

SDK CALIENTE, INC.  
(Trustor)

to

\_\_\_\_\_  
(Trustee)

for the benefit of

BEDFORD CAPITAL FUNDING, LLC  
(Lender)

\_\_\_\_\_  
DEED OF TRUST, SECURITY AGREEMENT AND  
ASSIGNMENT OF LEASES AND RENTS  
\_\_\_\_\_

Dated as of: May 10, 2002

Location: 700 Front Street, Caliente, Lincoln County, Nevada

RECORD AND RETURN TO:

Bedford Capital Funding, LLC  
116 South River Road  
Bedford, NH 03110

Attention: Denis O. Robinson

THIS Indenture (this "Deed of Trust"), made as of May 10, 2002, by SDK CALIENTE, INC., a Nevada corporation, having its principal place of business at 545000 Ema-Lu Lane, McArthur, California 96058-8643 ("Trustor"), to First American Title Company of Nevada, a Nevada corporation ("Trustee"), for the use and benefit of BEDFORD CAPITAL FUNDING, LLC, a Delaware limited liability company, having its principal place of business at 116 South River Road, Bedford, New Hampshire 03110 ("Lender").

W I T N E S S E T H:

To secure the payment of an indebtedness in the principal sum of Seven Hundred Twenty One Thousand Six Hundred Fourteen and 34/100 Dollars (\$721,614.34) (the "Loan"), lawful money of the United States of America, to be paid with interest according to a certain Deed of Trust Note dated the date hereof made by Trustor to Lender (the note together with all extensions, renewals or modifications thereof being hereinafter collectively called the "Note") and all other sums due hereunder, under the Note and any Other Security Documents (hereinafter defined) (said indebtedness and interest due under the Note and all other sums due hereunder and under the Note and the Other Security Documents being hereinafter collectively called the "Debt"), Trustor has mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged, assigned, and hypothecated and by these presents does hereby mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, assign and hypothecate unto the Trustee, its successors and assigns, for the use and benefit of Lender the real property located at 700 Front Street, Caliente, Lincoln County, Nevada and more particularly described in Exhibit A attached hereto (the "Premises") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements");

TOGETHER WITH: all right, title, interest and estate of Trustor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements together with the following property, rights, interests and estates being hereinafter described are collectively referred to herein as the "Deed of Trust Property"):

all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights (including, without limitation, all right, title and interest of Trustor under any reciprocal easement agreement affecting or pertaining to the Deed of Trust Property), and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity,

of Trustor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

all machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Trustor, or in which Trustor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Trustor, or in which Trustor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements (hereinafter collectively called the "Equipment"), including the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Trustor in and to any of the Equipment which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Deed of Trust Property is located (the "Uniform Commercial Code") superior in lien to the lien of this Deed of Trust. In connection with Equipment which is leased to Trustor or which is subject to a lien or security interest which is superior to the lien of this Deed of Trust, this Deed of Trust shall also cover all right, title and interest of Trustor in and to all deposits, and the benefit of all payments now or hereafter made with respect to such Equipment;

all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Deed of Trust Property, whether from the exercise of the right of eminent domain or condemnation (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Deed of Trust Property;

all right, title and interest of Trustor in and to the lease dated as June 6, 2000 (including, without limitation, all guarantees of said leases) (as it may be amended from time to time, the "Lease") between Trustor, as successor to original lessor, and the United States Postal Service as lessee ("Lessee") and all other leases and subleases (including, without limitation, all guarantees thereof) and other agreements affecting the use, enjoyment or occupancy of the Premises and the Improvements heretofore or hereafter entered into (the "Other Leases") (including any use or occupancy arrangements created pursuant to Section 365(d) of Title 11 of the United States Code (the "Bankruptcy Code") or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or occupant of any portion of the Premises and the Improvements) and all income, rents, issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Premises and the Improvements (the "Rents") (including any payments

received pursuant to Section 502(b) of the Bankruptcy Code or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or occupant of any portion of the Premises and the Improvements and all claims as a creditor in connection with any of the foregoing) and all proceeds from the sale, cancellation, surrender or other disposition of the Lease and the Other Leases and the right to receive and apply the Rents to the payment of the Debt;

Trustor's interest in any insurance policies covering the Premises and the Improvements, all proceeds thereof and any unearned premiums on any insurance policies covering the Deed of Trust Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Deed of Trust Property or any part thereof;

the right, in the name and on behalf of Trustor, to appear in and defend any action or proceeding brought with respect to the Deed of Trust Property and to commence any action or proceeding to protect the interest of Lender in the Deed of Trust Property or any part thereof;

all franchises, trade names, trademarks, symbols, service marks, books, records, plans and specifications, contracts, licenses, approvals, consents, subcontracts, service contracts, management contracts, permits and other agreements of any nature whatsoever now or hereafter obtained or entered into by Trustor, or any managing agent of the Deed of Trust Property on behalf of Trustor, with respect to the use, occupation, development, construction and/or operation of the Deed of Trust Property or any part thereof or the activities conducted thereon or therein, or otherwise pertaining to the Deed of Trust Property or any part thereof;

all accounts receivable, contract rights, interests, estate or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Deed of Trust Property or any part thereof, and all reserve accounts, accounts for the deposit, collection and/or disbursement of Rents and other accounts now or hereafter in existence with respect to the Loan, including, without limitation, that certain account for the payment of Rents to Lender described in Paragraph 14(a) of the Assignment of Lease and Rents delivered to Lender by Trustor on the date hereof and all interest reserve accounts, Trustor reserve accounts and replacement reserve accounts provided for under any documentation entered into or delivered by Trustor in connection with the Loan; and

all rights which Trustor now has or may hereafter acquire, to be indemnified and/or held harmless from any liability, loss, damage, cost or expense (including, without limitation, attorneys' fees and disbursements) relating to the Deed of Trust Property or any part thereof.

TO HAVE AND TO HOLD the above granted and described Deed of Trust Property unto and to the use and benefit of Lender, and the successors and assigns of Lender, forever;

IN TRUST, WITH POWER OF SALE, to secure the payment to Lender of the Debt at the time and in the manner provided for its payment in the Note and this Deed of Trust;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Trustor shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note and this Deed of Trust and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void.

AND Trustor represents and warrants to and covenants and agrees with Lender and Trustee as follows:

### Part I

#### **General Provisions**

1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements. Trustor will pay the Debt at the time and in the manner provided in the Note and in this Deed of Trust. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Deed of Trust now or hereafter executed by Trustor and/or others and by or in favor of Lender, which evidences, secures or guarantees all or any portion of the payments due under the Note or otherwise is executed and/or delivered in connection with the Note and Deed of Trust (the "Other Security Documents"), are hereby made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein.

2. Warranty of Title. Trustor warrants that Trustor has good and marketable title to the Deed of Trust Property and has the right to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, lease, assign and hypothecate the same and that Trustor possesses an indefeasible fee estate in the Premises and the Improvements subject to the Lease and that it owns the Deed of Trust Property free and clear of all liens, encumbrances and charges whatsoever except for the Lease and those exceptions shown in the title insurance policy insuring the lien of this Deed of Trust. Trustor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Deed of Trust and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever.

3. Insurance. (a) The Deed of Trust Property shall at all times during the entire term of this Deed of Trust be insured for the mutual benefit of Trustor and Lender against loss or

damage by any peril covered by a standard "all risk of physical loss" insurance policy, or, at Lender's option, where Lessee is required to maintain insurance, with such insurance as is required to be maintained by Lessee pursuant to the terms of the applicable Lease, or in the event that the Lease is no longer in effect, as otherwise required by Lender. Unless Lender shall have otherwise agreed, such insurance, whether provided by Trustor or Lessee, shall be in an amount (i) equal to at least the then full replacement cost of the Improvements and Equipment, without deduction for physical depreciation (and contain an appropriate "Replacement Cost Endorsement" with waiver of depreciation) and with a deductible no greater than \$5,000.00, and (ii) such that the insurer would not deem Trustor a co-insurer under said policies. The policies of insurance carried in accordance with this Paragraph 3 (the "Policies") shall be paid annually in advance.

(b) Unless the Policies described in this Paragraph 3(b) are being provided by Lessee in accordance with the provisions of Paragraph 3(a) herein, Trustor, at its sole cost and expense, for the mutual benefit of Trustor and Lender, shall also obtain and maintain during the entire term of this Deed of Trust the following Policies:

(i) Flood insurance if any part of the Deed of Trust Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any successor act thereto) in an amount at least equal to the outstanding principal amount of the Note or the maximum limit of coverage available with respect to the Improvements and Equipment under said Act, whichever is less.

(ii) Comprehensive public liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages.

(iii) Rental loss insurance in an amount equal to the aggregate annual amount of all rents and additional rents payable under the Lease, such rental loss insurance to cover rental losses for a period of at least twelve (12) months after the date of the fire or casualty in question, irrespective of whether the Lease has been terminated during that one-year period, or, in the event the Lease is no longer in effect, as required by Lender. Trustor shall not, without the prior written consent of Lender, amend any of the Leases to reduce the amounts and/or types of insurance required to be maintained under the Lease or waive any provision of the Lease to reduce such amounts and/or types of insurance.

(iv) Insurance against loss or damage from explosion of air conditioning equipment, machinery and equipment, or similar apparatus now or hereafter installed in the Improvements.

(v) Such other insurance as may from time to time be reasonably required by Lender in order to protect its interests.



(c) All Policies if and to the extent required by Lender and except as otherwise provided in the applicable Lease (i) shall be issued by an insurer rated at least "A" by the Rating Agencies that is satisfactory to Lender, (ii) shall contain the standard New York Lender or equivalent non-contribution clause naming Lender as the person to which all payments made by such insurance company shall be paid, (iii) shall be maintained throughout the term of this Deed of Trust without cost to Lender, (iv) shall be delivered to Lender, (v) shall contain such provisions as Lender deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Trustor, Lender nor any other party shall be a co-insurer under said Policies and that Lender shall receive at least ten (10) days prior written notice of any modification or cancellation, and (vi) shall be satisfactory in form and substance to Lender and shall be approved by Lender as to amounts, form, risk coverage, deductibles, loss payees and insureds. The premiums for such Policies (the "Insurance Premiums") shall be paid as the same become due and payable. Not later than ten (10) days prior to the expiration date of each of the Policies, Trustor will deliver to Lender satisfactory evidence of the renewal of each Policy.

(d) If the Deed of Trust Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Trustor shall give prompt notice thereof to Lender. Trustor shall not settle or adjust or permit the settlement or adjustment of any insurance claim without Lender's prior written consent. All insurance proceeds required to be applied to restoration and repair of the Deed of Trust Property under the Lease shall be disbursed in accordance with the provisions of the Lease for such restoration and repair upon such conditions as Lender may reasonably require and which are otherwise customary in the locality where the Deed of Trust Property is situated, which conditions shall include, without limitation, the following: (i) no Event of Default, or event which with notice and/or the passage of time, or both, would constitute an Event of Default has occurred and remains uncured at the time of such disbursement; (ii) the insurer does not deny liability to any named insured; (iii) the remaining Deed of Trust Property continues at all times to comply with all applicable building, zoning and other land use laws and regulations; (iv) in Lender's reasonable judgment, the restoration or repair is practicable and can be completed within a reasonable period of time following such damage or destruction, but in no event later than the date by which completion is required under the Lease; (v) Trustor proceeds promptly after the insurance claims are settled with the restoration or repair; and (vi) the restoration or repair is performed in compliance with all applicable laws, rules and regulations. All insurance proceeds not required to be disbursed for repair and restoration of the Deed of Trust Property pursuant to the provisions of the Lease shall be delivered to Lender and may be retained and applied by Lender, after deduction of Lender's reasonable costs and expenses of collection, toward payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper (such application to be without any prepayment consideration, except that if an Event of Default, or an event with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred, then such application shall be subject to the Default Prepayment Consideration (as such term is defined in the Note) computed in accordance with the Note).

(e) Trustor acknowledges Lender's right under and pursuant to Paragraph 23 hereof to obtain (either itself or by its agents, servicers, nominees or attorneys) any insurance required of Trustor hereunder should Trustor fail to do so as required hereunder.

4. Payment of Taxes, etc. (a) All taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Deed of Trust Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Deed of Trust Property or any part thereof (the "Other Charges") shall be paid on or prior to the date the same become due and payable. Trustor will deliver to Lender, promptly upon Lender's request, evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent. Trustor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Deed of Trust Property. Trustor shall furnish to Lender or its designee receipts for the payment of the Taxes and Other Charges prior to the date the same shall become delinquent.

(b) After prior written notice to Lender, Trustor, at its own expense, may contest, or permit to be contested, by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes or Other Charges, provided that (i) Trustor is not in default under the Note or this Deed of Trust, (ii) Trustor is permitted to do so under the provisions of any Deed of Trust or deed of trust junior in lien to this Deed of Trust, (iii) such proceeding shall suspend the collection of the Taxes or Other Charges from Trustor and from the Deed of Trust Property, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Trustor is subject and shall not constitute a default thereunder, (v) neither the Deed of Trust Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost, (vi) adequate reserves for the payment of the Taxes or Other Charges, together with all interest and penalties thereon, shall have been set aside, and (vii) Trustor shall have furnished to Lender, or caused to be furnished to Lender, such security as may be required in the proceeding, or as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon.

5. Escrow Fund. Trustor shall, after an Event of Default (unless the tenant under the Lease is paying such sums directly) or during any period that the Lease is not in effect, at the option of Lender or its designee, pay to Lender on the fifteenth day of each calendar month after notice from Lender (a) one-twelfth of an amount which would be sufficient to pay the Taxes payable, or estimated by Lender to be payable, during the next ensuing twelve (12) months, and (b) one-twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof, except to the extent that amounts are actually paid by Trustor and received by Lender or its agent on account of such



insurance premiums under the Trustor Reserve Agreement of even date herewith, in which such event those amounts shall be deposited and allocated pursuant to such Trustor Reserve Agreement (said amounts in (a) and (b) above hereinafter called the "Escrow Fund"). The Escrow Fund, if any, and the payments of interest or principal or both, payable pursuant to the Note, shall be added together and shall be paid as an aggregate sum by Trustor to Lender. Trustor hereby pledges to Lender any and all monies now or hereafter deposited in the Escrow Fund as additional security for the payment of the Debt. Lender will apply the Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Trustor pursuant to Paragraphs 3 and 4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Paragraphs 3 and 4 hereof, Lender shall, in its discretion, return any excess to Trustor or credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Deed of Trust Property. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Trustor shall promptly pay to Lender, upon demand, an amount which Lender shall estimate as sufficient to make up the deficiency. Upon the occurrence of an Event of Default, Lender may apply any sums then present in the Escrow Fund to the payment of the following items in any order in its sole discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note; or
- (v) All other sums payable pursuant to the Note, this Deed of Trust and the Other Security Documents, including, without limitation, advances made by Lender pursuant to the terms of this Deed of Trust.

Until expended or applied as above provided, any amounts in the Escrow Fund shall constitute additional security for the Debt. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Lender. No earnings or interest on the Escrow Fund shall be payable to Trustor.

6. Condemnation. (a) Trustor shall promptly give Lender written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Trustor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note, in this Deed of Trust and the Other Security Documents and the Debt shall not

be reduced until any award or payment therefor shall have been actually received after expenses of collection and applied by Lender to the discharge of the Debt. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein and in the Note. Trustor shall cause the award or payment made in any condemnation or eminent domain proceeding, which is payable to Trustor, to be paid directly to Lender.

(b) All condemnation awards or payments required to be applied to restoration and repair of the Deed of Trust Property under the applicable Lease shall be disbursed in accordance with the provisions of the applicable Lease. All condemnation awards or payments not required to be disbursed for repair and restoration of the Deed of Trust Property pursuant to the provisions of the applicable Lease shall be delivered to Lender and applied to the reduction or discharge of the Debt whether or not then due and payable (such application to be without any prepayment consideration, except that if an Event of Default, or an event with notice and/or the passage of time, or both, would constitute an Event of Default, has occurred, then such application shall be subject to the Default Prepayment Consideration computed in accordance with the Note). If the Deed of Trust Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of such award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive said award or payment, or a portion thereof sufficient to pay the Debt. Trustor shall file and prosecute or cause to be filed and prosecuted its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be paid over to Lender, and hereby irrevocably authorizes and empowers Lender, in the name of Trustor or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claim or claims, and although it is hereby expressly agreed that the same shall not be necessary in any event, Trustor shall, upon demand of Lender, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to Lender, free and clear of any encumbrances of any kind or nature whatsoever.

7. The Lease. (a) Trustor, by this Deed of Trust and the Assignment of Lease and Rents of even date herewith, has absolutely and unconditionally assigned to Lender, all of Trustor's right, title and interest in the Lease, the Other Leases and the Rents, it being intended by Trustor that this assignment constitutes a present, absolute assignment. Trustor represents to Lender that (i) the Lease is in full force and effect, (ii) a true and correct copy of the Lease as amended to the date hereof has been delivered to Lender, (iii) neither Trustor nor Lessee is in default under any of the terms, covenants or conditions of the Lease, (iv) Trustor has not delivered to, or received from the Lessee any notice of default under the Lease and (v) all rents payable under each of the Lease, including all additional rent, have been paid in full.

(b) Trustor agrees with Lender that Trustor (i) shall observe and perform all the obligations imposed upon the lessor under the Lease and shall not do or permit to be done anything to impair the value of the Lease as security for the Debt; (ii) shall promptly send copies to Lender of

all notices of default which Trustor shall send or receive thereunder; (iii) shall enforce all of the terms, covenants and conditions contained in the Lease upon the part of the Lessee thereunder to be observed or performed, short of termination thereof; (iv) shall not execute any other assignment of lessor's interest in the Lease; (v) shall not alter, modify or change the terms of the Lease without the prior consent of Lender, or cancel or terminate the Lease or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the premises demised by the Lease or of any interest therein so as to effect a merger of the estates and rights of, or termination or diminution of the obligations of Lessee thereunder; (vi) shall not alter, modify or change the terms of any guaranty of the Lease or cancel or terminate any such guaranty without the prior consent of Lender; (vii) shall not consent to any assignment of or subletting under the Lease not in accordance with the Lease terms, without the prior written consent of Lender; (viii) upon request of Lender, shall request and use reasonable efforts to obtain, a tenant certificate from the Lessee in form and substance reasonably satisfactory to Lender; and (ix) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Deed of Trust Property as Lender shall from time to time require.

8. Maintenance of Deed of Trust Property. The Deed of Trust Property shall be maintained in a good and safe condition and repair. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment or as otherwise permitted under the Lease) without the consent of Lender. Trustor shall cause the Deed of Trust Property to be in compliance with all laws, orders and ordinances affecting the Deed of Trust Property, or the use thereof. Trustor shall cause any part of the Deed of Trust Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Paragraph 6 hereof to be promptly repaired, replaced or rebuilt. Trustor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Deed of Trust Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Deed of Trust Property is or shall become a nonconforming use, Trustor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Lender.

9. Transfer or Encumbrance of the Deed of Trust Property. (a) Trustor acknowledges that Lender has examined and relied on the creditworthiness and experience of Trustor in owning and operating properties such as the Deed of Trust Property in agreeing to make the Loan, and that Lender will continue to rely on Trustor's ownership of the Deed of Trust Property as a means of maintaining the value of the Deed of Trust Property as security for repayment of the Debt. Trustor acknowledges that Lender has a valid interest in maintaining the value of the Deed of Trust Property so as to ensure that, should Trustor default in the repayment of the Debt, Lender can recover all or a portion of the Debt by a sale of the Deed of Trust Property. Trustor shall not, without the prior written consent of Lender, sell, convey, alienate, mortgage, encumber, pledge or otherwise

transfer the Deed of Trust Property or any part thereof or any interest therein or any direct or indirect interest in Trustor, or permit the Deed of Trust Property or any part thereof or any interest therein or any direct or indirect interest in Trustor to be sold, conveyed, alienated, mortgaged, encumbered, pledged or otherwise transferred.

(b) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this Paragraph 9 shall be deemed to include, without limitation, (i) an installment sales agreement wherein Trustor agrees to sell the Deed of Trust Property or any part thereof for a price to be paid in installments; (ii) an agreement by Trustor leasing all or a substantial part of the Deed of Trust Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Trustor's right, title and interest in and to the Lease or any Rents; (iii) any divestiture of Trustor's title or any interest therein in any manner or way, whether voluntary or involuntary, or any merger, consolidation, dissolution or syndication affecting Trustor; (iv) if Trustor, any person or entity guaranteeing payment of the Debt or any portion thereof or performance by Trustor of any of the terms of this Deed of Trust (a "Guarantor"), or any general partner or managing member of Trustor or Guarantor is a corporation, the voluntary or involuntary sale, conveyance or transfer of any of such corporation's stock (or any stock or other interests of any corporation or entity directly or indirectly controlling such corporation, by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders or any change in the control of such corporation directly or indirectly; and (v) if Trustor, any Guarantor or any general partner or managing member of Trustor or any Guarantor is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, limited partner, joint venturer or member or the transfer of any partnership interests of any general partner, managing partner or limited partner or the transfer of any interests of any joint venturer or member (or any interests of any entity directly or indirectly controlling such partner, joint venturer or member, by operation of law or otherwise). Notwithstanding the foregoing, the following shall not be deemed to be a sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this Paragraph 9: (A) transfer by devise or descent or by operation of law upon the death of a partner, member or stockholder of Trustor or any general partner thereof who is a person; and/or (B) a sale, transfer or hypothecation for estate planning purposes of a partnership, shareholder or membership interest in Trustor, whichever the case may be, by the current partner(s), shareholder(s) or member(s), as applicable, who is a person, to an immediate family member (i.e., parents, spouses, siblings, children or grandchildren) of such partner, shareholder or member (or a trust for the benefit of any such persons); provided that in no event shall the bankruptcy-remote or single purpose status of Trustor or any general partner or managing member of Trustor be affected by such transfer.

(c) Lender shall not be required to demonstrate any actual impairment of its



security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Trustor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Deed of Trust Property without Lender's consent. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Deed of Trust Property regardless of whether voluntary or not, or whether or not Lender has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Deed of Trust Property.

(d) Lender's consent to a sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Deed of Trust Property shall not be deemed to be a waiver of Lender's right to require such consent to any future occurrence of same. Any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Deed of Trust Property made in contravention of this Paragraph 9 shall be null and void and of no force and effect.

(e) Trustor agrees to bear and shall pay or reimburse Lender on demand for all reasonable expenses (including, without limitation, reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Lender in connection with the review, approval and documentation of any such sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer.

(f) Lender's consent to the sale or transfer of the Deed of Trust Property will not be unreasonably withheld after consideration of all relevant factors, provided that:

- (i) no Event of Default or event which with the giving of notice or the passage of time would constitute an Event of Default shall have occurred and remain uncured;
- (ii) the proposed transferee ("Transferee") shall be a reputable entity or person of good character, creditworthy, with sufficient financial worth considering the obligations assumed and undertaken, as evidenced by financial statements and other information reasonably requested by Lender and shall comply in all respects with the provisions set forth in Paragraph 20 of this Deed of Trust and all other applicable criteria of the Rating Agencies (as hereinafter defined);
- (iii) Lender shall have received evidence satisfactory to Lender that all required approvals, if any, to such sale or transfer shall have been obtained, including, without limitation, approvals required under the Lease;
- (iv) Lender shall have received evidence in writing from the Rating Agencies to the effect that such transfer will not result in a re-qualification, reduction or withdrawal of any rating initially assigned or to be assigned in a Secondary Market Transaction (as hereinafter defined). The term "Rating Agencies" as



used herein shall mean any of Standard & Poor's Ratings Group, Duff & Phelps Credit Rating Co., Moody's Investors Service, Inc. and Fitch Investors Service, Inc. or any other nationally-recognized statistical rating agency which has been approved by Lender and which is then rating the securities or certificates issued in connection with the Secondary Market Transaction;

- (v) Lender shall have received such legal opinions as may be requested by Lender or any Rating Agency in connection with such sale or transfer;
- (vi) the Transferee shall have executed and delivered to Lender an assumption agreement in form and substance acceptable to Lender, evidencing such Transferee's agreement to abide and be bound by the terms of the Note, this Deed of Trust and the Other Security Documents, together with such title insurance endorsements as may be reasonably requested by Lender; and
- (vii) Lender shall have received an assumption fee equal to one percent (1%) of the then unpaid principal balance of the Note in addition to the payment of all costs and expenses incurred by Lender in connection with such assumption (including reasonable attorneys' fees and costs).

10. Estoppel Certificates. After request by Lender, Trustor shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note and this Deed of Trust are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

11. Changes in the Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Deed of Trust which deducts the Debt from the value of the Deed of Trust Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Deed of Trust Property, Trustor will pay such tax, with interest and penalties thereon, if any. In the event Lender is advised by counsel chosen by it that the payment of such tax or interest and penalties by Trustor would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

12. No Credits on Account of the Debt. Trustor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Deed of Trust Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Deed of Trust Property, or any part thereof, for real

estate tax purposes by reason of this Deed of Trust or the Debt. In the event such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

13. Documentary Stamps. If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Deed of Trust, or impose any other tax or charge on the same, Trustor will pay for the same, with interest and penalties thereon, if any.

14. Usury Laws. This Deed of Trust and the Note are subject to the express condition that at no time shall Trustor be obligated or required to pay interest on the Debt at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the maximum interest rate which Trustor is permitted by law to contract or agree to pay. If by the terms of this Deed of Trust or the Note, Trustor is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the same shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all previous payments in excess of such maximum rate shall be deemed to have been payments in reduction of the principal and not on account of the interest due hereunder.

15. Books and Records. Trustor and Guarantors, if any, shall keep adequate books and records of account in accordance with generally accepted accounting principles consistently applied and furnish to Lender: (a) an annual operating statement of the Deed of Trust Property; (b) an annual balance sheet and profit and loss statement of Trustor, and, if requested by Lender, of any Guarantor, prepared by or, if required by Lender, audited and certified by, a certified public accountant acceptable to Lender within ninety (90) days after the close of each fiscal year; and (c) such annual balance sheets and profit and loss statements and other financial statements as may, from time to time, be required by Lender. Trustor shall provide Lender with such additional financial or management information as Lender may request, provided that any such additional information with respect to the Lessee or the Deed of Trust Property is available to Trustor pursuant to the terms and provisions of the applicable Lease.

16. Performance and Enforcement of Other Agreements. Trustor shall observe and perform each and every term to be observed or performed by Trustor and shall enforce each and every term required to be observed or performed by any other party pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Deed of Trust Property, including, without limitation, any reciprocal easement, operating or similar agreement, and if Trustor shall fail to so observe, perform and enforce any such terms, Lender and Servicer and their agents, employees, contractors, engineers, architects and other representatives shall have the right to so observe, perform and enforce such terms.

17. Further Acts, etc. Trustor will, at the cost of Trustor, and without expense to

Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deed of trusts, assignments, notices of assignment, transfers and assurances as Lender shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust or for filing, registering or recording this Deed of Trust. Trustor, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Trustor or without the signature of Trustor to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Deed of Trust Property. Trustor grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to this Paragraph 17.

18. Recording of Deed of Trust, etc. Trustor forthwith upon the execution and delivery of this Deed of Trust and thereafter, from time to time, will cause this Deed of Trust, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Deed of Trust Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Lender in, the Deed of Trust Property. Trustor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Deed of Trust, any Deed of Trust supplemental hereto, any security instrument with respect to the Deed of Trust Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Deed of Trust, any deed of trust supplemental hereto, any security instrument with respect to the Deed of Trust Property or any instrument of further assurance, except where prohibited by law so to do. Trustor shall hold harmless and indemnify Lender, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Deed of Trust.

19. Prepayment. If permitted by the Note, the Debt may be prepaid in accordance with the terms thereof.

20. Single Purpose Entity/Separateness. Trustor hereby represents and warrants to, and covenants with, Lender that as of the date hereof and until such time as the Debt shall be paid in full:

(a) The purpose for which Trustor is organized shall be limited solely to (i) owning, holding, selling, leasing, transferring, exchanging, operating and managing the Deed of

Trust Property, (ii) entering into the Loan with Lender, (iii) refinancing the Deed of Trust Property in connection with a permitted repayment of the Loan and (iv) transacting any and all lawful business for which Trustor may be organized under its constitutive law that is incident, necessary and appropriate to accomplish the foregoing.

(b) Trustor does not own and will not own any asset or property other than (i) the Deed of Trust Property, and (ii) incidental personal property necessary for the ownership or operation of the Deed of Trust Property.

(c) Trustor will not engage in any business other than the ownership, management and operation of the Deed of Trust Property and Trustor will conduct and operate its business as presently conducted and operated. Trustor shall not pledge its assets for the benefit of any other person or entity, other than with respect to the Loan.

(d) Trustor will not enter into any contract or agreement with any affiliate of Trustor, any constituent party of Trustor, any Guarantor or any affiliate or constituent party of Guarantor, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arms-length basis with unaffiliated third parties. Trustor will allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate.

(e) Trustor has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation) other than (i) the Debt or (ii) unsecured trade and operational debt customarily payable within thirty (30) days incurred in the ordinary course of business with trade creditors and in amounts as are normal and reasonable under the circumstances. No indebtedness other than the Loan may be secured (subordinate or pari passu) by the Deed of Trust Property.

(f) Trustor has not made and will not make any loans or advances to any third party (including any affiliate or constituent party of Trustor, any Guarantor or any affiliate or constituent party of Guarantor), and shall not acquire obligations or securities of its affiliates or any constituent party and shall not hold evidence of indebtedness issued by any other person or entity (other than cash and investment-grade securities).

(g) Trustor is and will remain solvent and Trustor will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due and payable.

(h) Trustor has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Trustor will not, nor will Trustor permit any constituent party or Guarantor to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or

other organizational documents of Trustor or such constituent party or Guarantor without the prior written consent of Lender.

(i) Trustor will maintain books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party. Trustor's assets will not be listed as assets on the financial statement of any other entity. Trustor will file its own tax returns and will not file a consolidated federal income tax return with any other corporation. Trustor shall maintain its books, records, resolutions and agreements as official records.

(j) Trustor will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Trustor, any constituent party of Trustor, any Guarantor or any affiliate or constituent party of Guarantor), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks.

(k) Trustor will 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.

(l) Neither Trustor nor any constituent party will seek or effect the dissolution, winding up, sale of assets, liquidation, consolidation or merger, in whole or in part, or the sale of any material assets, of Trustor.

(m) Trustor will hold all of its assets in its own name and will not commingle the funds and other assets of Trustor with those of any affiliate or constituent party of Trustor, any Guarantor, any affiliate or constituent party of Guarantor or any other person or entity and will not participate in any cash management system with any such party.

(n) Trustor has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party, any Guarantor, or any affiliate of any constituent party or Guarantor, or any other person.

(o) Trustor does not and will not hold itself out to be responsible for the debts or obligations of any other person or entity and does not and will not guarantee the debts or obligations of any other person or entity.

(p) Trustor shall not hold out its credit as being available to satisfy the obligations of any other person or entity.

(q) Trustor shall maintain a sufficient number of employees in light of its



contemplated business operations and shall pay the salaries of its own employees from its own funds.

(r) If Trustor is a limited partnership or a limited liability company and its general partner or managing member, respectively, is (i) a corporation whose sole asset is its interest in Trustor or (ii) another limited partnership or limited liability company with a general partner or managing member, respectively, that is a corporation whose sole asset is its interest in such general partner or managing member of Trustor (each such corporation an “SPC Party”), each such SPC Party will at all times comply, and will cause Trustor to comply, with each of the representations, warranties, and covenants contained in this Paragraph 20 as if such representation, warranty or covenant was made directly by such SPC Party.

21. Events of Default. The Debt shall become immediately due and payable at the option of Lender, without notice or demand, upon any one or more of the followings events (“Events of Default”):

- (a) if any portion of the Debt is not paid when due;
- (b) if any of the Taxes or Other Charges is not paid when the same is due and payable, subject to the provisions of Paragraph 4;
- (c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Lender upon request;
- (d) if Trustor violates or does not comply with any of the provisions of Paragraphs 7, 9, 20, 34 or 35;
- (e) if a default or an event which with notice or lapse of time or both would become a default has occurred and is continuing under the Lease and has not been cured as provided therein within a period of time equal to one-half of the time allowed for such cure under the applicable Lease or if the Lease is canceled, terminated, abridged, modified or surrendered;
- (f) if any representation or warranty of Trustor, or of any Guarantor, made herein or in any such guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material respect when made;
- (g) if Trustor or any Guarantor shall make an assignment for the benefit of creditors or if Trustor shall generally not be paying its debts as they become due;
- (h) if a receiver, liquidator or trustee of Trustor or of any Guarantor shall be appointed or if Trustor or any Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Trustor or

any Guarantor or if any proceeding for the dissolution or liquidation of Trustor or of any Guarantor shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Trustor or such Guarantor, upon the same not being discharged, stayed or dismissed within sixty (60) days;

(i) if Trustor shall be in default under any other Deed of Trust or security agreement covering any part of the Deed of Trust Property whether it be superior or junior in lien to this Deed of Trust;

(j) if the Deed of Trust Property becomes subject to any mechanic's, materialman's or other lien other than a lien for local real estate taxes and assessments not then due and payable and such lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) calendar days;

(k) if Trustor fails to cure promptly any violations of laws or ordinances affecting the Deed of Trust Property; or

(l) if for more than thirty (30) days after notice from Lender, Trustor shall continue to be in default under any other term, covenant or condition of the Note, this Deed of Trust or any of the Other Security Documents, provided that the notice and grace period set forth in this subparagraph (l) shall not apply to any other Event of Default expressly set forth in this Paragraph 21 or to any other Event of Default defined as such in the Note or any Other Security Document or to any other covenant or condition with respect to which a grace period is expressly provided elsewhere.

22. Default Interest. Upon the occurrence of any Event of Default, Trustor shall pay interest on the unpaid principal balance of the Note at a rate equal to the greater of four percent (4)% above the Applicable Interest Rate (as defined in the Note) or four percent (4%) above the Prime Rate (as defined in the Note) (the "Default Rate"). Such Default Rate interest shall be compounded monthly. The Default Rate shall be computed from the occurrence of the Event of Default until the actual receipt and collection of the Debt. This charge shall be added to the Debt, and shall be deemed secured by this Deed of Trust. This clause, however, shall not be construed as an agreement or privilege to extend the date of the payment of the Debt, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default. If the Default Rate is above the maximum rate permitted by applicable law, the Default Rate shall be the maximum rate permitted by applicable law.

23. Right to Cure Defaults. (a) Upon the occurrence of any Event of Default or if Trustor fails to make any payment or to do any act as herein provided (including, without limitation, any failure to observe, perform and/or enforce the terms of any reciprocal easement agreement affecting or pertaining to the Deed of Trust Property, or any failure to make any payment or to do any act with respect to property other than the Deed of Trust Property, as may be provided for in the

applicable Lease), Lender and/or Servicer may (themselves or by their agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives), but without any obligation to do so and without notice to or demand on Trustor and without releasing Trustor from any obligation hereunder or curing or being deemed to have cured any default hereunder, make or do the same in such manner and to such extent as Lender and/or Servicer may deem necessary to protect the security hereof. Lender and Servicer (and their agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives) are authorized to enter upon the Deed of Trust Property for such purposes and Lender and/or Servicer are authorized to appear in, defend, or bring any action or proceeding to protect Lender's interest in the Deed of Trust Property or to foreclose this Deed of Trust or collect the Debt, including, without limitation, the remedies provided for in subparagraph (c) below. All costs and expenses (the "Advances") incurred by Lender and/or Servicer in remedying such Event of Default or other such failure by Trustor (including, without limitation, any such failure with respect to property other than the Deed of Trust Property, as may be provided for in the applicable Lease) or in appearing in, defending, or bringing any such action or proceeding (including, without limitation, reasonable attorneys' fees and disbursements to the extent permitted by law and any fees of any special servicer of Lender) shall bear interest at the Default Rate (the "Advance Interest"), for the period after notice from Lender and/or Servicer that such cost or expense was incurred to the date of payment to Lender and/or Servicer. All such Advances incurred by Lender or Servicer, as applicable (the "Advancing Party"), together with all such Advance Interest thereon, shall be deemed to be protective advances hereunder and shall constitute a portion of the Debt and be secured by this Deed of Trust and the Other Security Documents and shall be immediately due and payable upon demand by Lender or Servicer therefor.

Notwithstanding anything to the contrary in this Paragraph 23(a) or in the Note, if, within thirty (30) days after Trustor has received written demand from the Advancing Party, Trustor has failed to reimburse the Advancing Party for all Advances incurred by the Advancing Party, together with Advance Interest thereon, then, unless the Advancing Party specifies in such written demand that the failure of Trustor to make such reimbursement shall constitute an Event of Default hereunder, (i) the failure of Trustor to reimburse the Advancing Party for such Advances and Advance Interest pursuant to such written demand shall not, in and of itself, be deemed to be an Event of Default hereunder; (ii) such Advances and Advance Interest shall automatically be deemed to be due and payable on the earlier of the Maturity Date (as defined in the Note) or fifteen (15) days after Trustor has received subsequent written demand therefor from the Advancing Party, and the failure of Trustor to pay such Advances and Advance Interest on the earlier of the Maturity Date or the expiration of such 15-day period shall be deemed to be an automatic Event of Default hereunder; and (iii) from and after the expiration of such 30-day period until the date such Advances and Advance Interest have been paid in full by Trustor, the Applicable Interest Rate (as defined in the Note) shall be equal to the Default Rate, and the outstanding principal balance of the Note shall bear interest at such Applicable Interest Rate. Notwithstanding that such Advances and Advance Interest may be due and payable on the earlier of the Maturity Date or the expiration of such 15-day period as

provided in clause (ii) above, Trustor shall nevertheless have the right at any time to pay to the Advancing Party all or any portion of such Advances, together with the Advance Interest which is accrued thereon through the date of such payment. If the Advances and Advance Interest have been paid in full by Trustor in accordance with the preceding sentence, then from and after the date of such payment (and provided that no Event of Default (or event which is not curable with the payment of money and which, with the lapse of time or the giving of notice, or both, would become an Event of Default) has occurred and is continuing), the Applicable Interest Rate on the Note shall be the rate per annum as originally set forth in the Note prior to the failure of Trustor to reimburse the Advancing Party prior to the expiration of such 30-day period. Except with respect to the payment of Advances and Advance Interest by Trustor, the foregoing provisions of this Paragraph 23 shall not in any way affect the provisions of the Note regarding prepayment of the principal balance of the Note or the provisions of Paragraph 59 hereof.

(b) In order to facilitate Lender's and/or Servicer's rights under subparagraph (a) above, Trustor hereby further grants to Lender and Servicer and any agents, employees, contractors, engineers, architects, nominees, attorneys and other representatives of Lender and/or Servicer, an easement on, over, through and under the Deed of Trust Property in order to exercise any such rights. Such easement is self-effectuating and runs with the land, and shall be binding upon Trustor and all successors and assigns of Trustor. Trustor shall cause the foregoing rights of Lender and easement to be agreed to by and binding upon all tenants of the Deed of Trust Property and all successors and assigns of such tenants. Trustor shall promptly execute, and cause to be executed, any other documents required by Lender in order to further confirm the foregoing rights of Lender and easement. For the foregoing purposes, Trustor constitutes and appoints each of Lender and Servicer its true and lawful attorney-in-fact with full power of substitution to exercise any such rights in the name of Trustor. Trustor empowers each of said attorneys-in-fact to do any and every act which Trustor might do in its own behalf to fulfill the terms of the Note, this Deed of Trust, the Other Security Documents and/or the Lease. It is further understood and agreed that the foregoing powers of attorney, which shall be deemed to be powers coupled with an interest, cannot be revoked. Trustor specifically agrees that all powers granted to Lender and Servicer under this Deed of Trust may be assigned by Lender to its successors or assigns as holder of the Note and by Servicer to its successors or assigns as servicer of the Loan.

(c) Trustor specifically admits and acknowledges that a prima facie showing of any threatened breach, anticipatory breach or breach of any term, provision or condition of this Deed of Trust by Trustor also constitutes a showing (i) of irreparable injury to Lender, for which Lender may have no adequate remedy at law, and (ii) that the balance of hardships weighs in favor of Lender. Immediately upon learning of any such threatened breach, anticipatory breach or breach by Trustor, in addition to any other rights or remedies available under this Deed of Trust or at law or in equity, Lender and/or Servicer shall have the right to, but shall not be obligated to, (A) institute an action, suit or proceeding in equity for the specific performance of any such term, provision or



condition; (B) institute an action, suit or proceeding against Trustor for damages resulting from such threatened breach, anticipatory breach or breach and/or (C) commence an action against Trustor for injunctive relief, and may move, ex parte and without notice to Trustor, for a temporary restraining order or preliminary injunction, prohibitory and/or mandatory as the circumstances require, restraining and prohibiting any such threatened breach, anticipatory breach or breach. Trustor expressly waives any requirement that Lender and/or Servicer post a bond or undertaking for any such temporary restraining order or preliminary injunction described in clause (C) above.

24. Late Payment Charge. If any portion of the Debt is not paid on or before the date on which it is due, Trustor shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of such unpaid portion of the Debt or the maximum amount permitted by applicable law, to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment, and such amount shall be secured by this Deed of Trust and the Other Security Documents.

25. Prepayment After Event of Default. Except as otherwise expressly provided in connection with a casualty or condemnation under Paragraphs 3(d) and 6(b) hereof, the principal balance of the Note may not be prepaid in whole or in part, whether voluntarily or involuntarily, prior to the Maturity Date; provided, however, that Trustor shall have the right and option to defease the Loan and obtain a release of the Deed of Trust Property from the lien of this Deed of Trust in accordance with and subject to the terms and provisions set forth in Paragraph 59 of this Deed of Trust (the "Defeasance Option"). If following the occurrence of any Event of Default, Trustor or any purchaser at foreclosure or any other person shall tender payment of all or any portion of the Debt, whether such payment is voluntary or involuntary, or occurs as a result of a foreclosure or the exercise of any other remedies available to Lender under the Note, this Deed of Trust and the Other Security Documents, or otherwise, such tender shall be deemed to be an attempt to circumvent the prohibition against prepayment set forth in this Paragraph 25 and Trustor shall pay to Lender, in addition to the Debt, the Default Prepayment Consideration.

26. Right of Entry. Lender and its agents shall have the right to enter and inspect the Deed of Trust Property at all reasonable times.

27. Remedies. (a) Upon the occurrence of any Event of Default, Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Trustor and in and to the Deed of Trust Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (i) declare the entire Debt to be immediately due and payable;
- (ii) institute proceedings for the complete foreclosure of this Deed of Trust



in which case the Deed of Trust Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Deed of Trust for the portion of the Debt then due and payable, subject to the continuing lien of this Deed of Trust for the balance of the Debt not then due;

(iv) sell for cash or upon credit the Deed of Trust Property or any part thereof and all estate, claim, demand, right, title and interest of Trustor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note;

(vi) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Deed of Trust;

(vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Deed of Trust Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Trustor, any Guarantor or of any person, firm or other entity liable for the payment of the Debt;

(viii) enter into or upon the Deed of Trust Property, either personally or by its agents, servicers, nominees or attorneys and dispossess Trustor and its agents and servants therefrom, and thereupon Lender may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Deed of Trust Property and conduct the business thereat; (B) complete any construction on the Deed of Trust Property in such manner and form as Lender deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Deed of Trust Property; (D) exercise all rights and powers of Trustor with respect to the Deed of Trust Property, whether in the name of Trustor or otherwise, including, without limitation, the right to cancel, enforce or modify the Lease and, if the Lease shall no longer be in effect, the right to make, cancel, enforce or modify new leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Deed of Trust Property and every part thereof; and (E) apply the receipts from the Deed of Trust Property to the payment of the Debt, after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, assessments, insurance and Other Charges in connection with the Deed of Trust Property, as well as just and reasonable compensation for the services of Lender, its counsel,

agents and employees; or

(ix) pursue such other rights and remedies as may be available at law and in equity.

In the event of a sale, by foreclosure or otherwise, of less than all of the Deed of Trust Property, this Deed of Trust shall continue as a lien on the remaining portion of the Deed of Trust Property.

(b) The proceeds of any sale made under or by virtue of this Paragraph 27, together with any other sums which then may be held by Lender under this Deed of Trust, whether under the provisions of this Paragraph 27 or otherwise, shall be applied by Lender to the payment of the Debt in such priority and proportion as Lender in its discretion shall deem proper.

(c) To the extent permitted by applicable law, Lender may adjourn from time to time any sale by it to be made under or by virtue of this Deed of Trust by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Lender, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales made by Lender under or by virtue of this Paragraph 27, Lender, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Lender is hereby irrevocably appointed the true and lawful attorney of Trustor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Deed of Trust Property and rights so sold and for that purpose Lender may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Trustor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any such sale or sales made under or by virtue of this Paragraph 27 shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Trustor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Trustor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Trustor.

(e) Upon any sale made under or by virtue of this Paragraph 27, Lender may bid for and acquire the Deed of Trust Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Lender is authorized to deduct under this Deed of Trust.

(f) No recovery of any judgment by Lender and no levy of an execution under any judgment upon the Deed of Trust Property or upon any other property of Trustor shall affect in

any manner or to any extent the lien of this Deed of Trust upon the Deed of Trust Property or any part thereof, or any liens, rights, powers or remedies of Lender hereunder, but such liens, rights, powers and remedies of Lender shall continue unimpaired as before.

28. Reasonable Use and Occupancy. In addition to the rights which Lender may have herein, upon the occurrence of any Event of Default, Lender, at its option, may require Trustor to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Deed of Trust Property as may be occupied by Trustor or may require Trustor to vacate and surrender possession of the Deed of Trust Property to Lender or to such receiver and, in default thereof, Trustor may be evicted by summary proceedings or otherwise.

29. Security Agreement. This Deed of Trust is both a real property deed of trust and a "security agreement" within the meaning of the Uniform Commercial Code. The Deed of Trust Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Deed of Trust Property. Trustor by executing and delivering this Deed of Trust has granted and hereby grants to Lender, as security for the Debt, a security interest in the Deed of Trust Property to the full extent that the Deed of Trust Property may be subject to the Uniform Commercial Code (said portion of the Deed of Trust Property so subject to the Uniform Commercial Code being called in this Paragraph 29 the "Collateral"). If an Event of Default shall occur, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender, Trustor shall at its expense assemble the Collateral and make it available to Lender at a convenient place acceptable to Lender. Trustor shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Lender in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Trustor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Trustor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. In the event of any change in name, identity or structure of any Trustor, such Trustor shall notify Lender thereof and promptly after request shall execute, file and record such Uniform Commercial 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 Uniform Commercial Code forms or continuation statements, Trustor shall, promptly after request, execute, file and record such Uniform

Commercial Code forms or continuation statements as Lender shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof. Trustor hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Lender, as secured party, in connection with the Collateral.

30. Actions and Proceedings. Lender has the right to appear in and defend any action or proceeding brought with respect to the Deed of Trust Property and to bring any action or proceeding, in the name and on behalf of Trustor, which Lender, in its discretion, decides should be brought to protect their interest in the Deed of Trust Property. Lender shall, at its option, be subrogated to the lien of any deed of trust or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

31. Waiver of Counterclaim. All amounts due under this Deed of Trust, the Note and the Other Security Documents shall be payable without setoff, counterclaim or any deduction whatsoever. Trustor hereby waives the right to assert a setoff, counterclaim (other than a mandatory or compulsory counterclaim) or deduction in any action or proceeding brought against it by Lender, and, to the extent permitted by law, waives trial by jury in any action or proceeding brought by either party hereto against the other or in any counterclaim asserted by Lender against Trustor, or in any matters whatsoever arising out of or in any way connected with this Deed of Trust, the Note, any of the Other Security Documents or the Debt.

32. Recovery of Sums Required to Be Paid. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Trustor existing at the time such earlier action was commenced.

33. Marshalling and Other Matters. Trustor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Deed of Trust Property or any part thereof or any interest therein. Further, Trustor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Deed of Trust on behalf of Trustor, and on behalf of each and every person acquiring any interest in or title to the Deed of Trust Property subsequent to the date of this Deed of Trust and on behalf of all persons to the extent permitted by applicable law.

34. Hazardous Substances. (a) Trustor hereby represents and warrants to Lender that, to the best of Trustor's knowledge, after due inquiry and investigation, except as may have been disclosed in those certain environmental reports prepared by EMG dated January 8, 2002 (the



“Environmental Report”): (i) the Deed of Trust Property is not in direct or indirect violation of any federal, state, or local law, ordinance or regulation or any court judgment or order of any federal, state or local agency or regulatory body applicable to Trustor or to the Deed of Trust Property relating to industrial hygiene or to environmental or unsafe conditions including, but not limited to, those relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Substances (hereinafter defined) those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations, or processes relating to the Deed of Trust Property, and those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about the Deed of Trust Property or, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Substances Transportation Act, the Resource Conservation and Recovery Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Safe Drinking Water Act and Occupational Safety and Health Act, and all regulations adopted in respect to the foregoing laws (collectively, “Environmental Laws”); (ii) the Deed of Trust Property is not subject to any private or governmental lien or judicial or administrative notice or action relating to hazardous and/or toxic, dangerous and/or regulated, substances, wastes, materials, pollutants or contaminants, petroleum and petroleum products, tremolite, anthlophyli or actinolite or polychlorinated biphenyls (including, without limitation, any raw materials which include hazardous constituents) and any other substances or materials which are included under or regulated by Environmental Laws (collectively, “Hazardous Substances”); (iii) no Hazardous Substances are or have been, prior to Trustor’s acquisition of the Deed of Trust Property, discharged, generated, treated, disposed of or stored on, incorporated in, or removed or transported from the Deed of Trust Property otherwise than in compliance with all Environmental Laws; (iv) no property adjoining the Deed of Trust Property is being used or has ever been used at any previous time, for the disposal, storage, treatment, processing or other handling of Hazardous Substances; and (v) no underground storage tanks exist on any of the Deed of Trust Property except as those disclosed in writing to Lender and which comply with applicable Environmental Laws.

(b) So long as Trustor owns or is in possession of the Deed of Trust Property, Trustor shall (i) keep or cause the Deed of Trust Property to be kept free from Hazardous Substances and in compliance with all Environmental Laws; (ii) promptly notify Lender if Trustor shall become aware of any Hazardous Substances on the Deed of Trust Property and/or if Trustor shall become aware that the Deed of Trust Property is in direct or indirect violation of any Environmental Laws; and (iii) conduct and complete or cause to be conducted and completed all remedial action necessary to clean up such Hazardous Substances and remove such Hazardous Substances and/or cure such violations, as applicable, as required by law, promptly after Trustor becomes aware of same. Nothing herein shall prevent Trustor from recovering such expenses from any other party that may be liable for such removal or cure.



(c) Upon Lender's reasonable request, at any time and from time to time while this Deed of Trust is in effect, Trustor shall provide at Trustor's sole expense, an inspection or audit of the Deed of Trust Property prepared by a licensed hydrogeologist or licensed environmental engineer approved by Lender indicating the presence or absence of Hazardous Substances on the Deed of Trust Property. If Trustor fails to provide such inspection or audit within thirty (30) days after such request Lender may order same, and Trustor hereby grants to Lender and its employees and agents access to the Deed of Trust Property and a license to undertake such inspection or audit. The cost of such inspection or audit shall be added to the principal balance of the sums due under the Note and this Deed of Trust and shall bear interest thereafter until paid at the Default Rate. The obligations and liabilities of Trustor under this Paragraph 34 shall survive any termination, satisfaction, or assignment of this Deed of Trust and the exercise by Lender of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Deed of Trust Property by foreclosure or a conveyance in lieu of foreclosure.

35. Asbestos. Trustor represents and warrants that, to the best of Trustor's knowledge, after due inquiry and investigation, no asbestos or any substance containing asbestos ("Asbestos") is located on the Deed of Trust Property except as may have been disclosed in the Environmental Report. Trustor shall not install in the Deed of Trust Property, nor permit to be installed in the Deed of Trust Property, Asbestos and shall remove or cause to be removed any Asbestos promptly upon discovery to the satisfaction of Lender, or take all action necessary to ensure that such Asbestos is abated or managed in a manner which complies with all applicable federal, state and local laws, ordinances, rules and regulations with respect to Asbestos. Trustor shall in all instances comply with, and ensure compliance by all occupants of the Deed of Trust Property with, all applicable federal, state and local laws, ordinances, rules and regulations with respect to Asbestos, and shall keep the Deed of Trust Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. In the event that Trustor receives any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Deed of Trust Property, Trustor shall immediately notify Lender. Upon Lender's reasonable request, at any time and from time to time while this Deed of Trust is in effect, Trustor shall provide, at Trustor's sole expense, an inspection or audit of the Deed of Trust Property prepared by an engineering or consulting firm approved by Lender, indicating the presence or absence of Asbestos on the Deed of Trust Property. If Trustor fails to provide such inspection or audit within thirty (30) days after such request, Lender may order same, and Trustor hereby grants to Lender and its employees and agents access to the Deed of Trust Property and a license to undertake such inspection or audit. The cost of such inspection or audit shall be added to the principal balance of the sums due under the Note and this Deed of Trust and shall bear interest thereafter until paid at the Default Rate. The obligations and liabilities of Trustor under this Paragraph 35 shall survive any termination, satisfaction, or assignment of this Deed of Trust and the exercise by Lender of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Deed of Trust Property by foreclosure or a conveyance in lieu of foreclosure.

36. Environmental Monitoring. In the event that any investigation, site monitoring, containment cleanup, removal, restoration or other work of any kind is reasonably necessary or desirable under an applicable Environmental Law (the "Remedial Work"), Trustor shall commence and thereafter diligently prosecute to completion all such Remedial Work within thirty (30) days after written demand by Lender for performance thereof (or such shorter period of time as may be required under applicable law). All Remedial Work shall be performed by contractors approved in advance by Lender, and under the supervision of a consulting engineer approved by Lender. All costs and expenses of such Remedial Work shall be paid by Trustor including, without limitation, Lender's reasonable attorneys' fees and disbursements incurred in connection with monitoring or review of such Remedial Work. In the event Trustor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Lender may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, may be added to the Debt and shall bear interest thereafter until paid at the Default Rate.

37. Handicapped Access. (a) Trustor agrees that the Deed of Trust Property shall at all times strictly comply, to the extent applicable, with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively "Access Laws").

(b) Notwithstanding any provisions set forth herein or in any other document regarding Lender's approval of alterations of the Deed of Trust Property, Trustor shall not alter or permit the Deed of Trust Property to be altered in any manner which would increase Trustor's responsibilities for compliance with the applicable Access Laws without the prior written approval of Lender. Lender may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to Lender.

(c) Trustor agrees to give prompt notice to Lender of the receipt by Trustor of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

38. Indemnification. In addition to any other indemnifications provided herein or in the Other Security Documents, Trustor covenants and agrees at its sole cost and expense to protect, defend, indemnify and save harmless Lender and Servicer from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including without limitation reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against Lender or Servicer by reason of (a) ownership of this Deed of Trust, the Deed of Trust Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Deed of Trust Property or any

part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Deed of Trust Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Trustor to perform or comply with any of the terms of this Deed of Trust; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Deed of Trust Property or any part thereof; (f) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance or Asbestos on, from, or affecting the Deed of Trust Property or any other property; (g) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance or Asbestos; (h) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance or Asbestos; (i) any violation of the Environmental Laws, which are based upon or in any way related to such Hazardous Substance or Asbestos including, without limitation, the costs and expenses of any remedial action, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses; and (j) any failure of the Deed of Trust Property to comply with any Access Laws. Any amounts payable to Lender or Servicer by reason of the application of this Paragraph 38 shall be secured by this Deed of Trust and shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender or Servicer until paid. The obligations and liabilities of Trustor under this Paragraph 38 shall survive any termination, satisfaction or assignment of this Deed of Trust and the exercise by Lender of any of its rights or remedies hereunder including, but not limited to, the acquisition of the Deed of Trust Property by foreclosure or a conveyance in lieu of foreclosure.

39. Notices. Any notice, demand, statement, request or consent made hereunder shall be effective and valid only if in writing, referring to this Deed of Trust, signed by the party giving such notice, and delivered either personally to such other party, or sent by nationally recognized overnight courier delivery service or by certified mail of the United States Postal Service, postage prepaid, return receipt requested, or by facsimile, addressed to the other party as follows (or to such other address or person as either party or person entitled to notice may by notice to the other party specify):

To Lender:

Bedford Capital Funding, LLC  
116 South River Road  
Bedford, New Hampshire 03110  
Attention: Robert B. Bianchetti, Vice President  
Phone: (603) 647-4533  
Fax: (603) 647-7710

and with a copy concurrently to:

Arbor Commercial Mortgage, LLC  
15 Broad Street, 10th Fl  
Boston, MA 02109  
Attention: Mr. Victor Bove  
Phone: (704) 593-7878  
Fax: (704) 593-7459

To Trustor:

SDK Caliente, Inc.  
545000 Ema-Lu Lane  
McArthur, California 96058-8643  
Phone:  
Fax:

Unless otherwise specified, notices shall be deemed given as follows: (i) if delivered personally, when delivered, (ii) if delivered by nationally recognized overnight courier delivery service, on the day following the day such material is sent, (iii) if sent by certified mail, three (3) days after such notice has been sent by Trustor or Lender, or (iv) if sent by facsimile, upon sending party's receipt of confirmation that the fax has been received.

40. Authority; Compliance with ERISA and State Statutes on Governmental Plans. (a) Trustor (and the undersigned representative of Trustor, if any) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Deed of Trust, and to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, hypothecate and assign the Deed of Trust Property pursuant to the terms hereof and to keep and observe all of the terms of this Deed of Trust on Trustor's part to be performed.

(b) Trustor represents and warrants that Trustor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

(c) Trustor represents and warrants that, as of the date of this Deed of Trust and throughout the term of this Deed of Trust, (i) Trustor is not an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is subject to Title I of ERISA, and (ii) the assets of such Trustor do not constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101.

(d) Trustor represents and warrants to Lender that, as of the date of this Deed of Trust and throughout the term of this Deed of Trust (i) Trustor is not a "governmental plan" within the meaning of Section 3(32) of ERISA, and (ii) transactions by or with Trustor or any Trustor are not subject to state statutes regulating investments of and fiduciary obligations with respect to

governmental plans.

(e) Trustor covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of this Deed of Trust, as requested by Lender in its sole discretion, that (i) Trustor is not an “employee benefit plan” or a “governmental plan”; (ii) Trustor is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

1. Equity interests in Trustor are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2);
2. Less than 25 percent of all equity interests in such Trustor are held by “benefit plan investors” within the meaning of 29 C.F.R. § 2510.3-101(f)(2); or
3. Trustor qualifies as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. § 2510.3-101(c) or (e).

(f) Any of the following shall constitute an Event of Default under this Deed of Trust, entitling Lender to exercise any and all remedies to which it may be entitled under this Deed of Trust, and any Other Security Documents: (i) the failure of any representation or warranty made by any Trustor under this Paragraph 40 to be true and correct in all respects, (ii) the failure of any Trustor to provide Lender with the written certifications and evidence referred to in this Paragraph 40, or (iii) the consummation by Trustor or any one Trustor of a transaction which would cause this Deed of Trust or any exercise of Lender’s rights under this Deed of Trust, or the Other Security Documents to constitute a non-exempt prohibited transaction under ERISA or a violation of a state statute regulating governmental plans, or otherwise subjecting Lender to liability for violation of ERISA or such state statute.

(g) Trustor shall indemnify Lender and defend and hold Lender harmless from and against all civil penalties, excise taxes, or other loss, cost, damage and expense (including, without limitation, attorneys’ fees and disbursements and costs incurred in the investigation, defense and settlement of claims and losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender’s sole discretion) that Lender may incur, directly or indirectly, as a result of a default under this Paragraph 40. This indemnity shall survive any termination, satisfaction or foreclosure of this Deed of Trust.

41. Waiver of Notice. Trustor shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Deed of Trust specifically and expressly provides for the giving of notice by Lender to Trustor and except with respect to matters



for which Lender is required by applicable law to give notice, and Trustor hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Deed of Trust does not specifically and expressly provide for the giving of notice by Lender to Trustor.

42. Remedies of Trustor. In the event that a claim or adjudication is made that Lender has acted unreasonably or unreasonably delayed acting in any case where by law or under the Note, this Deed of Trust or the Other Security Documents, it has an obligation to act reasonably or promptly, Lender shall not be liable for any monetary damages, and Trustor's remedies shall be limited to injunctive relief or declaratory judgment.

43. Sole Discretion of Lender. Wherever pursuant to this Deed of Trust, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

44. Non-Waiver. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Deed of Trust. Trustor shall not be relieved of Trustor's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Trustor or Guarantors to take any action to foreclose this Deed of Trust or otherwise enforce any of the provisions hereof or of the Note or the Other Security Documents, (b) the release, regardless of consideration, of the whole or any part of the Deed of Trust Property, or of any person liable for the Debt or any portion thereof, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Deed of Trust or the Other Security Documents. Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Deed of Trust. The rights and remedies of Lender under this Deed of Trust shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

45. No Oral Change. This Deed of Trust, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Trustor or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

46. Liability. If Trustor consists of more than one person, the obligations and

liabilities of each such person hereunder shall be joint and several. This Deed of Trust shall be binding upon and inure to the benefit of Trustor and Lender and their respective successors and assigns forever.

47. Inapplicable Provisions. If any term, covenant or condition of the Note or this Deed of Trust is held to be invalid, illegal or unenforceable in any respect, the Note and this Deed of Trust shall be construed without such provision.

48. Headings, etc. The headings and captions of various paragraphs of this Deed of Trust are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

49. Duplicate Originals. This Deed of Trust may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

50. Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Deed of Trust may be used interchangeably in singular or plural form and the word "Trustor" shall mean "each Trustor and any subsequent owner or owners of the Deed of Trust Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Deed of Trust," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Deed of Trust Property" shall include any portion of the Deed of Trust Property and any interest therein. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

51. Homestead. Trustor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Deed of Trust Property as against the collection of the Debt, or any part hereof.

52. Assignments. Lender shall have the right to assign or transfer its rights under this Deed of Trust without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Lender under this Deed of Trust.

53. Cooperation. Trustor acknowledges that Lender and its successors and assigns may (a) sell this Deed of Trust, the Note and Other Security Documents to one or more investors as a whole loan, (b) participate the Loan to one or more investors, (c) deposit this Deed of Trust, the Note and Other Security Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets or (d) otherwise sell the Loan or interest therein to investors (the transactions referred to in clauses (a) through (d) are hereinafter referred to as "Secondary

Market Transactions”). Trustor shall cooperate in good faith with Lender in effecting any such Secondary Market Transaction and shall cooperate in good faith to implement all requirements imposed by the Rating Agency involved in any Secondary Market Transaction including, without limitation, all structural or other changes to the Loan, modifications to any documents evidencing or securing the Loan, delivery of opinions of counsel acceptable to the Rating Agency and addressing such matters as the Rating Agency may require; provided, however, that the Trustor shall not be required to modify any documents evidencing or securing the Loan which would modify (i) the interest rate payable under the Note, (ii) the stated maturity of the Note, (iii) the amortization of principal of the Note, or (iv) any other material economic term of the Loan. Trustor shall provide such information and documents relating to Trustor, Guarantor, if any, the Deed of Trust Property, the Lease and the Lessee as Lender or any Rating Agency may reasonably request in connection with a Secondary Market Transaction, including, without limitation, any further environmental requirements. Lender shall have the right to provide to prospective investors any information in its possession, including, without limitation, financial statements relating to Trustor, the Guarantor, if any, the Deed of Trust Property and the Lessee. Trustor acknowledges that certain information regarding the Loan and the parties thereto and the Deed of Trust Property may be included in a private placement memorandum, prospectus or other disclosure documents.

54. Recourse Provisions. Subject to the qualifications below, Lender shall not enforce the liability and obligation of Trustor to perform and observe the obligations contained in this Deed of Trust, the Note or in any of the Other Security Documents by any action or proceeding wherein a money judgment shall be sought against Trustor, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interests under the Note, this Deed of Trust or the Other Security Documents or in the Deed of Trust Property, or any other collateral given to Trustor pursuant to this Deed of Trust and the Other Security Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Trustor only to the extent of Trustor’s interest in the Deed of Trust Property and in any other collateral given to Lender, and Lender, by accepting this Deed of Trust, the Note and the Other Security Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Trustor in any such action or proceeding under or by reason of or in connection with this Deed of Trust, the Note or the Other Security Documents. The provisions of this Paragraph 54 shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by this Deed of Trust, the Note or any of the Other Security Documents; (ii) impair the right of Lender to name Trustor as a party defendant in any action or suit for foreclosure and sale under this Deed of Trust; (iii) affect the validity or enforceability of any guaranty made in connection with the Debt or any of the rights and remedies of the Lender thereunder; (iv) impair the right of Lender to obtain the appointment of a receiver; (v) impair the enforcement of the Assignment of Lease and Rents executed in connection herewith; or (vi) constitute a waiver of the right of Lender to enforce the liability and obligation of Trustor, by money judgment or otherwise, to the extent of any loss,

damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with any or all of the following:

- (a) fraud or intentional misrepresentation by Trustor or any Guarantor in connection with the Loan;
- (b) the gross negligence or willful misconduct of Trustor;
- (c) physical waste of the Deed of Trust Property;
- (d) the breach of any provision of any environmental indemnity given by Trustor to Lender in this Deed of Trust or by separate agreement concerning Environmental Laws, Hazardous Substances and Asbestos and any indemnification of Lender with respect thereto in such document or agreement;
- (e) the removal or disposal of any portion of the Deed of Trust Property after an Event of Default;
- (f) the misapplication or conversion by Trustor of (i) any insurance proceeds paid by reason of any loss, damage or destruction to the Deed of Trust Property, (ii) any awards or other amounts received in connection with the condemnation of all or a portion of the Deed of Trust Property, or (iii) any Rents following an Event of Default;
- (g) failure to pay charges for labor or materials or other charges that can create liens on any portion of the Deed of Trust Property;
- (h) any security deposits collected with respect to the Deed of Trust Property which are not delivered to Lender upon a foreclosure of the Deed of Trust Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof; and
- (i) Trustor or Lessee, as the case may be, fails to pay any obligation arising under the Lease with respect to any special assessments levied on the Property by any governmental authority.

Notwithstanding anything to the contrary in this Deed of Trust, the Note or any Other Security Documents, (i) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt secured by this Deed of Trust or to require that all collateral shall continue to secure all of the Debt owing to Lender, and (ii) the Debt shall become

fully recourse to Trustor in the event that: (A) Trustor fails to maintain its status as a single purpose entity as required by, and in accordance with the terms and provisions of, this Deed of Trust; (B) Trustor fails to obtain Lender's prior written consent to any subordinate financing or other voluntary lien encumbering the Deed of Trust Property as required by this Deed of Trust; (C) Trustor fails to obtain Lender's prior written consent to any assignment, transfer, or conveyance of the Deed of Trust Property or any interest therein as required by this Deed of Trust; (D) without the prior written consent of Lender, (1) the Lease is amended or modified, or (2) the Lease is terminated or canceled (except by Lessee as expressly permitted by the provisions of the Lease) or the term of the Lease is surrendered, or Trustor and Lessee enter into any agreement to do any of the foregoing in this clause (D); or (E) there is any violation of the use restrictions and/or exclusivity restrictions in the Lease, including, without limitation, the provisions of the General Conditions Rider to the Lease.

**55. Governing Law; Submission to Jurisdiction. This Deed of Trust shall be governed by and construed in accordance with the law of the state in which the Deed of Trust Property is located without regard to conflict of law provisions thereof. Each Trustor, and each endorser or guarantor hereby submits to personal jurisdiction in said state and the federal courts of the United States of America located in said state (and any appellate courts taking appeals therefrom) for the enforcement of such TRUSTOR'S, ENDORSOR'S OR GUARANTOR'S obligations hereunder, under the Note, ANY Guaranty and the other SECURITY Documents, and waives any and all personal rights under the law of any other state to object to jurisdiction within such state for the purposes of SUCH ACTION, SUIT, PROCEEDING OR litigation to enforce such obligations of such TRUSTOR, ENDORSOR or GUARANTOR. EACH TRUSTOR AND EACH ENDORSOR AND GUARANTOR hereby waives and agrees not to assert, as a defense in any action, suit or proceeding arising out of or relating to this DEED OF TRUST, THE NOTE, ANY GUARANTY or any of the OTHER SECURITY Documents, (A) that it is not subject to such jurisdiction or that such action, suit or proceeding may not be brought or is not maintainable in those courts or that this DEED OF TRUST, THE NOTE, ANY GUARANTY AND/OR ANY OF THE OTHER SECURITY DOCUMENTS may not be enforced in or by those courts or that it is exempt or immune from execution, (B) that the action, suit or proceeding is brought in an inconvenient forum or (C) that the venue of the action, suit or proceeding is improper. In the event any SUCH action, suit, proceeding or litigation is commenced, TRUSTOR, OR ENDORSOR AND GUARANTOR agree that service of process may be made, and personal jurisdiction over such TRUSTOR, ENDORSOR OR GUARANTOR obtained, by service of a copy of the summons, complaint and other pleadings required to commence such litigation upon such TRUSTOR OR ENDORSOR OR GUARANTOR at THE ADDRESS SET FORTH IN PARAGRAPH 39 HEREIN.**

**56. Waiver of Jury Trial. TRUSTOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY**



**RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS DEED OF TRUST, OR THE OTHER SECURITY DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY TRUSTOR AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH 56 IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY TRUSTOR.**

57. Miscellaneous.

(a) Any consent or approval by Lender in any single instance shall not be deemed or construed to be Lender's consent or approval in any like matter arising at a subsequent date, and the failure of Lender to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Lender be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Lender pursuant hereto shall be narrowly construed to be applicable only to Trustor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, other than the party to whom such consent or approval was given or reasonably intended to benefit, and any such consent or approval shall not be deemed to constitute Lender a venturer or partner with Trustor nor shall privity of contract be presumed to have been established with any such third party.

(b) Trustor represents and warrants to Lender that, as of the date hereof, there has not been committed by Trustor any act or omission affording the federal government or any state or local government the right of forfeiture as against the Deed of Trust Property or any part thereof or any monies paid in performance of Trustor's obligations under the Note, this Deed of Trust or under any of the Other Security Documents. Trustor hereby covenants and agrees not to commit, permit or suffer to exist any act, omission or circumstance affording such right of forfeiture. In furtherance thereof, Trustor hereby indemnifies Lender and agrees to defend and hold Lender harmless from and against any loss, damage or injury by reason of the breach of the covenants and agreements or the representations and warranties set forth in this Paragraph 57.

(c) Trustor represents and warrants to Lender that all utilities necessary for the operation of the Improvements are available at the Deed of Trust Property.

58. Servicer. Lender may from time to time appoint one or more servicers and/or special servicers (collectively, the "Servicer") to administer the Loan or otherwise perform certain functions in connection with the Loan, which Servicer shall have the power and authority to exercise

all of the rights and remedies of Lender and to act as agent of Lender hereunder.

59. Defeasance.

(a) Provided no Event of Default, or event which with notice and/or the passage of time would become an Event of Default, has occurred and is continuing, at any time (x) after the earlier to occur of (I) the date which is four (4) years from the date hereof or (II) the date which is two years from the "startup day" within the meaning of Section 806G(a)(9) of the Code of the REMIC Trust or otherwise two years after the securitization of the Loan, and (y) before the Maturity Date, Trustor may voluntarily defease the Loan and obtain the release of the Deed of Trust Property from the lien of this Deed of Trust upon the satisfaction of the following conditions precedent:

(i) not less than thirty (30) days prior written notice to Lender specifying a regularly scheduled payment date (the "Release Date") on which the Defeasance Deposit (hereinafter defined) is to be made;

(ii) the payment to Lender of interest accrued and unpaid on the principal balance of the Note to but not including the Release Date;

(iii) the payment to Lender of all other sums, not including scheduled interest or principal payments due after the Release Date, due under the Note, this Deed of Trust and the Other Security Documents;

(iv) the payment to Lender of the Defeasance Deposit; and

(v) the delivery to Lender of:

(A) a security agreement, in form and substance that would be satisfactory to a prudent lender, creating a first priority lien on the Defeasance Deposit and the U.S. Obligations (hereinafter defined) purchased on behalf of Trustor with the Defeasance Deposit in accordance with this provision of this Paragraph 59 (the "Security Agreement");

(B) a release of the Deed of Trust Property from the lien of this Deed of Trust (for execution by Lender) in a form appropriate for the jurisdiction in which the Deed of Trust Property is located and that in form and substance would otherwise be satisfactory to a prudent lender;

(C) an officer's certificate of Trustor certifying that the requirements set forth in this Paragraph 59(a) have been satisfied;

- (D) an opinion of counsel for Trustor in form and substance that would be satisfactory to a prudent lender stating, among other things, that Lender has a perfected first priority security interest in the Defeasance Deposit and the U.S. Obligations purchased by Lender on behalf of Trustor, and that Trustor has legally and validly transferred and assigned the U.S. Obligations and all obligations, rights and duties under and to the Note to the Successor Trustor (hereinafter defined);
- (E) evidence in writing from the applicable Rating Agencies to the effect that such release will not result in a re-qualification, reduction or withdrawal of any rating in effect immediately prior to such defeasance for any securities issued in connection with a Secondary Market Transaction involving the Loan which are then outstanding;
- (F) if required by the applicable Rating Agencies, Trustor should also deliver or cause to be delivered a non-consolidation opinion with respect to the Successor Trustor in form and substance that would be satisfactory to a prudent lender and in form and substance satisfactory to the applicable Rating Agencies;
- (G) a certificate of Trustor's independent certified public accountant certifying that the U.S. Obligations purchased with the Defeasance Deposit generate monthly amounts equal to or greater than the required Scheduled Defeasance Payments; and
- (H) such other certificates, documents or instruments as Lender may reasonably request.

In connection with the conditions set forth in subparagraph (a)(v) above, Trustor hereby appoints Lender as its agent and attorney-in-fact for the purpose of using the Defeasance Deposit to purchase U.S. Obligations which provide payments on or prior to, but as close as possible to, all successive scheduled payment dates after the Release Date upon which interest and principal payments are required under the Note (including the amounts due on the Maturity Date) and in amounts equal to the scheduled payments due on such dates under the Note (the "Scheduled Defeasance Payments"). Trustor, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be made directly to Lender and applied to satisfy the obligations of Trustor under the Note.

(b) Upon compliance with the requirements of this Paragraph 59, the Deed of Trust Property shall be released from the lien of this Deed of Trust and the pledged U.S. Obligations shall be the sole source of collateral securing the Note. Provided no Event of Default has occurred and is continuing, any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required by subparagraph (a) above and satisfy Trustor's obligations under this Paragraph 59 shall be remitted to Trustor. In connection with such release, Trustor (or, at Lender's option, Lender) shall establish or designate a successor entity (the "Successor Trustor"), which shall be a single purpose bankruptcy remote entity which is not directly or indirectly owned by Trustor and which shall be approved by Lender, and Trustor shall transfer and assign all obligations, rights and duties under and to the Note together with the pledged U.S. Obligations to such Successor Trustor. Such Successor Trustor shall assume the obligations under the Note and the Security Agreement and Trustor shall be relieved of its obligations thereunder. Trustor shall pay \$1,000.00 to any such Successor Trustor as consideration for assuming the obligations under the Note and the Security Agreement. Notwithstanding anything in this Deed of Trust to the contrary, no other assumption fee shall be payable upon a transfer of the Note in accordance with this Paragraph 59, but Trustor shall pay all costs and expenses incurred by Lender, including, without limitation, Lender's attorneys' fees and expenses, incurred in connection with this Paragraph 59.

(c) For purposes of this Paragraph 59, the following terms shall have the following meanings:

(i) The term "Code" shall mean the Internal Revenue Code of 1986, as amended, and as it may be further amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

(ii) The term "Defeasance Deposit" shall mean an amount equal to the remaining principal amount of the Note, the Yield Maintenance Premium, any costs and expenses incurred or to be incurred in the purchase of U.S. Obligations necessary to meet the Scheduled Defeasance Payments and any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note or otherwise required to accomplish the agreements of this Paragraph 59;

(iii) The term "REMIC Trust" shall mean a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code that holds the Note;

(iv) The term "U.S. Obligations" shall mean direct non-callable obligations of the United States of America; and

(v) The term "Yield Maintenance Premium" shall mean the amount (if any) which, when added to the remaining principal amount of the Note, will be sufficient to purchase U.S. Obligations providing the required Scheduled Defeasance Payments.

**Part II**

**State Specific Provisions**

The following provisions set forth in the Nevada Revised Statutes are hereby made a part of the Deed of Trust, Security Agreement and Assignment of Leases and Rents granted by SDK Caliente, Inc., as trustor, in favor of Bedford Capital Funding, LLC, as beneficiary, and incorporated therein by this reference:

**NRS 107.030** Adoption of covenants by reference...

5. COVENANT NO. 5. That in case grantor shall well and truly perform the obligation or pay or cause to be paid at maturity the debt or promissory note, and all moneys agreed to be paid by him, and interest thereon for the security of which the transfer is made, and also the reasonable expenses of the trust in this section specified, then the trustee, its successors or assigns, shall reconvey to the grantor all the estate in the premises conveyed to the trustee by the grantor. Any part of the trust property may be reconveyed at the request of the beneficiary.

6. COVENANT NO. 6. That if default be made in the performance of the obligation, or in the payment of the debt, or interest thereon, or any part thereof, or in the payment of any of the other moneys agreed to be paid, or of any interest thereon, or if any of the conditions or covenants in this section adopted by reference be violated, and if the notice of breach and election to sell, required by this chapter, be first recorded, then trustee, its successors or assigns, on demand by beneficiary, or assigns, shall sell the above-granted premises, or such part thereof as in its discretion it shall find necessary to sell, in order to accomplish the objects of these trusts, in the manner following, namely:

The trustees shall first give notice of the time and place of such sale, in the manner provided by the laws of this state for the sale of real property under execution, and may from time to time postpone such sale by such advertisement as it may deem reasonable, or without further advertisement, by proclamation made to the persons assembled at the time and place previously appointed and advertised for such sale, and on the day of the sale so advertised, or to which such sale may have been postponed, the trustee may sell the property so advertised, or any portion thereof, at public auction, at the time and place specified in the notice, either in the county in which the property, or any part thereof, to be sold, is situated, or at the principal office of the trustee, in its discretion, to the highest cash bidder. The beneficiary, obligee, creditor, or the holder or holders of the promissory note or notes secured thereby may bid and purchase at such sale. The beneficiary may, after recording the notice of breach and election, waive or withdraw the same or any proceedings thereunder, and shall thereupon be restored to his former position and have and enjoy the same rights as through such notice had not been recorded...

8. COVENANT NO. 8. That in the event of a sale of the premises conveyed or transferred in trust, or any part thereof, and the execution of a deed or deeds therefor under such trust, the recital therein of default, and of recording notice of breach and election of sale, and of the



elapsing of the 3-month period, and of the giving of notice of sale, and of a demand by beneficiary, his heirs or assigns, that such sale should be made, shall be conclusive proof of such default, recording, election, elapsing of time, and of the due giving of such notice, and that the sale was regularly and validly made on due and proper demand by beneficiary, his heirs and assigns; and any such deed or deeds with such recitals therein shall be effectual and conclusive against grantor, his heirs and assigns, and all other persons; and the receipt for the purchase money recited or contained in any deed executed to the purchaser as aforesaid shall be sufficient discharge to such purchaser from all obligation to see to the proper application of the purchase money, according to the trusts aforesaid.

9. COVENANT NO. 9. That the beneficiary or his assigns may, from time to time, appoint another trustee, or trustees, to execute the trust created by the deed of trust or other conveyance in trust. A copy of a resolution of the board of directors of beneficiary (if beneficiary be a corporation), certified by the secretary thereof, under its corporate seal, or an instrument executed and acknowledged by the beneficiary (if the beneficiary be a natural person), shall be conclusive proof of the proper appointment of such substituted trustee. Upon the recording of such certified copy or executed and acknowledged instrument, the new trustee or trustees shall be vested with all the title, interest, powers, duties and trusts in the premises vested in or conferred upon the original trustee. If there be more than one trustee, either may act alone and execute the trusts upon the request of the beneficiary, and all his acts thereunder shall be deemed to be the acts of all trustees, and the recital in any conveyance executed by such sole trustee of such request shall be conclusive evidence thereof, and of the authority of such sole trustee to act.

The following provisions set forth in the Nevada Revised Statutes, as the same may be hereafter amended from time to time, are additionally hereby made a part of the Deed of Trust, Security Agreement and Assignment of Leases and Rents and incorporated therein by this reference:

**NRS 107.080 Trustee's power of sale: Power conferred; required notices; effect of sale.**

1. Where any transfer in trust of any estate in real property is made after March 29, 1927, to secure the performance of an obligation or the payment of any debt, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which the transfer is security.

2. The power of sale must not be exercised, however, until:

(a) In the case of any trust agreement coming into force:

(1) On or after July 1, 1949, and before July 1, 1957, the grantor, or his successor in interest, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property, has for a period of 15 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment; or

(2) On or after July 1, 1957, the grantor, or his successor in interest, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property, has for a period of 35 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment;

(b) The beneficiary, the successor in interest of the beneficiary or the trustee first executes and causes to be recorded in the office of the recorder of the county wherein the trust property, or some part thereof, is situated a notice of the breach and of his election to sell or cause to be sold the property to satisfy the obligation; and

(c) Not less than 3 months have elapsed after the recording of the notice.

3. The 15- or 35-day period provided in paragraph (a) of subsection 2 commences on the first day following the day upon which the notice of default and election to sell is recorded in the office of the county recorder of the county in which the property is located and a copy of the notice of default and election to sell is mailed by registered or certified mail, return receipt requested and with postage prepaid to the grantor, and to the person who holds the title of record on the date the notice of the default and election to sell is recorded, at their respective addresses, if known, otherwise to the address of the trust property. The notice of default and election to sell must describe the deficiency in performance or payment and may contain a notice of intent to declare the entire unpaid balance due if acceleration is permitted by the obligation secured by the deed of trust, but acceleration must not occur if the deficiency in performance or payment is made good and any costs, fees and expenses incident to the preparation or recordation of the notice and incident to the making good of the deficiency in performance or payment are paid within the time specified in subsection 2.

4. The trustee, or other person authorized to make the sale under the terms of the trust deed or transfer in trust, shall, after expiration of the 3-month period following the recording of the notice of breach and election to sell, and before the making of the sale, give notice of the time and place thereof in the manner and for a time not less than that required by law for the sale or sales of real property upon execution. The sale itself may be made at the office of the trustee, if the notice so provides, whether the property so conveyed in trust is located within the same county as the office of the trustee or not.

5. Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and his successors in interest without equity or right of redemption. The sale of a lease of a dwelling unit of a cooperative housing corporation vests in the purchaser title to the shares in the corporation which accompany the lease.

**NRS 40.430 — Action for recovery of debt secured by mortgage or other lien; "action" defined.**

1. Except in cases where a person proceeds under subsection 2 of NRS 40.495 or subsection 1 of NRS 40.512, there may be but one action for the recovery of any debt, or for the enforcement of any right secured by a mortgage or other lien upon real estate. That action must be in accordance with the provisions of this section and NRS 40.433 to 40.459, inclusive. In that action, the judgment must be rendered for the amount found due the plaintiff, and the court, by its decree or judgment, may direct a sale of the encumbered property, or such part thereof as is necessary, and apply the proceeds of the sale as provided in NRS 40.462...

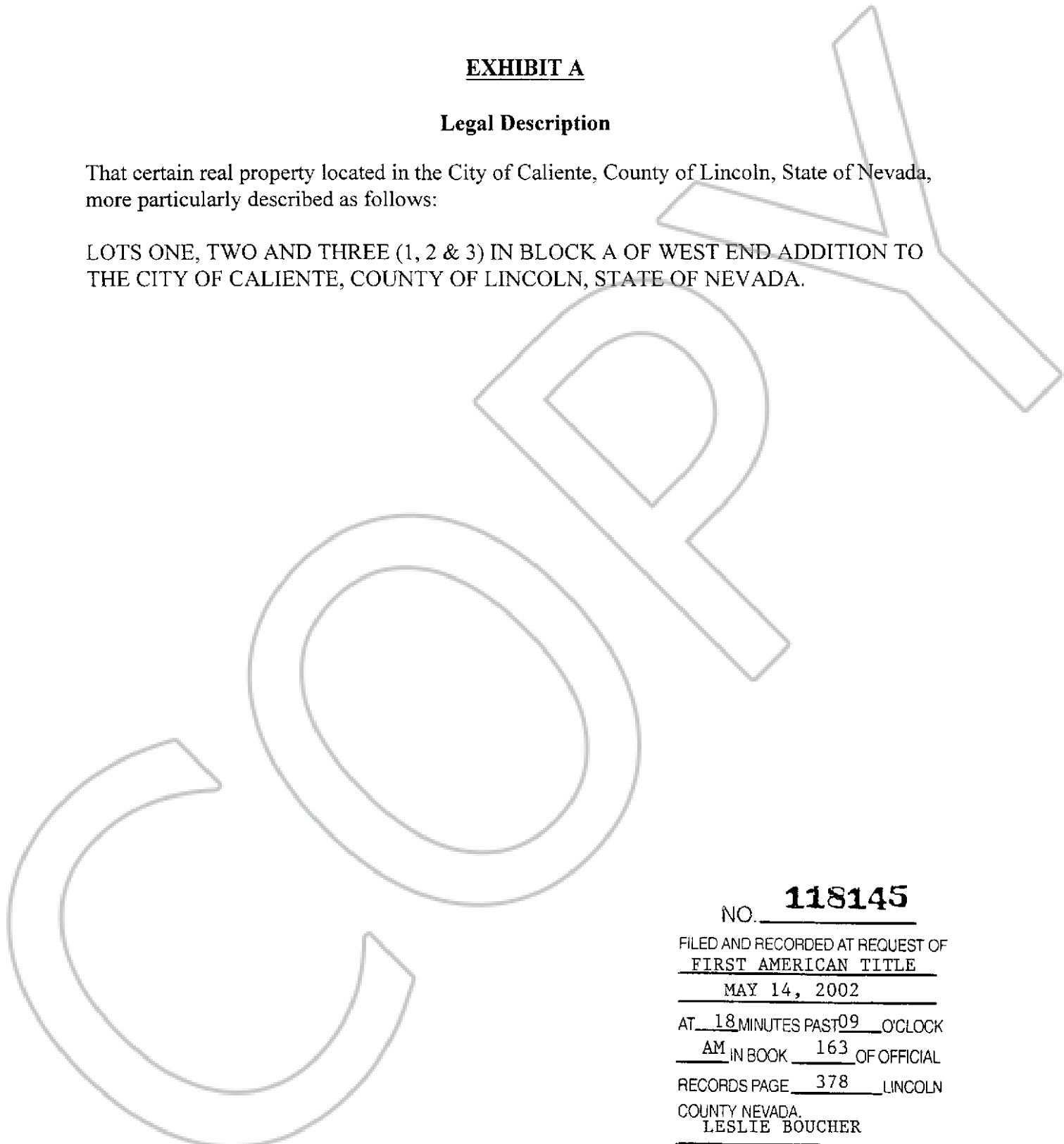


**EXHIBIT A**

**Legal Description**

That certain real property located in the City of Caliente, County of Lincoln, State of Nevada, more particularly described as follows:

LOTS ONE, TWO AND THREE (1, 2 & 3) IN BLOCK A OF WEST END ADDITION TO THE CITY OF CALIENTE, COUNTY OF LINCOLN, STATE OF NEVADA.



NO. **118145**

FILED AND RECORDED AT REQUEST OF  
FIRST AMERICAN TITLE

MAY 14, 2002

AT 18 MINUTES PAST 09 O'CLOCK

AM IN BOOK 163 OF OFFICIAL

RECORDS PAGE 378 LINCOLN

COUNTY NEVADA.

LESLIE BOUCHER

BY Debra Leeve COUNTY RECORDER  
, DEPUTY