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

This Deed of Trust, Security Agreement, and Assignment of Rents and Leases (this "Deed of Trust") is entered into as of February 17, 2000, by ENTERPRISE BUSINESS PARK D-2, L.P., a Texas limited partnership (the "Grantor"), whose address is 3700 Chase Tower, 2200 Ross Avenue, Dallas, Texas 75201, to Joel L. Ross, Trustee ("Trustee"), whose address is c/o Vinson & Elkins L.L.P., 2001 Ross Avenue, Suite 3700, Dallas, Texas 75201.

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ARTICLE 1 DEFINITIONS

Section 1.1 Definitions. As used herein, the following terms shall have the following meanings:

"Beneficiary": TRAMMELL CROW COMPANY, whose address is 2001 Ross, Suite 3400, Dallas, Texas 75201, Attention: Richard H. Coe.

"Commitment": Beneficiary's obligation to make advances under the Loan Documents.

"Construction Contracts": All agreements, written or oral, between Grantor and any other Person, and between parties other than Grantor, in any way relating to the design or construction of the Improvements, or the Land, or the supplying of material, labor, supplies, or other services therefor.

"Event of Default": Any occurrence described in Article 6.

"Fixtures": All materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Grantor and now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements, together with all accessions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof.

"Governmental Authority": The United States, the state, county, city and political subdivisions in which the Mortgaged Property is located or which exercises jurisdiction over the Mortgaged Property or Grantor and any court, agency, department, commission, board, bureau or instrumentality of any of them which exercises jurisdiction over the Mortgaged Property or Grantor.

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"Grantor": The above-defined Grantor and any and all subsequent owners of the Mortgaged Property or any part thereof (without hereby implying Beneficiary's consent to any Disposition [defined below] of the Mortgaged Property).

"Guarantor" (individually and/or collectively, as the context may require)
Those Persons, if any, executing a Guaranty.

"Guaranty" (individually and/or collectively, as the context may require):
Those instruments of guaranty, if any, now or hereafter in effect, from Guarantor to Beneficiary guaranteeing the repayment of any part of the indebtedness or the satisfaction of, or continued compliance with, any of the Obligations, or both.

"Impositions": (a) All real estate and personal property taxes, charges, assessments, excises and levies and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time before or after the execution hereof may be assessed, levied or imposed upon the Mortgaged Property or the ownership, use, occupancy or enjoyment thereof, or any portion thereof, or the sidewalks, streets or alleyways adjacent thereto; (b) any charges, fees, license payments or other sums payable for any easement, license or agreement maintained for the benefit of the Mortgaged Property or to which the Mortgaged Property is subject; and (c) water, gas, sewer, electricity, telephone and other utility charges and fees.

"Improvements": All buildings, structures and other improvements, and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land or any part thereof.

"Indebtedness": (a) All amounts due under or secured by the Loan Documents; and (b) such additional sums, with interest thereon, as may hereafter be borrowed from Beneficiary, its successors or assigns, by the then record owner of the Mortgaged Property, when evidenced by a promissory note which, by its terms, is secured hereby (it being contemplated that such future indebtedness may be incurred).

"Land": The real estate or interest therein described in Exhibit A in any Deed of Trust, and all rights, titles and interests appurtenant thereto.

"Leases": All leases, subleases, licenses, concessions or other agreements (written or oral, now or hereafter in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all security and other deposits made in connection therewith, and all other agreements, such as engineers' contracts, utility contracts, maintenance agreements and service contracts that in any way relate to the use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property, except leases, subleases or other agreements pursuant to which Grantor is granted a possessory interest in the Land.

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"Legal Requirements": (a) All judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to Grantor, any Guarantor, or the Mortgaged Property, including, without limitation, the ownership, use, accessibility, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, (b) all covenants, conditions, and restrictions contained in any deed or other form of conveyance or in any other instrument of any nature that relate in any way or are applicable to the Mortgaged Property or the ownership, use or occupancy thereof, (c) Grantor's or any Guarantor's presently or subsequently effective bylaws and articles of incorporation or partnership, limited partnership, joint venture, trust or other form of business association agreement, (d) all Leases, and (e) any other contracts (written or oral) that relate in any way to the Mortgaged Property and to which Grantor may be bound, including, without limitation, any lease or other contract pursuant to which Grantor is granted a possessory interest in the Land.

"Loan Documents": The Note, this Deed of Trust, and all other documents now or hereafter executed by Grantor or any other Person to evidence, secure or guaranty the payment of the Indebtedness or the performance of the Obligations.

"Mortgaged Property": The Land, Improvements, Fixtures, Personalty, Plans, Leases and Rents, together with:

(a) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances in anywise appertaining thereto, and all right, title and interest, if any, of Grantor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof;

(b) all betterments, improvements, additions, alterations, appurtenances, substitutions, replacements and revisions thereof and thereto and all reversions and remainders therein;

(c) all of Grantor's right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures or Personalty, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; and

(d) all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance of the Obligations.

As used in this Deed of Trust, the term "**Mortgaged Property**" shall mean all or, where the context permits or requires, any portion of the above or, where the context permits or requires, any interest therein.

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"Note": The promissory note dated February 17, 2000, executed by Grantor payable to the order of Beneficiary in the principal amount of \$9,400,000, and any and all renewals, rearrangements, reinstatements, enlargements or extensions of such promissory notes or of any promissory notes given therefor. The Note matures on February 17, 2002.

"Obligations": All of the covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Grantor, Guarantor, or any other Person to Beneficiary, Trustee or others under the Loan Documents.

"Permitted Encumbrances": The outstanding liens, easements, restrictions, security interests and other matters (if any) as reflected on Exhibit B, to the extent validly existing and affecting the Mortgaged Property, and the liens and security interests created by the Loan Documents.

"Person": Any individual, partnership, corporation, real estate investment trust, business association, or other type of entity.

"Personalty": All of the right, title and interest of Grantor in and to all goods, accounts, general intangibles, instruments, documents, chattel paper, and all other personal property of any kind or character defined in and subject to the provisions of the UCC now owned or hereafter acquired by Grantor and now or hereafter affixed to, placed upon, used in connection with, arising from or any way related to the Land and Improvements or which may be used in or relating to the planning, development, financing, or operation of the Mortgaged Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, contract rights (including, without limitation, those relating to the sale of any portion of the Mortgaged Property), trademarks, trade names, inventory, all refundable, returnable, or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Grantor with any Governmental Authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, together with all accessions, replacements and substitutions thereto or therefor and the proceeds thereof.

"Plans": All plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof.

"Rents": All of the rents, revenues, income, proceeds, profits, security and other types of deposits, and other benefits paid or payable by parties to the Leases other than Grantor for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property.

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"UCC": The Texas Uniform Commercial Code or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than Texas, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

ARTICLE 2

GRANT

Section 2.1 **Grant.** To secure the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, Grantor has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY, unto Trustee the Mortgaged Property, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property unto Trustee, forever, and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Trustee against every Person whomsoever lawfully claiming or to claim the same or any part thereof; however, if the Commitment has been terminated, the Indebtedness has been fully paid, and the Obligations have been fully performed, then the liens, security interests, estates and rights granted hereunder (other than those set forth in Sections 4.11, 9.8, and 11.3) shall terminate; otherwise, they shall remain in full effect. A certificate or other written statement executed on behalf of Beneficiary confirming that the Commitment is in effect, the Indebtedness has not been fully paid, or the Obligations have not been fully discharged, shall be sufficient evidence thereof for the purpose of reliance by third parties on such fact.

ARTICLE 3

WARRANTIES AND REPRESENTATIONS

Grantor unconditionally warrants and represents to Beneficiary as follows:

Section 3.1 **Organization and Power.** If Grantor or Guarantor, or any signatory who signs on any such party's behalf, is a corporation, general partnership, limited partnership, joint venture, trust, or other type of business association, as the case may be, it (a) is a corporation duly incorporated or a partnership or trust, joint venture or other type of business association duly organized, validly existing and in good standing under the laws of the state of its formation or existence, and has complied with all conditions prerequisite to its doing business in the State of Texas and (b) has all requisite power and all governmental certificates of authority, licenses, permits, qualifications and documentation to own, lease and operate its properties and to carry on its business as now being, and as proposed to be, conducted.

Section 3.2 **Validity of Loan Documents.** The execution, delivery and performance by each party (and each Person signing on its behalf) of the Loan Documents (other than Beneficiary), (a) are within such party's powers and have been duly authorized by all Persons whose authorization is necessary therefor and do not require the consent or approval of any other Person which has not been obtained and all other requisite action for such authorization has been taken, (b) have received all (if any) requisite prior governmental approval to be legally binding and

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enforceable in accordance with the terms thereof, and (c) will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time, or both) a default under any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Grantor's or Guarantor's property or assets, except as contemplated by the provisions of the Loan Documents. The Loan Documents constitute the legal, valid and binding obligations of Grantor, Guarantor and others obligated under the Loan Documents, enforceable in accordance with their respective terms (except that enforcement may be subject to applicable bankruptcy, insolvency, or similar laws generally affecting the enforcement of creditors' rights).

Section 3.3 Information. All information, reports, papers and data given or to be given to Beneficiary with respect to Grantor, Guarantor or others obligated under the Loan Documents or to the Mortgaged Property are, or at the time of delivery will be, accurate, complete and correct in all material respects and do not, or will not, omit any fact, whose inclusion is necessary to prevent the facts contained therein from being materially misleading.

Section 3.4 Title to Mortgaged Property and Lien of this Instrument. Grantor has good and indefeasible title to the Land in fee simple and Improvements, and good title to the Fixtures and Personalty, free and clear of any liens, charges, encumbrances, security interests, claims, easements, restrictions, options, leases (other than the Leases), covenants and other rights, titles, interests or estates of any nature whatsoever, except the Permitted Encumbrances. This Deed of Trust constitutes a valid, subsisting, first lien deed of trust on the Land, the Improvements and the Fixtures; a valid, subsisting first security interest in the Personalty, Construction Contracts, Plans, and, to the extent that the terms Leases and Rents include items covered by Chapter 9 of the UCC, in the Leases and Rents; and a valid, subsisting first and absolute assignment of the Leases and Rents not covered by Chapter 9 of the UCC, all in accordance with the terms hereof.

Section 3.5 Impositions. Grantor and Guarantor have filed all Federal, state, county, municipal and city income and other tax returns required to have been filed by them and have paid all taxes and other Impositions which have become due pursuant to such returns or pursuant to any assessments received by them, and neither Grantor nor Guarantor knows of any basis for any additional assessment in respect of any such taxes or other Impositions, except that which may result from increased valuation resulting from the construction of the Improvements.

Section 3.6 Payments. Grantor has paid or will pay in full (except for such retainages as may be permitted or required by any Legal Requirement to be withheld by Grantor pending completion of the Improvements) all sums owing or claimed for labor, material, supplies, personal property (whether or not forming a Fixture) and services of every kind and character used, furnished or installed in or on the Mortgaged Property and no claim therefor exists or will be permitted to be created, unless Grantor (a) is diligently contesting payment thereof and (b) has delivered to Beneficiary funds or obtained a bond (in form and substance and with an issuing company reasonably satisfactory to Beneficiary) in an amount reasonably satisfactory to Beneficiary or has made other arrangements satisfactory to Beneficiary.

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ARTICLE 4
AFFIRMATIVE COVENANTS

Grantor unconditionally covenants and agrees with Beneficiary as follows:

Section 4.1 **Payment and Performance.** Grantor shall pay the indebtedness when due under the Loan Documents and shall perform all of the Obligations in full by the dates they are required to be performed.

Section 4.2 **Existence.** Grantor shall preserve and keep in full force and effect its existence, rights, franchises, and trade names.

Section 4.3 **Compliance with Legal Requirements.** Grantor shall promptly and faithfully comply with, conform to and obey all Legal Requirements whether or not they necessitate structural changes in, improvements to, or interfere with the use or enjoyment of, the Mortgaged Property.

Section 4.4 **First Lien Status.** Grantor shall protect the first lien and security interest status of this Deed of Trust and the other Loan Documents. If any lien or security interest is asserted against the Mortgaged Property, Grantor shall promptly, and at its expense, (a) pay the underlying claim in full or take such other action so as to cause it to be released or, if permitted by Beneficiary in Beneficiary's sole discretion, bonded to Beneficiary's reasonable satisfaction and (b) within five days from the date such lien or security interest is so asserted, give Beneficiary notice of such lien or security interest. Such notice shall specify who is asserting such lien or security interest and shall, to the extent of Grantor's knowledge, detail the origin and nature of the underlying claim giving rise to such asserted lien or security interest.

Section 4.5 **Payment of Impositions.** Grantor shall pay and discharge, or cause to be paid and discharged, the Impositions not later than the due date thereof, or the day any fine, penalty, interest or cost may be added thereto or imposed, or the day any lien may be filed, for the nonpayment thereof (if such day is used to determine the due date of the respective item); however, Grantor may, to the extent and in the manner permitted by law, (a) pay the Impositions in installments whether or not interest shall accrue on the unpaid balance of such Impositions if the installment payment would not create or permit the filing of a lien (statutory, constitutional or contractual) against the Mortgaged Property and (b) contest the payment of any Impositions in good faith and by appropriate proceedings provided that (1) any such contest shall be prosecuted diligently and in a manner not prejudicial to the rights, liens and security interests of Beneficiary, (2) Grantor shall deposit funds with Beneficiary, obtain a bond in form and substance, with an issuing company and in an amount satisfactory to Beneficiary or make other arrangements satisfactory to Beneficiary (Grantor shall make such deposit, obtain such bond or make such other arrangements, as the case may be, within five days after demand therefor and, if made by payment of funds to Beneficiary, the amount so deposited shall be disbursed in accordance with the resolution of the contest either to Grantor or the adverse claimant), (3) no contest may be conducted and no payment may be delayed beyond the tenth day before the date on which the Mortgaged Property could be sold for nonpayment, and (4) Beneficiary may pay over to the taxing authority entitled thereto any or all of

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the funds at any time when, in the opinion of Beneficiary's counsel, the entitlement of such authority to such funds is established.

Section 4.6 **Repair.** Grantor shall keep the Mortgaged Property in good order and condition and shall make all repairs, replacements, additions, betterments, improvements and alterations thereof and thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep the Mortgaged Property in such order and condition. Grantor shall use its best efforts to prevent any act or occurrence which might impair the value or usefulness of the Mortgaged Property for its intended usage as set forth in the Plans or elsewhere in the Loan Documents. When any such repairs, replacements, additions, betterments, improvements or alterations are required on an emergency basis to prevent loss, damage, waste or destruction thereof, Grantor shall proceed to construct them, or cause them to be constructed, notwithstanding anything to the contrary contained in Section 5.2; however, in instances where such emergency measures are to be taken, Grantor shall notify Beneficiary in writing of their commencement and the measures to be taken, and, when they are completed, the completion date and the measures actually taken.

Section 4.7 **Insurance.** Grantor shall obtain and maintain insurance upon and relating to the Mortgaged Property insuring against personal injury and death, loss by fire and such other hazards, casualties and contingencies (including business interruption insurance and builder's all risk coverage) as are normally and usually covered by extended coverage policies in effect where the Land is located on properties like the Mortgaged Property, and such other risks as may be specified by Beneficiary, from time to time, all in such amounts and with such insurers of recognized responsibility as are reasonably acceptable to Beneficiary. Each insurance policy issued in connection therewith shall provide by way of endorsements, riders or otherwise that (a) proceeds will be payable to Beneficiary as its interest may appear, and such proceeds shall be applied, at Beneficiary's option, either to the restoration, repair or replacement of the Mortgaged Property or toward the payment of the Indebtedness; (b) the coverage of Beneficiary shall not be terminated, reduced or affected in any manner regardless of any breach or violation by Grantor of any warranties, declarations or conditions in such policy; (c) no such insurance policy shall be cancelled, endorsed, altered or reissued to effect a change in coverage for any reason and to any extent whatsoever unless such insurer shall have first given Beneficiary 30-days' prior written notice thereof; and (d) Beneficiary may, but shall not be obligated to, make premium payments to prevent any cancellation, endorsement, alteration or reissuance and such payments shall be accepted by the insurer for such purpose. Beneficiary shall be furnished with the original or certified copy of each such initial policy coincident with the execution of this Deed of Trust and the original or certified copy of each renewal policy at least 14 days before the initial or each immediately preceding renewal policy expires together with receipts or other evidence that the premiums thereon have been paid. Grantor shall furnish to Beneficiary, within 30 days after the close of each of Grantor's fiscal years, a statement certified by Grantor or a duly authorized officer of Grantor of the amounts of insurance maintained in compliance with this Section 4.7, of the risks covered by such insurance and of the insurance company or companies which carry such insurance.

Section 4.8 **Application of Proceeds.** If the proceeds of the insurance described in Section 4.7 are to be used for restoration, repair or replacement (hereinafter referred to as the "**Work**") of the Mortgaged Property, such proceeds shall be paid out by Beneficiary from time to

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time to Grantor (or, at the option of Beneficiary, jointly to Grantor and the Persons furnishing labor and/or material incident to the Work or directly to such Persons) as the Work progresses, subject to the following conditions: (a) before the commencement thereof (other than Work to be performed on an emergency basis to protect the Mortgaged Property or prevent interference therewith), (1) at Beneficiary's option, an architect or engineer, approved by Beneficiary, shall be retained by Grantor (at Grantor's expense) and charged with the supervision of the Work and (2) Grantor shall have prepared and submitted to Beneficiary the plans and specifications for such Work for Beneficiary's approval thereof; (b) each request for payment by Grantor shall be made on ten-days' prior written notice to Beneficiary and shall be accompanied by a certificate executed by the architect or engineer supervising the Work (if one is required pursuant to Section 4.8(a)), otherwise by Grantor or an executive officer of Grantor, stating, among other matters reasonably required by Beneficiary, that: (1) all of the Work completed has been done in compliance with the plans and specifications submitted to and approved by Beneficiary, (2) the sum requested is justly required to reimburse Grantor for payments by Grantor to, or is justly due to, the Persons rendering services or materials for the Work (giving a brief description of such services and materials); (3) when added to all sums previously paid out by Grantor, the sum requested does not exceed the value of the Work done to the date of such certificate; and (4) the amount of insurance proceeds remaining in the hands of Beneficiary will be sufficient on completion of the Work to pay for the Work in full (giving in such reasonable detail as the Beneficiary may require an estimate of the cost of such completion); (c) each request shall be accompanied by waivers of lien satisfactory in form and substance to Beneficiary covering that part of the Work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to Beneficiary that there has not been filed with respect to the Mortgaged Property any mechanic's lien or other lien, affidavit or instrument asserting any lien or any lien rights with respect to the Mortgaged Property; (d) there is no Default existing since the hazard, casualty or contingency giving rise to payment of the insurance proceeds; (e) in the case of the request for the final disbursement, such request is accompanied by a copy of any Certificate of Occupancy or other certificate required by any Legal Requirement to render occupancy of the damaged portion of the Mortgaged Property lawful; and (f) if, in Beneficiary's judgment, the amount of such insurance proceeds will not be sufficient to complete the Work after deducting any expenses incurred by Beneficiary in collecting such amounts (which determination may be made prior to or during the performance of the Work), Grantor shall deposit with Beneficiary, immediately upon a request therefor, an amount which when added to such insurance proceeds will be sufficient, in Beneficiary's judgment, to complete the Work. If, upon completion of the Work, any portion of the insurance proceeds has not been disbursed to Grantor (or one or more of the other aforesaid Persons) incident thereto, Beneficiary may, at Beneficiary's option, disburse such balance to Grantor or apply such balance toward the payment of the Indebtedness. Beneficiary may (A) withhold from each such disbursement 10% (or such greater amount, if permitted or required by any Legal Requirement) of the amount otherwise herein provided to be disbursed, and continue to withhold such sum, until the time permitted for perfecting mechanic's and materialman's or similar liens against the Mortgaged Property has expired (or such longer period of time as permitted or required by any Legal Requirement), at which time the amount withheld shall be disbursed to Grantor (or to Grantor and any Persons furnishing labor and/or material for the Work or directly to such Persons), or (B) apply at any time the whole or any part of such insurance proceeds to the curing of any Default.

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Section 4.9 **Restoration Following Casualty.** If any act or occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (including any casualty for which insurance was not obtained or obtainable), shall result in damage to or loss or destruction of the Mortgaged Property, Grantor shall give notice thereof to Beneficiary and if so instructed by Beneficiary, shall promptly, at Grantor's expense and regardless of whether the insurance proceeds (if any) are sufficient or made available therefor commence and diligently restore, repair, replace and rebuild the Mortgaged Property to completion in accordance with all Legal Requirements as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction.

Section 4.10 **Inspection.** Grantor shall permit Trustee and Beneficiary, and their agents, representatives and employees, upon prior notice to Grantor, to inspect the Mortgaged Property at all reasonable times during normal business hours.

Section 4.11 **Hold Harmless.** Grantor shall defend, at its expense, and hold Beneficiary harmless from, any action, proceeding or claim affecting the Mortgaged Property or the Loan Documents, and all costs and expenses incurred by Beneficiary in protecting its interests hereunder in such an event (including all court costs and reasonable attorneys' fees) shall be borne by Grantor. If Grantor is a partnership or joint venture, each partner or venturer of Grantor jointly and severally agrees that in the event any dispute whatsoever arises among the partners or venturers, each partner or venturer will indemnify Beneficiary and any corporation controlling, controlled by, or under common control with Beneficiary and any officer, director, or employee of Beneficiary or any such corporation, and will hold Beneficiary and any such corporation and any such officer, director or employee of such corporation or Beneficiary, harmless from and against all expenses, including without limiting the generality of the foregoing, all legal fees, damages, and other liabilities of any type whatsoever (including but not limited to, any liabilities arising out of demands by any of the partners for undistributed loan funds) suffered or incurred as a result of or in connection with any such dispute. This indemnity provision shall survive repayment of the Indebtedness, shall be binding upon the respective heirs, legal representatives, successors and assigns of Grantor, and if Grantor is a partnership or joint venture, each partner or venturer of Grantor, and shall inure to the benefit of Beneficiary, its successors and assigns, any corporation controlling, controlled by, or under common control with Beneficiary and the officers, directors, shareholders, agents and employees of any such corporation or Beneficiary.

Section 4.12 **Books and Records.** Grantor shall maintain full and accurate books of account and other records reflecting the results of its operations of the Mortgaged Property, and will furnish, or cause to be furnished, to Beneficiary on or before 90 days after the end of Grantor's fiscal year (a) a complete executed copy of a report of an examination of Grantor's financial affairs, such report to include a balance sheet and statement of profit and loss for Grantor's immediately preceding fiscal year together with any and all related notes and such other detail as Beneficiary may reasonably require, and a certificate executed by Grantor (or if Grantor is a corporation, an officer of Grantor, or, if Grantor is a partnership or joint venture, a general partner or venturer) certifying that such report has been prepared in accordance with generally accepted auditing standards and generally accepted accounting principles applied on a consistent basis and fairly presents Grantor's financial condition as of the date thereof and the results of its operations for the period covered thereby, (b) a written statement identifying each of the Leases by the term, the space occupied, the

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rental or other payment required thereunder and any security paid as to each of the Leases, and (c) a certificate by Grantor (or if Grantor is a corporation, an officer of Grantor, or, if Grantor is a partnership or joint venture, a general partner or venturer) certifying that, as of the date thereof, there does or does not (as the case may be) exist a Default or an Event of Default or, if a Default or an Event of Default exists, specifying the nature thereof. At Beneficiary's option, the report called for in Section 4.12(a) shall be audited, at Grantor's expense, by a certified public accountant satisfactory to Beneficiary. At any time and from time to time Grantor shall deliver to Beneficiary such other financial data as Beneficiary shall reasonably request with respect to the ownership, development, maintenance, use and operation of the Mortgaged Property, including, without limitation, operating statements and a written statement identifying each of the Leases by the term, the space occupied, the rental or other payment required thereunder and any security paid as to each of the Leases. Beneficiary shall have the right, at reasonable times and upon reasonable notice, to audit, examine, and make copies or extracts of Grantor's books of account and records relating to the Mortgaged Property, all of which shall be maintained and made available to Beneficiary and Beneficiary's representatives for such purpose at the address specified herein for Grantor, or at such other location as Beneficiary may approve. Upon Beneficiary's request, Grantor shall also furnish Beneficiary with convenient facilities and all books and records necessary for an audit of such statements.

ARTICLE 5 **NEGATIVE COVENANTS**

Grantor covenants and agrees with Beneficiary as follows:

Section 5.1 **Use Violations.** Grantor shall not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, the Mortgaged Property in any manner which (a) violates any Legal Requirement, (b) may be dangerous unless safeguarded as required by law, (c) constitutes a public or private nuisance or (d) makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto.

Section 5.2 **Alterations.** Grantor shall not commit or permit any waste of the Mortgaged Property.

Section 5.3 **Disposition of Mortgaged Property and Beneficial Interest in Grantor.** Grantor shall not sell, lease, exchange, assign, convey, transfer or otherwise dispose of any portion of the Mortgaged Property or any interest therein (a "**Disposition**") or permit the transfer of any part of the beneficial ownership interest in Grantor (if Grantor is a corporation, partnership, joint venture, trust or other type of business association or legal entity) or any interest therein, without the prior written consent of Beneficiary. In connection with determining whether to grant or withhold such consent, Beneficiary may (but is not obligated to), among other things, (a) consider the creditworthiness of the party to whom such Disposition will be made and its management ability with respect to the Mortgaged Property, (b) consider whether the security for repayment of the Indebtedness and the performance of the Obligations, or Beneficiary's ability to enforce its rights, remedies and recourses with respect to such security, will be impaired in any way by the proposed Disposition, (c) require as a condition to granting such consent an increase in the rate of interest payable under the Note or any other change in the terms and provisions of the Note and other Loan

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Documents, (d) require that Beneficiary be reimbursed for all costs incurred by Beneficiary in investigating the creditworthiness and management ability of the party to whom such Disposition will be made and in determining whether Beneficiary's security will be impaired by the proposed Disposition, (e) require the payment to Beneficiary of a transfer fee to cover the cost of documenting the Disposition in its records, (f) require the payment of its reasonable attorney's fees in connection with such Disposition, (g) require the express assumption of payment of the Indebtedness and performance of the Obligations by the party to whom such Disposition will be made (with or without the release of Grantor from liability for such Indebtedness and Obligations), (h) require the execution of assumption agreements, modification agreements, supplemental loan documents and financing statements satisfactory in form and substance to Beneficiary, (i) require endorsements (to the extent available under applicable law) to any existing mortgages, title insurance policies or construction binders insuring Beneficiary's liens and security interests covering the Mortgaged Property, and (j) require additional security for the payment of the Indebtedness and performance of the Obligations. If a Disposition or a transfer of any interest in Grantor (beneficial or otherwise) or part thereof occurs without Beneficiary's prior written consent, Beneficiary may accelerate the maturity of the Indebtedness without notice of any kind (including, without limitation, notice of intent to accelerate and notice of acceleration).

Section 5.4 No Further Encumbrances. Grantor shall not, without the prior written consent of Beneficiary, create, place or permit to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any mortgage, pledge, lien (statutory, constitutional or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, regardless of whether it is expressly subordinate to the liens of the Loan Documents, with respect to the Mortgaged Property, other than the Permitted Encumbrances, or with respect to any of the beneficial interests in Grantor (if Grantor is an entity). If any such event occurs, Beneficiary may accelerate the maturity of the Indebtedness without notice of any kind (including, without limitation, notice of intent to accelerate and notice of acceleration).

ARTICLE 6

EVENTS OF DEFAULT

Section 6.1 Events of Default. The term "Event of Default" shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

- (a) Payment of Indebtedness. If Grantor fails to pay any Indebtedness when due.
- (b) Performance of Obligations. If Grantor fails to perform fully and timely any of the Obligations when called for and such failure shall remain uncured (i) as to Obligations arising under the other Loan Documents (even if also arising under this Deed of Trust), for the period, if any, therein specified, or (ii) as to the Obligations arising only under this Deed of Trust, for a period of 30 days after the earlier to occur of (1) the date Beneficiary or Trustee gives written notice thereof to Grantor or (2) the date upon which Grantor had actual knowledge of the Obligation to be performed; provided, however, that if such default requires work to be performed, acts to be done or conditions to be remedied which, by their nature, cannot be performed, done or remedied, as the

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case may be, within such 30-day period, no Event of Default shall be deemed to have occurred if Grantor commences same within such 30-day period and thereafter diligently and continuously prosecutes the same to completion within 60 days after such notice or date of actual knowledge.

(c) **Voluntary Bankruptcy.** If Grantor or any Guarantor or, if Grantor or any Guarantor is a partnership, joint venture, trust or other type of business association, if any of the parties comprising Grantor or any Guarantor, shall (1) voluntarily be adjudicated as bankrupt or insolvent, (2) file any petition or commence any case or proceeding under any provision or chapter of the Federal Bankruptcy Code or any other federal or state law relating to its insolvency, bankruptcy, rehabilitation, liquidation or reorganization, (3) make a general assignment for the benefit of its creditors, (4) have an order for relief entered under the Federal Bankruptcy Code with respect to it, (5) convene a meeting of its creditors, or any class thereof, for the purpose of effecting a moratorium upon or extension or composition of its debts, (6) fail to pay its debts as they mature, (7) admit in writing that it is generally not able to pay its debts as they mature or generally not pay its debts as they mature, or (8) becomes insolvent.

(d) **Involuntary Bankruptcy.** If (1) a petition is filed or any case or proceeding described in Section 6.1(c) hereof is commenced against Grantor or any Guarantor, or, if Grantor or any Guarantor is a partnership, joint venture, trust or other type of business association, against any of the parties comprising Grantor or any Guarantor, or against the assets of any such Persons, unless such petition and the case or proceeding initiated thereby is dismissed within 90 days from the date of the filing, (2) an answer is filed by Grantor or any Guarantor, or, if Grantor or any Guarantor is a partnership, joint venture, trust or other type of business association, by any of the parties comprising Grantor or any Guarantor, admitting the allegations of any such petition, or (3) a court of competent jurisdiction enters an order, judgment or decree appointing, without the consent of Grantor or any Guarantor, or, if Grantor or any Guarantor is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Grantor or any Guarantor, a custodian, trustee, agent or receiver for it, or for all or any part of its property, or authorizing the taking possession by a custodian, trustee, agent or receiver of it, or all or any part of its property unless such appointment is vacated or dismissed or such possession is terminated within 90 days from the date of such appointment or commencement of such possession, but not later than five days before the proposed sale of any assets of Grantor or any Guarantor, or, if Grantor or any Guarantor is a partnership, joint venture, trust or other business association, of any of the parties comprising Grantor or any Guarantor, by such custodian, trustee, agent or receiver, other than in the ordinary course of the business of Grantor or any Guarantor.

(e) **Foreclosure of Other Liens.** If the holder of any lien or security interest on the Mortgaged Property (without implying Beneficiary's consent to the existence, placing, creating or permitting of any such lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(f) **Other Loan Documents.** An "Event of Default" occurs under any other Loan Document.

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ARTICLE 7
DEFAULT AND FORECLOSURE

Section 7.1 **Remedies.** If an Event of Default occurs, Beneficiary may, subject to the provisions of Section 7.10, at Beneficiary's election and by or through Trustee or otherwise, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration:** Declare the "**Principal Balance**" (defined as meaning the then unpaid principal balance on the Note), the accrued, unpaid interest and any other accrued but unpaid portion of the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Grantor), whereupon the same shall become immediately due and payable.

(b) **Entry on Mortgaged Property:** Enter upon and into the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Grantor remains in possession of all or any part of the Mortgaged Property after an Event of Default and without Beneficiary's prior written consent thereto, Beneficiary may invoke any and all legal remedies to dispossess Grantor, including specifically one or more actions for forcible entry and detainer, trespass to try title and writ of restitution. Nothing contained in the foregoing sentence shall, however, be construed to impose any greater obligation or any prerequisites to acquiring possession of the Mortgaged Property after an Event of Default than would have existed in the absence of such sentence.

(c) **Operation of Mortgaged Property:** Hold, complete the construction or development of, lease, manage, operate or otherwise use or permit the use of the Mortgaged Property, either by itself or by other Persons, in such manner, for such time and upon such other terms as Beneficiary may deem to be prudent and reasonable under the circumstances (making such repairs, alterations, additions and improvements thereto and taking any and all other action with reference thereto, from time to time, as Beneficiary deems necessary or desirable), and apply all Rents and other amounts collected by Trustee in connection therewith in accordance with Section 7.8.

(d) **Foreclosure and Sale:** Sell or offer for sale the Mortgaged Property in such portions, order and parcels as Beneficiary may determine, with or without having first taken possession of same, to the highest bidder for cash at public auction. Such sale shall be made (1) at a location designated for foreclosure sales in accordance with the Texas Property Code at the courthouse of the County wherein the Land (or any portion thereof to be sold) is located on the first Tuesday of any month between the hours of 10:00 A.M. and 4:00 P.M. after giving notice of the time, place and terms of sale and that portion of the Mortgaged Property to be sold, by (A) posting or causing to be posted written or printed notice thereof at least 21 days prior to the date of said sale at the County courthouse door thereof, (B) at least 21 days preceding the date of such sale, filing such notice in the office of the county clerk of the County in which the Land (or any portion thereof to be sold) is located and (C) at least 21 days preceding the date of such sale serving written notice of the proposed sale by certified mail on each person or entity obligated to pay the Indebtedness according to the records of the Beneficiary; or (2) by accomplishing all or any of the aforesaid in

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such manner as permitted or required by Section 51.002 of the Texas Property Code relating to the sale of real estate or by Chapter 9 of the UCC relating to the sale of collateral after default by debtor (as they now exist or may be hereafter amended or succeeded), or by any other present or subsequent articles or enactments relating to same. Notwithstanding anything contained in the Loan Documents to the contrary and notwithstanding Section 13.14 hereof, service of the notice called for in Section 7.1(d)(1)(C) shall be completed and be effective upon deposit of the notice enclosed in a post-paid wrapper properly addressed to such Person obligated to pay the Indebtedness at the most recent address as shown by the records of the Beneficiary in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any Person having knowledge of the facts to the effect that such service was so completed shall be prima facie evidence of the fact of service. At any such sale (i) whether made under the power herein contained, the Texas Property Code, the UCC, any other Legal Requirement or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for Trustee to have physically present, or to have constructive possession of, the Mortgaged Property (Grantor shall deliver to Trustee any portion of the Mortgaged Property not actually or constructively possessed by Trustee immediately upon demand by Trustee), and the title to and right of possession of any such property shall pass to the purchaser thereof as completely as if it had been actually present and delivered to purchaser at such sale, (ii) each instrument of conveyance executed by Trustee shall contain a general warranty of title, binding upon Grantor, (iii) each recital contained in any instrument of conveyance made by Trustee shall conclusively establish the truth and accuracy of the matters recited therein, including, without limitation, nonpayment of the Indebtedness, advertisement and conduct of such sale in the manner provided herein and otherwise by law and appointment of any successor Trustee hereunder, (iv) any and all prerequisites to the validity thereof shall be conclusively presumed to have been performed, (v) the receipt of Trustee or of such other party or officer making the sale shall be a sufficient discharge to the purchaser or purchasers for his or their purchase money and no such purchaser or purchasers, or his or their assigns or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication or nonapplication thereof, (vi) to the fullest extent permitted by law, Grantor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Grantor, and against any and all other Persons claiming or to claim the property sold or any part thereof, by, through or under Grantor, and (vii) to the extent and under such circumstances as are permitted by law, Beneficiary may be a purchaser at any such sale.

(e) **Receiver:** Make application to a court of competent jurisdiction as a matter of strict right and without notice to Grantor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, for appointment of a receiver of the Mortgaged Property and Grantor does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 7.8.

(f) **Other:** Exercise any and all other rights, remedies and recourses granted under the Loan Documents (including, without limiting the generality of the foregoing, those set forth in Sections 9.5 and 10.6) or now or hereafter existing in equity, at law, by virtue of statute or otherwise.

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Section 7.2 Separate Sales. The Mortgaged Property may be sold in one or more parcels and in such manner and order as Trustee, in his sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 7.3 Remedies Cumulative, Concurrent and Nonexclusive. Beneficiary shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including specifically those granted by the UCC in effect and applicable to the Mortgaged Property or any portion thereof) and they (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Grantor or others obligated under the Notes, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Beneficiary, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse and (d) are intended to be, and shall be, nonexclusive.

Section 7.4 No Conditions Precedent to Exercise of Remedies. Neither Grantor nor any other Person obligated for payment of any part of the Indebtedness or fulfillment of any of the Obligations shall be relieved of such obligation by reason of (a) the failure of Trustee to comply with any request of Grantor or of any other Person to foreclose the lien of this Deed of Trust or to enforce any provisions of the other Loan Documents, (b) the release, regardless of consideration, of the Mortgaged Property or the addition of any other property to the Mortgaged Property, (c) any agreement or stipulation between any subsequent owner of the Mortgaged Property and Beneficiary extending, renewing, rearranging or in any other way modifying the terms of the Loan Documents without first having obtained the consent of, given notice to or paid any consideration to Grantor or such other Person, and in such event Grantor and all such other Persons shall continue to be liable to make payment according to the terms of any such extension or modification agreement unless expressly released and discharged in writing by Beneficiary or (d) by any other act or occurrence except the complete payment of the Indebtedness and the complete fulfillment of all of the Obligations.

Section 7.5 Release of and Resort to Collateral. Beneficiary may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the liens or security interests created in or evidenced by the Loan Documents or their stature as first and prior liens and security interests in and to the Mortgaged Property. For payment of the Indebtedness, Beneficiary may resort to any other security therefor held by Trustee in such order and manner as Beneficiary may elect.

Section 7.6 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Grantor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Grantor by virtue of any present or future law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisalment, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) except as set forth in the Loan Documents, all notices of any Default or of Trustee's election to exercise or his actual exercise of any right, remedy or recourse provided for under the Loan Documents and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

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Section 7.7 **Discontinuance of Proceedings.** Beneficiary shall have the unqualified right to discontinue or abandon any right, remedy, or recourse that it had proceeded to invoke under the Loan Documents and, in such an event, Grantor and Beneficiary shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary shall continue as if the right, remedy or recourse had never been invoked.

Section 7.8 **Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, operation or other use of the Mortgaged Property shall be applied by Beneficiary or Trustee (or the receiver, if one is appointed) to the extent that funds are so available therefrom to the following in the order of priority that Beneficiary, in its sole discretion, may determine:

(a) to the payment of the reasonable costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) reasonable trustees' and receivers' fees, (2) court costs, (3) reasonable attorneys' and accountants' fees, (4) reasonable costs of advertisement and (5) the payment of any and all Impositions, liens, security interests or other rights, titles or interests equal or superior to the liens and security interests of this Deed of Trust (except those to which the Mortgaged Property has been sold subject to and without in any way implying Beneficiary's prior consent to the creation thereof);

(b) to the payment of all amounts, other than the Principal Balance and accrued but unpaid interest, which may be due to Beneficiary under the Loan Documents, together with interest thereon as provided therein;

(c) to the payment of all accrued but unpaid interest due on the Note;

(d) to the payment of the Principal Balance;

(e) to the extent funds are available therefor out of the sale proceeds or the Rents and, to the extent known by Beneficiary and permitted by law, to the payment of any indebtedness or obligation secured by a subordinate deed of trust on or security interest in the Mortgaged Property; and

(f) to Grantor.

Section 7.9 **Acceleration Following Certain Events.** Notwithstanding anything to the contrary herein contained or inferable from any provision hereof, upon the occurrence of an Event of Default described in Sections 6.1(c), 6.1(d) or 6.1(e), the Principal Balance, unpaid accrued interest and any other accrued but unpaid portion of the Indebtedness shall immediately become due and payable in full without the necessity of further action on the part of Trustee or Beneficiary, and Grantor hereby expressly waives any requirement of notice of intent to accelerate maturity and notice of acceleration of maturity of the Indebtedness.

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Section 7.10 **Occupancy After Foreclosure.** The purchaser at any foreclosure sale pursuant to Section 7.1(d) shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property or any part thereof shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at such sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any Justice Court having jurisdiction over the Mortgaged Property.

ARTICLE 9 CONDEMNATION

Section 8.1 **General.** Immediately upon its obtaining knowledge of the institution or the threatened institution of any proceeding for the condemnation of the Mortgaged Property, Grantor shall notify Trustee and Beneficiary of such fact. Grantor shall then, if requested by Beneficiary, file or defend its claim thereunder and prosecute same with due diligence to its final disposition and shall cause any awards or settlements to be paid over to Beneficiary for disposition pursuant to the terms of this Deed of Trust. Grantor may be the nominal party in such proceeding but Beneficiary shall be entitled to participate in and to control same and to be represented therein by counsel of its own choice, and Grantor will deliver, or cause to be delivered, to Beneficiary such instruments as may be requested by it from time to time to permit such participation. If the Mortgaged Property is taken or diminished in value, or if a consent settlement is entered, by or under threat of such proceeding, the award or settlement payable to Grantor by virtue of its interest in the Mortgaged Property shall be, and hereby is, assigned, transferred and set over unto Beneficiary to be held by it in trust, subject to the liens and security interests of this Deed of Trust, and disbursed as follows:

(a) if (1) all of the Mortgaged Property is taken, (2) so much of the Mortgaged Property is taken, or the Mortgaged Property is so diminished in value, that the remainder thereof cannot (in Beneficiary's judgment) continue to be operated profitably for the purpose it was being used immediately prior to such taking or diminution, (3) an Event of Default shall have occurred or (4) the Mortgaged Property is partially taken or diminished in value and (in Beneficiary's judgment) need not be rebuilt, restored or repaired in any manner, then in any such event the entirety of the sums so paid to Beneficiary shall be applied by it in the order recited in Section 8.2; or

(b) if (1) only a portion of the Mortgaged Property is taken and the portion remaining can (in Beneficiary's judgment), with rebuilding, restoration or repair, be profitably operated for the purpose referred to in Section 8.1(a)(2), (2) none of the other facts recited in Section 8.1(a) exists, (3) Grantor shall deliver to Beneficiary plans and specifications for such rebuilding, restoration or repair acceptable to Beneficiary, which acceptance shall be evidenced by Beneficiary's written consent thereto, and (4) Grantor shall thereafter commence and complete the rebuilding, restoration or repair, all in substantial accordance with the plans and specifications and within three months after the date of the taking or diminution in value and shall otherwise comply with Section 4.8; then such sums shall be paid to Grantor to reimburse Grantor for money spent in the rebuilding, restoration or repair; otherwise such sums shall be applied by Beneficiary in the order recited in Section 8.2.

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Section 8.2 **Application of Proceeds.** All proceeds received by Beneficiary with respect to a taking or a diminution in value of the Mortgaged Property shall be applied to the following in the order of priority that Beneficiary, in its sole discretion, may determine:

(a) to reimburse Trustee or Beneficiary for all costs and expenses, including reasonable attorneys' fees, incurred in connection with collection of the said proceeds;

(b) to the payment of those items recited in Section 7.8(b) through 7.8(f); however, if such proceeds are required under Section 8.1(b) to be applied to the rebuilding, restoration or repair of the Mortgaged Property, the provisions of Section 4.8 shall determine the conditions precedent for utilizing such proceeds for such purpose.

ARTICLE 9

ASSIGNMENT OF RENTS AND LEASES

Section 9.1 **Assignment.** For ten dollars (\$10.00) and other valuable consideration, including the Indebtedness evidenced by the Note, whose receipt and sufficiency are acknowledged, Grantor has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY absolutely unto Beneficiary the Leases and the Rents, subject only to the Permitted Encumbrances applicable thereto and the License (defined below). TO HAVE AND TO HOLD the Leases and the Rents unto Beneficiary, forever, and Grantor does hereby bind itself, its successors and assigns to warrant and forever defend title to the Leases and the Rents unto Beneficiary against every Person whomsoever lawfully claiming or to claim the same or any part thereof; however, if the Indebtedness is fully paid, the Obligations have been fully performed and discharged, and the Commitment has been terminated, then this assignment shall terminate and be of no further effect, and all rights, titles and interests conveyed pursuant to this assignment shall become revested in Grantor without the necessity of any further act or requirement by Grantor, Trustee or Beneficiary.

Section 9.2 **Limited License.** Beneficiary hereby grants to Grantor a limited license (the "License"), nonexclusive with the rights of Beneficiary reserved in Section 9.4, to exercise and enjoy all incidences of ownership of the Leases and the Rents, including specifically but without limitation the right to collect, demand, sue for, attach, levy, recover and receive the Rents, and to give proper receipts, releases and acquittances therefor. Grantor shall receive all Rents and hold the same as a trust fund to be applied, and to apply the Rent so collected, first to the payment of the Indebtedness and the satisfaction and discharge of the Obligations that are then due. Thereafter, Grantor may use the balance of the Rent collected in any manner not inconsistent with the Loan Documents.

Section 9.3 **Enforcement of Leases.** While the License is in effect, Grantor shall (a) submit all proposed Leases to Beneficiary for approval before the execution thereof, (b) duly and punctually perform and comply with any and all representations, warranties, covenants and agreements expressed as binding upon the landlord under any Lease, (c) maintain each of the Leases in full effect during the term thereof, (d) appear in and defend any action or proceeding in any manner connected with any of the Leases, (e) deliver to Beneficiary executed counterparts of all

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Leases and (f) deliver to Beneficiary such further information, and execute and deliver to Beneficiary such further assurances and assignments, with respect to the Leases as Beneficiary may from time to time request. Without Beneficiary's prior written consent, Grantor shall not (1) do or knowingly permit to be done anything to impair the value of any of the Leases, (2) except for deposits not to exceed one month's rent for any one lessee, collect any of the Rent more than one month in advance of the time when it becomes due under any Lease, (3) discount any future accruing Rent, (4) amend, modify or terminate any Lease or (5) assign or grant a security interest in or to the License or any of the Leases.

Section 9.4 Suits; Attornment. Beneficiary reserves and may exercise the right and Grantor hereby acknowledges that Beneficiary has the right (but not the obligation) after an Event of Default to collect, demand, sue for, attach, levy, recover and receive any Rent, to give proper receipts, releases and acquittances therefor and, after deducting the expenses of collection, to apply the net proceeds thereof as a credit upon any portion of the Indebtedness selected by Beneficiary, notwithstanding that such portion selected may not then be due and payable or that such portion is otherwise adequately secured. Grantor authorizes and directs any lessee of the Mortgaged Property to deliver any such payment to, and otherwise to attorn all other obligations under the Leases direct to, Beneficiary. Grantor ratifies and confirms all that Beneficiary shall do or cause to be done by virtue of this Article 9. No lessee shall be required to inquire into the authority of Beneficiary to collect any Rent, and any lessee's obligation to Grantor shall be absolutely discharged to the extent of its payment to Beneficiary.

Section 9.5 Remedies. At any time after the occurrence of any Event of Default, Beneficiary, at its option and in addition to the remedies provided in Article 7 hereof, shall have the complete, continuing and absolute right, power and authority to terminate the License solely by the giving of written notice of termination to Grantor. Upon Beneficiary's giving of such notice, the License shall immediately terminate without any further action being required of Beneficiary. Thereafter, Beneficiary shall have the exclusive right, power and authority to take any and all action as described in Section 9.4, regardless of whether a foreclosure sale of the remainder of the Mortgaged Property has occurred under this Deed of Trust, or whether Beneficiary or Trustee has taken possession of the remainder of the Mortgaged Property or attempted to do any of the same. No action referred to in Section 9.4 or this Section 9.5 taken by Beneficiary or Trustee shall constitute an election of remedies.

Section 9.6 No Obligation of Trustee or Beneficiary. Neither the acceptance by Beneficiary of the assignment granted in this Article 9, nor the granting of any other right, power, privilege or authority in this Article 9 or elsewhere in this Deed of Trust, nor the exercise of any of the foregoing, shall (a) prior to the actual taking of physical possession and operational control of the Mortgaged Property by Beneficiary or Trustee, be deemed to constitute Beneficiary or Trustee as a "mortgagee in possession" or (b) at any time thereafter, obligate Beneficiary or Trustee (1) to appear in or defend any action or proceeding relating to the Leases, the Rents or the remainder of the Mortgaged Property, (2) to take any action hereunder, (3) to expend any money or incur any expenses or perform or discharge any obligation, duty or liability with respect to any Lease, (4) to assume any obligation or responsibility for any deposits which are not physically delivered to Beneficiary or (5) for any injury or damage to person or property sustained in or about the Mortgaged Property.

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Section 9.7 **No Merger of Estates.** So long as any part of the Indebtedness and the Obligations remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Beneficiary, any lessee or any third party by purchase or otherwise.

Section 9.8 **Grantor's Indemnities.** Grantor shall indemnify and hold Beneficiary and Trustee harmless from and against any and all liability, loss, cost, damage or expense which Beneficiary or Trustee may incur under or by reason of this assignment, or for any action taken by Beneficiary or Trustee hereunder, or by reason of or in defense of any and all claims and demands whatsoever which may be asserted against Beneficiary or Trustee arising out of the Leases, including those arising from the negligence of Beneficiary or Trustee, but excluding all liabilities arising from Beneficiary's or Trustee's gross negligence or willful misconduct. If Beneficiary or Trustee incurs any such liability, loss, cost, damage or expense, the amount thereof together with all reasonable attorneys' fees and interest thereon at the default rate specified in the Loan Documents shall be payable by Grantor to Beneficiary or Trustee immediately, without demand, and shall be secured under Article 2 hereof.

Section 9.9 **Conflict.** The absolute assignment contained in this Article 9 is in addition to, and not in lieu of, Article 2. It is the intent of the parties that no conflict exist between the absolute assignment contained in this Article 9 and the collateral conveyance contained in Article 2. However, if and to the extent any such conflict is perceived to exist as to the Leases or the Rents, such conflict shall be resolved in favor of the absolute assignment contained in this Article 9.

ARTICLE 10

SECURITY AGREEMENT

Section 10.1 **Security Interest.** This Deed of Trust (a) shall be construed as a deed of trust on real property, and (b) shall also constitute and serve as a "Security Agreement" on personal property within the meaning of, and shall constitute until the grant of this Deed of Trust shall terminate as provided in Article 2, a first and prior security interest under, the UCC with respect to the Personalty, Fixtures, Construction Contracts, Plans, Leases and Rents. To this end, Grantor grants to Trustee and Beneficiary, a first and prior security interest in the Personalty, Fixtures, Construction Contracts, Plans, Leases and Rents to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. It is the intent of Grantor, Beneficiary and Trustee that this Deed of Trust encumber all Leases and Rents, that all items contained in the definition of "Leases" and "Rents" which are included within Chapter 9 of the UCC be covered by the security interest granted in this Article 10 and that all items contained in the definition of "Leases" and "Rents" which are excluded from Chapter 9 of the UCC be covered by the provisions of Article 2 and Article 9 hereof.

Section 10.2 **Financing Statements.** Grantor shall execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such financing statements and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect, and preserve Beneficiary's security interest herein granted and Beneficiary may cause such

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statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest

Section 10.3 **Uniform Commercial Code Remedies.** Beneficiary and/or Trustee shall have all the rights, remedies and recourses with respect to the Personalty, Fixtures, Construction Contracts, Plans, Leases and Rents afforded to it by the UCC in addition to, and not in limitation of, the other rights, remedies and recourses afforded by the Loan Documents.

Section 10.4 **No Obligation of Trustee or Beneficiary.** The security interest herein granted shall not be deemed or construed to constitute Trustee or Beneficiary as a trustee in possession of the Mortgaged Property, to obligate Trustee or Beneficiary to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

Section 10.5 **Construction Mortgage and Fixture Filing.** This Deed of Trust secures future advances to be used for construction of improvements on the Land. Accordingly, this Deed of Trust constitutes a "construction mortgage" under the UCC. This Deed of Trust shall also constitute a "fixture filing" for the purposes of the UCC. All or part of the Mortgaged Property is or is to become fixtures; information concerning the security interest herein granted may be obtained at the addresses set forth on the first page hereon. For purposes of the security interest herein granted, the address of Debtor (Grantor) is set forth in the first paragraph of this Deed of Trust and the address of the Secured Party (Beneficiary) is set forth in Section 1.1.

Section 10.6 **Foreclosure of Security Interest.** If an Event of Default shall occur, Beneficiary may elect, in addition to exercising any other rights, remedies and recourses set forth in Article 7 or Article 9, or referred to in Section 10.3, to collect and receive all Rents and to proceed in the manner set forth in Section 9.501(d) of the UCC relating to the procedure to be followed when a security agreement covers both real and personal property. Except as otherwise set forth in this Section 10.6, at any foreclosure and sale as described in Section 7.1(d), it shall be deemed that the Trustee proceeded under Section 9.501(d) of the UCC, as to types of property covered thereby, and that such sale passed title to all of the Mortgaged Property and other property described herein to the purchaser thereof, including without limitation the Personalty, Construction Contracts, Plans, Leases and Rents. Beneficiary, acting by and through the Trustee or any other representative, may elect either prior to or at such sale not to proceed under Section 9.501(d) of the UCC by notifying Grantor of the manner in which Beneficiary intends to proceed with regard to the Personalty, Construction Contracts, Plans, Leases and Rents.

ARTICLE 11 ENVIRONMENTAL MATTERS

Section 11.1 **Definitions.** For the purposes of this Article 11, unless the context otherwise specifies or requires, the following terms shall have the following meanings:

(a) **"Environmental Laws"** means all Legal Requirements pertaining to health, safety, or the environment in effect in any jurisdiction in which Grantor conducts business or where

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the Mortgaged Property is located, including without limitation: (1) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), as amended from time to time including without limitation as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980, and the Hazardous and Solid Waste Amendments of 1984 ("RCRA") and regulations promulgated thereunder; (2) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), as amended from time to time, including without limitation as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), and regulations promulgated thereunder; (3) the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), as amended from time to time; (4) the Clean Air Act (42 U.S.C. 7401 *et seq.*), as amended from time to time; (5) the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*), as amended from time to time ("ADA"), and all regulations and guidelines promulgated pursuant to the ADA, and all other similar laws, including without limitation the Architectural Barriers Act of 1968, the Texas Architectural Barriers Statute of 1978, and the Fair Housing Amendments Act of 1988, all as amended from time to time and including all regulations promulgated pursuant to any one or more of them; (6) the Endangered Species Act (15 U.S.C. § 1531 *et seq.*), as amended from time to time; (7) laws, statutes, ordinances, rules, regulations, orders, or determinations relating to "wetlands," including without limitation those set forth in the Clean Water Act (33 U.S.C. § 1251 *et seq.*), as amended from time to time; (8) the Texas Water Code, as amended from time to time; and (9) the Texas Solid Waste Disposal Act (TEX. HEALTH & SAFETY CODE ANN. §§ 361.001-361.345), as amended from time to time.

(b) "Hazardous Materials" means (1) any "hazardous waste" as defined by RCRA, and regulations promulgated thereunder; (2) any "hazardous substance", "pollutant", or "contaminant" as defined by CERCLA, and regulations promulgated thereunder; (3) any toxic substance as defined under or regulated by the Toxic Substances Control Act; (4) asbestos (whether friable or not), asbestos containing materials, polychlorinated biphenyls, radon, or explosive or radioactive materials; (5) underground and above ground storage tanks, whether empty, filled or partially filled with any substance, including without limitation any petroleum product or any other "hazardous substance"; (6) any volatile organic compounds, including oil and petroleum products; (7) any substances which because of their quantitative concentration, chemical, radioactive, flammable, explosive, infectious, or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety, or welfare or to the environment, including, without limitation, any polychlorinated biphenyls ("PCBs"), toxic metals, etchants, pickling and plating wastes, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive wastes; (8) any substance the presence of which on the Mortgaged Property is prohibited by any Environmental Laws; and (9) any other substance which by any Environmental Laws requires special handling or notification of any Governmental Authority in its collection, storage, treatment, or disposal.

(c) "Hazardous Materials Contamination" means the contamination (whether presently existing or hereafter occurring) of any improvements, facilities, soil, groundwater, air, or other elements on or of the Mortgaged Property by Hazardous Materials or the release of Hazardous Materials at, upon, under or within the Mortgaged Property, or the contamination of the buildings, facilities, soil, groundwater, air, or other elements on or of any other property as a result of

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Hazardous Materials at any time (whether before or after the date of this Deed of Trust) emanating from the Mortgaged Property.

(d) **"Environmental Claim"** means any investigative, enforcement, cleanup, removal, containment, remedial, or other private or governmental or regulatory action at any time threatened, instituted, or completed pursuant to any Environmental Laws against Grantor or against or with respect to the Mortgaged Property or its use, and any claim threatened or made by any Person against Grantor or against or with respect to the Mortgaged Property or its use relating to damage, contribution, cost recovery, compensation, or injury resulting from any alleged breach or violation of any Environmental Laws.

(e) **"Environmental Condition"** means any condition, circumstance, or matter related to or connected with the Mortgaged Property or Grantor's ownership and use of the Mortgaged Property which is covered by any Environmental Laws.

Section 11.2 **Environmental Matters; Hazardous Substances.** Grantor represents and warrants that, to its knowledge, the Mortgaged Property has not been the site of any activity that would violate any past or present Environmental Law. Specifically, without limitation, to Grantor's actual knowledge, (a) no Hazardous Materials Contamination exists, and (b) the Mortgaged Property contains no Hazardous Materials, except for insignificant quantities used and stored in connection with routine maintenance or repair of the Mortgaged Property.

Section 11.3 **Allocation of Risks and Indemnity.** Except to the limited extent set forth in Section 11.4, all risk of loss associated with non-compliance with Environmental Laws, with the presence of any Hazardous Material in, on, or about the Mortgaged Property or with respect to any Hazardous Materials Contamination shall lie solely with Grantor. Accordingly, Grantor shall bear all risks and costs associated with any damages or liability therefrom including all costs of response, cleaning up, remediating, restoring, or otherwise curing any Hazardous Materials Contamination. Grantor shall (except to the limited extent provided in Section 11.4) indemnify, defend, and hold, Trustee, Beneficiary, and their respective officers, directors, employees, agents, and contractors (the **"Indemnified Parties"**) harmless from and against all liabilities, damages, claims, and expenses (including reasonable costs of defense), arising out of or associated with, in any way, the non-compliance with Environmental Laws, the existence of Hazardous Materials in, on, or about the Mortgaged Property or any Hazardous Materials Contamination, including those arising out of or alleged to have arisen from any Indemnified Party's negligence, but excluding its gross negligence.

Section 11.4 **Indemnified Party's Responsibility.** The provisions of Section 11.3 relating to allocation of risks and indemnity shall not apply, as to each Indemnified Party, to any loss, damage, or expense resulting solely from such Indemnified Party's affirmative violation of Environmental Laws or affirmative placement of any Hazardous Materials on or about the Mortgaged Property, and any such Indemnified Party shall be responsible therefor. Except to the limited extent provided in this paragraph, all risk of loss associated with non-compliance with Environmental Laws, Hazardous Materials or Hazardous Materials Contamination is allocated to Grantor, which shall bear the same.

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Section 11.5 Compliance with Environmental Laws. Grantor shall at all times comply fully with all Environmental Laws.

Section 11.6 Inspection. Upon prior notice to Grantor, Beneficiary may enter the Mortgaged Property at reasonable times during normal business hours to inspect for the existence of Hazardous Materials or Hazardous Materials Contamination. If Beneficiary reasonably believes that the Mortgaged Property may be adversely affected by reason of Hazardous Materials or Hazardous Materials Contamination, then Beneficiary may, at Grantor's expense, have an environmental study or audit made with respect to the Mortgaged Property, in such detail and scope as the circumstances then warrant, provided that Beneficiary may not exercise such right more frequently than once each 12 months unless there is reasonably objective evidence or a governmental claim that Hazardous Materials or Hazardous Materials Contamination may affect the Mortgaged Property.

Section 11.7 No Waiver. Notwithstanding any provision in this Article 11 or elsewhere in this Deed of Trust, or any rights or remedies granted by this Deed of Trust, Beneficiary does not waive and expressly reserves all rights and benefits now or hereafter accruing to it under the "secured creditor exception" set forth in 40 C.F.R. § 300.1400. No action taken by Beneficiary pursuant to this Deed of Trust or any other Loan Document shall be deemed or construed to be a waiver or relinquishment of any such rights or benefits under the "secured creditor exception."

ARTICLE 12 CONCERNING THE TRUSTEE

Section 12.1 No Required Action. Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in or defend any action, suit or other proceeding in connection therewith where in his opinion such action will be likely to involve him in expense or liability, unless requested to do so by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to him against any and all costs and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and makes no representation in respect thereof or in respect of the rights, remedies and resources of Beneficiary.

Section 12.2 Certain Rights. With the approval of Beneficiary, Trustee may take any and all of the following actions: (a) select, employ and consult with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (b) execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (c) select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of

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judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (d) any and all other lawful action as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by him, or anyone entering by virtue of the powers herein granted him, upon the Mortgaged Property for debts contracted or liability or damages incurred in the management or operation of the Mortgaged Property. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. Trustee shall be entitled to reimbursement for actual, reasonable expenses incurred by him in the performance of his duties hereunder. Grantor shall, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save him harmless against, any and all liability and reasonable expenses which may be incurred by him in the performance of his duties, including those arising from his negligence, but excluding those arising from his gross negligence or wilful misconduct.

Section 12.3 Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any monies received by him hereunder.

Section 12.4 Successor Trustees. Trustee may resign by the giving of notice of such resignation in writing to Beneficiary. If Trustee shall die, resign or become disqualified from acting in the execution of this trust, or shall fail or refuse to execute the same when requested by Beneficiary to do so, or if, for any reason, Beneficiary shall prefer to appoint a substitute trustee to act instead of the forenamed Trustee, Beneficiary shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estates, rights, powers and duties of the forenamed Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary is a corporation and such appointment is executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any other officer of the corporation. Grantor ratifies and confirms any acts which the forenamed Trustee, or his successor or successors in this trust, shall do lawfully by virtue hereof.

Section 12.5 Perfection of Appointment. Should any deed, conveyance or instrument of any nature be required from Grantor by any successor Trustee to more fully and certainly vest in and confirm to such new Trustee such estates, rights, powers and duties, then, upon request by such Trustee, any such deeds, conveyances and instruments shall be made, executed, acknowledged and delivered and shall be caused to be recorded and/or filed by Grantor.

Section 12.6 Succession Instruments. Any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; nevertheless, upon the written request of Beneficiary or of the successor Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer

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and deliver any of the property and monies held by such Trustee to the successor Trustee so appointed in its or his place.

Section 12.7 No Representation by Trustee or Beneficiary. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, including (but not limited to) any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Beneficiary.

ARTICLE 13 MISCELLANEOUS

Section 13.1 Performance at Grantor's Expense. Grantor shall (a) pay all legal fees incurred by Beneficiary in connection with the preparation of the Loan Documents (including any amendments thereto or consents, releases or waivers granted thereunder); (b) reimburse Beneficiary, promptly upon demand, for all amounts expended, advanced or incurred by Beneficiary to satisfy any obligation of Grantor under the Loan Documents, which amounts shall include all court costs, attorneys' fees (including, without limitation, for trial, appeal or other proceedings), fees of auditors and accountants and other investigation expenses reasonably incurred by Beneficiary in connection with any such matters; and (c) pay any other expenses of performing or complying with any and all of the Obligations. Except to the extent that certain expenses are included within the definition of "Indebtedness", the payment of such expenses shall not be credited, in any way and to any extent, against any installment on or portion of the Indebtedness.

Section 13.2 Survival of Obligations. Each and all of the Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Indebtedness shall have been paid in full and the Commitment has terminated; however, nothing contained in this Section 13.2 shall limit the obligations of Grantor as set forth in Sections 4.11, 9.8 and 11.3.

Section 13.3 Further Assurances. Grantor, upon the request of Beneficiary or Trustee, will execute, acknowledge, deliver and record and/or file such further instruments and do such further acts as may be reasonably necessary, desirable or proper to carry out more effectively the purpose of the Loan Documents and to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including specifically but without limitation, any renewals, additions, substitutions, replacements, betterments or appurtenances to the then Mortgaged Property.

Section 13.4 Recording and Filing; Title Insurance. Grantor shall cause the Loan Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and refiled in such manner and in such places as Trustee or Beneficiary shall reasonably request, and will pay all such recording, filing, re-recording and refiling taxes, fees and

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other charges. Grantor shall, at its expense, obtain and maintain Title Insurance in respect of the Mortgaged Property. If, for any reason during the period the Indebtedness or the Commitment is outstanding, the Title Insurance is no longer valid or the Title Insurer is insolvent or unable to adequately insure the validity and priority of the Liens created by this Deed of Trust (as determined by Beneficiary in its discretion), Grantor shall obtain, at its expense, replacement Title Insurance issued by a Title Insurer acceptable to Beneficiary in such amount and form as required by Beneficiary insuring that the Liens created by this Deed of Trust are first-priority Liens against the Mortgaged Property.

Section 13.5 Notices. Any notice required or permitted to be given under or in connection with this Deed of Trust shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, or sent by telex, telegram, telecopy or other similar form of rapid transmission confirmed by mailing (by first class or express mail, postage prepaid) written confirmation at substantially the same time as such rapid transmission, or personally delivered to an officer of the receiving party. All such communications shall be mailed, sent or delivered,

(a) if to Grantor, to its address shown in the Deed of Trust, or to such other address or to such individual's or department's attention as it may have furnished Beneficiary in writing; or

(b) if to Beneficiary, to its address shown in the introductory paragraph hereof, or to such other address or to such individual's or department's attention as it may have furnished to Grantor in writing.

Except as provided in Section 7.1(d) (which shall govern the giving of notices in respect of foreclosure sales), any communication so addressed and mailed shall be deemed to be given when delivered to the address of the intended addressee, and any notice so sent by rapid transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by Beneficiary or Grantor as the case may be.

Section 13.6 Beneficiary's Right to Perform the Obligations. If Grantor fails, refuses or neglects to make any payment or perform any act required by the Loan Documents then at any time thereafter, and without notice to or demand upon Grantor and without waiving or releasing any other right, remedy or recourse Beneficiary may have because of same, Beneficiary may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Grantor, and shall have the right to enter upon the Land and into the Improvements for such purpose and to take all such action thereon and with respect to the Mortgaged Property, as it may deem necessary or appropriate. If Beneficiary shall elect to pay any Imposition or other sums due with reference to the Mortgaged Property, Beneficiary may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Loan Documents, Beneficiary shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. Grantor shall indemnify Beneficiary for all losses, expenses, damages, claims and causes of action, including

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reasonable attorneys' fees, incurred or accruing by reason of any acts performed by Beneficiary pursuant to the provisions of this Section 13.6 or by reason of any other provision in the Loan Documents. All sums paid by Beneficiary pursuant to this Section 13.6, and all other sums expended by Beneficiary to which it shall be entitled to be indemnified, together with interest thereon at the highest lawful rate from the date of such payment or expenditure until paid, shall constitute additions to the Indebtedness, shall be secured by the liens, security interests and rights created by the Loan Documents and shall be paid by Grantor to Beneficiary upon demand.

Section 13.7 Covenants Running with the Land. All Obligations contained in this Deed of Trust are intended by Grantor, Beneficiary and Trustee to be, and shall be construed as, covenants running with the Mortgaged Property.

Section 13.8 Successors and Assigns. Subject to the provisions of Sections 5.2, 5.3 and 5.4, all of the terms of the Loan Documents shall apply to, be binding upon and inure to the benefit of the parties thereto, their successors, assigns, heirs and legal representatives, and all other persons claiming by, through or under them.

Section 13.9 No Waiver; Severability. Any failure by Trustee or Beneficiary to insist, or any election by Trustee or Beneficiary not to insist, upon strict performance by Grantor or Guarantor of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other terms, provisions or conditions thereof; and Trustee or Beneficiary shall have the right at any time or times thereafter to insist upon strict performance by Grantor or Guarantor of any and all of such terms, provisions and conditions. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other Persons or circumstances nor the other instruments referred to hereinabove shall be affected thereby, but shall be enforced to the greatest extent permitted by law.

Section 13.10 Entire Agreement and Modification. The Loan Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof, and all prior agreements relative thereto which are not contained herein or therein are terminated. The Loan Documents may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

Section 13.11 Counterparts. This Deed of Trust may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute but one instrument.

Section 13.12 Applicable Law. The Loan Documents shall be governed by and construed according to the laws of the State of Texas from time to time in effect except to the extent preempted by United States federal law.

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Section 13.13 **Subrogation.** If any or all of the proceeds of the Notes have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property, then, to the extent of such funds so used, Beneficiary shall be subrogated to all of the rights, claims, liens, titles and interests existing against the Mortgaged Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles and interests, in any, are not waived, but are continued in full force and effect in favor of Beneficiary and are merged with the liens and security interests created herein as cumulative security for the repayment of the Indebtedness and the satisfaction of the Obligations.

Section 13.14 **No Partnership.** Nothing contained in the Loan Documents is intended to, or shall be construed as, creating to any extent and in any manner whatsoever, any partnership, joint venture, or association between Grantor, any Guarantor, Trustee and Beneficiary, or in any way make Beneficiary or Trustee co-principals with Grantor or any Guarantor with reference to the Mortgaged Property, and any inferences to the contrary are hereby expressly negated.

Section 13.15 **Waiver of Stay, Moratorium, and Similar Rights.** Grantor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Deed of Trust or the indebtedness secured hereby, or any agreement between Grantor and Beneficiary or any rights or remedies Beneficiary may have thereunder, hereunder or by law.

Section 13.16 **Maintenance of Rights of Way, Easements, and Licenses.** Grantor shall maintain, preserve and renew all rights of way, easements, grants, privileges, licenses and franchises reasonably necessary for the use of the Mortgaged Property from time to time and will not, without the prior consent of Beneficiary, initiate, join in or consent to any private restrictive covenant or other public or private restriction as to the use of the Mortgaged Property. Grantor shall, however, comply with all restrictive covenants which may at any time affect the Mortgaged Property, zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

Section 13.17 **Headings.** The Article, Section and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

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Delaware
ENTERPRISE BUSINESS PARK D-2, L.P., a ~~Texas~~
limited partnership

By: Trammell Crow DFW Development, Inc., its general
partner

By: *Thomas O. McNearney, III*
Thomas O. McNearney, III
Vice President

THE STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on February 16, 2000 by Thomas O. McNearney, III, Vice President of Trammell Crow DFW Development, Inc., a Delaware corporation, general partner of Enterprise Business Park D-2, L.P., a Texas limited partnership, on behalf of such limited partnership.

My Commission Expires:

Marie Martinez
Printed Name
Notary Public - State of Texas



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EXHIBIT A

DESCRIPTION

BEING a 5.683 acre tract of land out of the Rufus Sewell Survey, Abstract No. 845, Collin County, Texas; said tract being part of Lot 1, Block 1, Enterprises Addition No. 2, an addition to the City of Allen, Texas according to the plat recorded in Volume G, Page 457 of the Plat Records of Collin County, Texas; said tract being conveyed to Intecom, Inc. by Special Warranty Deed recorded in Volume 3337, Page 205, of the Deed Records of Collin County, Texas; said 5.683 acre tract being more particularly described as follows:

COMMENCING, at a 1/2-inch iron rod found for corner at the intersection of the east right-of-way line of U.S. Highway 75 (a variable width right-of-way) and the southeast right-of-way line of Enterprise Boulevard (a 60-foot wide right-of-way); said point being the westernmost northwest corner of Lot 1D-1, Block 1, Enterprises Addition No. 2, an addition to the City of Allen, Texas according to the plat recorded in Volume J, Page 900 of the Plat Records of Collin County, Texas;

THENCE, South 14 degrees 03 minutes 55 seconds West, along the said east line of U.S. Highway 75 and along the west line of said Lot 1D-1, a distance of 363.13 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found at the POINT OF BEGINNING; said point being the southwest corner of said Lot 1D-1;

THENCE, South 77 degrees 41 minutes 12 seconds East, departing the said east line of U.S. Highway 75 and along the south line of said Lot 1D-1, a distance of 518.16 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found for corner in the west right-of-way line of Southern Pacific Railroad (a variable width right-of-way, 130-feet wide at this point) and the east line of said Lot 1; said point being the southwest corner of said Lot 1D-1; said point also being on a curve to the left whose center bears South 58 degrees 14 minutes 35 seconds East, a distance of 2964.79 feet from said point;

THENCE, in a southeasterly direction along said west line of Southern Pacific Railroad and the said east line of Lot 1 and along said curve to the left through a central angle of 08 degrees 13 minutes 44 seconds, an arc distance of 425.81 feet to a 1/2-inch iron rod found at the end of said curve;

THENCE, South 21 degrees 55 minutes 24 seconds West, a distance of 109.90 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found at the intersection of the said west line of Southern Pacific Railroad with the north right-of-way line of Ridgemont Drive (a variable width right-of-way);

THENCE, North 87 degrees 48 minutes 54 seconds West, along the said north line of Ridgemont Drive, a distance of 337.54 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found for corner;

THENCE, North 02 degrees 11 minutes 06 seconds East, a distance of 6.70 feet to a 1/2-inch iron rod found at an angle point;

THENCE, North 53 degrees 10 minutes 56 seconds East, a distance of 10.72 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found for corner;

THENCE, North 36 degrees 49 minutes 04 seconds West, a distance of 73.00 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found for corner;

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DESCRIPTION

THENCE, South 53 degrees 10 minutes 56 seconds West, a distance of 35.00 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found for corner;

THENCE, North 36 degrees 49 minutes 04 seconds West, a distance of 5.23 feet to a 1/2-inch iron rod found at an angle point; said point being in the said east line of U.S. Highway 75;

THENCE, North 14 degrees 03 minutes 05 seconds East, along the said east line of U.S. Highway 75, a distance of 540.10 feet to the POINT OF BEGINNING;

CONTAINING, 247,561 square feet or 5.68 acres of land, more or less.

NOTE: COMPANY DOES NOT REPRESENT THAT THE ABOVE ACREAGE AND/OR SQUARE FOOTAGE CALCULATIONS ARE CORRECT.

Return to.

Trammell Crow Company
Attn: Kim Kepley
2700 Chase Tower
2200 Ross Ave.
Dallas, Texas

75201-2770

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE
DESIGNATED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND
UNENFORCEABLE UNDER FEDERAL LAW
(COUNTY OF COLLIN
STATE OF TEXAS)
I hereby certify that this instrument was FILED in the Public Records on the 17th day
and the date stamped herein by me, and was duly RECORDED, in the Official Public
Records of Real Property of Collin County, Texas on

FEB 17 2000

Helen Starnes



Filed for Record in:
COLLIN COUNTY, TX
HONORABLE HELEN STARNES

On 2000/02/17

At 9:49A

Number: 00-0015193
Type: DT 75.00