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BOOK 185 PAGE 740

PREPARED BY AND WHEN
RECORDED RETURN TO:

Leonard, Street and Delnard
Suite 2300
150 S. Fifth Street
Minneapolis, MN 55402

Attention: Andrew P. Lee

FILED
STATION
BY CLARK COUNTY TITLE

JAN 22 12 36 PM '99

GARY H. OLSON

SPACE ABOVE LINE FOR RECORDER'S USE

Abbreviated Legal Description: Lots 22, 23 & 24 Blk 7
TOWN OF STEVENSON
Tax Parcel No.: 02-07-01-1-1-4000-0-0

CCT-57771

DEED OF TRUST,
ASSIGNMENT OF RENTS, SECURITY AGREEMENT
AND FIXTURE FINANCING STATEMENT

Stevenson Office Building, Stevenson, WA

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (herein "Instrument") is made as of January 21, 1999, among the Trustor/Grantor, VINE STREET INVESTORS, L.L.C., a limited liability company organized and existing under the laws of the State of Washington, whose address is 516 North Olympic, Arlington, WA 98223 (herein "Borrower"), CLARK COUNTY TITLE COMPANY, a corporation organized and existing under the laws of the State of Washington, whose address is 1400 Washington Street, Suite 100, Vancouver, WA 98660 (herein "Trustee"), and the Beneficiary, WEST COAST BANK, an Oregon state chartered commercial bank having an office at 2850 Harrison Avenue NW, Olympia, Washington 98502, its successors, transferees and assigns (herein "Lender").

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants, conveys and assigns to Trustee, in trust with power of sale, the following described property located in Skamania County, State of Washington (herein "Land"):

SEE PAGE 24 HERETO FOR LEGAL DESCRIPTION.

TOGETHER with all estate, right, title, interest, claim or demand, which Borrower now has or may hereafter acquire in or to the following:

WASHINGTON COMMERCIAL • 1/98

All buildings, structures, improvements and tenements now or hereafter located on the Land, and all heretofore or hereafter vacated alleys and streets abutting the Land, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the Land (collectively, the "Improvements"); and

All fixtures, apparatus, machinery, equipment, goods, engines, boilers, incinerators, building materials, appliances, supplies and other tangible personal property of every nature whatsoever now owned or hereafter acquired by the Borrower and now or hereafter located in, on, or used, or useable, or intended to be used in connection with the Land or the Improvements, including, but not limited to, clothes washers and dryers, dishwashers, garbage disposal units, refrigerators, fans, heaters, stoves, ranges, ovens and trash compactors, lobby and all other indoor and outdoor furniture, including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets, entertainment, recreational and security equipment and goods, air and water filtration or purification devices, any and all heating, plumbing and lighting apparatus and fixtures, elevators and motors, engines and machinery, electrical equipment, incinerator apparatus, ventilating, air-conditioning and air cooling apparatus, water and gas apparatus, pipes, water heaters, mirrors, mantels, partitions, cleaning, intercom and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, water softeners, carpets, carpeting, storm windows and doors, window screens, screen doors, storm sash, window shades or blinds, awnings, locks, fences, trees, shrubs, and all other tangible personal property of every kind and nature whatsoever, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing (collectively, the "Equipment and Fixtures"), all of which are hereby declared and shall be deemed to be fixtures and an accession to the freehold and a part of the Land and Improvements; and

Any funds held in escrow by Lender for the payment of liens or encumbrances, ground rents, repairs or replacements, general real estate taxes, special assessments or insurance premiums with respect to any portion of the Land, the Improvements or the Equipment and Fixtures; and

All leases, rents, income, issues, profits, royalties, concessions, security deposits, advance rents, contract rights, general intangibles, and accounts of, arising from or related to the Land, the Improvements or the Equipment and Fixtures, now existing or hereafter at any time acquired or arising, whether accruing before or after foreclosure of this Mortgage or during the period of redemption thereof; and

All claims and awards for insurance and condemnation proceeds related to the Land, the Improvements or the Equipment and Fixtures; and

All architectural, construction, development, management, leasing, maintenance, Housing Assistance Payment or other government subsidy, employment or similar contracts relating to Borrower's use and operation of the Land, the Improvements or the Equipment and Fixtures, and all extensions, renewals and modifications thereof and substitutions therefor; all licenses, permits, permissions and approvals relating to the current and future use, occupancy, maintenance and operation of the Land, the Improvements or the Equipment and Fixtures, and all extensions, renewals and modifications thereof and substitutions therefor; all plans and specifications relating to the past, current or future construction of any Improvements or Equipment and Fixtures and all unexpired warranties, guarantees and sureties, if any, received by Borrower in connection with the operation and improvement of the Land, the Improvements or the Equipment and Fixtures; and

Proceeds of all the foregoing;

All of the foregoing are herein referred to as the "Property."

TO SECURE TO LENDER (a) the repayment of the indebtedness evidenced by that certain Promissory Note dated as of even date herewith made by Borrower and certain affiliates of Borrower (herein "Note") in the principal sum of \$3,500,000.00, with interest thereon, with the balance of the indebtedness, if not sooner paid, due and payable on February 1, 2009, and all renewals, extensions and modifications thereof; (b) the repayment of any future advances, with interest thereon, made by Lender to Borrower pursuant to paragraph 33 hereof (herein "Future Advances"); (c) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument; and (d) the performance of the covenants and agreements of Borrower herein contained.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant, convey and assign the Property (and, if this Instrument is on a leasehold, that the ground lease is in full force and effect without modification except as noted above and without default on the part of either lessor or lessee thereunder), that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

Uniform Covenants. Borrower and Lender covenant and agree as follows:

1. **PAYMENT OF PRINCIPAL AND INTEREST.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, any prepayment premium and late charges provided in the Note and all other sums secured by this Instrument. If two or more payments are made by Borrower with insufficient funds within any twelve-month period, then Lender may require that any subsequent payments be made by cashier's check or by wire transfer as a condition to acceptance of such payments.

2. **FUNDS FOR TAXES, INSURANCE AND OTHER CHARGES; REPAIR AND REPLACEMENT RESERVE AND SECURITY AGREEMENT.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly installments of principal or interest are payable under the Note (or on another day designated in writing by Lender), until the Note is paid in full, a sum (herein "Funds") equal to (a) one-twelfth of the yearly water and sewer rates and taxes and assessments which may be levied on the Property, and (b) one-twelfth of the yearly premium installments for fire and other hazard insurance, rent loss insurance and such other insurance covering the Property as Lender may require pursuant to paragraph 5 hereof, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. In addition, Borrower shall be required to deposit and maintain with Lender Funds sufficient to pay an additional one-sixth of the yearly amounts described in (a) and (b) of the preceding sentence. Any waiver by Lender of a requirement that Borrower pay such Funds may be revoked by Lender, in Lender's sole discretion, at any time upon notice in writing to Borrower. Lender may require Borrower to pay to Lender, in advance, such other Funds for other taxes, charges, premiums, assessments and impositions in connection with Borrower or the Property which Lender shall reasonably deem necessary to protect Lender's interests (herein "Other Impositions"). Unless otherwise provided by applicable law, Lender may require Funds for Other Impositions to be paid by Borrower in a lump sum or in periodic installments.

The Funds shall be held in an institution(s) the deposits of which are insured or guaranteed by a Federal or state agency (including Lender if Lender such an institution). Lender shall apply the Funds to pay said rates, rents, taxes, assessments, insurance premiums and Other Impositions so long as Borrower is not in breach of any covenant or agreement of Borrower in this Instrument. Lender shall make no charge for so holding and applying the Funds, analyzing said account or for verifying and compiling said assessments and bills, unless applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Instrument that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires interest, earnings or profits to be paid, Lender shall not be required to pay

Borrower any interest, earnings or profits on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds in Lender's normal format showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Instrument.

If the amount of the Funds held by Lender at the time of the annual accounting thereof shall exceed the amount deemed necessary by Lender to provide for the payment of water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as they fall due, such excess shall be credited to Borrower on the next monthly installment or installments of Funds due. If at any time the amount of the Funds held by Lender shall be less than the amount deemed necessary by Lender to pay water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within thirty days after notice from Lender to Borrower requesting payment thereof.

The requirements related to the deposits to be made for repairs and replacements, their application and release are more specifically set forth in the Replacement Reserve and Security Agreement between Borrower and Lender dated as of the date of the Note (the "Replacement Reserve Agreement"). Borrower shall deposit with Lender the amounts required by the Replacement Reserve Agreement, at the times required by the Replacement Reserve Agreement, and shall perform all other obligations as and when required pursuant to the Replacement Reserve Agreement.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument or any other Loan Document (defined below), Lender may apply, in any amount and in any order as Lender shall determine in Lender's sole discretion, any Funds held by Lender at the time of application (i) to pay rates, rents, taxes, assessments, insurance premiums and Other Impositions which are now or will hereafter become due, or (ii) as a credit against sums secured by this Instrument. Upon payment in full of all sums secured by this Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

The term "Loan Documents" shall mean, collectively, the following documents: (i) this Instrument, as modified by any riders given by Borrower to Lender and covering the Property; (ii) the Note, as modified by any addendum thereto; (iii) any separate assignment of rents and/or leases given by Borrower to Lender and covering the Property; (iv) any reserve or escrow agreement relating to completion of improvements, replacements, repairs, tenant improvements and/or debt service (any such agreement, including the Replacement Reserve Agreement, a "Reserve Agreement"); (v) omitted; (vi) any separate environmental indemnity agreement or O&M Agreements (as defined below); and (vii) all other documents, agreements or certificates arising under, related to, or made in connection with, the loan evidenced by the Note, as such Loan Documents may be amended from time to time.

3. **APPLICATION OF PAYMENTS.** Unless applicable law provides otherwise, all payments received by Lender from Borrower under the Note or this Instrument shall be applied by Lender in the following order of priority: (i) amounts payable to Lender by Borrower under paragraph 2 hereof; (ii) interest payable on the Note; (iii) principal of the Note; (iv) interest payable on advances made pursuant to paragraph 8 hereof; (v) principal of advances made pursuant to paragraph 8 hereof; (vi) interest payable on any Future Advance, provided that if more than one Future Advance is outstanding, Lender may apply payments received among the amounts of interest payable on the Future Advances in such order as Lender, in Lender's sole discretion, may determine; (vii) principal of any Future Advance, provided that if more than one Future Advance is outstanding, Lender may apply payments received among the principal balances of the Future Advances in such order as Lender, in Lender's sole discretion, may determine; and (viii) any other sums secured by this Instrument in such order as Lender, at Lender's option, may determine; provided, however, that Lender may, at Lender's option, apply any sums payable pursuant to paragraph 8 hereof prior to interest on and

principal of the Note, but such application shall not otherwise affect the order of priority of application specified in this paragraph 3. Notwithstanding the preceding sentence, (i) Lender shall be permitted to apply any partial payment received from Borrower in any manner determined by Lender and in any order of priority of application as determined by Lender, in Lender's sole discretion, and (ii) upon any breach of any covenant or agreement of Borrower in the Instrument, the Note or any other Loan Document, Lender shall be permitted to apply any funds held pursuant to any Reserve Agreement in any manner which is permitted pursuant to such Reserve Agreement and in any order of priority of application as determined by Lender, in Lender's sole discretion.

4. **CHARGES; LIENS.** Borrower shall pay all water and sewer rates, rents, taxes, assessments, premiums, and Other Impositions attributable to the Property at Lender's option in the manner provided under paragraph 2 hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the payee thereof, or in such other manner as Lender may designate in writing. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph 4, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without Lender's prior written permission, Borrower shall not allow any lien inferior to this Instrument to be perfected against the Property.

5. **INSURANCE.** Borrower shall keep Borrower and the Property now existing or hereafter erected on the Property insured by carriers at all times satisfactory to Lender against loss by fire, hazards included within the term "extended coverage", rent loss and such other hazards, casualties, liabilities and contingencies as Lender (and, if this Instrument is on a leasehold, the ground lease) shall require, in such amounts and for such periods as Lender shall require. Such policies shall not be subject to co-insurance and shall include an ordinance and law endorsement that deletes (or has the effect of deleting) any exclusion based on the application of laws or ordinances. All premiums on insurance policies shall be paid, at Lender's option, in the manner provided under paragraph 2 hereof, or by Borrower making payment, when due, directly to the carrier, or in such other manner as Lender may designate in writing. Such policies shall not be financed or pledged as collateral for any obligation of Borrower other than Borrower's obligations under the Loan Documents.

All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies, and Borrower shall promptly furnish to Lender all renewal notices and all receipts for paid premiums. At least thirty days prior to the expiration date of a policy, Borrower shall deliver to Lender a renewal policy in form satisfactory to Lender. If this Instrument is on a leasehold, Borrower shall furnish Lender a duplicate of all policies, renewal notices, renewal policies and receipts of paid premiums, if any, required under the ground lease, and, in that case, the originals thereof need not be supplied by Borrower to Lender.

In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and empowers Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses or take any action hereunder. Borrower further authorizes Lender, at Lender's option, (a) to hold all or part of such proceeds to be used to reimburse Borrower for the cost of reconstruction or repair of the Property, and/or (b) to apply all or part of such proceeds to the payment of the sums secured by this Instrument (including funds, if any, remaining after any reimbursement to Borrower pursuant to (a)), whether or not then due, in the order of application set forth in paragraph 3 hereof (subject, however to the rights of the lessor under the ground lease if this Instrument is on a leasehold).

If the insurance proceeds are held by Lender to reimburse Borrower for the cost of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as Lender may approve in writing. Lender may, at Lender's option, condition disbursement of said proceeds on Lender's approval of such plans and specifications of an architect satisfactory to Lender, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require. If the insurance proceeds are applied to the payment of the sums secured by this Instrument, any such application of proceeds to principal shall not extend or postpone the due dates of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amounts of such installments. If the Property is sold pursuant to paragraph 29 hereof or if Lender acquires title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

6. PRESERVATION AND MAINTENANCE OF PROPERTY; LEASEHOLDS; ENVIRONMENTAL HAZARDS PROVISION. Borrower (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair, (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, (f) shall provide for professional management of the Property by a property manager satisfactory to Lender pursuant to a contract approved by Lender in writing, unless such requirement shall be waived by Lender in writing, (g) shall generally operate and maintain the Property in a manner to ensure maximum rentals, and (h) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights and powers of Lender. Neither Borrower nor any tenant or other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

To the extent this Instrument covers a leasehold interest of Borrower, Borrower (i) shall comply with the provisions of the lease, (ii) shall give immediate written notice to Lender of any default by the lessor under such lease or of any other notice received by Borrower from such lessor of any default thereunder by Borrower, (iii) shall exercise any option to renew or extend such lease and give written confirmation thereof to Lender within thirty days after such option becomes exercisable, (iv) shall give immediate written notice to Lender of the commencement of any remedial proceedings under such lease by any party thereto, and, if required by Lender, shall permit Lender, as Borrower's attorney-in-fact to control and act for Borrower in any such remedial proceedings, and (v) shall within thirty days after request by Lender, obtain from the lessor under such lease and deliver to Lender such lessor's estoppel certificate required thereunder, if any. Borrower hereby expressly transfers and assigns to Lender the benefit of all covenants contained in such lease(s), as amended from time to time, whether or not such covenants run with the land, but Lender shall have no liability with respect to such covenants nor any other covenants contained in any such lease.

Borrower shall not surrender the leasehold estate or any interests herein conveyed nor terminate or cancel any lease creating such estate and/or interests, and Borrower shall not, without the express prior written consent of Lender, alter or amend said lease(s). Borrower covenants and agrees that there shall not be a merger of any such lease or of the leasehold estate created thereby, with the fee estate covered by the lease by reason of

said leasehold estate or said fee estate, or any part of either, coming into common ownership, unless Lender shall consent in writing to such merger. If Borrower shall acquire such fee estate, then this Instrument shall simultaneously and without further action be spread so as to become a lien on such fee estate.

Borrower further covenants and agrees that Borrower shall not:

- (a) cause or permit the presence, use, generation, manufacture, production, processing, installation, release, discharge, storage (including aboveground and underground storage tanks for petroleum or petroleum products), treatment, handling, or disposal of any Hazardous Materials (as defined below) (excluding the safe and lawful use and storage of small quantities of Hazardous Materials customarily used in the operation and maintenance of comparable properties or for normal household purposes) on or under the Property, or in any way affecting the Property or its value, or which may form the basis for any present or future demand, claim or liability relating to contamination, exposure, cleanup or other remediation of the Property or;
- (b) cause or permit the transportation to, from or across the Property of any Hazardous Material (excluding the safe and lawful use and storage of small quantities of Hazardous Materials customarily used in the operation and maintenance of comparable properties or for normal household purposes); or
- (c) cause or exacerbate any occurrence or condition on the Property that is or may be in violation of Hazardous Materials Law (as defined below).

(The matters described in (a), (b) and (c) above are referred to collectively below as "Prohibited Activities or Conditions.")

Except with respect to matters which have been disclosed in that certain environmental hazard assessment report of the Property prepared by Eckland Consultants, Inc., dated December 1, 1998, and addressed to Lender, Borrower represents and warrants that it has not at any time caused or permitted any Prohibited Activities or Conditions and to the best of its knowledge, no Prohibited Activities or Conditions exist or have existed on or under the Property. Borrower shall take all appropriate steps (including but not limited to appropriate lease provisions) to prevent its employees, agents, and contractors, and all tenants and other occupants on the Property, from causing, permitting or exacerbating any Prohibited Activities or Conditions. Borrower shall not lease or allow the sublease of all or any portion of the Property for residential use, and all leases and subleases shall provide that tenants and subtenants shall not cause, permit or exacerbate any Prohibited Activities or Conditions.

If Borrower has disclosed that Prohibited Activities or Conditions exist on the Property, Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons present on the Property to so comply with, (1) any program of operations and maintenance ("O&M Program") relating to the Property that is acceptable to Lender with respect to one or more Hazardous Materials (which O&M Program may be set forth in an agreement of Borrower (an "O&M Agreement")) and all other obligations set forth in any O&M Agreement, and (2) all Hazardous Materials Laws. Any O&M Program shall be performed by qualified personnel. All costs and expenses of the O&M Program shall be paid by Borrower, including without limitation Lender's fees and costs incurred in connection with the monitoring and review of the O&M Program and Borrower's performance thereunder. If Borrower fails timely to commence or diligently continue and complete the O&M Program and comply with any O&M Agreement, then Lender may, at Lender's option, declare all of the sums secured by the Instrument to be immediately due and payable, and Lender may invoke any remedies permitted by paragraph 29 of the Instrument.

Borrower represents that Borrower has not received, and has no knowledge of the issuance of, any claim, citation or notice of any pending or threatened suits, proceedings, orders, or governmental inquiries or opinions involving the Property that allege the violation of any Hazardous Materials Law ("Governmental Actions").

Borrower shall promptly notify Lender in writing of: (i) the occurrence of any Prohibited Activity or Condition on the Property; (ii) Borrower's actual knowledge of the presence on or under any adjoining property of any Hazardous Materials which can reasonably be expected to have a material adverse impact on the Property or the value of the Property, discovery of any occurrence or condition on the Property or any adjoining real property that could cause any restrictions on the ownership, occupancy, transferability or use of the Property under Hazardous Materials Law. Borrower shall cooperate with any governmental inquiry, and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activities or Conditions; (iii) any Governmental Action; and (iv) any claim made or threatened by any third party against Borrower, Lender, or the Property relating to loss or injury resulting from any Hazardous Materials. Any such notice by Borrower shall not relieve Borrower of, or result in a waiver of any obligation of Borrower under this paragraph 6.

Borrower shall pay promptly the costs of any environmental audits, studies or investigations (including but not limited to advice of legal counsel) and the removal of any Hazardous Materials from the Property required by Lender as a condition of its consent to any sale or transfer under paragraph 19 of the Instrument of all or any part of the Property or any transfer occurring upon a foreclosure or a deed in lieu of foreclosure or any interest therein, or required by Lender following a reasonable determination by Lender that there may be Prohibited Activities or Conditions on or under the Property. Borrower authorizes Lender and its employees, agents and contractors to enter onto the Property for the purpose of conducting such environmental audits, studies and investigations. Any such costs and expenses incurred by Lender (including but not limited to fees and expenses of attorneys and consultants, whether incurred in connection with any judicial or administrative process or otherwise) which Borrower fails to pay promptly shall become immediately due and payable and shall become additional indebtedness secured by the Instrument pursuant to paragraph 8 of the Instrument.

Borrower shall hold harmless, defend and indemnify Lender and its officers, directors, trustees, employees, and agents from and against all proceedings (including but not limited to Government Actions), claims, damages, penalties, costs and expenses (including without limitation fees and expenses of attorneys and expert witnesses, investigatory fees, and cleanup and remediation expenses, whether or not incurred within the context of the judicial process), arising directly or indirectly from (i) any breach of any representation, warranty, or obligation of Borrower contained in this paragraph 6 or (ii) the presence or alleged presence of Hazardous Materials on or under the Property.

The term "Hazardous Materials," for purposes of this paragraph 6, includes petroleum and petroleum products, flammable explosives, radioactive materials (excluding radioactive materials in smoke detectors), polychlorinated biphenyls, lead, asbestos in any form that is or could become friable, hazardous waste, toxic or hazardous substances or other related materials whether in the form of a chemical, element, compound, solution, mixture or otherwise, including, but not limited to, those materials defined as "hazardous substances," "extremely hazardous substances," "hazardous chemicals," "hazardous materials," "toxic substances," "solid waste," "toxic chemicals," "air pollutants," "toxic pollutants," "hazardous wastes," "extremely hazardous waste," or "restricted hazardous waste" by Hazardous Materials Law or regulated by Hazardous Materials Law in any manner whatsoever.

The term "Hazardous Materials Law," for the purposes of this paragraph 6, means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other binding governmental requirements and any court judgments applicable to Borrower or to the Property relating to industrial hygiene or to environmental or unsafe conditions or to human health including, but not limited to, those relating to the

collected from Borrower under applicable law. Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the indebtedness secured hereby. Nothing contained in this paragraph 8 shall require Lender to incur any expense or take any action hereunder.

9. **INSPECTION.** Lender may make or cause to be made reasonable entries upon and inspections of the Property.

10. **BOOKS AND RECORDS.** Borrower shall keep and maintain at all times and upon Lender's request, Borrower shall make available at the Property address, complete and accurate books of accounts and records in sufficient detail to correctly reflect the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property (including but not limited to all bills, invoices and contracts for electrical service, gas service, water and sewer service, waste management service, telephone service and management services). These books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender. Borrower shall furnish to Lender the following: (i) within 120 days after the end of each fiscal year of Borrower, a statement of income and expenses of the Property and a statement of changes in financial position, and when requested by Lender, a balance sheet, each in reasonable detail and certified by Borrower and, if Lender shall require, the foregoing statements shall be audited by an independent certified public accountant; (ii) at least quarterly and at any other time upon Lender's request, a rent schedule for the Property, in the form required by Lender and certified by Borrower, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable, the rent paid and any other information requested by Lender; (iii) at least quarterly and upon Lender's request, an accounting of all security deposits held in connection with any lease of any part of the Property, including the name and identification number of the accounts in which such security deposits are held, the name and address of the financial institutions in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts; (iv) promptly upon Borrower's receipt, copies of any complaint filed against Borrower or the Property management alleging any violation of laws relating to handicap access or the Americans with Disabilities Act and any final administrative or judicial dispositions of such complaints; (v) upon Lender's request an operating statement for the Property for the month immediately prior to the date of the request, and (vi) on or before June 1 of each year, current financial statements for the Key Principal(s) and any guarantors. If Borrower shall fail to timely provide the financial statements required by clause (i) above, Lender shall have the right to have Borrower's books and records audited in order to obtain such financial statements, and any such costs and expenses incurred by Lender which Borrower fails to pay promptly shall become immediately due and payable and shall become additional indebtedness secured by the Instrument pursuant to paragraph 8 of the Instrument.

11. **CONDEMNATION.** Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender subject, if this Instrument is on a leasehold, to the rights of lessor under any ground lease.

Borrower authorizes Lender to apply such awards, payments, proceeds or damages, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to restoration or repair of the

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Property or to payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in paragraph 3 hereof, with the balance, if any, to Borrower. Unless Borrower and Lender otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Lender may require.

12. BORROWER AND LIEN NOT RELEASED. From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lienholder or guarantors, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Instrument, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of said indebtedness, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this paragraph 12 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and shall not affect the lien or priority of lien hereof on the Property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

13. FORBEARANCE BY LENDER NOT A WAIVER. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of any sum secured by this Instrument after the due date of such payment shall not be a waiver of Lender's right either to require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Instrument, nor shall Lender's receipt of any awards, proceeds or damages under paragraphs 5 and 11 hereof operate to cure or waive Borrower's default in payment of sums secured by this Instrument.

14. ESTOPPEL CERTIFICATE; FURTHER ACTION. Borrower shall within ten days of a written request from Lender furnish Lender with a written statement, duly acknowledged, setting forth the sums secured by this Instrument and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Instrument. Borrower will do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, perfecting, and confirming unto Lender the property and rights given hereby or in the other Loan Documents.

15. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT/FIXTURE FINANCING STATEMENT. This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code as enacted in the "Property Jurisdiction" (defined below) for any of the items, including, without limitation, each and every item of Equipment and Fixtures, specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants Lender a security interest in said items. In addition, this Instrument shall constitute and is filed as a fixture filing under the Uniform Commercial Code covering goods comprising part of the Property which are or are to become fixtures upon the subject real estate. For the purposes of this fixture filing and the filing of

this Instrument as a financing statement, the "debtor" is Borrower, the "secured party" is Lender, and the real estate upon which the fixtures and/or other items are located is the Land. The Borrower's Tax Identification/Social Security Number is: 91-1279940. Borrower agrees that Lender may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Lender may require to perfect a security interest with respect to said items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon Borrower's breach of any covenant or agreement of Borrower contained in this Instrument, including the covenants to pay when due all sums secured by this Instrument, Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at Lender's option, may also invoke the remedies provided in paragraph 29 of this Instrument as to such items. In exercising any of said remedies, Lender may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided in paragraph 29 of this Instrument.

16. LEASES OF THE PROPERTY. As used in this paragraph 16, the word "lease" shall mean "sublease" if this Instrument is on a leasehold. Borrower shall comply with and observe Borrower's obligations as landlord under all leases of the Property or any part thereof ("Lease" or "Leases").

(a) Borrower covenants and agrees not to enter into any new Lease, or to enter into any modification of any existing Lease, for all or any part of the Property, without the specific, prior written consent of Lender, unless the following conditions are met: (i) the Lease is for less than square feet of rented space (any such Lease is referred to herein as a "Minor Lease"), (ii) the proposed Lease is substantially consistent with a form of lease approved in advance by Lender, and (iii) all of the conditions set forth in this paragraph 16 have been met. Any Lease for square feet of rented space or more is referred to herein as a "Major Lease".

(b) Any Lease (or modification thereof) requiring Lender's prior written consent as provided in (a) above (a "Leasing Action") shall be submitted to Lender in final form, with all exhibits attached.

(c) Provided the requirements of subparagraph (c) below are met, Lender's prior written consent shall not be required in connection with the termination, assignment, or sublease, renewal, amendment or waiver of Borrower's rights as landlord in connection with a Minor Lease. Lender's prior written consent shall be required in connection with the termination, assignment, sublease, renewal, amendment, or material waiver of Borrower's rights as landlord in connection with a Major Lease (such actions are referred to herein as "Other Leasing Actions"). Any request for Lender's consent to an Other Leasing Action shall be submitted in writing.

(d) Lender shall promptly respond to a complete request for consent to a Leasing Action or for Other Leasing Actions. Borrower shall furnish Lender with executed copies of all Leases, Lease guarantees, and other agreements evidencing Leasing Actions or Other Leasing Actions.

(c) Regardless of whether a Lease, Leasing Action or Other Leasing Action is subject to Lender's approval, all Leases entered into from and after the date of this Instrument must satisfy all of the following terms and conditions unless otherwise agreed in advance by Lender:

(i) The Lease must be an arm's-length transaction to an independent third party not affiliated with or related to Borrower or any of its partners, and the Lease may not contain any option, right of first refusal, or any other right to purchase any portion of the fee interest in and to the Property

(ii) The Lease must contain provisions (A) obligating the tenant under the Lease to attorn to any purchaser of the Property at a foreclosure sale or by deed or other proceeding in lieu of foreclosure; (B) providing that neither Lender nor any purchaser at a foreclosure sale or by deed or any proceeding in lieu of foreclosure shall be responsible for any act, omission, or default by any prior landlord (including Borrower), the return of any security deposit, or the payment of any tenant allowance or other concession, be bound by any rent paid more than one (1) month in advance, or be subject to any offset, defense, or counterclaim against any prior landlord (including Borrower), and (C) providing that the Lease is subject and subordinate to the Instrument and the Loan Documents and must obligate the tenant to subordinate the Lease to any future mortgages of the Property, which obligation to subordinate may, however, be conditioned upon such future mortgagees agreeing not to join such tenant in any foreclosure proceedings if tenant is not in default under the terms of its Lease.

(iii) The rent payable under the Lease shall not be less than the greater of: (i) fair market rent for similar space in projects similar to the Property in the county in which the Property is located, or (ii) \$ _____ per square foot, exclusive of costs of common area charges, HVAC and utilities, maintenance, insurance, real estate taxes and other costs of Property operation, and the Lease must prohibit the tenant from prepaying rent more than one month in advance of its due date.

(iv) The Lease may not permit the Tenant to self-insure in connection with any of Tenant's insurance obligations under the related Lease.

(v) All leasing commissions due with respect to the Lease must be paid by Borrower full within sixty days after the commencement of occupancy by the tenant.

(vi) The Lease must require the Tenant to be in compliance with the provisions of this Instrument concerning Hazardous Materials. The tenant must agree to indemnify Borrower and any subsequent owner of the Property for any damages caused by a breach of tenant's obligations with respect to Hazardous Materials.

17. **REMEDIES CUMULATIVE.** Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument, the Note and the other Loan Documents or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

18. **ACCELERATION IN CASE OF BORROWER'S INSOLVENCY; SINGLE ASSET BORROWER.**

(a) If Borrower shall voluntarily file a petition under the Federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar or successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of

Borrower, or if Borrower shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Borrower or Borrower's property, or if the Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Borrower shall make an assignment for the benefit of Borrower's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure is not discharged within ten days, then Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by paragraph 29 of this Instrument.

(b) Until the debt evidenced by the Note is paid in full, Borrower shall not (1) own or acquire any real or personal property other than the Property and assets (such as accounts) related to the operation and maintenance of the Property, or (2) operate any business other than the management and operation of the Property. Without the necessity of an evidentiary hearing and without the necessity or requirement that Lender establish or prove the value of the Property, or the lack of adequate protection of Lender's interest in the Property, Lender shall be entitled to the immediate termination of the automatic stay of 11 U.S.C. § 362 in order to permit Lender to exercise all of its rights and remedies in respect of the Property, the existence of this provision constituting sufficient "cause" for purposes of 11 U.S.C. § 362(d)(1), and Borrower agrees not to directly or indirectly oppose or otherwise defend against the termination of the automatic stay. Any attorney's fees and other expenses incurred by Lender in connection with Borrower's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Borrower secured by this Instrument pursuant to paragraph 8 hereof.

19. **TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER.**

(a) **Definitions**

For purposes of the Instrument, the following terms have the respective meanings set forth below:

- (1) The term "Key Principal" means: J. Brent McKinley and Connie McKinley.
- (2) The term "Transfer" means a sale, assignment, transfer or other disposition (whether voluntary or by operation of law) of, or the granting or creating of a lien, encumbrance or security interest in, the Property or in ownership interests (including, without limitation, easement or leasehold interests), and the issuance or other creation of ownership interests in an entity and the reconstitution of one type of entity to another type of entity.
- (3) A "Significant Interest" in any entity shall mean the following:
 - (i) if the entity is a general partnership or a joint venture, any partnership interest in the general partnership, or any interest of a joint venturer in a joint venture;
 - (ii) if the entity is a limited partnership, (A) any limited partnership interest in the entity which, together with all other limited partnership interests in the entity Transferred since the date of the Note, exceeds 49% of all of the limited partnership interests in the entity, or (B) any general partnership interest in the entity;
 - (iii) if the entity is a limited liability company, any membership interest or ownership interest which, together with all other such membership interests or ownership interests in the limited liability company Transferred since the date of the Note, exceeds 49% of all of the membership interests in the limited liability company;

- (iv) if the entity is a corporation, any voting stock in the corporation which, together with all other voting stock of the corporation Transferred since the date of the Note, exceeds 49% of all of the voting stock of the corporation; or
- (v) if the entity is a trust, any beneficial interest in such trust which, together with all other beneficial interests in the trust Transferred since the date of the Note, exceeds 49% of all of the beneficial interests in the trust.

(b) Acceleration of the Loan Upon Transfers of the Property or Significant Interests

Lender may, at Lender's option, declare all sums secured by the Instrument immediately due and payable and Lender may invoke any remedies permitted by paragraph 29 of the Instrument if, without Lender's prior written consent, any of the following shall occur:

- (1) a Transfer of all or any part of the Property or any interest in the Property;
- (2) a Transfer of any Significant Interest in Borrower;
- (3) a Transfer of any Significant Interest in a corporation, partnership, limited liability company, joint venture, or trust which owns a Significant Interest in Borrower;
- (4) if Borrower is a trust, or if any trust owns a Significant Interest in Borrower, the addition, deletion or substitution of a trustee of such trust, which addition, deletion or substitution has not been approved by Lender; or
- (5) a Transfer of all or any part of any Key Principal's ownership interest (other than limited partnership interests) in Borrower, or in any other entity which owns, directly or indirectly, through one or more intermediate entities, an ownership interest in Borrower.

(c) No Acceleration of the Loan For Transfers Caused By Certain Events

Notwithstanding the foregoing provisions of this covenant, Lender shall not be entitled to declare sums secured by the Instrument immediately due and payable or to invoke any remedy permitted by paragraph 29 of the Instrument solely upon the occurrence of any of the following:

- (1) A Transfer that occurs by inheritance, devise, or bequest or by operation of law upon the death of a natural person who is an owner of the Property or the owner of a direct or indirect ownership interest in Borrower.
- (2) The grant of a leasehold interest made with Lender's prior approval in accordance with this Instrument.
- (3) A sale or other disposition of obsolete or worn out personal property which is contemporaneously replaced by comparable personal property of equal or greater value which is free and clear of liens, encumbrances and security interests other than those created by the Loan Documents.
- (4) The creation of a mechanic's or materialmen's lien or judgment lien against the Property which is released of record or otherwise remedied to Lender's satisfaction, within 30 days of the date of creation.

- (5) The grant of an easement, if prior to the granting of the easement Borrower causes to be submitted to Lender all information required by Lender to evaluate the easement, and if Lender determines that the easement will not materially affect the operation of the Property or Lender's interest in the Property and Borrower pays to Lender, on demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request.
- (6) a Transfer of all or any part of any Key Principal's ownership interest in Borrower, provided: (i) such Transfer is to the Key Principal's spouse, child (or their spouse), grandchild (or their spouse) or sibling (or their spouse), an estate-planning trust established by such Key Principal, another Key Principal or an entity owned or controlled by any of such parties; and (ii) Borrower and such Key Principal shall execute such documents and otherwise provide such documents and information as reasonably required by Lender in connection with the Transfer. Borrower shall notify Lender in advance of any such proposed Transfer and shall reimburse Lender for all of Lender's reasonable out of pocket expenses incurred in connection with any such Transfer and any such Transfer shall not release any Key Principal from any liability under the Loan Documents. If any such Transfer involves more than 50% of a Key Principal's ownership interest in Borrower, then Lender may require the transferee to execute a Guaranty in the form executed and delivered by the Key Principal.

20. **NOTICE.** Each notice, demand, consent, or other approval (collectively, "notices" and singly, "notice") given under the Note, the Instrument, and any other Loan Document, shall be in writing to the other party at its address set forth above, or at such other address as such party may designate by notice to the other party and shall be deemed given (a) three (3) Business Days after mailing, by certified or registered U.S. mail, return receipt requested, postage prepaid, (b) one (1) Business Day after delivery, fee prepaid, to a national overnight delivery service, or (c) when delivered, if personally delivered with proof of delivery thereof.

Borrower and Lender each agrees that it will not refuse or reject delivery of any notice given hereunder, that it will acknowledge, in writing, the receipt of the same upon request by the other party and that any notice rejected or refused by it shall be deemed for all purposes of this Agreement to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service. As used in the Instrument, the term "Business Day" means any day other than a Saturday, a Sunday or any other day on which Lender is not open for business.

Lender shall not be required to deliver notice to any Key Principal in connection with any notice given to Borrower.

21. **SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 19 hereof. All covenants and agreements of Borrower shall be joint and several. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors as authorized by Lender. The captions and headings of the paragraphs of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

22. **UNIFORM INSTRUMENT; GOVERNING LAW; SEVERABILITY.** This form of instrument combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property and related fixtures and personal property. This Instrument shall be governed by the law of the jurisdiction in which the Property is located (the "Property

Jurisdiction"). In the event that any provision of this Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Instrument or the Note which can be given effect without the conflicting provisions, and to this end the provisions of this Instrument and the Note are declared to be severable. In the event that any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in this Instrument or in the Note, whether considered separately or together with other charges levied in connection with this Instrument and the Note, violates such law, and Borrower is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to Lender in excess of the amounts payable to Lender pursuant to such charges as reduced shall be applied by Lender to reduce the principal of the indebtedness evidenced by the Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all indebtedness which is secured by this Instrument or evidenced by the Note and which constitutes interest, as well as all other charges levied in connection with such indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest computed thereby is uniform throughout the stated term of the Note.

Borrower and Lender further covenant and agree as follows:

(a) Choice of Law

The validity of the Instrument and the other Loan Documents, each of their terms and provisions, and the rights and obligations of Borrower under the Instrument and the other Loan Documents, shall be governed by, interpreted, construed, and enforced pursuant to and in accordance with the laws of the Property Jurisdiction, without regard to conflicts of law principles.

(b) Consent to Jurisdiction

Borrower consents to the exclusive jurisdiction of any and all state and federal courts with jurisdiction in the Property Jurisdiction over Borrower and Borrower's assets. Borrower agrees that such assets shall be used first to satisfy all claims of creditors organized or domiciled in the United States of America ("USA") and that no assets of Borrower in the USA shall be considered part of any foreign bankruptcy estate.

Borrower agrees that any controversy arising under or in relation to the Note, the Instrument or any of the other Loan Documents shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which may arise under or in relation to the Note, and any security for the debt evidenced by the Note, including without limitation those controversies relating to the execution, interpretation, breach, enforcement, or compliance with the Note, the Instrument, or any other issue arising under, related to, or in connection with any of the Loan Documents. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any litigation arising from the Note, the Instrument or any of the other Loan Documents, and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

23. **WAIVER OF STATUTE OF LIMITATIONS; WAIVER OF MARSHALLING.** Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Note or any other obligation secured by this Instrument. Notwithstanding the existence of any other security interests in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies

provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

24. **BREACH OF REPRESENTATIONS AND WARRANTIES.** It shall be an event of default hereunder if any representation or warranty made by Borrower or general partner of Borrower (if applicable) herein or in the other Loan Documents, or any certificate, report, financial statement or other instrument or document furnished to by Borrower to Lender shall have been false or misleading in any material respect when made.

25. **ASSIGNMENT OF RENTS; RECEIVER** Borrower has executed a separate Assignment of Rents and Leases to further secure Borrower's obligations under the Loan Documents (the "Assignment of Rents"). Any "Event of Default" under the Assignment of Rents shall be deemed to be an "Event of Default" hereunder. To the extent required by the laws of the Property Jurisdiction in order to be enforceable, the terms of the Assignment of Rents, including without limitation and rights and remedies of Lender contained therein, are hereby incorporated herein and made a part of this Instrument by this reference. In addition, the extent required by the laws of the Property Jurisdiction for an assignment of rents to be enforceable, upon Lender's request, Borrower shall assign to Lender, by written instrument satisfactory to Lender, all leases now existing or hereafter made of all or any part of the Property, any and all guarantees thereof, and all security deposits made by tenants in connection with such leases of the Property. Upon such assignment by Borrower to Lender of any leases of the Property, Lender shall have all of the rights and powers possessed by Borrower prior to such assignment and Lender shall have the right to modify, extend or terminate such existing leases and to execute new leases, in Lender's sole discretion.

Upon delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all rents, issues, profits, proceeds and revenues of the Property as the same become due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Borrower as trustee for the benefit of Lender only; provided, however, that the written notice by Lender to Borrower of the breach by Borrower shall contain a statement that Lender exercises its rights to such rents. Borrower agrees that commencing upon delivery of such written notice of Borrower's breach by Lender to Borrower, each tenant of the Property shall make such rents payable to and pay such rents to Lender or Lender's agents on Lender's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Borrower.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Lender may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Instrument. In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Borrower hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

26. **OMITTED.**

27. OMITTED.

28. **WAIVER OF JURY TRIAL.** Borrower (i) covenants and agrees not to elect a trial by jury with respect to any issue arising under any of the Loan Documents triable by a jury and (ii) waives any right to trial by jury to the extent that any such right shall now or hereafter exist. This waiver of right to trial by jury is separately given, knowingly and voluntarily with the benefit of competent legal counsel by Borrower, and this waiver is intended to encompass individually each instance and each issue as to which the right to a jury trial would otherwise accrue. Further, Borrower hereby certifies that no representative or agent of Lender (including, but not limited to, Lender's counsel) has represented, expressly or otherwise, to Borrower that Lender will not seek to enforce the provisions of this paragraph 28.

Non-Uniform Covenants. Borrower and Lender further covenant and agree as follows:

29. **ACCELERATION; REMEDIES.** Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, including, but not limited to, the covenants to pay when due any sums secured by this Instrument, Lender at Lender's option may declare all of the sums secured by this Instrument to be immediately due and payable without further demand. After giving Borrower notice of default in the manner prescribed by applicable law, Lender may invoke the power of sale and any other remedies permitted by applicable law or provided herein. Borrower acknowledges that the power of sale herein granted may be exercised by Lender without prior judicial hearing. Borrower has the right to bring an action to assert the non-existence of a breach or any other defense of Borrower to acceleration and sale. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, attorney's fees and costs of documentary evidence, abstracts and title reports.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee and Lender shall give such notices as the laws of Washington may require to Borrower and to such other persons as the laws of Washington prescribe, and after the lapse of such time as may be required by applicable law, Trustee shall sell the Property according to the laws of Washington. Trustee may sell the Property at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property for a period or periods by public announcement at the time and place fixed in the notice of sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, express or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including, but not limited to, Trustee's attorney's fees and costs of title evidence; (b) to all sums secured by this Instrument in such order as Lender, in Lender's sole discretion, directs; and (c) the excess, if any, to the clerk of the superior court of the county in which the sale took place.

Upon the breach of any covenant or agreement by Borrower in the Instrument, (including, but not limited to, the covenants to pay when due sums secured by the Instrument) or any other Loan Document, Lender, at Lender's option may, in addition to any remedies specified in this covenant, invoke any other remedies provided in any Replacement Reserve Agreement.

If Borrower is in default under any promissory note (other than the Note) evidencing a loan (the "Subordinate Loan") secured by a security instrument (other than the Instrument) covering all or any portion of the Property (the "Subordinate Instrument") or under any Subordinate Instrument or other loan document executed in connection with the Subordinate Loan, (and whether or not Borrower has obtained the prior approval of Lender to the placement of such Subordinate Instrument on the Property) which default remains uncured after any applicable cure period, Borrower also then will be in default under the Note and the Instrument. In that event, the entire unpaid principal balance of the Note, accrued interest and any other sums due Lender secured by the Instrument then will become due and payable, at Lender's option. If Lender exercises this option to accelerate, Lender will do so in accordance with the provisions of the Note and the Instrument, and Lender may invoke any and all remedies permitted by applicable law, the Note, the Instrument, or any of the other Loan Documents.

Lender shall be entitled to recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of the provisions of this Instrument, and the right of Lender to recover

such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Instrument, or the foreclosure of this Instrument.

Borrower shall not at any time insist upon, or plead, or in any manner whatsoever claim or take any benefit or advantage of the right of inquisition on any property levied upon under a judgment obtained in proceedings to collect the obligations hereby secured or in proceedings on this Instrument, and further waives and releases any and all benefits that may accrue to the Borrower by virtue of any stay or extension or moratorium law, any exemption from execution or sale of the Property or any part thereof wherever enacted, now or at any time hereafter in force which may affect the covenants and terms of performance of this Instrument, nor claim, take or insist on any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale or sales of the Property which may be made pursuant to this Instrument, or pursuant to any decree, judgment or order of any court of competent jurisdiction. Borrower shall not, after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof. Borrower hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power granted or delegated to Lender by this Instrument, but to suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

30. **RECONVEYANCE.** Upon payment of all sums secured by this Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Instrument and all notes evidencing indebtedness secured by this Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Property.

31. **SUBSTITUTE TRUSTEE.** In accordance with applicable law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder who has ceased to act. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

32. **USE OF THE PROPERTY.** Borrower represents and warrants that the Property is not used principally or primarily for agricultural or grazing purposes and this Instrument does not secure an obligation incurred primarily for person, family or household purposes.

33. **FUTURE ADVANCES.** Upon request of Borrower, Lender, at Lender's option so long as this Instrument secures indebtedness held by Lender, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Instrument when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Instrument, not including sums advanced in accordance herewith to protect the security of this Instrument, exceed the original amount of the Note (US \$3,500,000.00) plus the additional sum of US \$0.60.

34. **EXPENSES DURING ANY REDEMPTION PERIOD.** If this Instrument is foreclosed as a mortgage and the Property sold at a foreclosure sale, then during any redemption period allowed under applicable law, the purchaser at the foreclosure sale may make such repairs or alterations to the Property as may be reasonably necessary or desirable for the property operation, care, preservation, protection and insurance of the Property. Any expense incurred by such a purchaser, together with interest from the date paid at the default rate under the Note, shall be added to and become part of the amount required to be paid for redemption from such foreclosure sale.

BOOK 185 PAGE 761

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO
FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER
WASHINGTON LAW.

DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

Stevenson Office Building, Stevenson, WA

BORROWER SIGNATURE PAGE

IN WITNESS WHEREOF, Borrower has executed this Instrument or has caused the same to be executed by its
representatives thereunto duly authorized.

BORROWER:

VINE STREET INVESTORS, L.L.C., a
Washington limited liability company

By: 
Name: J. Brent McKinley
Its: Manager

Borrower's Address: 516 North Olympic, Arlington, WA 98223

DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

Stevenson Office Building, Stevenson, WA

BORROWER ACKNOWLEDGMENT PAGE

STATE OF WASHINGTON)
COUNTY OF) SS.

On this 4th day of January, 1998, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared J. Brent McKinley to me known to be the Manager of the limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

My Commission expires: 11/29/02



Notary Public in and for the State of
Washington, residing at:

Cindy L. Palmer
Lake Stevens

BOOK 185 PAGE 763

DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

Stevenson Office Building, Stevenson, WA

EXHIBIT A:

LEGAL DESCRIPTION

Lots 22, 23 & 24, Block 7, TOWN OF STEVENSON, according to the plat thereof,
recorded in Book "A" of Plats, page 11, records of Skamania County, Washington.