounting principles with the following adjustments: (1) in reporting net operating income, rents shall be reflected in accordance with the contractual terms of the relevant lease agreements, rather than a straight-line basis over the terms of the lease agreements, and (2) the value of assets and liabilities shall be reflected at their "current value" instead of their historical cost (which historical cost includes adjustments for depreciation and amortization), or (B) in accordance with other methods reasonably acceptable to Lender, in each case as consistently applied, and shall furnish to Lender:

(a) a current certified rent roll, signed and dated by Borrower, detailing for each of the Leases, the names of all tenants of the Premises, the portion of the Premises occupied by each tenant, the annual or monthly rental, including base rent, additional rent and percentage rent, and any other charges payable and the term of each of the Leases, including the expiration date, and any other information as is reasonably required by Lender, within 120 days after the end of each calendar year until the reconveyance of this Deed of Trust;

(b) an annual operating statement of the Premises detailing the total revenues received, total expenses incurred, total cost of all capital improvements, total debt service and

total cash flow, to be prepared and certified by Borrower, in form acceptable to Lender in its reasonable discretion, or if Borrower is in monetary default hereunder or under any of the other Facility Documents or the Property Specific Loan Documents, an audited annual operating statement prepared and certified by an independent certified public accountant acceptable to Lender, within 120 days after the end of each calendar year until the reconveyance of this Deed of Trust;

(c) an annual balance sheet and profit and loss statement of Borrower and of any guarantor or indemnitor under any Facility Document or Property Specific Loan Document, in form acceptable to Lender in its reasonable discretion, prepared and certified by Borrower, the guarantor or indemnitor as to the applicable statement, and, such statements, if Borrower is in monetary default hereunder or under any of the other Facility Documents or any of the Property Specific Loan Documents, shall be audited financial statements prepared and certified by an independent certified public accountant acceptable to Lender. All annual reports and statements required under Sections 2.16(b) and (c) hereof shall be in form acceptable to Lender in its reasonable discretion and shall be delivered to Lender within 120 days after the end of each calendar year until the reconveyance of this Deed of Trust;

(d) an annual operating budget and management plan presented on a monthly basis consistent with the annual operating statement described above for the Premises, including cash flow projections for the upcoming year, and all proposed capital replacements and improvements at least fifteen (15) days prior to the start of each Fiscal Year;

(e) the following quarterly statements (i) operating statements of the Premises in form acceptable to Lender in its reasonable discretion, prepared and certified by Borrower, detailing the revenues received, the expenses incurred and the net operating income before and after debt service (interest payments), (ii) a statement stating major capital improvements for that quarter and appropriate year to date information, and (iii) a summary report in form acceptable to Lender in its reasonable discretion, each within 60 days after the end of each calendar quarter;

(f) quarterly certified rent rolls meeting the requirements of paragraph 2.16(a) above, within 60 days after the end of each calendar quarter;

(g) quarterly evidence of insurance required to be maintained pursuant to Section 2.04 hereof (including a certification by Borrower that all insurances required hereunder are in place and being maintained), within 60 days after the end of each calendar quarter;

(h) quarterly leasing and marketing plans for the then next 12-month period along with a list of potential tenant and/or lease prospects;

(i) a copy of the federal tax return of Borrower, if any, as and when filed with the Internal Revenue Service; and

(j) upon request from Lender (but, absent a default by Borrower hereunder, not more often than once each calendar year), the following:

(i) an accounting of all security deposits held in connection with any of the Leases, including the name and identification number of the accounts in

which such security deposits are held, the name and address of the financial institutions in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release from Borrower to obtain information regarding such accounts directly from such financial institutions;

- (ii) such other financial or management information as may, from time to time, be reasonably required by Lender and in form and substance reasonably satisfactory to Lender; and
- (iii) Borrower's books and records regarding the Premises for examination, review, copying and audit by Lender or its auditors during normal business hours and convenient facilities for such examination, review, copying and audit of Borrower's books and records of account.

(k) Borrower hereby appoints Lender its attorney in fact for the purpose of hiring at Borrower's cost an auditing firm to prepare and deliver to Lender any overdue rent roll, operating statement or balance sheet and profit and loss statement in the event Borrower fails or refuses to furnish to Lender those financial reports as and when due. Borrower agrees to make any and all of Borrower's books and records available to such auditing firm. The costs and expenses of the auditor shall be due and payable to Lender upon demand and shall constitute a part of the Indebtedness.

Section 2.17. Prohibition Against Conveyances, Encumbrances and Borrowing.

(a) Except as hereinafter provided, without the prior consent of Lender, neither Borrower nor any Person shall convey, assign, sell, mortgage, encumber, pledge, hypothecate, grant a security interest in, grant options with respect to, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) all or any portion of any legal or beneficial interest in: (x) all or any portion of the Mortgaged Property including the Leases; or (y) all or any direct ownership interest in Borrower or in any Upstream Owner. In furtherance of the foregoing, subordinate liens (voluntary or involuntary) secured by any portion of the Mortgaged Property, or any beneficial interest in the Mortgaged Property, and any mezzanine or any other financing, whether unsecured or secured by any direct ownership interest in Borrower or in any Upstream Owner, shall not be permitted except with the prior consent of Lender; provided, however, that the foregoing restrictions shall not apply to (i) the Senior Security Instrument or (ii) third-party financing obtained by Borrower, EOS Properties II, LLC, a Delaware limited liability company, or EOS Investment Fund II, L.P., a Bermuda limited partnership, from any parties (or such parties Affiliates) that own a direct or indirect interest in Borrower. In addition, no Outside EOS Entities shall be permitted to obtain any (i) acquisition financing that, in the aggregate, exceeds 75% of the Acquisition Costs of the assets to be acquired (with all such financing that does not exceed such 75% threshold being expressly permitted) or (ii) any financing that, in the aggregate, exceeds 75% of the value of the assets already then owned by such Outside EOS Entities (with all such financing that does not exceed such 75% threshold being expressly permitted). Nothing contained herein shall limit or impair Borrower or the Upstream Owners from incurring trade payables in the ordinary course of business or operating expenses in the ordinary course of

business. Without limiting Lender's right to withhold its consent to any transfer or encumbrance, any such transfer or encumbrance to which Lender consents must be to or with a United States citizen or an entity owned or controlled by United States citizens which is not an OFAC Prohibited Person. All requests for Lender's consent under this Section 2.17 shall be on a form previously approved by Lender and shall be accompanied by the payment of Lender's standard processing fee for such transactions then in effect. Lender's consent to any of the foregoing actions, if given (in Lender's sole discretion), may be conditioned upon a change in the interest rate, maturity date, amortization period or other terms under the Loan Note(s) evidencing a Collateral Property Loan, the payment of a transfer fee and/or any other requirements of Lender. In addition to the standard processing fee and the transfer fee referred to in this Section 2.17, Borrower agrees to bear and shall pay or reimburse Lender on demand for all reasonable expenses (including reasonable attorneys' fees, costs and expenses, title search costs, and title insurance endorsement premiums) incurred by Lender in connection with the review, approval and documentation of any such transaction. The foregoing prohibitions are not intended to and shall not prevent the Principals or Upstream Owners from obtaining loans or incurring indebtedness unrelated to Borrower and the Mortgaged Property and are also not intended to, and shall not prevent Upstream Owners from executing guarantees and/or indemnity agreements for its subsidiaries (direct or indirect) or to prevent Borrower from incurring reasonable and customary trade payables and unsecured operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Mortgaged Property in such amounts as are normal and reasonable under the circumstances, provided that such debt is not evidenced by a note and is paid when due.

(b) Intentionally Omitted.

(c) Notwithstanding the foregoing provisions of Section 2.17(a) or anything else contained in this Deed of Trust to the contrary, Lender's consent shall not be required and no fee shall be payable in connection with any transfers of direct or indirect interest in Borrower provided that after such transfer either Charles J. Schreiber, Jr. and/or Peter M. Bren directly or indirectly Control Borrower. Borrower shall provide Lender with written notice within thirty (30) days after any such transfer of the nature of said transfer and the identity of the transferee and such notice shall include a certification from Borrower to Lender that the required ownership and control described above exists.

(d) Except as expressly provided above in this Section 2.17, subordinate liens (voluntary or involuntary) secured by any portion of the Mortgaged Property (other than the Senior Security Instrument), or any beneficial interest in the Mortgaged Property, and except as expressly provided above in this Section 2.17, any mezzanine or any other financing, whether secured or unsecured, by any Upstream Owner shall not be permitted.

Section 2.18. Estoppel Certificates. Within 10 Business Days of a request by Lender, Borrower shall furnish to Lender a duly acknowledged written statement confirming: (a) the original principal amount of the Floating Rate Note; (b) the unpaid principal amount of the Floating Rate Note; (c) the rate of interest of the Floating Rate Note; (d) the terms of payment and maturity date of the Floating Rate Note; (e) the date installments of interest and/or principal were last paid; (f) that, except as provided in detail in such statement, there are no offsets or defenses against the Indebtedness or defaults or events which with the passage of time or the

giving of notice, or both, would constitute an Event of Default under the Floating Rate Note, this Deed of Trust or the other Facility Documents or the Property Specific Loan Documents; and (g) such other information that Lender shall reasonably request. Borrower shall use commercially reasonable efforts to also furnish to Lender within 30 days of its request therefor tenant estoppel letters from such tenants of the Premises as Lender may require, but such requests as to any one tenant shall not be made more often than once in a calendar year period.

Section 2.19. Assignment of Leases and Property Income.

(a) Borrower hereby absolutely, presently, unconditionally and irrevocably assigns, transfers and sets over to Lender all of the right, title and interest of Borrower in and to the Leases and the Property Income. Borrower shall not otherwise assign, transfer or encumber in any manner the Leases or the Property Income or any portion thereof. Borrower shall have a license, revocable by Lender, to collect and use the Property Income as the same becomes due and payable so long as no Event of Default has occurred, but may not collect any Property Income more than 30 days in advance of the date the same becomes due. The assignment in this Section 2.19 shall constitute an absolute, irrevocable and present assignment of the Leases and the Property Income, and not an additional assignment for security, and the existence or exercise of Borrower's revocable license to collect Property Income shall not operate to subordinate this assignment to any subsequent assignment. The exercise by Lender of any of its rights or remedies under this Section 2.19 shall not be deemed or construed to make Lender: (i) a mortgagee-in-possession; (ii) responsible for the payment of any taxes or assessments with respect to the Premises, (iii) liable to perform any obligation of the lessor under any Lease(s) or under applicable law, (iv) liable to any person for any dangerous or defective condition in the Premises or for any negligence in the management, upkeep, repair, or control of the Premises resulting in loss or injury or death to any Person, or (v) be liable in any manner for the remediation of any environmental impairment except that caused by the gross negligence or willful misconduct of Lender.

(b) Except as permitted by Section 2.19(d) and subject to the terms of Section 2.19(c) and Section 2.19(e), all Leases and amendments, modifications and renewals of existing Leases, shall be subject to the prior review and approval of Lender and its counsel, at Borrower's expense. Except as otherwise consented to by Lender, all Leases shall be written on the standard form of lease, which shall have been approved by Lender, with such changes as may be commercially reasonable from time to time. Borrower shall furnish Lender with executed copies of all Leases and renewals and amendments thereto within 30 days after execution thereof. All proposed Leases and renewals of existing Leases shall be at rental rates and on terms comparable to existing local market rates and terms and shall be arms-length transactions with bona fide, independent third party tenants. All Leases shall provide that they are subordinate to this Deed of Trust and that the lessee agrees to attorn to Lender provided Lender agrees not to disturb lessee's possession of the leased premises so long as lessee is not in default under the Lease. Lender agrees that it will enter into a subordination, nondisturbance and attornment agreement ("SNDA"), at the request of Borrower, with any tenant who occupies in excess of the lesser of (a) 25,000 square feet or more of the Mortgaged Property or (b) 100% of the Mortgaged Property, so long as each such SNDA is substantially in the form of Lender's standard SNDA form, as same may be amended by Lender from time to time. All proposed Leases and renewals of existing Leases (other than Leases satisfying all of the terms and conditions set forth in

Subsection 2.19(d)(i) through (vi)) shall be subject to the prior review and approval of Lender and its counsel, at Borrower's expense. Notwithstanding anything contained herein to the contrary, except with the prior written consent of the Lender, no portion of the Mortgaged Property shall be leased, used or occupied for dry cleaning operations or the storage of any chemicals used in the dry cleaning process.

(c) Borrower shall perform all obligations as lessor under all Leases and shall enforce all of the terms, covenants and conditions contained therein upon the part of the lessee thereunder to be performed or observed, short of termination thereof, except as otherwise set forth in this Section 2.19(c). Except with the prior consent of Lender, Borrower shall not (i) cancel, terminate or surrender any Lease or consent to any cancellation, termination or surrender thereof (unless (A) no default then exists under the Facility Documents or the Property Specific Loan Documents, (B) such Lease satisfies all of the terms and conditions set forth in Subsection 2.19(d)(i) through (vi) below, (C) the cancellation, termination or surrender of such Lease (or any combination of Leases) shall not cause the Portfolio DSC to be less than 1.25:1.0, with such Portfolio DSC to be calculated by Lender based upon the previous calendar quarter's Net Operating Income adjusted to reflect the absence of such Lease or Leases, and (D) Borrower delivers written notice of such cancellation, termination or surrender to Lender within five (5) Business Days thereof); (ii) amend, modify, sublet or assign any Non-Conforming Lease or consent to the amendment, modification, subletting or assignment thereof; (iii) amend or modify (or consent to the amendment or modification of) any Lease if such amendment or modification would cause such Lease to be a Non-Conforming Lease; (iv) subordinate any Lease to any mortgage, deed of trust or other security interest that is subordinate to this Deed of Trust; (v) enter into any new Lease (except as permitted in Section 2.19(d) below); (vi) waive any material default under or breach of any Non-Conforming Lease; (vii) consent to or accept any prepayment or discount of rent or advance rent under any Lease more than 30 days in advance; (viii) take any other action in connection with any Lease which may impair or jeopardize Lender's interest therein; or (ix) alter, modify or change the terms of any guaranty, letter of credit or other credit support with respect to any of the Non-Conforming Leases or cancel or terminate such guaranty, letter of credit or other credit support without the prior written consent of Lender. Notwithstanding Section 2.19(c)(i) above, Borrower may terminate any Lease or consent to any termination thereof without the prior consent of Lender if either (y) the tenant under such Lease is then in bankruptcy and is not paying rent due under such Lease or (z) the tenant under such Lease has not paid rent due under such Lease for three (3) consecutive months and such Lease is not a Major Lease; provided, however, Borrower delivers written notice of any such termination to Lender within five (5) Business Days of such termination.

(d) Notwithstanding Section 2.19(b), Lender's prior consent shall not be required for entering into any new Lease or any Lease extension, renewal or amendment, provided that no Event of Default exists and such new Lease or Lease extension, renewal or amendment (i) covers less than fifty percent (50%) of the net rentable area of the Premises (with no option to expand the net rentable area under the Lease to a total amount greater than fifty percent (50%) of the net rentable area of the Premises), (ii) represents an arms-length transaction to a bona fide rent-paying tenant not affiliated with Borrower and provides for rental rates and terms comparable to existing local market rates and terms; (iii) as to a new Lease, has an initial lease term not less than three (3) years and not exceeding ten (10) years (excluding any extension or renewal terms), and as to any extension or renewal of an existing Lease, has an initial extension or renewal term

not exceeding ten (10) years; (iv) is on a standard lease form previously approved by Lender, with such changes as may be commercially reasonable from time to time, with no material changes not customarily found in leases of space in properties of the same type and in the same region as the Mortgaged Property; (v) otherwise is on a commercially reasonable basis, and (vi) will not violate any provision of any other lease, restriction, covenant or private or public agreement affecting the Mortgaged Property or the Borrower, or both. Any Lease that fails to satisfy all of the requirements set forth in subsection (i) through (vi) above shall be referred to herein as a "Non-Conforming Lease". Borrower shall give Lender notice of any Lease or renewal thereof satisfying all of the requirements set forth in Subsection 2.19(d)(i) through (vi) above, together with a fully executed and complete copy of such Lease, not later than 30 days after the execution thereof.

(e) With respect to each Non-Conforming Lease Document (as defined below), Borrower shall provide to Lender for its prior approval a term sheet for the proposed Lease (a "Non-Conforming Lease Term Sheet"). For each of the Non-Conforming Leases and/or each amendment, modification, subletting or assignment thereof (each, a "Non-Conforming Lease Document"), such Non-Conforming Lease Document will be deemed approved if (i) the material business terms of such Non-Conforming Lease Document are substantially the same (or no worse than) as the material business terms set forth in the Non-Conforming Lease Term Sheet for such Non-Conforming Lease Document previously approved (or deemed approved) by Lender, (ii) the Non-Conforming Lease Document represents an arms-length transaction to a bona fide rent-paying tenant not affiliated with Borrower and (iii) the applicable Non-Conforming Lease is on a standard lease form previously approved by Lender, with such changes as may be commercially reasonable from time to time. Lender's failure to approve or disapprove of any Non-Conforming Lease Term Sheet within five (5) Business Days after Lender's receipt of Borrower's written request for such approval shall be deemed Lender's approval of such Non-Conforming Lease Term Sheet. Notwithstanding anything contained herein to the contrary, if the material business terms of any Non-Conforming Lease Document are worse than the material business terms set forth in the applicable Non-Conforming Lease Term Sheet approved or deemed approved by Lender, Lender's approval of such Non-Conforming Lease shall be required (such approval to be granted in Lender's sole good faith discretion), and Borrower agrees Lender's approval shall not be deemed granted if Lender does not approve or disapprove such Non-Conforming Lease Document within five (5) Business Days after Lender's receipt of a request for approval thereof.

(f) In addition to the foregoing, Borrower shall comply with all terms and provisions of the Assignment.

(g) Upon Lender's request after an Event of Default which is continuing, Borrower shall deliver to Lender any or all of the tenant security deposits, including any letters of credit, under the Leases, together with: (i) any assignment of the proceeds of such security deposits; (ii) any assignment and transfer of such letters of credit or the proceeds thereof; and (iii) any tenants' consents to assignment of such security deposits and assignment and transfer of such letters of credit, as Lender shall reasonably request. All security deposits delivered to Lender shall be held without interest and may be commingled with Lender's other funds (unless the payment of interest thereon and a separate account therefor is required under applicable tenant leases or by law).

(h) Borrower hereby agrees that Lender may authorize and direct the tenants named in the Leases and all Lease guarantors, to pay over to Lender or such other party as Lender may direct, all Property Income upon receipt from Lender of written notice to the effect that an Event of Default exists, and to continue to do so until the tenants and Lease guarantors are otherwise notified by Lender.

(i) Upon the occurrence of an Event of Default, Lender may, with or without exercising any other rights or remedies: (i) give or require Borrower to give notice to any or all tenants under the Leases authorizing and directing them to pay all Property Income under the Leases directly to Lender; and (ii) without regard to any waste, adequacy of the security or solvency of Borrower, apply for the appointment of a receiver of the Mortgaged Property to which appointment Borrower hereby consents, whether or not foreclosure proceedings have been commenced under this Deed of Trust and whether or not a foreclosure sale has occurred.

Section 2.20. Environmental Matters; Warranties; Notice; Indemnity.

(a) Borrower represents and warrants to Lender regarding the Premises and the Equipment as follows:

- (i) Borrower has not installed, used, generated, manufactured, produced, stored, Released, discharged or disposed of in, on, under or about the Premises, or transported to or from any portion of the Premises, any Hazardous Substance or allowed any other Person to do so, except under conditions permitted by applicable Environmental Laws and except for cleaning supplies in reasonable quantities used in the operation of the Premises so long as the supplies are maintained, used, stored and disposed of in accordance with all applicable Environmental Laws;
- (ii) there are no Hazardous Substances or underground storage tanks in, on, or under or about the Premises, except those that are both: (A) in compliance with Environmental Laws and with permits issued pursuant thereto; and (B) fully disclosed to Lender in writing pursuant to the written reports resulting from environmental assessments of the Mortgaged Property delivered to Lender prior to the date of this Deed of Trust (the "Environmental Report");
- (iii) that to Borrower's actual knowledge, there are no past, present or threatened Releases of any Hazardous Substance in, on, under or about the Premises except as described in the Environmental Report;
- (iv) that to Borrower's actual knowledge, there is no threat of any Release of Hazardous Substances migrating to the Premises except as described in the Environmental Report;
- (v) that to Borrower's actual knowledge, there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Premises or the Equipment except as described in the Environmental Report;

- (vi) Borrower does not know of, and has not received, any written or oral notice or other communication from any Person (including, but not limited to, a governmental entity) relating to Hazardous Substances or Remediation thereof, of possible liability of any Person pursuant to any Environmental Law, other environmental conditions in connection with the Premises or Equipment, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; and
- (vii) Borrower has truthfully and fully provided to Lender, in writing, any and all information relating to conditions in, on, under or about the Premises that is known by Borrower and that is contained in Borrower's files and records, including any reports relating to Hazardous Substances in, on, under or about the Premises and/or to the environmental condition of the Premises.

(b) Borrower shall not install, use, generate, manufacture, produce, store, Release, discharge or dispose of on, under or about the Premises, or transport to or from any portion of the Premises, any Hazardous Substance or allow any other Person to do so, except under conditions permitted by applicable Environmental Laws, except for cleaning supplies in reasonable quantities used in the operation of the Premises so long as the supplies are maintained, used, stored and disposed of in accordance with all applicable Environmental Laws. Additionally, except with the prior consent of Lender, no portion of the Premises shall be leased, used or occupied for dry cleaning operations or the storage of any chemicals used in the dry cleaning process.

(c) Borrower shall keep and maintain the Premises in compliance with, and shall not cause or permit the Premises to be in violation of, applicable Environmental Laws.

(d) Borrower shall promptly provide notice to Lender of:

- (i) any proceeding, investigation or inquiry commenced by any governmental authority with respect to the presence of any Hazardous Substance on, under or about the Premises or the migration of any Hazardous Substance to or from adjoining property;
- (ii) all claims made or threatened by any Person against Borrower, any other party occupying the Premises or any portion thereof, or the Premises, relating to any loss or injury allegedly resulting from any Hazardous Substance; and
- (iii) the discovery of any occurrence or condition on the Premises or on any real property adjoining or in the vicinity of the Premises, of which Borrower becomes aware, which might cause the Premises or any portion thereof to be in violation of any Environmental Law or subject to any restriction on ownership, occupancy, transferability or use under any Environmental Law (collectively, an "Environmental Violation").

(e) Lender and, to the extent authorized by Lender, Trustee may join and participate in, as a party if Lender so determines, any legal or administrative proceeding or action concerning the Premises or Equipment under any Environmental Law. Borrower agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' fees, costs and expenses) relating to or incurred by Lender in connection with any such action or proceeding.

(f) Borrower shall indemnify, defend and hold Trustee and Lender and their respective directors, officers, employees and agents harmless from and against any and all claims, demands, liabilities, losses, damages, judgments, fines, penalties, costs and expenses (including reasonable attorneys' fees, costs and expenses) directly or indirectly arising out of or attributable to: (i) a breach of any warranty or representation contained in this Section 2.20, Section 2.21 or Section 2.22 or of any other provision thereof; (ii) an action against Borrower to enforce any of the provisions of this Section 2.20, Section 2.21 or Section 2.22; and (iii) the installation, use, generation, manufacture, production, storage, Release, threatened Release, or presence of a Hazardous Substance on, under, or about the Premises or any portion thereof including: (a) all direct and consequential damages; (b) the costs of any required Remediation; and (c) the costs of the preparation and implementation of any plans for Remediation, closure or other required plans. Except in the event of payment in full of the Loan by Borrower to Lender and where Lender never was in possession of the Mortgaged Property, this indemnity shall survive the satisfaction, release or extinguishment of the lien of this Deed of Trust including any extinguishment of such lien by foreclosure or deed in lieu thereof.

(g) Notwithstanding anything provided in Section 2.20(f) to the contrary, the indemnity provided for in Section 2.20(f) above shall not extend to Hazardous Substances present on the Premises or first released at or from the Premises (A) after the earlier of (i) payment in full of the Obligations and the recording of a discharge of this Deed of Trust provided the Obligations have been paid as required by the Facility Documents and the Property Specific Loan Documents without acceleration and without a declared default or (ii) a Mortgaged Property Release; or (B) after foreclosure or deed in lieu of foreclosure and the recording of the deed to the Premises resulting from the foreclosure or deed in lieu of foreclosure to Lender or, in the case of a foreclosure, other third party successful bidder has taken possession, provided in the event of (A) or (B) above (x) such Hazardous Substances were placed or deposited on or released at or from the Premises by third parties unrelated in any way to Borrower or any person or entity affiliated with or having an interest in Borrower or a member or shareholder of Borrower, after the dates of such foreclosure and recording of the deed following foreclosure or deed in lieu of foreclosure and in each case after the taking of possession by Lender or other third party bidder at the foreclosure sale, and (y) such deposit was not caused by and does not result from the negligent or intentional action of Borrower or any person or entity having a direct or indirect interest in Borrower or affiliated with Borrower or member or shareholder of Borrower.

Section 2.21. Environmental Matters; Remediation.

(a) If any investigation, site monitoring, containment, cleanup, removal, restoration or other Remediation of any kind or nature is required, reasonably necessary or desirable under any applicable Environmental Law because of or in connection with the current or future

presence, suspected presence, Release or suspected Release of a Hazardous Substance into the air, soil, ground water, surface water, or soil vapor on, under or about the Premises or any portion thereof, Borrower shall promptly commence and diligently prosecute to completion all such Remediation. In all events, such Remediation shall be commenced within 45 days after any demand therefor by Lender or such shorter period as may be required under any applicable Environmental Law.

(b) All Remediation shall be performed by contractors, and under the supervision of a consulting engineer, each approved in advance by Lender. All costs and expenses of such Remediation and of Lender's monitoring or review of such Remediation (including reasonable attorneys' fees, costs and expenses) shall be paid by Borrower. If Borrower does not timely commence and diligently prosecute to completion the Remediation, Lender may (but shall not be obligated to) cause such Remediation to be performed. Borrower agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' fees, costs and expenses) relating to or incurred by Lender in connection with monitoring, reviewing or performing any Remediation.

(c) Except with Lender's prior consent, Borrower shall not commence any Remediation or enter into any settlement agreement, consent decree or other compromise relating to any Hazardous Substances or Environmental Laws which might, in Lender's reasonable judgment, impair the value of Lender's security hereunder. Lender's prior consent shall not be required, however, if the presence or threatened presence of Hazardous Substances on, under or about the Premises poses an immediate threat to the health, safety or welfare of any person or is of such a nature that an immediate remedial response is necessary, and it is not possible to obtain Lender's prior consent. In such event Borrower shall notify Lender as soon as practicable of any action taken.

Section 2.22. Environmental Matters; Inspection.

(a) Lender and its agents shall have the right to enter upon and inspect all or any portion of the Premises, and to conduct customary environmental tests, assessments, audits and soil borings. Except in an emergency, such entry shall be at reasonable times, with reasonable advance notice, and subject to the rights of tenants of the Premises. Lender may select a consulting engineer to conduct and prepare reports of such inspections, tests, assessments, audits and soil borings. The inspection rights granted to Lender in this Section 2.22 shall be in addition to, and not in limitation of, any other inspection rights granted to Lender in this Deed of Trust.

(b) Promptly upon the written request of Lender after an Event of Default which remains uncured, Borrower shall provide Lender, at Borrower's expense, with an environmental site assessment or environmental audit report prepared by an environmental engineering firm acceptable to Lender, to assess with a reasonable degree of certainty the presence or absence of any Hazardous Substance and the potential costs in connection with abatement, cleanup or removal of any Hazardous Substance found on, under, at, or within the Premises.

(c) Borrower agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' fees, costs and expenses) relating to or incurred by Lender in connection with the inspections, tests, assessments, audits, soil borings and

reports described in this Section 2.22 and to provide the environmental site assessment or environmental report described in Section 2.22(b) in the following situations:

- (i) if Lender has reasonable grounds to believe, at the time any such inspection, test, assessment, audit, or soil boring is ordered or Environmental Report is requested, that there exists an Environmental Violation or that a Hazardous Substance is present on, under or about the Premises or is migrating to or from adjoining property, except under conditions permitted by applicable Environmental Laws and not prohibited by any Loan Document;
- (ii) if any such inspection reveals an Environmental Violation or that a Hazardous Substance is present on, under or about the Premises or is migrating to or from adjoining property, except under conditions permitted by applicable Environmental Laws and not prohibited by any Loan Document;
- (iii) if Lender has reasonable grounds to believe that a change in the presence of Hazardous Substances on the Premises has occurred;
- (iv) if Lender has reasonable grounds to believe that a change in the compliance of the Premises with any Environmental Law has occurred;
- (v) if Lender is not reasonably satisfied with the results or quality of an environmental site assessment or an environmental audit report which has been prepared in connection with the Premises, with the exception of the environmental site assessment and environmental audit report required by Lender in conjunction with the making of the Loan; or
- (vi) if an Event of Default exists at the time such inspection is ordered or at the time the request is made for an Environmental Report.

Section 2.23. Management. At all times prior to the payment in full of the Indebtedness, the Mortgaged Property shall be managed by a management company satisfactory to Lender, and pursuant to a management agreement reasonably satisfactory to Lender. As of the date hereof, Lender approves Transwestern Property Company Southwest GP, LLC, dba Transwestern Commercial Services as manager of the Mortgaged Property, reserving the right, however, to revoke such approval (i) upon and during any Event of Default, or (ii) if the Debt Service Coverage Ratio falls below 1:1, or (iii) if the Portfolio DSC falls below 1.25:1.0. If at any time Transwestern Property Company Southwest GP, LLC, dba Transwestern Commercial Services ceases to manage the Mortgaged Property, management by a national management company that manages not fewer than _____ square feet of office space in the San Antonio, Texas metropolitan area shall be deemed satisfactory to Lender (any such management company being hereinafter referred to as an "Acceptable Manager"). With regard to any management company other than an Acceptable Manager, should the management company or the management agreement not be satisfactory to Lender, then the entire Indebtedness, including any prepayment premium, shall be immediately due and payable at Lender's option. Any time the management

company (other than an Acceptable Manager) is not satisfactory to Lender, Borrower shall have a reasonable opportunity, not exceeding ninety (90) days to obtain approval of a management company satisfactory to Lender prior to Lender accelerating the Indebtedness. Any leasing commissions and management agreement entered into by Borrower affecting the Mortgaged Property (other than brokerage commission agreements entered into directly with tenants' brokers with respect to specific Leases) shall be subordinated to this Deed of Trust.

Section 2.24. ERISA. As of the date hereof and throughout the term of this Deed of Trust: (i) Borrower is not and will not be an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA; (ii) the assets of Borrower do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA; (iii) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA; (iv) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of fiduciaries with respect to governmental plans; and (v) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Floating Rate Note, this Deed of Trust, the other Facility Documents or the Property Specific Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA. Borrower further agrees to deliver to Lender such certifications or other evidence of compliance with the provisions of this Section 2.24 as Lender may from time to time request.

Section 2.25. Terrorism and Anti-Money Laundering.

(a) As of the date hereof and throughout the term of this Deed of Trust: (i) Borrower; (ii) any Person controlling or controlled by Borrower; (iii) if Borrower is a privately held entity, any Person having a beneficial interest in Borrower; or (iv) any Person for whom Borrower is acting as agent or nominee in connection with this transaction, is not an OFAC Prohibited Person.

(b) To comply with applicable Anti-Money Laundering Laws, all payments by Borrower to Lender or from Lender to Borrower will only be made in Borrower's name and to and from a bank account of a bank based or incorporated in or formed under the laws of the United States or a bank that is not a "foreign shell bank" within the meaning of the U.S. Bank Secrecy Act (31 U.S.C. § 5311 *et seq.*), as amended, and the regulations promulgated thereunder by the U.S. Department of the Treasury, as such regulations may be amended from time to time.

(c) Borrower agrees to provide Lender at any time and from time to time during the term of the Loan with such information as Lender determines to be necessary or appropriate to comply with the Anti-Money Laundering Laws of any applicable jurisdiction, or to respond to requests for information concerning the identity of Borrower, any Person controlling or controlled by Borrower or any Person having a beneficial interest in Borrower, from any governmental authority, self-regulatory organization or financial institution in connection with its Anti-Money Laundering Laws and compliance procedures, or to update such information.

(d) The representations and warranties set forth in this Section 2.25 shall be deemed repeated and reaffirmed by Borrower as of each date that Borrower makes a payment to Lender

under the Floating Rate Note, this Deed of Trust, the other Facility Documents and the Property Specific Loan Documents or receives any payment from Lender. Borrower agrees promptly to notify Lender in writing should Borrower become aware of any change in the information set forth in these representations.

Section 2.26. Special Purpose Entity Requirements.

- (a) Borrower has not and shall not:
- (i) engage in any business or activity other than the acquisition, ownership, operation and maintenance of the Lender Financed Properties, and activities incidental thereto;
 - (ii) acquire or own any material asset other than the Lender Financed Properties and such incidental personal property as may be necessary for the operation of the Lender Financed Properties;
 - (iii) merge into or consolidate with any Person or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case obtaining the prior consent of Lender;
 - (iv) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior consent of Lender, amend, modify, terminate or fail to comply with the provisions of Borrower's formation documents;
 - (v) own any subsidiary or make any investment in or acquire the obligations or securities of any other Person without the prior consent of Lender;
 - (vi) commingle its assets with the assets of any of its shareholders, partners, members, Principals, affiliates, or any shareholder, partner, member, principal or affiliate thereof, or of any other Person or transfer any assets to any such Person other than distributions on account of equity interests in Borrower permitted hereunder and properly accounted for;
 - (vii) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the loan evidenced by the Floating Rate Note and the Collateral Property Loans, except reasonable and customary trade payables and operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Lender Financed Properties in such amounts as are normal and reasonable under the circumstances, provided that such debt is not evidenced by a note and is paid when due;
 - (viii) Intentionally Deleted;

- (ix) fail to maintain its records, books of account and bank accounts separate and apart from those of its shareholders, partners, members, Principals and affiliates, or any shareholder, partner, member, principal or affiliate thereof, and any other Person or fail to prepare and maintain its own financial statements in accordance with generally accepted accounting principles and susceptible to audit, or if such financial statements are consolidated fail to cause such financial statements to contain footnotes disclosing that the Lender Financed Properties are actually owned by Borrower;
- (x) enter into any contract or agreement with any of its shareholders, partners, members, Principals or affiliates, any guarantor or indemnitor of all or a portion of the Loan or any shareholder, partner, member, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties;
- (xi) fail to correct any known misunderstandings regarding the separate identity of Borrower;
- (xii) share any common logo with or hold itself out as or be considered as a department or division of any of its shareholders, partners, members, Principals or affiliates, or any shareholder, partner, member, principal or affiliate thereof, or any other Person or allow any Person to identify Borrower as a department or division of that Person;
- (xiii) hold itself out to be responsible or pledge its assets or credit worthiness for the debts of another Person or allow any Person to hold itself out to be responsible or pledge its assets or credit worthiness for the debts of Borrower (except for a guarantor or indemnitor of the loan evidenced by the Floating Rate Note or the Collateral Property Loans);
- (xiv) make any loans or advances to any third party, including any of its shareholders, partners, members, Principals or affiliates, or any shareholder, partner, member, principal or affiliate thereof;
- (xv) Intentionally Deleted;
- (xvi) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name in order not: (A) to mislead others as to the entity with which such other party is transacting business; or (B) to suggest that Borrower is responsible for the debts of any third party (including any of its shareholders, partners, members, Principals or affiliates, or any shareholder, partner, member, principal or affiliate thereof);
- (xvii) fail to allocate fairly and reasonably among Borrower and any third party (including any guarantor or indemnitor of the Loan) any overhead for

common employees, shared office space or other overhead and administrative expenses;

- (xviii) allow any Person to pay the salaries of its own employees or fail to maintain a sufficient number of employees for its contemplated business operations;
- (xix) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;
- (xx) seek dissolution or winding up in whole, or in part;
- (xxi) file a voluntary petition or otherwise initiate proceedings to have Borrower or any Principal adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against Borrower or any Principal, or file a petition seeking or consenting to reorganization or relief of Borrower or any Principal as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to Borrower or Principal; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of Borrower or any Principal or of all or any substantial part of the properties and assets of Borrower or any Principal, or make any general assignment for the benefit of creditors of Borrower or any Principal, or admit in writing the inability of Borrower or Principal to pay its debts generally as they become due or declare or effect a moratorium on Borrower or any Principal debt or take any action in furtherance of any such action; or
- (xxii) conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of Borrower or the creditors of any other Person.

(b) If Borrower is a limited partnership, then any general partner of Borrower must also be a special purpose entity and comply with the provisions of this Section 2.26. If Borrower is no longer the Borrower named on page one (1) of this Deed of Trust and such successor Borrower is a limited liability company, then any managing member of Borrower must also be a special purpose entity and comply with the provisions of this Section 2.26.

(c) Intentionally Deleted.

Section 2.27. Operating Agreements and Permitted Encumbrances.

(a) Provided that no Event of Default exists and subject to Section 2.23 above, Borrower may enter into, amend, modify, supplement, restate, terminate or otherwise alter any Operating Agreement. Following the occurrence of an Event of Default, no Operating Agreement shall be amended, modified, supplemented, restated, terminated or otherwise altered by Borrower, nor shall Borrower consent or otherwise acquiesce in any of the foregoing, if such

amendment, modification, supplement, restatement or termination materially affects the value of the Mortgaged Property, without in each instance the prior consent of Lender.

(b) No Permitted Encumbrance shall be amended, modified, supplemented, restated or otherwise altered by Borrower, nor shall Borrower consent or otherwise acquiesce in any of the foregoing, if such amendment, modification, supplement or restatement materially affects the value of the Mortgaged Property, without in each instance the prior consent of Lender. No Permitted Encumbrance benefiting the Mortgaged Property shall be terminated by Borrower unless such terminated Permitted Encumbrance is replaced with a similar agreement upon terms and conditions, and with such third parties, as are reasonably acceptable to Lender.

(c) Borrower will deliver to Lender, at the same time received or sent by Borrower, copies of all notices, demands or requests sent or otherwise made by Borrower or any other Person under or pursuant to any Operating Agreement or Permitted Encumbrance.

(d) The term of any Operating Agreement or Permitted Encumbrance shall not be extended or otherwise renewed by Borrower (unless pursuant to a right currently afforded Borrower thereunder) if such extension or renewal materially affects the value of the Mortgaged Property without in each instance Lender's prior written approval.

(e) Borrower agrees to observe, perform and discharge all material obligations, covenants and warranties required to be kept and performed by Borrower under the Operating Agreements and Permitted Encumbrances.

(f) Borrower shall use best efforts to enforce or secure the performance of each and every material obligation, term, covenant, condition and agreement to be performed by any other party to any of the Operating Agreements and Permitted Encumbrances.

Section 2.28. Compliance with Laws. To Borrower's actual knowledge, the Mortgaged Property is in compliance with all provisions of all zoning, subdivision, land use, environmental, traffic, fire, building, and occupational safety and health rules, regulations, codes, acts and statutes to which it is subject.

Section 2.29. Formation Documents. Each of Borrower, and the Upstream Owner, and all of their respective constituent partners and/or members may modify their respective Formation Documents, provided that (a) no such modification will have an adverse effect on Lender, as determined by Lender in its sole discretion, and (b) after such modification either Charles J. Schreiber, Jr. and/or Peter M. Bren directly or indirectly Control Borrower. Borrower shall provide Lender with written notice within thirty (30) days after any such modification of the nature of said modification and such notice shall include a certification from Borrower to Lender that the required ownership and control described above exists.

ARTICLE III.

Security Agreement

Section 3.01. Warranties, Representations and Covenants of Borrower. Borrower covenants, warrants, represents and agrees with and to Trustee and Lender as follows:

(a) This Deed of Trust constitutes a security agreement under the Code and serves as a fixture filing in accordance with the Code. This Deed of Trust creates, and Borrower hereby grants to Lender, a security interest in favor of Lender as secured party under the Code with respect to all property (specifically including the Collateral) included in the Mortgaged Property which is covered by the Code. The mention of any portion of the Mortgaged Property in a financing statement filed in the records normally pertaining to personal property shall not derogate from or impair in any manner the intention of Borrower and Lender hereby declared that all items of the Collateral are part of the real property encumbered hereby to the fullest extent permitted by law, regardless of whether any such item is physically attached to the Improvements or whether serial numbers are used for the better identification of certain items. Specifically, the mention in any such financing statement of: (i) the rights in or to the Proceeds of any policy of insurance; (ii) any condemnation Proceeds; (iii) Borrower's interest in any Leases or Property Income; or (iv) any other item included in the Mortgaged Property, shall not be construed to alter, impair or impugn any rights of Lender as determined by this Deed of Trust or the priority of Lender's lien upon and security interest in the Mortgaged Property. Any such mention shall be for the protection of Lender in the event that notice of Lender's priority of interest as to any portion of the Mortgaged Property is required to be filed in accordance with the Code to be effective against or take priority over the interest of any particular class of Persons, including the federal government or any subdivision or instrumentality thereof.

(b) Except for the security interest granted by this Deed of Trust and the Senior Security Instrument, Borrower is and, as to portions of the Collateral to be acquired after the date hereof, will be the sole owner of the Collateral, free from any lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever except Permitted Encumbrances. Borrower shall notify Lender of, and shall defend the Collateral against, all claims and demands of all Persons at any time claiming the same or any interest therein.

(c) Except as otherwise provided in this Deed of Trust, Borrower shall not lease, sell, convey or in any manner transfer the Collateral without the prior consent of Lender.

(d) The Collateral is not used or bought for personal, family or household purposes.

(e) The Collateral shall be kept on or at the Premises, and Borrower shall not remove the Collateral from the Premises without the prior consent of Lender, except such portions or items of the Collateral as are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Borrower with items of equal or greater value.

(f) Intentionally Deleted.

(g) Borrower shall not change its place of formation or its entity name without providing Lender with 60 days prior notice. In the event of any change in name, identity or structure of Borrower, Borrower shall notify Lender thereof and promptly after request shall execute, file and record such Code forms as are necessary to maintain the priority of Lender's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Lender shall require the filing or recording of additional Code forms or continuation statements, Borrower shall, promptly after request, execute, file and record such Code forms or continuation statements as Lender shall deem necessary (subject to

Lender's right to sign such statements on behalf of Borrower as provided in Section 3.01(h)), and shall pay all expenses and fees in connection with the filing and recording thereof. If Lender shall initially pay such expenses, Borrower shall promptly reimburse Lender for the expenses.

(h) Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to execute in the name of and on behalf of Borrower any and all financing statements and continuations thereof and to file with the appropriate public office on its behalf and at its expense any financing or other statements signed only by Lender, as secured party, in connection with the Collateral covered by this Deed of Trust.

(i) Borrower represents that its exact legal name is as set forth on the Cover Sheet of this Deed of Trust.

(j) Borrower's Federal Tax Identification Number is 20-5854953 and Borrower's Organizational Number is 4247135.

(k) Borrower shall not file any termination statements concerning the Mortgaged Property without Lender's prior consent unless the Indebtedness has been repaid and this Deed of Trust has been released.

(l) Where Collateral is in possession of a third party, Borrower will join with Lender in notifying the third party of Lender's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Lender.

(m) Borrower will cooperate with Lender in obtaining control with respect to Collateral consisting of deposit accounts, investment property, letter of credit rights and electronic chattel paper.

Section 3.02. Financing Statements. A CARBON, PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS DEED OF TRUST OR ANY FINANCING STATEMENT RELATING TO THIS DEED OF TRUST SHALL BE SUFFICIENT AS A FINANCING STATEMENT.

Section 3.03. Addresses. The state of organization, organizational ID number and mailing address of Borrower and the address of Lender from which information concerning the security interest granted hereby may be obtained are set forth on the Cover Sheet of this Deed of Trust. Borrower maintains its sole place of business or its chief executive office at the address shown on said Cover Sheet, and Borrower shall immediately notify Lender in writing of any change in said place of business or chief executive office.

Section 3.04. Fixture Filing. This Deed of Trust shall constitute a fixture filing under the Code as to any goods and other personal property included in the Mortgaged Property in which Borrower has granted to Lender a security interest as provided in this Article III which are or may become fixtures under applicable law. This fixture filing is to be recorded in the County of Bexar, State of Texas.

ARTICLE IV.

Default and Remedies

Section 4.01. Events of Default. Each of the following shall constitute an Event of Default under the Floating Rate Note, this Deed of Trust, the other Facility Documents:

(a) Failure to pay any principal, interest, deposit or other amount due under the Floating Rate Note, this Deed of Trust or any other Facility Document within 10 days after the date such amount is due.

(b) Except as provided in Section 4.01(a) and Sections 4.01(c) to 4.01(w), inclusive, failure to perform or comply with any term, obligation, covenant or condition contained in the Floating Rate Note, this Deed of Trust or any other Facility Document, within thirty (30) days after the delivery of written notice from Lender of such failure; provided that if such default is not reasonably capable of being cured (without taking into account financial capability) within such thirty (30) day period, such failure shall not constitute an Event of Default so long as Borrower commences the cure of such default within such thirty (30) day period, diligently prosecutes such cure to completion and completes the cure within 120 days after delivery of such written notice from Lender.

(c) The occurrence of an Event of Default, or default after passage of any applicable grace or cure period, under any of the other Facility Documents or any of the Property Specific Loan Documents.

(d) The occurrence of an Event of Default, or default after passage of any applicable grace or cure period, under any guaranty, indemnity or other instrument delivered to Lender in connection with the Collateral Property Loans.

(e) If any representation, warranty, certification or other statement made herein or in any other Facility Document, in any application for the Facility or in any statement or certificate at any time given to Lender in connection with the Facility shall prove to be untrue or misleading in any material respect.

(f) If Lender fails to have a legal, valid, binding and enforceable first priority lien on the Mortgaged Property or any portion thereof or on any material portion of the personal property or other Collateral.

(g) Failure to permit Lender or its agents to enter to the Mortgaged Property or to access Borrower's books and records in accordance with the terms of this Deed of Trust and the other Facility Documents.

(h) Failure to pay any Imposition as and when due (subject to Borrower's right to contest under Section 2.06 hereof), or to maintain insurance or apply insurance proceeds as required by this Deed of Trust.

(i) Except as permitted in this Deed of Trust, adjusting, compromising, settling or entering into any agreement with respect to insurance settlements and condemnation proceedings, without the prior consent of Lender.

(j) Damage to any of the Mortgaged Property in any manner which is not covered by insurance or funds of Borrower as a result of Borrower's failure to maintain insurance required in accordance with this Deed of Trust.

(k) Except as permitted in this Deed of Trust: (i) a change in the use of the Premises or causing or permitting the use or occupancy of any part of the Premises to be discontinued if such change of use or discontinuance would violate any zoning or other law, ordinance or regulation; (ii) consent to any zoning reclassification, modification or restriction affecting the Premises; (iii) taking any steps whatsoever to convert the Mortgaged Property, or any portion thereof, to a condominium or cooperative form of ownership; or (iv) the actual or threatened alteration, demolition or removal of any of the Improvements, without the prior consent of Lender.

(l) Failure to deliver copies of any notices from governmental or regulatory authorities in accordance with the terms of this Deed of Trust and the other Facility Documents.

(m) Failure to deliver financial statements required by Section 2.16 within 30 days after the delivery of written notice from Lender or the estoppel certificates required by Section 2.18 within ten (10) days after the delivery of written notice from Lender.

(n) Violation of any of the terms, obligations, covenants or conditions set forth in Section 2.17, Section 2.19, or Section 2.27.

(o) If a default or event of default shall occur under any permitted mortgage, deed of trust, encumbrance, lien or security agreement encumbering all or any portion of the Mortgaged Property which is subordinate or superior to the lien of this Deed of Trust, or if any party under any such instrument shall commence a foreclosure or other collection or enforcement action in connection therewith.

(p) Failure to obtain a management company, management agreement and/or leasing commissions agreement satisfactory to Lender within the 90-day period set forth in Section 2.23.

(q) Failure of Borrower, any Principal or any guarantor or indemnitor of the loan evidenced by the Floating Rate Note or any Collateral Property Loan to preserve and keep in full force and effect its existence, franchises, licenses, authorizations, registrations, permits and approvals required under the laws of the state of its formation and the State and any franchises, licenses, authorizations, registrations, permits and approvals required or necessary to operate its business.

(r) If Borrower, any Principal or any guarantor or indemnitor of the loan evidenced by the Floating Rate Note or any Collateral Property Loan consents to the filing of, or commences or consents to the commencement of, any Bankruptcy Proceeding with respect to Borrower or such Principal, guarantor or indemnitor.

(s) If any Bankruptcy Proceeding shall have been filed against Borrower, any Principal or any guarantor or indemnitor of the Loan and the same is not withdrawn, dismissed, canceled or terminated within 90 days of such filing.

(t) If Borrower, any Principal or any guarantor or indemnitor of the loan evidenced by the Floating Rate Note or any Collateral Property Loan is adjudicated bankrupt or insolvent or a petition for reorganization of Borrower or any such Principal, guarantor or indemnitor is granted.

(u) If a receiver, liquidator or trustee of Borrower, any Principal or any guarantor or indemnitor of the loan evidenced by the Floating Rate Note or any Collateral Property Loan or of any of the properties of Borrower or any such Principal, guarantor or indemnitor shall be appointed.

(v) If Borrower, any Principal or any guarantor or indemnitor of the Loan shall make an assignment for the benefit of its creditors or shall admit in writing the inability to pay its debts generally as they become due.

(w) Except as otherwise permitted herein, if Borrower, any Principal or any guarantor or indemnitor of the Loan shall die or shall institute or cause to be instituted any proceeding for the termination or dissolution of Borrower or any such Principal, guarantor or indemnitor.

(x) The occurrence of an Event of Default (as defined in the Senior Security Instrument).

Section 4.02. Remedies. Upon the occurrence of any Event of Default, Lender may take such actions against Borrower and/or the Mortgaged Property or any portion thereof as it deems advisable to protect and enforce its rights against Borrower and in and to the Mortgaged Property, without notice or demand except as set forth herein. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Facility Documents or the Property Specific Loan Documents. Such actions may include the following:

(a) Lender may declare the entire principal balance under the Floating Rate Note or any Collateral Property Loan Note then unpaid, together with all accrued and unpaid interest thereon, prepayment fees thereunder, and all other unpaid Indebtedness, to be immediately due and payable.

(b) Lender may enter into or upon the Mortgaged Property, personally or by its agents, nominees or attorneys, and may dispossess Borrower and its agents and servants therefrom, and thereupon Lender at its sole discretion may: (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every portion of the Mortgaged Property and conduct business thereon, in any case either in the name of Lender or in such other name as Lender shall deem best; (ii) complete any construction on the Mortgaged Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals,

replacements and improvements to or on the Mortgaged Property; (iv) exercise all rights and powers of Borrower with respect to the Mortgaged Property, whether in the name of Borrower or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Property Income; and (v) apply the receipts of Property Income to the payment of the Indebtedness (including any prepayment fee payable under the Loan Note(s) evidencing a Collateral Property Loan and any breakage amounts payable under the Floating Rate Note) in such order as Lender shall determine in its sole discretion, after deducting therefrom all expenses (including reasonable attorneys' fees, costs and expenses) incurred in connection with the aforesaid operations and all amounts necessary to pay the Impositions, insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Lender, its agents, nominees and attorneys.

(c) With or without entry, personally or by its agents, nominees or attorneys, Lender may require Trustee to sell all or any portion of the Mortgaged Property and all or any portion of Borrower's estate, right, title, interest, claim and demand therein and right of redemption thereof at one or more private or public sales in the manner and to the extent permitted by law, as an entirety or in parcels or portions, and Trustee shall have any statutory power of sale as may be provided by law in the State.

(d) Lender may institute or require Trustee to institute proceedings for the complete foreclosure of this Deed of Trust, in which case the Mortgaged Property may be sold for cash or upon credit, as an entirety or in parcels or portions.

(e) Lender may institute, or require Trustee to institute, proceedings for the partial foreclosure of this Deed of Trust for the portion of the Indebtedness then due and payable, subject to the continuing lien of this Deed of Trust for the balance of the Indebtedness not then due.

(f) Lender may institute, or require Trustee to institute, an action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement contained in the Floating Rate Note, this Deed of Trust or any other Facility Document or any Property Specific Loan Document, or in aid of the execution of any power granted hereunder or for the enforcement of any other appropriate legal or equitable remedy.

(g) Lender and Trustee shall have the rights and may take such actions as are set forth, described or referred to in any rider entitled "Rider - Applicable State Law Provisions" attached hereto and made a part hereof, or as are permitted by the laws of the State.

(h) Except as otherwise provided for in this Deed of Trust and the other Facility Documents and Property Specific Loan Documents, Lender may recover judgment on the Floating Rate Note and the Property Specific Loan Notes, either before, during or after any proceedings for the foreclosure or enforcement of this Deed of Trust.

(i) Lender may secure the appointment of a receiver, trustee, liquidator or similar official of the Mortgaged Property or any portion thereof, and Borrower hereby consents and agrees to such appointment, without notice to Borrower and without regard to the adequacy of

the security for the Indebtedness and without regard to the solvency of Borrower or any other Person liable for the payment of the Indebtedness, and such receiver or other official shall have all rights and powers permitted by applicable law and such other rights and powers as the court making such appointment may confer, but the appointment of such receiver or other official shall not impair or in any manner prejudice the rights of Lender to receive the Property Income pursuant to this Deed of Trust or the Assignment.

(j) Lender may exercise any or all of the remedies available to a secured party under the Code.

(k) Lender may pursue, or require Trustee to pursue, any other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Facility Documents or the Property Specific Loan Documents.

(l) Lender may apply any funds then on deposit with Lender for payment of Impositions, ground rent or insurance premiums in the manner provided for in Section 2.07.

(m) Lender in its sole discretion may surrender any insurance policies and collect the unearned premiums and apply such sums against the Indebtedness.

(n) To the extent permitted by law, exercise or require Trustee to exercise any power of sale.

Section 4.03. General Provisions Regarding Remedies.

(a) Proceeds of Sale. The proceeds of any sale of the Mortgaged Property (occurring in connection with Lender's exercise of remedies) received by Lender, or part thereof, shall be distributed and applied to the Indebtedness in such order and priority as Lender deems appropriate in its sole discretion.

(b) Effect of Judgment. No recovery of any judgment by Lender or Trustee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Borrower shall affect in any manner or to any extent the lien of this Deed of Trust upon the Mortgaged Property or any portion thereof, or any rights, powers or remedies of Lender or Trustee hereunder. Such lien, rights, powers and remedies of Lender and Trustee shall continue unimpaired as before.

(c) Continuing Power of Sale. The power of sale conferred upon Trustee in this Deed of Trust shall not be exhausted by any one or more sales as to any portion of the Mortgaged Property remaining unsold, but shall continue unimpaired until all of the Mortgaged Property is sold or all of the Indebtedness is paid.

(d) Right to Purchase. At any sale of the Mortgaged Property or any portion thereof pursuant to the provisions of this Deed of Trust, Lender or Trustee shall have the right to purchase the Mortgaged Property being sold, and in such case shall have the right to credit against the amount of the bid made therefor (to the extent necessary) all or any portion of the Indebtedness then due.

(e) Right to Terminate Proceedings. Lender or Trustee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in Section 4.02 at any time before the conclusion thereof, as determined in Lender's sole discretion and without prejudice to Lender.

(f) No Waiver or Release. Lender may resort to, or require Trustee to resort to, any remedies and the security given by the Facility Documents and the Property Specific Loan Documents, in whole or in part, and in such portions and in such order as determined in Lender's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Facility Documents and the Property Specific Loan Documents. The failure of Lender or Trustee to exercise any right, remedy or option provided in the Facility Documents and the Property Specific Loan Documents to the fullest extent not prohibited by applicable laws shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Facility Documents and the Property Specific Loan Documents. To the fullest extent not prohibited by applicable laws, no acceptance by Lender or Trustee of any payment after the occurrence of an Event of Default and no payment by Lender or Trustee of any Advance or obligation for which Borrower is liable hereunder shall be deemed to waive or cure such Event of Default or Borrower's liability to pay such obligation. To the fullest extent not prohibited by applicable laws, no sale of all or any portion of the Mortgaged Property, no forbearance on the part of Lender or Trustee, and no extension of time for the payment of the whole or any portion of the Indebtedness or any other indulgence given by Lender or Trustee to Borrower or any other Person, shall operate to release or in any manner affect Lender's or Trustee's interest in the Mortgaged Property or the liability of Borrower to pay the Indebtedness, except to the extent that such liability shall be reduced by Proceeds of the sale of all or any portion of the Mortgaged Property received by Lender. No waiver by Lender or Trustee shall be effective unless it is in writing and then only to the extent specifically stated.

(g) No Impairment; No Release. The interests and rights of Lender or Trustee under the Facility Documents and the Property Specific Loan Documents shall not be impaired by any indulgence, including: (i) any renewal, extension or modification which Lender may grant with respect to any of the Indebtedness; (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Lender or Trustee may grant with respect to the Mortgaged Property or any portion thereof; or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Indebtedness. To the fullest extent not prohibited by applicable laws, if the Mortgaged Property is sold and Lender enters into any agreement with the then owner of the Mortgaged Property extending the time of payment of the Indebtedness, or otherwise modifying the terms hereof or of any other Facility Document or any Property Specific Loan Document, Borrower shall continue to be liable to pay the Indebtedness according to the tenor of any such agreement unless expressly released and discharged in writing by Lender.

(h) Waivers and Agreements Regarding Remedies. To the fullest extent that Borrower may legally do so, Borrower:

- (i) agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any laws now or hereafter in force providing for any appraisal or appraisement, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation,

appraisal or appraisement, stay of execution, extension and notice of election to accelerate or declare due the whole of the Indebtedness;

- (ii) waives all rights to a marshalling of the assets of Borrower, Borrower's partners, if any, and others with interests in Borrower, including the Mortgaged Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Facility Documents and the Property Specific Loan Documents to a sale of the Mortgaged Property for the collection of the Indebtedness without any prior or different resort for collection, or the right of Lender or Trustee to the payment of the Indebtedness out of the Proceeds of sale of the Mortgaged Property in preference to every other claimant whatsoever;
- (iii) waives any right to bring or utilize any defense, counterclaim or setoff, other than one in good faith, which denies the existence or sufficiency of the facts upon which the foreclosure action is grounded or which is based on Lender's or Trustee's wrongful actions. If any defense, counterclaim or setoff (other than one permitted by the preceding sentence) is raised by Borrower in such foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, the foregoing waiver shall not bar a separate action for such damage (unless such claim is required by law or applicable rules of procedure to be pleaded in or consolidated with the action initiated by Lender or Trustee), but such separate action shall not thereafter be consolidated with Lender's or Trustee's foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying any such foreclosure action;
- (iv) waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the provisions of any laws pertaining to the rights and remedies of sureties;
- (v) waives the defense of laches and any applicable statutes of limitation; and
- (vi) waives any right to have any trial, action or proceeding tried by a jury.

(i) Lender's Discretion. To the fullest extent not prohibited by applicable laws, Lender may exercise its rights, options and remedies and may make all decisions, judgments and determinations under this Deed of Trust and the other Facility Documents and the Property Specific Loan Documents in its sole unfettered discretion.

(j) Recitals of Facts. Intentionally Deleted.

(k) Lender's Right to Waive, Consent or Release. Lender may at any time, in writing: (i) waive compliance by Borrower with any covenant herein made by Borrower to the extent and in the manner specified in such writing; (ii) consent to Borrower's doing any act which Borrower is prohibited hereunder from doing, or consent to Borrower's failing to do any act which Borrower is required hereunder to do, to the extent and in the manner specified in such writing; or (iii) release or require Trustee to release any portion of the Mortgaged Property, or any interest therein, from this Deed of Trust and the lien of the other Facility Documents and the Property Specific Loan Documents. No such act shall in any way impair the rights of Lender or Trustee hereunder except to the extent specified by Lender in such writing.

(l) Possession of the Mortgaged Property. Upon the occurrence of any Event of Default hereunder and demand by Lender at its option, Borrower shall immediately surrender or cause the surrender of possession of the Premises to Lender. If Borrower or any other occupant is permitted to remain in possession, such possession shall be as tenant of Lender and such occupant: (i) shall on demand pay to Lender monthly, in advance, reasonable use and occupancy charges for the space so occupied; and (ii) in default thereof, may be dispossessed by the usual summary proceedings. Upon the occurrence of any Event of Default and demand by Lender, Borrower shall assemble the Collateral and make it available at any place Lender may designate to allow Lender to take possession and/or dispose of the Collateral. The covenants herein contained may be enforced by a receiver of the Mortgaged Property or any portion thereof. Nothing in this Section 4.03(l) shall be deemed a waiver of the provisions of this Deed of Trust prohibiting the sale or other disposition of the Mortgaged Property without the prior consent of Lender.

(m) Limitations on Liability. In any action or proceedings brought on the Floating Rate Note, this Deed of Trust or any other Facility Documents and the Property Specific Loan Documents in which a money judgment is sought, Lender and Trustee will look solely to the Mortgaged Property and other property described in the Property Specific Loan Documents (including the Property Income and any other rents and profits from such property) and to Borrower for payment of the Indebtedness and, specifically and without limitation, Lender and Trustee agree to waive any right to pursue under any circumstances any of the constituent members, partners, officers, directors or shareholders of Borrower.

(n) Subrogation. If all or any portion of the proceeds of the Floating Rate Note or any Advance shall be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any portion thereof, then Lender and Trustee shall be subrogated to, and shall have the benefit of the priority of, such other lien or encumbrance and any additional security held by the holder thereof.

(o) Protective Advances. To the extent of any protective advances made by Lender, Lender may determine in its sole discretion whether such amounts are secured hereby or secured by the Senior Security Instrument.

ARTICLE V.

Miscellaneous

Section 5.01. Notices.

(a) All notices, consents, approvals and requests required or permitted hereunder or under any other Facility Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by: (i) certified or registered United States mail, postage prepaid; (ii) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery; or (iii) facsimile provided a confirming copy is sent the same day in the manner set forth in (ii) above, addressed in either case as follows:

If to Lender, at the following address:

Massachusetts Mutual Life Insurance Company
c/o Babson Capital Management LLC
1500 Main Street, Suite 2100
Springfield, Massachusetts 01115
Attention: Managing Director, Real Estate Finance Group
Facsimile: (413) 226-1498

With a copy to:

Massachusetts Mutual Life Insurance Company
c/o Babson Capital Management LLC
1500 Main Street, Suite 2800
Springfield, Massachusetts 01115
Attention: Vice President, Real Estate Law
Facsimile: (413) 226-1079

and a copy to:

Massachusetts Mutual Life Insurance Company
c/o Babson Capital Management LLC
800 Newport Center Drive, Suite 750
Newport Beach, California 92660
Attention: Ms. Lydia Shen
Facsimile: (949) 640-2510

and a copy to:

Cox, Castle & Nicholson LLP
2049 Century Park East, 28th Floor
Los Angeles, California 90067
Attention: Adam B. Weissburg, Esq.
Facsimile: (310) 277-7889

If to Trustee, at the following address:

R. Bruce Gadd, II
c/o Babson Capital Management LLC
Two Galleria Tower
13455 Noel Road, Suite 950
Dallas, Texas 75240
Facsimile: (972) 991-7440

If to Borrower, at the following address:

EOS Acquisition II, LLC
c/o KBS Realty Advisors, LLC
620 Newport Center Drive, Suite 1300
Newport Beach, California 92660
Attention: Dave Meltz
Facsimile: (949) 417-6520

With a copy to:

KBS Realty Advisors, LLC
620 Newport Center Drive, Suite 1300
Newport Beach, California 92660
Attention: Lori Lewis
Facsimile: (949) 417-6520

and to:

Morgan, Lewis & Bockius LLP
5 Park Plaza, Suite 1750
Irvine, California 92614
Attention: L. Bruce Fischer
Facsimile: (949) 399-7001

or to such other address and person as shall be designated from time to time by Lender or Borrower, as the case may be, in a written notice to the other party in the manner provided for in this Section 5.01. A notice shall be deemed to have been given: in the case of hand delivery or by facsimile, at the time of delivery; in the case of registered or certified mail, three Business Days after deposit in the United States mail; or in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day. A party receiving a notice which does not comply with the technical requirements for notice under this Section 5.01 may elect to waive any deficiencies and treat the notice as having been properly given.

(b) Intentionally Deleted.

(c) Borrower shall notify Lender promptly of the occurrence of any of the following: (i) receipt of notice from any governmental authority relating to the Mortgaged Property; (ii) any material change in the occupancy of the Mortgaged Property; (iii) receipt of any notice from the holder of any other lien or security interest in the Mortgaged Property; or (iv) commencement of any judicial or administrative proceedings by, against or otherwise affecting Borrower or any

control with Borrower or any guarantor, or any other action by any creditor thereof as a result of any default under the terms of any loan.

Section 5.02. Binding Obligations; Joint and Several. The provisions and covenants of this Deed of Trust shall run with the land, shall be binding upon Borrower, its successors and assigns, and shall inure to the benefit of Lender and Trustee and their respective successors and assigns. If there is more than one Borrower, all their obligations and undertakings hereunder are and shall be joint and several.

Section 5.03. Captions. The captions of the sections and subsections of this Deed of Trust are for convenience only and are not intended to be a part of this Deed of Trust and shall not be deemed to modify, explain, enlarge or restrict any of the provisions hereof.

Section 5.04. Further Assurances. Borrower shall do, execute, acknowledge and deliver, at its sole cost and expense, such further acts, instruments or documentation, including additional title insurance policies or endorsements, as Lender or Trustee may reasonably require from time to time to better assure, transfer and confirm unto Lender the rights now or hereafter intended to be granted to Lender and/or Trustee under this Deed of Trust or any other Loan Document.

Section 5.05. Severability. To the fullest extent not prohibited by applicable laws, if any one or more of the provisions contained in this Deed of Trust shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 5.06. Borrower's Obligations Absolute. To the fullest extent not prohibited by applicable laws, all sums payable by Borrower hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Borrower hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any portion thereof; (b) any restriction or prevention of or interference with any use of the Mortgaged Property or any portion thereof; (c) any title defect or encumbrance or any eviction from the Premises or any portion thereof by title paramount or otherwise; (d) any Bankruptcy Proceeding relating to Borrower, any general partner of Borrower, or any guarantor or indemnitor, or any action taken with respect to this Deed of Trust or any other Facility Document or Property Specific Loan Document by any trustee or receiver of Borrower or any such general partner, guarantor or indemnitor, or by any court, in any such proceeding; (e) any claim which Borrower has or might have against Lender or Trustee; (f) any default or failure on the part of Lender or Trustee to perform or comply with any of the terms hereof or of any other agreement with Borrower; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Borrower shall have notice or knowledge of any of the foregoing. To the fullest extent not prohibited by applicable laws, except as expressly provided herein, Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Borrower.

Section 5.07. Amendments; Consents. This Deed of Trust cannot be altered, amended, modified or discharged orally and no executory agreement shall be effective to modify or discharge it in whole or in part, unless in writing and signed by the party against which enforcement is sought. No consent or approval required hereunder or under any other Facility Document or Property Specific Loan Document shall be binding unless in writing and signed by the party sought to be bound.

Section 5.08. Other Loan Documents and Exhibits. All of the agreements, conditions, covenants, provisions and stipulations contained in the Floating Rate Note and the other Facility Documents and the Property Specific Loan Documents, and each of them, which are to be kept and performed by Borrower are hereby made a part of this Deed of Trust to the same extent and with the same force and effect as if they were fully set forth in this Deed of Trust, and Borrower shall keep and perform the same, or cause them to be kept and performed, strictly in accordance with their respective terms. The Cover Sheet and each exhibit, schedule and rider attached to this Deed of Trust are integral parts of this Deed of Trust and are incorporated herein by this reference. In the event of any conflict between the provisions of any such exhibit, schedule or rider and the remainder of this Deed of Trust, the provisions of such exhibit, schedule or rider shall prevail.

Section 5.09. Legal Construction.

(a) All terms contained herein shall be construed, whenever the context of this Deed of Trust so requires, so that the singular number shall include the plural, and the plural the singular, and the use of any gender shall include all genders.

(b) The terms “include” and “including” as used in this Deed of Trust shall be construed as if followed by the phrase “without limitation”. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Deed of Trust shall refer to this Deed of Trust as a whole and not to any particular provision of this Deed of Trust, and Article, Section and Exhibit references contained in this Deed of Trust are references to Articles, Sections and Exhibits in or to this Deed of Trust unless otherwise specified.

(c) Any provision of this Deed of Trust or in the other Facility Documents permitting the recovery of “attorneys’ fees”, “attorneys’ fees and expenses”, “attorneys’ fees and costs” or “attorneys’ fees, costs and expenses” or any similar term shall be deemed: (i) to include such attorneys’ fees, costs and expenses; (ii) to include such fees, costs and expenses incurred in all probate, appellate and bankruptcy proceedings, as well as any post-judgment proceedings to collect or enforce any judgment or order relating to the Indebtedness or any of the Facility Documents and Property Specific Loan Documents; and (iii) shall be deemed to be separate and several, and shall survive merger into judgment.

Section 5.10. Merger. So long as any Indebtedness shall remain unpaid, fee title to and any other estate in the Mortgaged Property shall not merge, but shall be kept separate and distinct, notwithstanding the union of such estates in any Person.

Section 5.11. Time of the Essence. Time shall be of the essence in the performance of all obligations of Borrower under this Deed of Trust.

Section 5.12. Choice of Law. THE LOAN TO BE MADE PURSUANT TO THE FLOATING RATE NOTE WAS NEGOTIATED BY LENDER IN MASSACHUSETTS, AND MADE TO BORROWER AND ACCEPTED BY LENDER IN THE COMMONWEALTH OF MASSACHUSETTS, AND THE PROCEEDS OF THE FLOATING RATE NOTE WERE DISBURSED FROM THE COMMONWEALTH OF MASSACHUSETTS, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THE LOAN TO BE MADE PURSUANT TO THE FLOATING RATE NOTE AND THE OBLIGATIONS ARISING THEREUNDER, HEREUNDER AND UNDER THE OTHER FACILITY DOCUMENTS AND THE PROPERTY SPECIFIC LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY, ENFORCEMENT AND FORECLOSURE OF THE LIENS AND SECURITY INTERESTS CREATED UNDER THIS DEED OF TRUST SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE OF TEXAS, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE COMMONWEALTH OF MASSACHUSETTS SHALL GOVERN THE VALIDITY AND ENFORCEABILITY OF ALL FACILITY DOCUMENTS AND PROPERTY SPECIFIC LOAN DOCUMENTS, AND THE DEBT OR OBLIGATIONS ARISING HEREUNDER

Section 5.13. Business Purpose of Loan. Borrower stipulates and warrants that the purpose of the Loan is for the sole purpose of carrying on or acquiring a business, professional or commercial enterprise. Borrower further stipulates and warrants that all proceeds will be used for said business, professional or commercial enterprise.

Section 5.14. Transfer of Loan. Lender may, at any time, sell, transfer or assign the Floating Rate Note, this Deed of Trust, the other Facility Documents and the Property Specific Loan Documents or any portion thereof, and any or all servicing rights with respect thereto (collectively, a "Transfer"), or grant participations therein (a "Participation") or issue mortgage pass-through certificates or other securities (the "Securities") evidencing a beneficial interest in a rated or unrated public offering or private placement (a "Securitization"). In the case of a Transfer, the transferee shall have, to the extent of such Transfer, the rights, benefits and obligations of "Lender" hereunder and the other Facility Documents and the Property Specific Loan Documents. Lender may forward to each purchaser, transferee, assignee, servicer, participant, investor in such Transfer, Participation or Securitization or any Rating Agency (as hereinafter defined) rating such Securitization (collectively, the "Investor") and each prospective Investor or any agency maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Facility, the Property Specific Loans, the Mortgaged Property, Borrower, any principal of Borrower, and any guarantor and indemnitor of the Facility or any Property Specific Loan, whether furnished by Borrower, any guarantor, indemnitor or otherwise, as Lender determines necessary or desirable. Borrower irrevocably waives any and all rights it

may have under applicable state or federal law to prohibit disclosure, including any right of privacy. Further Borrower acknowledges that such information may be transmitted via the internet or by email. Lender will notify Borrower in writing of any Transfer of the Facility or any Property Specific Loan that results in Lender or its affiliates not retaining any ownership or servicing interest in the Facility or any Property Specific Loan. The term "Rating Agency" shall mean each statistical rating agency that has assigned a rating to the Securities.

Section 5.15. Cooperation. Borrower, any principal of Borrower, and any guarantor and indemnitor of the Facility or any Property Specific Loan shall cooperate with Lender, in connection with servicing the Facility or any Property Specific Loan and any Transfer, Participation, Securitization or any other financing created or obtained in connection with the loan, including:

(a) Estoppel Certificates. After request by Lender, Borrower, within 10 Business Days, shall furnish Lender or any proposed assignee with an estoppel certificate containing the information set forth in Section 2.18 and such other information that Lender shall reasonably request, duly acknowledged and certified.

(b) Bifurcation of Note. The Floating Rate Note and this Deed of Trust shall, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Mortgaged Property to be more particularly described therein. To that end, Borrower, upon written request of Lender, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by any guarantor or indemnitor of the Facility or any Property Specific Loan or the then owner of the Mortgaged Property, to Lender and/or its designee or designees substitute notes and security instruments in a form acceptable to Borrower and in such principal amounts, aggregating not more than the then unpaid principal amount of Indebtedness, and containing terms, provisions and clauses similar to those contained herein and in the Floating Rate Note, and such other documents and instruments as may be required by Lender, which have no material adverse effect on Borrower. Borrower shall not be required to incur any out of pocket costs in connection with any such bifurcation.

(c) Transfer of Funds. In the event of a Securitization, all funds held by Lender in connection with the Facility and each Property Specific Loan may be deposited in eligible accounts at eligible institutions as then defined and required by any nationally recognized Rating Agency. Borrower may be required to execute additional documents in connection with any such Transfer, Participation, Securitization or financing, including a new note or notes, which have no material adverse effect on Borrower. Borrower shall not be required to incur any out of pocket costs in connection with any such cooperation.

(d) Servicing Rights. Lender agrees that it shall retain all servicing rights with respect to the Loan following any Transfer, Participation or Securitization of the Facility or any Property Specific Loan.

Section 5.16. Register. Lender shall cause to be kept a register (the "Register") for the registration of ownership and transfer or assignment of the Floating Rate Note or any substitute note or notes secured by this Deed of Trust. The names and addresses of the registered owners

of such notes, the transfers or assignment of such notes and the names and addresses of the transferees of such notes will be registered in the Register under such reasonable regulations as Lender may prescribe. Borrower and Lender shall deem and treat the registered owner of any note as shown in the Register as the absolute owner thereof for all purposes, and neither Borrower nor Lender shall be affected by any notice to the contrary and payment of the principal of, interest on, and Prepayment Fee, if any, due on or with respect to the related note shall be made only to or upon the order of such registered owner. All such payments so made shall be valid and effective to satisfy and discharge the liability of any Borrower upon such notes to the extent of the sums so paid. Upon reasonable request from time to time, Lender shall permit any Borrower to examine the Register.

Section 5.17. Servicing Fees. Throughout the term of the Facility and each Property Specific Loan, Borrower shall promptly pay Lender for servicing activities of the Facility and each Property Specific Loan in accordance with Lender's then current fee schedules.

Section 5.18. Permitted REIT Distributions. Borrower shall be permitted, other than during a Restricted REIT Distribution Period, to have cash available from operations of the Mortgaged Property (but only to the extent remaining after payment of interest, default interest, if any, due under the Floating Rate Note, and operating expenses actually incurred by either Borrower or Lender) in amounts sufficient to enable Borrower to make distributions, and Borrower shall be permitted to make distributions (directly or indirectly), to Nestor REIT II, Inc., a Delaware corporation (the "REIT") sufficient (when combined with distributions of cash flow from the operations of other real properties owned by Borrower) to (a) enable the REIT to maintain its status as a real estate investment trust, and (b) pay for all REIT operating expenses necessary to maintain the REIT (i.e., all filing fees, accountant's fees, legal fees, etc.).

Section 5.19. Release of Security. Borrower shall have the right to obtain a release and reconveyance of the Mortgaged Property from the lien of this Deed of Trust and the Senior Security Instrument (a "Mortgaged Property Release"), provided that each of the following terms and conditions are satisfied:

(a) At the time of the request for a Mortgaged Property Release through the date of such Mortgaged Property Release, there shall be no Event of Default or Potential Event of Default;

(b) Prior to or concurrently with the Mortgaged Property Release, Borrower shall pay to Lender (i) the Release Amount plus (ii) the aggregate sum of the prepayment premiums due under any Loan Note to which all or a portion of the Release Amount will be applied plus (iii) to the extent any portion of the Release Amount is designated to be applied to the Floating Rate Note by Borrower (as provided in Section 2.5 of the Loan Facility Agreement), any breakage amounts due pursuant to Section 8 thereof; and

(c) (i) The Portfolio DSC upon such Mortgaged Property Release will be at least (a) 1.25:1 if the Portfolio Properties number two or more after such Mortgaged Property Release or (b) 1.5:1 if there is only one Portfolio Property after such Mortgaged Property Release, and (ii) the Portfolio Loan to Value Ratio will be no greater than (a) sixty-five percent (65%) if the Portfolio Properties number two or more after such Mortgaged Property Release or (b) fifty

percent (50%) if there is only one Portfolio Property after such Mortgaged Property Release (provided, however, that if the Borrower does not achieve either or both of the two financial covenants set forth in subsections (A) and (B) above (collectively, the "Release Criteria"), Borrower shall have the right under this Deed of Trust and the Senior Security Instrument to deliver to Lender, as a prepayment of any Loan Note and/or the Floating Rate Note, such additional amounts (in addition to the Release Amount) to cause Borrower to meet or exceed the Release Criteria, such prepaid amounts to also be subject to the prepayment provisions of the applicable Loan Note and the breakage provisions of the Floating Rate Note, as applicable). If Borrower disagrees with Lender's determination of the Portfolio Loan to Value Ratio, Borrower shall be entitled to request that an appraisal or appraisals be obtained at Borrower's cost and expense to determine the value of each Portfolio Property that is then subject to the liens of the security interests in favor of Lender. In such event, Lender shall retain an MAI appraiser acceptable to Lender (at Borrower's cost) in its reasonable discretion and notify Borrower as to the value determined by such appraisal.

It is expressly understood the Borrower may direct Lender to apply the Release Amount (and any additional principal pursuant to Section 5.19(c) hereof) to any Loan Note and/or the Floating Rate Note in such amounts and in such order as Borrower may elect in Borrower's sole and absolute discretion. Without limiting the foregoing, it shall not be a condition to the Mortgaged Property Release that the Release Amount (or any additional principal pursuant to Section 5.19(c) hereof) be applied to the Primary Note.

ARTICLE VI.

Trustee

Section 6.01. Certain Actions of Trustee. Upon the written request of Lender, Trustee may at any time: (a) reconvey all or any portion of the Mortgaged Property; (b) consent to the making of any map or plat thereof; (c) join in granting any easement thereon or in creating any covenants or conditions restricting the use or occupancy thereof; or (d) join in any extension agreement or in any agreement subordinating the lien or charge hereof. Any such action may be taken by Trustee without notice, and shall not affect the personal liability of any person for the payment of the Indebtedness or the lien of this Deed of Trust upon the Mortgaged Property for the full amount of the Indebtedness.

Section 6.02. Reconveyances. Upon the written request of Lender stating that all sums secured hereby have been paid, and upon payment of its fees, Trustee shall reconvey without warranty the Mortgaged Property then held by Trustee hereunder.

Section 6.03. Trustee's Covenants and Compensation. Trustee, by its acceptance hereof, covenants faithfully to perform and fulfill the trust herein created, being liable, however, only for negligence or willful misconduct. Trustee hereby waives any statutory fee and shall be entitled to, and hereby agrees to accept, reasonable compensation in lieu thereof for all services rendered or expenses incurred in the administration or execution of the trust hereby created. Borrower hereby agrees to pay such compensation subject to any applicable legal limitations.

Section 6.04. Substitution of Trustee. Lender at any time in its sole discretion may select and appoint a successor or substitute Trustee hereunder by instrument in writing in any manner now or hereafter provided by law. Such writing, upon recordation in the county where the Land is located, shall be conclusive proof of proper substitution of such successor or substitute Trustee which shall thereupon and without conveyance from the predecessor Trustee succeed to all its title, estate rights, powers and duties.

Section 6.05. Resignation of Trustee. Trustee may resign at any time upon giving thirty (30) days' notice to Borrower and to Lender.

Section 6.06. Ratification of Acts of Trustee. Borrower hereby ratifies and confirms any and all acts which Trustee named herein or its successors or assigns in this trust shall do lawfully by virtue hereof.

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

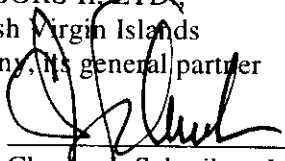
BORROWER:

EOS ACQUISITION II, LLC,
a Delaware limited liability company

By: **EOS PROPERTIES II, LLC,**
a Delaware limited liability company,
its sole member

By: **EOS INVESTMENT FUND II, L.P.,**
a Bermuda limited partnership,
its sole member

By: **POLIS REALTY**
ADVISORS II, LTD,
a British Virgin Islands
company, its general partner

By: 

Charles J. Schreiber, Jr.,
Chief Executive Officer

STATE OF CALIFORNIA)
)SS
COUNTY OF ORANGE)

On November 21, 2006 before me, Mickey Herrell
personally appeared Charles J. Schreiber, Jr.
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that
he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~
signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s)
acted, executed the instrument.

WITNESS my hand and seal.



Mickey Herrell
Signature

Printed Name: Mickey Herrell

EXHIBIT A

DESCRIPTION OF LAND

8.2065 acres of land (357,475.8 square feet), more or less, being all of Lot 1, Block 2, NCB 17506, HUEBNER 10 LIMITED SUBDIVISION UNIT 2, recorded in Volume 9517, Page(s) 178 of the Deed and Plat Records of Bexar County, Texas, and a 2.748 acre unplatted tract being the remainder of a 14.395 acre tract as recorded in Volume 7915, Page 2040 of the Official Public Records of Real Property of Bexar County, Texas. The 8.2065 acre tract being more fully described in the Exhibit "A" attached hereto and made a part hereof.

TOGETHER WITH a non-exclusive easement for vehicle and pedestrian ingress, egress and access as recorded in Volume 10435, Page 1148 of the Official Public Records of Real Property of Bexar County, Texas.

EXHIBIT A

FIELDNOTE DESCRIPTION

8.2065 Acres

Fieldnotes for 8.2065 acres of land (357,475.8 square feet) being all of Lot 1, Block 2, NCB (New City Block) 17506 in the City of San Antonio according to the Amending Plat of Huebner 10 Limited Subd., Unit -2 as recorded in Volume 9517 Page 178 of the Deed and Plat Records of Bexar County, Texas, and a 2.748 acre unplatted tract being the remainder of a 14.395 acre tract as recorded in Volume 7915 Page 2040 of the Official Public Record of Real Property of Bexar County, Texas (OPR) and being the same land as surveyed by SurveySA, LP and being more particularly described as follows:

BEGINNING at a set 1/2 inch iron rod with a red SurveySA cap to replace a TxDOT concrete monument at the northeast end of the curve return from the northeasterly ROW line of IH -10 (300' ROW) to the southeasterly ROW line of Huebner Road (FM Hwy 1517);

THENCE N 41° 00' 57" E with the southeast ROW line of Huebner Road and the northerly line of said Lot 1 a distance of 439.60 feet to a set 1/2 inch iron rod with a red SurveySA cap at the common corner of this tract, said Lot 1 and Lot 9 Block 1 of Exposition Plaza Unit 1 as recorded in Volume 9500 Page 74 of the Deed and Plat Records of Bexar County, Texas (DPRBC);

THENCE along the common line of this tract and said Lots 1 and 9 the following four courses:

S 32° 25' 12" E a distance of 22.30 to a set 1/2 inch iron rod with a red SurveySA cap;
S 54° 13' 54" E a distance of 67.00 to a set 1/2 inch iron rod with a red SurveySA cap;
S 43° 28' 13" E a distance of 93.72 to a found 'X' in a concrete curb; and
S 54° 13' 54" E a distance of 195.47 feet to a set 1/2 inch iron rod with a red SurveySA cap at the southerly corner of said Lot 9;

THENCE N 35° 46' 06" E along the southeasterly line of said Lot 9 and the unplatted portion of said 14.395 acres a distance of 159.38 feet to a set 1/2 inch iron rod with a red SurveySA cap at the southeasterly corner of said Lot 9 and the southwesterly corner of Lot 17 of Huebner Road/Expo Blvd. Subdivision as recorded in Volume 9560 Page 33 of the DPRBC;

THENCE N 41° 00' 57" E continuing with said Lot 17 a distance of 88.76 feet to a set 1/2 inch iron rod with a red SurveySA cap in the southwesterly line of Expo Plaza Apartments Subdivision as recorded in Volume 9557 Page 38 of the DPRBC, from which a 1/2 inch iron rod at the northwesterly corner of same bears N 48° 59' 03" W a distance of 15.28 feet;

THENCE S 48° 59' 03" E along the common line of said Lot 16 and said unplatted portion of said 14.395 acres a distance of 353.57 feet to a set 1/2 inch iron rod with a red SurveySA cap at the southerly corner of said Lot 16;

THENCE N 35° 46' 06" W along the southerly line of said Lot 16 a distance of 250.17 feet to a set 1/2 inch iron rod with a red SurveySA cap in the southwesterly ROW line of Expo Blvd (84' ROW) as platted as 'North Ten Plz' and recorded in Volume 9510 Page 212 of the DPRBC and the southeasterly corner of said Lot 16;

THENCE along the ROW line of Expo Blvd. In a curve to the left, with a radius of 1042.00 feet, a central angle of 01° 39' 02", a chord that bears S 52° 00' 15" E for 30.02 feet, a total arc length of 30.02 feet to a found 1/2 inch iron rod with an MBC cap for the southeasterly corner of this tract and said 14.395 acre tract and the northeasterly corner of Lot 13 of the Ancira Chrysler Plymouth Subdivision as recorded in Volume 9529 Page 72;

THENCE S 35° 46' 06" W along the northerly line of said Lot 16 and the southerly line of this tract a distance of 920.36 feet to a set 1/2 inch iron rod with a red SurveySA cap in the southeasterly line of IH 10;

THENCE N 54° 13' 54" W a distance of 46.78 feet along said IH 10 to a found 1/2 inch iron rod for the southwesterly corner of Lot 15 of C.M.D. Texas Subdivision as recorded in Volume 9533 Page 45 of the DPRBC;

THENCE around said Lot 15 the following seven calls:

With a curve to the left having a radius of 35.32 feet, a central angle of 34° 13' 04", a chord that bears N 52° 46' 35" E for 20.78 feet, a total arc length of 21.09 feet to a found 'X' in concrete;

N 35° 35' 58" E a distance of 151.40 feet to a found 1/2 inc iron rod at the beginning of a curve to the right with radius of 241.63 feet, a central angle of 13° 24' 18", a chord that bears N 42° 28' 19" E for 56.40 feet, a total arc length of 56.53 feet to a set 1/2 inch iron rod with a red SurveySA cap at the beginning of a curve to the left with a radius of 252.33 feet, a central angle of 13° 11' 32", a chord that bears N 42° 26' 42" E for 57.97 feet, a total arc length of 58.10 feet to a found 1/2 inch iron rod;

N 35° 51' 37" E a distance of 120.07 feet to a found 1/2 inch iron rod at the beginning of a curve to the left with a radius of 23.90 feet, a central angle of 90° 39' 37", a chord that bears N 09° 21' 48" W for 33.99 feet, a total arc length of 37.82 feet to a found 1/2 inch iron rod at the end of said curve and in the easterly line of said Lot 15;

N 54° 12' 22" W with said Lot 15 and the westerly line of said unplatted area a distance of 222.72 feet to a set 1/2 inch iron rod with a red SurveySA cap with the southerly line of said Lot 1, from which a found 1/2 inch iron rod bears S 35° 46' 06" W a distance of 26.81 feet;

THENCE Along the common line of said Lot 1 and 15 the following four courses:

S 35° 46' 06" W a distance of 318.16 feet to a found 1/2 inch iron rod;

S 22° 19' 17" W a distance of 84.11 feet to a found 1/2 inch iron rod;

S 35° 56' 04" W a distance of 15.03 feet to a found ½ inch iron rod; and
S 21° 57' 06" W a distance of 14.33 feet to a set 1/2 inch iron rod with a red SurveySA
cap in the southeasterly ROW line of said IH 10;

THENCE N 54° 13' 54" W along said ROW distance of 514.40 feet to a set 1/2 inch iron
rod with a red SurveySA cap at the southerly end of the curve return to Huebner Road;

THENCE along said curve to the right, with a radius of 40.00 feet, a central angle of
95° 27' 51", a chord that bears N 06° 27' 38" W for 59.20 feet, a total arc length of 66.65
feet to the Point of Beginning and containing 8.2065 acres. Bearings are based on the
platted southeasterly ROW line of IH 10. A survey plat was prepared this date to
accompany these field notes.

EXHIBIT B

PERMITTED ENCUMBRANCES

1. Restrictive covenants:

Volume 6595, Page 1862 and Volume 10435, Page 1148 of the Official Public Records of Real Property of Bexar County, Texas.

2. Easement Agreement recorded in Volume 6595, Page 1883 of the Official Public Records of Real Property of Bexar County, Texas, as such easement is depicted on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

3. INTENTIONALLY DELETED

4. 25 foot building setback line along the I.H. 10 of subject property, as shown on the plat recorded in Volume 9517, Page(s) 178 of the Deed and Plat Records of Bexar County, Texas, as such setback line is depicted on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

5. 20 foot non-exclusive easement as shown on plat recorded in Volume 9517, Page(s) 178 of the Deed and Plat Records of Bexar County, Texas, as such easement is depicted on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

6. Variable width drainage easement as shown on plat recorded in Volume 9517, Page(s) 178 of the Deed and Plat Records of Bexar County, Texas, as such easement is depicted on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

7. 16 foot sanitary sewer easement as shown on plat recorded in Volume 9517, Page(s) 178 of the Deed and Plat Records of Bexar County, Texas, as such easement is depicted on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

8. 14 foot electric overhang easement as shown on plat recorded in Volume 9517, Page(s) 178 of the Deed and Plat Records of Bexar County, Texas, as such easement is depicted on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

9. 20 foot electric, telephone and cable TV easement as shown on plat recorded in Volume 9517, Page(s) 178 of the Deed and Plat Records of Bexar County, Texas, as such easement is depicted on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez

Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

10. Variable width telephone and electric easement as shown on plat recorded in Volume 9517, Page(s) 178 of the Deed and Plat Records of Bexar County, Texas, as such easement is depicted on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

11. 10 foot telephone and cable TV easement as shown on plat recorded in Volume 9517, Page(s) 178 of the Deed and Plat Records of Bexar County, Texas, as such easement is depicted on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

12. 5 foot cable TV easement as shown on plat recorded in Volume 9517, Page(s) 178 of the Deed and Plat Records of Bexar County, Texas, as such easement is depicted on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

13. 40 foot building setback line along the Huebner Road of subject property, as shown on plat recorded in Volume 9517, Page(s) 178 of the Deed and Plat Records of Bexar County, Texas, as such setback line is depicted on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

14. 60 foot building setback line and parking setback line along the I.H. 10 property line as shown on plat recorded in Volume 9517, Page(s) 178 of the Deed and Plat Records of Bexar County, Texas, as such setback line is depicted on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

15. 14 foot electric easement as shown on plat recorded in Volume 9517, Page(s) 178 of the Deed and Plat Records of Bexar County, Texas, as such easement is depicted on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

16. Provision that no building may be located closer than 25 feet from the southwest property line due to the high pressure gas line located in the I.H. 10 R.O.W., 8 feet southwest from the southwest property line as recited on plat recorded in Volume 9517, Page(s) 178 of the Deed and Plat Records of Bexar County, Texas.

17. Electric and gas easement recorded in Volume 7378, Page 995 of the Official Public Records of Real Property of Bexar County, Texas, as such easement is depicted on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

18. Mutual Access and Easement Agreement recorded in Volume 9728, Page 1084 of the Official Public Records of Real Property of Bexar County, Texas, as such easement is depicted

on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

19. Easement Agreement recorded in Volume 6647, Page 648 of the Official Public Records of Real Property of Bexar County, Texas, as such easement is depicted on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

20. 10 foot telephone easement along the I.H. 10 of subject property, as set out in Volume 9517, Page(s) 178 of the Deed and Plat Records of Bexar County, Texas, as such easement is depicted on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

21. 25 foot parking setback easement along the Huebner Road of subject property, as set out in Volume 9517, Page(s) 178 of the Deed and Plat Records of Bexar County, Texas, as such parking setback easement is depicted on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

22. 24 foot ingress and egress easement as shown on plat recorded in Volume 9560, Page(s) 33 of the Deed and Plat Records of Bexar County, Texas, as such easement is depicted on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

23. 20 foot sanitary sewer easement as shown on plat recorded in Volume 9560, Page(s) 33 of the Deed and Plat Records of Bexar County, Texas, as such easement is depicted on that certain ALTA/ACSM Land Title Survey prepared by Keith A. Jimenez Registered Professional Land Surveyor dated November 7, 2006 and last revised November 20, 2006.

24. Rights of tenants, as tenants only, under unrecorded leases as shown on the attached rent roll and as disclosed in that certain Memorandum of Building and Roof Lease Agreement as recorded in Volume 8620, Page 145, which rights do not include any rights of first refusal or options to purchase all or any portion of the insured land. [(Seller required to provide rent roll prior to closing and Affidavit identify all the leases and including statement that there are no rights of first refusal or options to purchase.)]

25. 47 INTENTIONALLY DELETED

26. INTENTIONALLY DELETED

27. INTENTIONALLY DELETED

LIMITED LIABILITY COMPANY AGREEMENT
OF
EOS ACQUISITION II, LLC

This Limited Liability Company Agreement (this "Agreement") of EOS Acquisition II, LLC (the "Company") is entered into by EOS Properties II, LLC, a Delaware limited liability company, as the sole member of the Company (the "Member"). To the extent additional members are hereafter admitted to the Company, all such members are referred to as the "Members."

The sole Member hereby forms a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act, as amended from time to time (the "Act"), and hereby agrees as follows:

1. Name.

The name of the limited liability company formed hereby is EOS Acquisition II, LLC.

2. Purpose.

The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Act and engaging in any and all activities necessary or incidental to the foregoing.

3. Registered Office.

The address of the registered office of the Company in the State of Delaware is c/o Corporation Service Company, 2711 Centerville Road, Wilmington, County of New Castle.

4. Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Wilmington, County of New Castle.

5. Members.

The name and the business, residence or mailing addresses of the sole Member are as follows:

Name	Address
EOS Properties II, LLC	620 Newport Center Drive, Suite 1300 Newport Beach, CA 92660

6. Powers.

The business and affairs of the Company shall be managed by the Members in proportion to the capital contributions of the Members. The Members shall have the power to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by members under the laws of the State of Delaware. Each Member shall have the authority to bind the Company.

7. Dissolution.

The Company shall dissolve, and its affairs shall be wound up upon the first to occur of the following: (a) the written consent of the Members, or (b) the entry of a decree of judicial dissolution under Section 18-802 of the Act or (c) the death of a Member.

8. Capital Contributions.

The sole Member has contributed \$100, in cash, and no other property, to the Company.

9. Additional Contributions.

No Member is required to make any additional capital contribution to the Company.

10. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated in proportion to the capital contributions of the Members.

11. Distributions.

Distributions shall be made to the Members at the times and in the aggregate amounts determined by the Members. Such distributions shall be allocated among the Members in the same proportion as their capital account balances.

12. Assignments.

A Member may not assign in whole or in part its limited liability company interest.

13. Resignation.

Without the consent of the remaining Members, a Member may not resign from the Company.

14. Admission of Additional.

One (1) or more additional members of the Company may be admitted to the Company with the consent of the Members and upon being so admitted shall become bound by all of the terms of this Agreement and shall execute a written joinder to this Agreement.

15. Liability of Members.

The Members shall not have any liability for the obligations or liabilities of the Company except to the extent provided in the Act. The Company shall indemnify the Members for their actions as Members to the fullest extent permitted by the Act.

16. Governing Law.

This Agreement shall be governed by, and construed under, the laws of the State of Delaware, all rights and remedies being governed by said laws.

17. Amendment.

This Agreement may be amended in writing by the Members.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Limited Liability Company Agreement as of the 20th day of November, 2006.

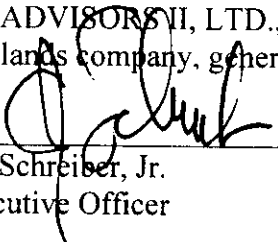
[Signature page follows]

EOS PROPERTIES II, LLC,
a Delaware limited liability company

By: EOS INVESTMENT FUND II, L.P.,
a Bermuda limited partnership,
its sole member

By: POLIS REALTY ADVISORS II, LTD.,
a British Virgin Islands company, general partner

By:



Charles J. Schreiber, Jr.
Chief Executive Officer

FIRST AMENDMENT
TO
LIMITED LIABILITY COMPANY AGREEMENT
OF
EOS ACQUISITION II, LLC

This First Amendment to the Limited Liability Company Agreement (this "Amendment") of EOS Acquisition II, LLC (the "Company") is made as of this 20th day of November, 2006, by EOS Properties II, LLC, a Delaware limited liability company, as the sole member of the Company (the "Member").

WITNESSETH:

WHEREAS, the Member entered into a Limited Liability Company Agreement of the Company dated as of November 20, 2006 (the "Operating Agreement").

WHEREAS, the Company will be receiving a loan (the "Loan") in an amount equal to TWENTY ONE MILLION TWO HUNDRED FIFTY FIVE THOUSAND DOLLARS (\$21,255,000) from Massachusetts Life Insurance Company ("MassMutual") pursuant to that certain Loan Facility Agreement to be entered into by and between the Company and MassMutual (the "Facility Agreement").

WHEREAS, the Member determines that it is in the best interest of the Company to obtain the Loan Facility from MassMutual; and

WHEREAS, the Member wishes to modify the Operating Agreement in the manner hereinafter set forth.

NOW, THEREFORE, in consideration of the agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Member hereby agrees as follows:

1. All defined terms used in this Amendment but not otherwise defined herein shall have the meanings ascribed to them in the Operating Agreement.

2. Purpose. Section 2 of the Operating Agreement is hereby deleted in its entirety and restated as follows:

The Company is formed for the sole object and purpose of acquiring, owning, operating and maintaining the real properties (the "Properties") acquired by the Company and financed by loans from MassMutual under the Loan Facility, and all activities incidental thereto.

3. Special Purpose Provision. Notwithstanding anything to the contrary in the Operating Agreement, until the Loan Facility expires in accordance with the Facility Agreement and all amounts under the Loan Facility are repaid, the Company will not incur any

debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the loan evidenced by that certain Floating Note Rate dated on or about the date hereof in the amount of \$7,150,000 and each loan by MassMutual under the Loan Facility, other than reasonable and customary trade payables and operational debt incurred with trade creditors in the ordinary course of the Company's business of owning and operating the Properties in such amounts as are normal and reasonable under the circumstances, provided that such debt is not evidenced by a note and is paid when due.

4. The Operating Agreement, as modified hereby, remains in full force and effect and is hereby ratified in all respects.

5. Notwithstanding anything contained within the Operating Agreement or this Amendment to the contrary, in the event of any discrepancy, conflict or dispute between the provisions set forth in this Amendment and those set forth in the Operating Agreement, the provisions set forth in this Amendment shall govern.

[Signature page follows]

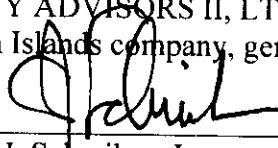
IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Amendment as of the date set forth above.

EOS PROPERTIES II, LLC,
a Delaware limited liability company

By: EOS INVESTMENT FUND II, L.P.,
a Bermuda limited partnership,
its sole member

By: POLIS REALTY ADVISORS II, LTD.,
a British Virgin Islands company, general partner

By:



Charles J. Schreiber, Jr.
Chief Executive Officer

RIDER

APPLICABLE STATE LAW PROVISIONS

Pursuant to the terms of Section 5.08 of the captioned Deed of Trust, this Rider and the following provisions shall be deemed incorporated into the Deed of Trust and made a part thereof for all purposes. In the event of any conflict between the terms set forth in this Rider and those set forth in the Deed of Trust, the terms set forth in this Rider will control for all purposes.

ARTICLE I Foreclosure and Sale

1.01. Foreclosure. Upon the occurrence of an Event of Default, Trustee, his successor or substitute, is authorized and empowered and it shall be his special duty at the request of Lender to sell the Premises or any part thereof situated in the State of Texas at the courthouse of any county in the State of Texas in which any part of the Premises is situated, at public venue to the highest bidder for cash between the hours of 10:00 a.m. and 4:00 p.m. on the first Tuesday in any month after having given notice of such sale in accordance with the statutes of the State of Texas then in force governing sales of real estate under powers conferred by deed of trust. The sale must begin at the time stated in the notice of sale or not later than three hours after that time. Any sale made by Trustee hereunder may be as an entirety or in such parcels as Lender may request, and any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. Further, any sale made by Trustee hereunder may, in lieu of cash, be upon such other terms and conditions as Lender may from time to time hereafter elect. The sale by Trustee of less than the whole of the Premises shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Premises shall be sold and, if the proceeds of such sale of less than the whole of the Premises shall be less than the aggregate of the indebtedness secured hereby and the expense of executing this trust as provided herein, this Deed of Trust and the lien hereof shall remain in full force and effect as to the unsold portion of the Premises just as though no sale had been made; provided, however, that Borrower shall never have any right to require the sale of less than the whole of the Premises but Lender shall have the right, at its sole election, to request Trustee to sell less than the whole of the Premises. After each sale, Trustee shall make to the purchaser or purchasers at such sale good and sufficient conveyances in the name of Borrower, conveying the property so sold to the purchaser or purchasers in fee simple with general warranty of title, and shall receive the proceeds of said sale or sales and apply the same as herein provided. Payment of the purchase price to Trustee shall satisfy the obligation of purchaser at such sale therefor, and such purchaser shall not be responsible for the application thereof. In the event any sale hereunder is not completed or is defective in the opinion of Lender, such sale shall not exhaust the power of sale hereunder and Lender shall have the right to cause a subsequent sale or sales to be made hereunder. Any and all statements of fact or other recitals made in any deed or deeds given by Trustee or any successor or substitute appointed hereunder as to nonpayment of the indebtedness secured hereby, or as to the occurrence of any Event of Default, or as to Lender having declared all of such indebtedness to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to the refusal, failure or inability to

act of Trustee or any substitute or successor, or as to the appointment of any substitute or successor trustee, or as to any other act or thing having been duly done by Lender or by such Trustee, substitute or successor, shall be taken as conclusive (absent manifest error) evidence of the truth of the facts so stated and recited. Trustee, his successor or substitute, 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, including the posting of notices and the conduct of sale, but in the name and on behalf of Trustee, his successor or substitute.

1.02 Right to Require Proof of Financial Ability. At any time during the bidding of any sale conducted by Trustee under paragraph 1.01 of this Rider, Trustee may require a bidding party (a) to disclose its full name, state and city of residence, occupation, and specific business office location, and the name and address of the principal the bidding party is representing (if applicable); and (b) to demonstrate reasonable evidence of the bidding party's financial ability (or, if applicable, the financial ability of the principal of such bidding party), as a condition to the bidding party submitting bids at the foreclosure sale. If any such bidding party (the "Questioned Bidder") declines to comply with Trustee's requirement in this regard, or if such Questioned Bidder does respond but Trustee, in Trustee's sole and absolute discretion, deems the information or the evidence of the financial ability of the Questioned Bidder (or, if applicable, the principal of such bidding party) to be inadequate, Trustee may continue the bidding with reservation; and in such event (i) Trustee shall be authorized to caution the Questioned Bidder concerning the legal obligations to be incurred in submitting bids, and (ii) if the Questioned Bidder is not the highest bidder at the sale, or if having been the highest bidder the Questioned Bidder fails to deliver the cash purchase price payment promptly to Trustee, all bids by the Questioned Bidder shall be null and void. Trustee may, in Trustee's sole and absolute discretion, determine that a credit bid may be in the best interest of Borrower and Lender and elect to sell the Premises for credit or for a combination of cash and credit; provided, however, that Trustee shall have no obligation to accept any bid except an all cash bid. In the event Trustee requires a cash bid and cash is not delivered within a reasonable time after conclusion of the bidding process, as specified by Trustee (but in no event later than 3:45 p.m. local time on the date of sale), then said contingent sale shall be null and void, the bidding process may be recommenced, and any subsequent bids or sale shall be made as if no prior bids were made or accepted.

1.03. Judicial Foreclosure. This Deed of Trust shall be effective as a mortgage as well as a deed of trust and upon the occurrence of an Event of Default may be foreclosed as to any of the Premises in any manner permitted by the laws of the State of Texas or of any other state in which any part of the Premises is situated, and any foreclosure suit may be brought by Trustee or by Lender. In the event a foreclosure hereunder shall be commenced by Trustee or his substitute or successor, Lender may at any time before the sale of the Premises direct the said Trustee to abandon the sale, and may then institute suit for the collection of the Floating Rate Note and the other secured indebtedness, and for the foreclosure of this Deed of Trust. It is agreed that if Lender should institute a suit for the collection of the Floating Rate Note or any other secured indebtedness and for the foreclosure of this Deed of Trust, Lender may at any time before the entry of a final judgment in said suit dismiss the same, and require Trustee, his substitute or successor to sell the Premises in accordance with the provisions of this Deed of Trust.

1.04. Proceeds of Sale. The proceeds of any sale held by Trustee or any receiver or public officer in foreclosure of the liens evidenced hereby shall be applied:

FIRST, to the payment of all necessary costs and expenses incident to such foreclosure sale, including but not limited to all court costs and charges of every character in the event foreclosed by suit, and a reasonable fee to Trustee acting under the provisions of paragraph 1.01 of this Rider if foreclosed by power of sale as provided in said paragraph, not exceeding one percent (1%) of the proceeds of such sale;

SECOND, to the payment in full of the Indebtedness (including specifically without limitation the principal, interest and attorneys' fees due and unpaid on the Floating Rate Note and the amounts due and unpaid and owed to Lender under this Deed of Trust and the other Loan Documents) in such order as Lender may elect, in Lender's sole and absolute discretion; and

THIRD, the remainder, if any, there shall be, shall be paid to Borrower or to such other party or parties as may be entitled thereto by law.

1.05. Lender as Purchaser. Lender shall have the right to become the purchaser at any sale held by any Trustee or substitute or successor or by any receiver or public officer, and any Lender purchasing at any such sale shall have the right to credit upon the amount of the bid made therefor, to the extent necessary to satisfy such bid, the Indebtedness owing to such Lender, or if such Lender holds less than all of the Indebtedness the pro rata part thereof owing to such Lender, accounting to all other Lenders not joining in such bid in cash for the portion of such bid or bids apportionable to such non-bidding Lender or Lenders.

1.06. Uniform Commercial Code. Upon the occurrence of an Event of Default, Lender may exercise its rights of enforcement under the Code with respect to the Collateral, and in conjunction with, in addition to or in substitution for those rights and remedies:

(a) Lender may enter upon the Premises to take possession of, assemble and collect the Collateral or to render it unusable; and

(b) Lender may require Borrower to assemble the Collateral and make it available at a place Lender designates which is mutually convenient to allow Lender to take possession or dispose of the Collateral; and

(c) written notice mailed to Borrower as provided herein ten (10) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; and

(d) any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the Premises under power of sale as provided herein upon giving the same notice with respect to the sale of the Collateral hereunder as is required for such sale of the Premises under power of sale; and

(e) in the event of a foreclosure sale, whether made by Trustee under the terms hereof, or under judgment of a court, the Collateral and the remainder of the Premises may, at the option of Lender, be sold as a whole; and

(f) it shall not be necessary that Lender take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this paragraph is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; and

(g) prior to application of proceeds of disposition of the Collateral to the secured indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Lender; and

(h) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to non-payment of the indebtedness or as to the occurrence of any Event of Default, or as to Lender having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Lender, shall absent manifest error be taken as conclusive evidence of the truth of the facts so stated and recited; and

(i) 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 Lender, including the sending of notices and the conduct of sale, but in the name and on behalf of Lender.

1.07. Partial Foreclosure. In the event of a default in the payment of any part of the Indebtedness, Lender shall have the right to proceed with foreclosure of the liens and security interests evidenced hereby without declaring the entire Indebtedness due, and in such event any such foreclosure sale may be made subject to the unmatured part of the Indebtedness; and any such sale shall not in any manner affect the unmatured part of the Indebtedness, but as to such unmatured part, this Deed of Trust shall remain in full force and effect just as though no sale had been made. The proceeds of any such sale shall be applied as provided in paragraph 1.04 of this Rider except that the amount paid under subparagraph SECOND thereof shall be only the matured portion of the Indebtedness and any proceeds of such sale in excess of those provided for in subparagraphs FIRST and SECOND (modified as provided above) shall be applied to installments of principal of and interest on the Floating Rate Note in the inverse order of maturity. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Indebtedness.

1.08. Waiver.

(a) To the full extent Borrower may do so, Borrower agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force pertaining to the rights and remedies of sureties or providing for any appraisalment, valuation, stay, extension or redemption, and Borrower, for Borrower and Borrower's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Premises, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisalment, stay of execution, notice of intention to mature or declare due the whole of the secured indebtedness, notice of intent to accelerate, notice of acceleration, and all rights to a

marshaling of the assets of Borrower, including the Premises, or to a sale in inverse order of alienation in the event of foreclosure of the liens and security interests hereby created.

(b) Borrower shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents whatever to defeat, reduce or affect the right of Lender under the terms of this Deed of Trust to a sale of the Premises for the collection of the Indebtedness without any prior or different resort for collection, or the right of Lender under the terms of this Deed of Trust to the payment of such indebtedness out of the proceeds of sale of the Premises in preference to every other claimant whatever.

(c) Subject to the provisions of Section 4.03(m) of this Deed of Trust, to the extent that Borrower, any partner thereof or any other entity responsible for the payment of the Indebtedness is now, or at any time or from time to time hereafter is, a partnership, Borrower and Lender expressly acknowledge and agree that Lender is not required to comply with Section 3.05(d) of the Texas Revised Partnership Act, as same may be hereafter amended or modified, or any other or further laws, rules or regulations now or hereafter in effect which may limit the rights and remedies of a creditor to pursue partners of a partnership prior to the pursuit of such creditor's rights and remedies against such partnership.

(d) If any law referred to in this paragraph and now in force, of which Borrower or Borrower's heirs, devisees, representatives, successors and assigns and such other persons claiming any interest in the Premises might take advantage despite this paragraph, shall hereafter be repealed and cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph.

1.09. Delivery of Possession After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale Borrower or Borrower's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Premises by, through or under Borrower are occupying or using the Premises, or any part thereof, each and all 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 landlord or tenant, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser. In the event the tenant fails to surrender possession of said property upon demand, the purchaser shall be entitled to institute and maintain an action for forcible entry and detainer of said property in the Justice of the Peace Court in the Justice Precinct in which such property, or any part thereof, is situated.

1.10. Waiver of Deficiency Statute.

(a) Subject to the provisions of Section 4.03(m) of this Deed of Trust, in the event an interest in any of the Mortgaged Property is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale, Borrower agrees that notwithstanding the provisions of Sections 51.003, 51.004, and 51.005 of the Texas Property Code (as the same may be amended from time to time), and to the extent permitted by law, Lender

shall be entitled to seek a deficiency judgment from Borrower and any other party obligated on the Floating Rate Note equal to the difference between the amount owing on the Floating Rate Note and the amount for which the Mortgaged Property was sold pursuant to judicial or nonjudicial foreclosure sale. Borrower expressly recognizes that this paragraph constitutes a waiver of the above-cited provisions of the Texas Property Code which would otherwise permit Borrower and other persons against whom recovery of deficiencies is sought (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Mortgaged Property as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Borrower further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Mortgaged Property for purposes of calculating deficiencies owed by Borrower, and others against whom recovery of a deficiency is sought.

(b) Alternatively, in the event the waiver provided for in subsection (a) above is determined by a court of competent jurisdiction to be unenforceable, to the fullest extent not prohibited by applicable laws, the following shall be the basis for the finder of fact's determination of the fair market value of the Mortgaged Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time):

(i) the Mortgaged Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Mortgaged Property will be repaired or improved in any manner before a resale of the Mortgaged Property after foreclosure;

(ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Mortgaged Property for cash promptly (but no later than twelve months) following the foreclosure sale;

(iii) all reasonable closing costs customarily borne by the seller in a commercial real estate transaction should be deducted from the gross fair market value of the Mortgaged Property, including, without limitation, brokerage commissions, title insurance, a survey of the Mortgaged Property, tax prorations, seller's attorneys' fees and marketing costs;

(iv) the gross fair market value of the Mortgaged Property shall be further discounted to account for any estimated holding costs associated with maintaining the Mortgaged Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in subsection (iii) above) and other maintenance expenses; and

(v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Mortgaged Property must be given by persons having at least five years experience in appraising property similar to the Mortgaged Property and who have conducted and prepared a

complete written appraisal of the Mortgaged Property taking into consideration the factors set forth above.

ARTICLE II

Future Advances and Interest Limitation

2.01. Future Advances. In addition to securing the full, prompt and complete payment when due of the Indebtedness, this Deed of Trust shall also secure any and all other, further or future loans, Advances, readvances, reborrowings and borrowings made to or at the request of Borrower from or by Lender and all other debts, obligations and liabilities of every kind and character of Borrower now or hereafter existing in favor of Lender (including, without limitation, all indebtedness incurred or arising pursuant to any Loan Document) whether such debts, obligations or liabilities be direct or indirect, primary or secondary, joint or several, fixed or contingent, and whether originally payable to any of such parties or to a third party, and subsequently acquired by any of such parties, and whether such debts, obligations and liabilities are evidenced by note, open account, overdraft, endorsement, surety agreement or otherwise, it being presently contemplated by Borrower and such other parties that Borrower may and will hereafter become indebted to Lender in other, further and future sum or sums.

2.02. Limitation on Interest. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with the applicable Texas law governing the maximum rate of interest payable on the indebtedness evidenced by the Floating Rate Note, this Deed of Trust and the Related Indebtedness (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to the Floating Rate Note, this Deed of Trust, any of the other Loan Documents or any other communication or writing by or between Borrower and Lender related to the transaction or transactions that are the subject matter of the Loan Documents, (ii) contracted for, charged, taken, reserved or received by reason of Lender's exercise of the option to accelerate the maturity of the Floating Rate Note and/or the Related Indebtedness, or (iii) Borrower will have paid or Lender will have received by reason of any voluntary prepayment by Borrower of the Floating Rate Note and/or the Related Indebtedness, then it is Borrower's and Lender's express intent that all amounts charged in excess of the Maximum Lawful Rate shall be automatically canceled, ab initio, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Lender shall be credited on the principal balance of the Floating Rate Note and/or the Related Indebtedness (or, if the Floating Rate Note and all Related Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of the Floating Rate Note, this Deed of Trust and other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity for the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if the Floating Rate Note has been paid in full before the end of the stated term of the Floating Rate Note, then Borrower and Lender agree that Lender shall, with reasonable promptness after Lender discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to Borrower and/or credit such excess interest against the Floating Rate Note and/or any Related Indebtedness then owing by

Borrower to Lender. Borrower hereby agrees that as a condition precedent to any claim seeking usury penalties against Lender, Borrower will provide written notice to Lender, advising Lender in reasonable detail of the nature and amount of the violation, and Lender shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against the Floating Rate Note and/or the Related Indebtedness then owing by Borrower to Lender. All sums contracted for, charged, taken, reserved or received by Lender for the use, forbearance or detention of any debt evidenced by the Floating Rate Note and/or Related Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Floating Rate Note and/or Related Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Floating Rate Note and/or the Related Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Floating Rate Note and/or the Related Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Floating Rate Note and/or Related Indebtedness. Notwithstanding anything to the contrary contained herein or in any other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Lawful Rate payable on the Floating Rate Note and/or the Related Indebtedness, Lender will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent United States federal law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Lender will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303 or under applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect. As used hereunder the term "Maximum Lawful Rate" shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Lender in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law), taking into account all Charges made in connection with the transaction evidenced by the Floating Rate Note and the other Loan Documents. As used hereunder, the term "Charges" shall mean all fees, charges and/or any other things of value, if any, contracted for, charged, taken, received or reserved by Lender in connection with the transactions relating to the Floating Rate Note and the other Loan Documents, which are treated as interest under applicable law. As used hereunder, the term "Related Indebtedness" shall mean any and all indebtedness paid or payable by Borrower to Lender pursuant to the Loan Documents or any other communication or writing by or between Borrower and Lender related to the transaction or transactions that are the subject matter of the Loan Documents, except such indebtedness which has been paid or is payable by Borrower to Lender under the Floating Rate Note.

ARTICLE III

Trustee's Duties and Liability

3.01. No Liability. Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever, except if the result of Trustee's gross negligence or willful misconduct. Trustee shall not be personally liable in case of entry by him or anyone acting by virtue of the powers herein granted him upon the Mortgaged Property for debts contracted or liability or damages or damages incurred in the management or operation of the Mortgaged Property. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder or believed by him to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by him in the performance of his duties hereunder and to reasonable compensation for such of his services hereunder as shall be rendered. Borrower will, from time to time, reimburse Trustee for and save and hold him harmless from and against any and all loss, cost, liability, damage and expense whatsoever incurred by him in the performance of his duties.

3.02. Retention of Monies. All monies received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other monies (except to the extent required by law) and Trustee shall be under no liability for interest on any monies received by him hereunder.

3.03. Successor Trustees. Trustee may resign by giving of notice of such resignation in writing to Lender. If Trustee shall die, resign or become disqualified from acting in the execution of this trust or shall fail or refuse to exercise the same when requested by Lender or if for any or no reason and without cause Lender shall prefer to appoint a substitute trustee to act instead of the original Trustee named herein, or any prior successor or substitute trustee, Lender shall, without any formality or notice to Borrower or any other person, have full power to appoint a substitute trustee and, if Lender so elects, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the aforementioned Trustee.

3.04. Succession Instruments. Any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but, nevertheless, upon the written request of Lender or his successor trustee, Trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee, upon the trust herein expressed, all the estates, properties, rights, powers and trusts of Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and monies held by Trustee to the successor trustee so appointed in its or his place.

3.05. Performance of Duties by Agents. Trustee may authorize one or more parties to act on his behalf to perform the ministerial functions required of him hereunder, including without limitation, the transmittal and posting of any notices.

ARTICLE IV

Fixture Filing and Assignment of Rents

4.01. Fixture Filing. Pursuant to the Code, this Deed of Trust shall be effective as a Financing Statement filed as a fixture filing from the date of its filing for record covering and

including any and all fixtures of every kind and type affixed to all or any portion of the Premises or forming part of all or any portion of the Improvements. The name and address of Borrower, as debtor, and Lender (where information concerning the security interest granted hereby may be obtained), as secured party, are as set forth on the cover page of this Deed of Trust. The above described goods are or are to become fixtures related to the Premises and the Improvements of which Borrower is the record title owner. This Deed of Trust shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to Section 9.103(e) of the Code, as amended.

4.02. Assignment of Rents. Borrower acknowledges and agrees that the assignment set forth in Section 2.19(a) of the body of this Deed of Trust shall be upon the following additional terms:

(a) until an Event of Default and receipt from Lender of written notice each tenant may pay any and all Property Income and other sums set forth above directly to Borrower, but after written notice, Borrower covenants to hold any and all such sums in trust for the use and benefit of Lender;

(b) upon an Event of Default and receipt from Lender of a written notice, each tenant is hereby authorized and directed, without the need for the prior consent, approval or joinder by Borrower or any other person, to pay directly to Lender any and all of such Property Income and other sums thereafter accruing;

(c) Lender shall not be liable for its failure to exercise diligence in the collection of any and all of such Property Income and other sums;

(d) the assignment set forth herein shall terminate upon the release of this instrument, but no tenant shall be required to accept notice of any such termination until a copy of any such release, as executed by Lender, has been delivered to such tenant;

(e) in no event shall the rights set forth in this assignment effect or be construed so as to effect a pro tanto reduction of the Indebtedness except to the extent, if at all, that Lender actually receives, after the occurrence of a default and Lender's election to pursue its rights under this paragraph, Property Income and other sums directly from any tenant of all or any portion of the Mortgaged Property and applies same, in Lender's discretion, to the Indebtedness; and

(f) Lender need not institute, prosecute or resort to any legal, equitable or other action, nor deliver any notice or demand, nor take any affirmative action whatsoever after the occurrence of a default in order to enforce and obtain the benefits of the provisions set forth herein.

Notwithstanding anything to the contrary contained herein or otherwise, Borrower and Lender intend, clearly and without ambiguity, that the assignment set forth herein shall be deemed and otherwise construed for all purposes to be an absolute, unconditional and presently effective assignment of the Property Income and the provisions of clause (a) and clause (b) above are intended solely for the benefit of each tenant and shall never inure to the benefit of Borrower or any person claiming by, through or under Borrower. In the event of any conflict

between the assignment set forth in Section 2.19(a) of this Deed of Trust and the Assignment, the Assignment will control.

ARTICLE V
Miscellaneous

5.01. Releases. Upon payment in full of the Indebtedness and all other indebtedness secured hereby, Lender shall, at Borrower's expense, cause the lien created by this Deed of Trust to be released by an instrument in form and substance reasonably satisfactory to Lender.

5.02. No Partnership. That notwithstanding anything to the contrary contained herein or otherwise (a) the relationship between Borrower and Lender hereunder and otherwise shall be deemed, construed and treated by Borrower and Lender for all purposes to be solely that of debtor/creditor; (b) the various consent, approval and other rights afforded to Lender under this Deed of Trust have been granted and designed solely to protect the value of the Mortgaged Property and to assure Borrower's payment of the Indebtedness and all of such rights are customarily granted lenders in a secured lending transactions; (c) Borrower and Lender hereby expressly disclaim any sharing of liabilities, losses, costs or expenses with respect to the ownership or operation of all or any portion of the Mortgaged Property, or otherwise; and (d) the terms contained herein are not intended by Borrower and Lender and shall not for any purpose be deemed, construed or treated by Borrower and Lender so as (i) to create a partnership or joint venture between Lender and Borrower or between Lender and any other party, or (ii) to cause Lender to be or become liable in any way for the debts and obligations of Borrower (including, without limitation, any losses attributable to Borrower's operation of the Mortgaged Property) or any other party.

5.03. Indemnity. It is the express intention of Borrower and Borrower hereby agrees that the indemnities set forth in this Deed of Trust and the other Loan Documents (including, without limitation, the indemnities set forth in Section 2.15 and Section 2.20(f) of this Deed of Trust) will apply to and fully protect each indemnified party even though any claims, demands, liabilities, losses, damages, causes of action, judgments, penalties, costs and expenses (including without limitation reasonable attorneys' fees) then the subject of indemnification may have been caused by, arise out of, or are otherwise attributable to, directly or indirectly, the negligence (excluding gross negligence or willful misconduct) in whole or in part of such indemnified party and/or any other party.

Borrower's Initials: _____



5.04. Incorporation By Reference. The terms, covenants and provisions of the Floating Rate Note and the other Loan Documents have been incorporated into this Deed of Trust by this reference. All persons from time to time having an interest in all or any portion of the Mortgaged Property are hereby placed on notice of all of the terms, covenants and provisions of the instruments incorporated herein and that copies of same may be obtained by those having an appropriate interest in the Mortgaged Property or any portion thereof upon written request to the Lender at the address set forth on the cover page of this Deed of Trust. Any such request shall include the name and address of the requesting party and also contain a brief explanation of the nature and reason for such request.

5.05. WAIVER OF JURY TRIAL. BORROWER AND LENDER BY ITS ACCEPTANCE HEREOF, EACH HEREBY ABSOLUTELY, IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY AND THE RIGHT TO CLAIM OR RECEIVE CONSEQUENTIAL OR PUNITIVE DAMAGES IN ANY LITIGATION, ACTION, CLAIM, SUIT OR PROCEEDING, AT LAW OR IN EQUITY, ARISING OUT OF, PERTAINING TO OR IN ANY WAY ASSOCIATED WITH THE INDEBTEDNESS, THE RELATIONSHIP OF THE PARTIES HERETO AS LENDER AND BORROWER, THE FLOATING RATE NOTE, THIS DEED OF TRUST, THE OTHER LOAN DOCUMENTS, THE PREMISES OR THE ACTIONS OF BORROWER AND/OR LENDER IN CONNECTION WITH ANY OF THE FOREGOING.

5.06. WAIVER OF CONSUMER RIGHTS. TO THE EXTENT NOW OR HEREAFTER APPLICABLE, BORROWER HEREBY WAIVES BORROWER'S RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF BORROWER'S OWN SELECTION, BORROWER VOLUNTARILY CONSENTS TO THIS WAIVER.

5.07. SECTION 26.02 NOTICE. IN ACCORDANCE WITH SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE, THIS DEED OF TRUST AND THE OTHER DOCUMENTS EVIDENCING, SECURING OR PERTAINING TO ALL OR ANY PORTION OF THE INDEBTEDNESS REPRESENT THE FINAL AGREEMENT BETWEEN BORROWER AND LENDER AS TO THE SUBJECT MATTER THEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF SUCH PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN SUCH PARTIES.

5.08. TEXAS FINANCE CODE SECTION 307.052 COLLATERAL PROTECTION INSURANCE NOTICE: (A) BORROWER IS REQUIRED TO: (I) KEEP THE PREMISES INSURED AGAINST DAMAGE IN THE AMOUNT LENDER SPECIFIES; (II) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (III) NAME LENDER AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS; (B) BORROWER MUST, IF REQUIRED BY LENDER, DELIVER TO LENDER A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND (C) IF BORROWER FAILS TO MEET ANY REQUIREMENT LISTED IN PARAGRAPH (A) OR (B), LENDER MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF BORROWER AT THE BORROWER'S EXPENSE.

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GERRY RICKHOFF COUNTY CLERK

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COUNTY OF BEXAR
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Gerry Rickhoff