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REQUESTED BY:

WHEN RECORDED MAIL TO:

DUANE MORRIS LLP
 Attn: Jonathan A. Olick, Esq.
 380 Lexington Avenue
 New York, New York 10168

Above Space for Recorder's Use

DEED OF TRUST, ASSIGNMENT OF LEASES,
ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING
(Construction Trust Deed)

This DEED OF TRUST, ASSIGNMENT OF LEASES, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as at any time amended, modified or supplemented, the "**Deed of Trust**") is made as of February 23, 2005, by and among CENTURION PARTNERS SANTA ANA, LLC, a Delaware limited liability company ("**Trustor**") whose address is 3636 Birch Street, Suite 260, Newport Beach, California 92660, Attn: Scot Matteson, CHICAGO TITLE COMPANY ("**Trustee**") whose address is 700 South Flower, Suite 800, Los Angeles, California 90017, and CTL LENDING GROUP, LLC, a Delaware limited liability company, together with its successors and assigns ("**Beneficiary**") whose address is 300 Park Avenue, Suite 1700, New York, New York 10022, with reference to the facts set forth below:

A. Trustor has issued to Beneficiary its Deed of Trust Note, in the original principal amount of \$42,800,000.00 (the "**Note**"), the proceeds of which Note (the "**Loan**") are to be used to finance the acquisition of the real property described below and the construction of certain additional improvements thereon.

B. Trustor has agreed to execute and deliver to Beneficiary this Deed of Trust as security for performance of all of its obligations under the Note and certain of the Loan Documents (as defined below) (the "**Loan Documents**"), as more particularly set forth below.

NOW THEREFORE, in consideration of the mutual covenants contained herein and benefits derived herefor, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustor agrees to the following terms and conditions:

GRANTING CLAUSES

1. GRANTS; OBLIGATIONS SECURED.

1.1 Property. Trustor irrevocably GRANTS, TRANSFERS AND ASSIGNS to Trustee, subject to the terms of this Deed of Trust, its successors and assigns, in trust, with power of sale and right of entry and possession, all of Trustor's present and future estate, right, title and interest in and to all of the following property, now owned or hereafter acquired (collectively the "**Property**");

(a) *Real Property.* That certain real property located in the City of Santa Ana, County of Orange, State of California, described in **Exhibit A** attached hereto and incorporated herein by this reference ("**Real Property**");

(b) *Improvements.* All present and future structures, buildings and improvements of any kind on the Real Property, and all machinery, equipment, appliances, furnishings, fixtures and other property used or usable in connection with the Real Property or the improvements now or hereafter on the Real Property or any business conducted on the Real Property, now or hereafter attached or affixed in any manner, or installed in, or adapted to the use of, the Real Property or any improvement thereon, including heating and air conditioning equipment and systems; facilities used to provide utility services, refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal, recreation or other services; window coverings, drapes and rods; and carpeting and floor coverings (all collectively the "**Improvements**");

(c) *Appurtenances.* All present and future appurtenances of the Real Property and rights of Trustor in and to any streets, alleys, roads, air rights, air space, navigable waters, public places, easements or rights of way relating to the Real Property or Improvements (the "**Appurtenances**");

(d) *Leases and Rents.* All rights of Trustor under all present and future leases, licenses, franchises, concessions, subleases, rental agreements and other agreements for possession, use or occupancy pertaining to any of the Property (the "**Leases**"), all extensions and modifications of any thereof, and all guarantees of, security for, and letters of credit and other credit enhancements given in connection with any person's obligations under any thereof, and all of the rents, issues, royalties, profits, receipts, revenue and income (including earnest money, sales deposits and security deposits) of any thereof or any of the Property (the "**Rents**") (subject, however, to the absolute assignment of the Rents set forth in **Section 9** and the absolute assignment set forth in any separate assignment thereof);

(e) *Minerals.* All present and future rights to all minerals, oil, gas and other hydrocarbon substances in, on or under the surface of the Real Property (to the extent owned by Trustor);

(f) *Water; Associations.* All present and future water, water rights and water stock relating to any of the Property, and all present and future documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Property; and

(g) *Proceeds, Deposits.* All proceeds, including insurance proceeds, and claims arising on account of any damage to, loss or taking of, or diminution in the value of any of the Property; all judgments, claims, causes of action and recoveries by settlement or otherwise for or arising on account of any damage to, loss or taking of, or diminution in value of any of the Property; all present and future deposits and payments made by Trustor with third parties in connection with the development of and construction upon the Real Property, and refunds thereof; and all present and future deposits and

payments made with or other security given to utility companies by Trustor with respect to the Real Property or Improvements, and refunds thereof.

1.2 Collateral. Trustor, as debtor, hereby GRANTS a security interest to Beneficiary, as secured party, in all of Trustor's present and future right, title and interest in and to all of the following property, now owned or hereafter acquired (collectively the "**Collateral**");

(a) *Tangible Property.* All goods and tangible personal property (including all appliances, furniture, furnishings, fittings, machinery, fixtures, tools, inventory, materials, supplies and equipment) which are now or hereafter installed on or attached or affixed to the Property, or which are used, necessary for use, or intended for use in connection with the Property (including the ownership, design, development, construction, improvement, equipping, furnishing, use, leasing, operation, management, occupancy, financing or sale of the Property), whether or not located or installed on or attached or affixed to the Property, including all goods and tangible personal property (including all appliances, furniture, furnishings, fittings, machinery, fixtures, tools, inventory, materials, supplies and equipment) for providing gas, light, heat, water, air-conditioning, ventilation, shade, refrigeration, laundry, dry cleaning, food preparation, food service, dishwashing, garbage disposal, trash removal, fumigation, pest control, vacuuming, cleaning, window washing, telecommunications, computer, elevator, escalator, transportation, parking, safety, security, alarm, maintenance, landscaping, repair, decoration, recreation, entertainment or other utilities, services, facilities or guest, tenant, visitor or other accommodations of any kind at or for the Property, unless the Tenant is entitled to remove any of the foregoing pursuant to the Principal Lease;

(b) *Intangible Property.* All intangible personal property, and all documentary, electronic and other evidences and embodiments of any intangible personal property, relating to the Pledged Property (including the ownership, design, development, construction, improvement, equipping, furnishing, use, leasing, operation, management, occupancy, financing or sale of the Property or Collateral), including, to the extent assignable: (1) all names under which or by which Trustor or any of the Property or Collateral may at any time be operated or known, all rights to carry on business under any such names or any variants of such names, and all goodwill in any way relating to Trustor, the Pledged Property, (2) all permits, licenses, variances, land use entitlements, approvals, consents, authorizations, franchises and agreements relating to or in any way affecting the Property ("**Permits**"), (3) all rights under any covenants, conditions and restrictions or other matters of record relating to or in any way affecting the Property, (4) all contracts (including construction, materials, architectural, service, engineering, consulting, leasing, financing, sale, surety, management, maintenance, repair and landscaping contracts, including without limitation all of the foregoing relating to the Property ("**Contracts**"), (5) all reserves, deferred payments, deposits, escrow deposits, refunds, bonds, cost savings, letters of credit, letter of credit rights, rights to proceeds of letters of credit and payments of any kind, (6) all disbursed proceeds of financing commitments, (7) all insurance policies (regardless of whether required by this Deed of Trust, the other Loan Documents, any Lease, Beneficiary or otherwise) and insurance proceeds, (8) all claims, causes of action, judgments, commercial tort claims and recoveries by settlement or otherwise (including for any damage to, or loss, taking, or diminution in the value of, any of the Pledged Property, or for any breach or rejection in bankruptcy of any lease or license of any of the Pledged Property by Trustor as lessee or lessor), and (9) all interests of Trustor under any lease of any personal property of any kind, including any options to purchase relating to the Property;

(c) *Plans, Reports, Records and Documents.* Without limiting any foregoing provision, all drawings, plans, specifications, tests, reports, studies, designs, data, appraisals, maps, surveys, engineering reports, promotional materials, business books and records, and other documents of any kind (in tangible, electronic or other form) relating in any way to the Property or any Collateral (including the

ownership, design, development, construction, improvement, equipping, furnishing, use, operation, management, occupancy, financing or sale of the Property or any Collateral);

(d) *Commercial Code Collateral Types.* Without limiting any foregoing provision, all goods, accounts, documents, instruments, investment property, money, deposit accounts, chattel paper, commercial tort claims, letter-of-credit rights and general intangibles, as those terms are defined in the California Uniform Commercial Code from time to time in effect, now or hereafter located or installed on or attached or affixed to the Property or any Collateral, or used, necessary for use, or intended for use in connection with or otherwise relating in any way to or deriving from any of the Property, the Collateral or any business operated on any of the Property or using any of the Collateral (including the ownership, design, development, construction, improvement, equipping, furnishing, use, leasing, operation, management, occupancy, financing or sale of any of the Property, the Collateral or any such business);

(e) *Property.* Any portion of the Property as to which the grant of a security interest is subject to the California Uniform Commercial Code in effect from time to time; and

(f) *Proceeds; Receipts and Revenues.* All proceeds, replacements, substitutions, products, accessions, and increases of any of the Collateral, and all receipts, income, revenues, rents, issues and profits of operation, use, hiring, leasing or licensing of any of the Collateral (in each case whether in the form of goods, accounts, money, instruments, chattel paper, commercial tort claims, letter-of-credit rights, documents, deposit accounts, investment property, general intangibles or otherwise). Notwithstanding the foregoing, the Collateral shall not include Trustor's accounts which are other than any accounts or funds established or maintained pursuant to **Section 7** or any proceeds from such accounts and investments made with the proceeds in such accounts.

(g) *Pledged Property.* The Pledged Property are referred to herein as the **"Pledged Property"**.

1.3 Fixture Filing. The personal property in which Beneficiary has a security interest includes goods which are or will become fixtures on the Property. This Deed of Trust is intended to serve as a fixture filing pursuant to the California UCC. Trustor is the "debtor"; Beneficiary is the "secured party"; and the addresses of each are as specified in the first paragraph of this Deed of Trust. Trustor is a limited liability company. Trustor's jurisdiction of organization is Delaware. Trustor's organizational identification number is 3883799. Trustor is the record owner of the Real Property.

1.4 Obligations Secured. The grants, assignments and transfers made in **Sections 1.1** and **1.2** secure, in such order of priority as Beneficiary, in its absolute discretion, may determine, the due, prompt and complete payment, performance, observance and satisfaction by Trustor of all of its obligations, covenants, agreements and conditions under all of the following (collectively the **"Secured Obligations"**):

(a) the Note, this Deed of Trust and all other Loan Documents (excluding the Environmental Indemnity Agreement);

(b) all other instruments and agreements now or hereafter given to evidence or further secure any obligations secured hereby;

(c) all other agreements to which Trustor (or the then owner of the Property) and Beneficiary may now or hereafter become parties which state that Trustor's (or such owner's) obligations under such agreements are secured by this Deed of Trust; and

(d) all extensions, modifications, substitutions, replacements and renewals of any of the foregoing.

Notwithstanding any other provision of this Deed of Trust or the provisions of any other document or instrument to the contrary, none of the obligations under the Environmental Indemnity Agreement -- Borrower nor the Environmental Indemnity Agreement -- Guarantors shall be in any way secured by the lien of this Deed of Trust or any other document or instrument securing the Loan or the Loan Documents.

2. ADDITIONAL DEFINED TERMS.

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

"Additional Interest Accrual" is defined in Section 3.3(a)(vi)(D).

"Additional Loan Conditions" means each of the following conditions to the making of one or more additional loans under Section 3.2:

(a) no Default or Event of Default shall have occurred and is continuing;

(b) Trustee and Trustor shall have made such modifications to this Deed of Trust and each other Loan Document to provide for the making of such additional loan, and Beneficiary shall have consented thereto;

(c) Trustor shall deliver an opinion of counsel reasonably acceptable to Beneficiary (the cost of which shall be paid by Trustor) that no registration of the Note or such additional loan shall be required under the Securities Act;

(d) Trustor shall have provided an officer's certificate, in reasonable detail, to the effect that the sum of the total monthly debt service requirements for each additional loan theretofore made and the Loan outstanding following the making of the additional loan, plus all amounts required to be deposited in any of the accounts established under Section 7 in each month, will be less than the total monthly Lease Payments required to be paid by the Tenant under the Principal Lease;

(e) Trustor shall have obtained an MAI Appraisal evidencing not more than 100% aggregate loan-to-value (based on the total indebtedness secured by the Pledged Property) ratio after giving effect to such additional loan;

(f) the maturity date and payment dates of such additional loan(s) must be the same as the Loan and such additional loan(s) must be fully amortized on or before such maturity date, without provision for any balloon payment at the maturity thereof;

(g) Trustor shall have provided appropriate endorsements to the Title Policy to cover such additional loan and shall have paid all costs and expenses of Trustee and Beneficiary in connection with such additional loan;

(h) the non-offsetable Base Rent payments by the Tenant under the Principal Lease, as amended, shall be sufficient to fully pay, as and when the same shall become due, all installments of the principal of and interest due on the Loan and such additional loan; and

(i) Beneficiary shall have agreed to make such additional loan(s), such agreement not to be unreasonably withheld or delayed if the conditions set forth in **clauses (a) through (h)** are satisfied.

"Affiliate" means, at any time, and with respect to any Person, any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person. As used in this definition, **"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Unless the context otherwise clearly requires, any reference to an "Affiliate" is a reference to an Affiliate of Trustor.

"Additional Space" means the approximately 40,000 rentable square feet of Improvements required to be constructed by Trustor on the Land pursuant to the Principal Lease.

"Additional Space Rent Commencement Date" means the date on which the Tenant commences the payment of Base Rent with respect to the Additional Space, which is anticipated to be March 1, 2006.

"Aggregate Paydown Amount" is defined in **Section 3.3(a)(vi)**.

"Appurtenances" is defined in **Section 1.1(c)**.

"Assignment of Contracts" means the Assignment and Security Agreement in Respect of Contracts, Licenses and Permits, dated the dated hereof, from Trustor to Beneficiary.

"Assignment of Leases" means the Assignment of Lessor's Interest in Leases, dated the date hereof, from Trustor to Beneficiary.

"Bankruptcy Code" means the Bankruptcy Reform Act of 1978, as amended, and as the same may be further amended, and any other laws with respect to bankruptcy, insolvency or reorganization that are successor thereto.

"Base Rent" means the rent payable by the Principal Tenant under the Principal Lease which, in accordance with Section 1 (definition of "Base Rent") of the Principal Lease is not subject to offset, reduction or deduction.

"Beneficiary" means CTL Lending Group, LLC, together with its successors and assigns.

"Beneficiary's Response Notice" is defined in **Section 3.3(a)(v)**.

"Beneficiary's Rights and Remedies" has the meaning set forth in **Section 16.7**.

"Business Day" means any day other than a Saturday, a Sunday or a day on which commercial banks in New York City or the County of Orange, California are required or authorized to be closed.

"Capital Maintenance Installment" means \$3,800 per month.

"Carve-Outs Guaranty" means the Non-Recourse Carve-Outs Guaranty, dated the date hereof, by Scot Matteson, Michael Lutton, Michael Smith and John Gates.

"Casualty" means any damage to or destruction of all or any part of the Pledged Property as a result of fire or other casualty.

"Casualty Proceeds" means all insurance proceeds (including title insurance proceeds) or other amounts actually received on account of a Casualty, except proceeds of delayed opening or business interruption insurance.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

"Collateral" is defined in Section 1.2.

"Condemnation" is defined in Section 5.6(a).

"Condemnation Proceeds" is defined in Section 5.6(b).

"Contracts" is defined in Section 1.2(b).

"Construction Administration Agreement" means the Construction Funding and Administration Agreement, dated the date hereof, among Trustor, Beneficiary and CTL Capital, LLC, as administrator.

"Costs" has the meaning set forth in Section 5.23(a).

"Costs of Collection" includes, without limitation, all reasonable attorneys' fees, and all reasonable out-of-pocket expenses incurred by Beneficiary's attorneys, and all reasonable out-of-pocket costs incurred by Beneficiary in the administration of the Liabilities, this Deed of Trust, and all other documents, instruments, and agreements executed in connection with or relating to the Liabilities, including, without limitation, costs and expenses associated with travel on behalf of Beneficiary. **"Costs of Collection"** also includes, without limitation, all reasonable attorneys' fees, out of pocket expenses incurred by Beneficiary's attorneys, and all costs incurred by Beneficiary, including, without limitation, reasonable out-of-pocket costs and expenses associated with travel on behalf of Beneficiary, which costs and expenses are directly or indirectly related to or in respect of Beneficiary's efforts to collect or enforce any of the Liabilities and/or to exercise or enforce any of Beneficiary's rights, remedies, or powers against or in respect of Trustor and/or any other guarantor or person liable in respect of the Liabilities (whether or not suit is instituted in connection with such efforts). **"Costs of Collection"** also includes, without limitation, all fees and costs, including reasonable attorneys' fees and costs, incurred by Beneficiary for the representation of Beneficiary in any action or proceeding relating to the Pledged Property, whether commenced by Beneficiary or any other Person, including without limitation foreclosure, receivership, lien or stop-notice enforcement, bankruptcy, Condemnation and probate actions or proceedings. The Costs of Collection shall be added to the Liabilities of Trustor to Beneficiary, as if

such had been lent, advanced, and credited by Beneficiary to, or for the benefit of, Trustor, and shall accrue interest at the stated rate of interest on the Note.

"Debt" means, in respect of any Person, (i) indebtedness for borrowed money or the deferred purchase price of property or services (excluding obligations under agreements for the purchase price of goods and services in the normal course of business which are not more than 90 days past due), (ii) obligations as lessee under leases that shall have been or should be, in accordance with GAAP, recorded as capital leases, (iii) obligations (whether matured or contingent) with respect to any letters of credit issued for the account of such Person, (iv) obligations under direct or indirect guaranties or other similar contingent liabilities in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise assure a creditor against loss in respect of indebtedness or obligations of others of the kinds referred to in clause (i), (ii) or (iii) above, and (iv) all Debt of another Person secured by a Lien on any property owned by the first Person (whether or not such Debt has been assumed by said first Person).

"Default" means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

"Default Rate" means the lower of (a) the maximum rate of interest permitted to be charged by law and (b) the rate which is the stated rate of interest on the Note plus 500 basis points.

"Disqualified Person" has the meaning set forth in ERISA.

"Easements" has the meaning set forth in Section 4.3(n).

"Environmental Claims" shall mean any and all administrative, regulatory or judicial actions, causes of action, suits, obligations, liabilities, losses, proceedings, decrees, judgments, penalties, fines, fees, demands, demand letters, orders, directives, claims (including any claims involving liability in tort, strict, absolute or otherwise), Costs, Liens, notices of noncompliance or violation, and legal and consultant fees and costs of investigations or proceedings, relating in any way to any Environmental Law, or arising from the presence or Release (or alleged presence or Release) into the environment of any Hazardous Material (hereinafter **"Claims"**) including, without limitation, and regardless of the merit of such Claim, any and all Claims by any governmental or regulatory authority or by any third party or other Person for enforcement, mitigation, cleanup, removal, response, remediation or other actions or damages, contribution, indemnification, cost recovery, compensation or injunctive or declaratory relief pursuant to any Environmental Law or any alleged injury or threat of injury to human health, safety, natural resources or the environment.

"Environmental Indemnity Agreement – Borrower" means the Hazardous Materials Indemnity Agreement, dated the date hereof, by Borrower.

"Environmental Indemnity Agreement – Guarantors" means the Hazardous Materials Indemnity Agreement, dated the date hereof, by Scot Matteson, Michael Lutton, Michael Smith and John Gates.

"Environmental Laws" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the Release of any Hazardous Materials into the environment, including but not limited to those related to Hazardous Materials or wastes, air emissions and discharges to waste or public systems.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that is treated as a single employer together with Trustor under section 414 of the Code.

"Event of Default" is defined in Section 15.

"Expenses Amount" is defined in Section 3.3(c)(i).

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States of America.

"Governmental Authority" means any federal, state, county, municipal, foreign, international, regional or other governmental or regulatory authority, agency, department, board, body, instrumentality, commission, arbiter acting pursuant to any express provision of federal or state law authorizing such arbitration or dispute resolution, court or any political subdivision of any of the foregoing.

"Hazardous Materials" shall mean, collectively, (a) any petroleum or petroleum product, explosive, radioactive material, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, lead, PCE, TCE, TCA or other chlorinated or non-chlorinated solvent, freon gas, methane gas, radon, and pesticide, herbicide or any other agricultural chemical; (b) any substance, material, product, derivative, compound, mixture, mineral, chemical, waste, medical waste or gas, in each case whether naturally occurring, human-made or the by-product of any process, (i) that is now or hereafter becomes defined or included within the definition of a "hazardous substance," "hazardous waste," "hazardous material," "toxic chemical," "toxic substance," "hazardous chemical," "extremely hazardous substance," "pollutant," "contaminant," or any other words of similar meaning under any Environmental Law or any other law relating to human health, safety, natural resources or the environment, (ii) exposure to which or the presence, use, generation, treatment, Release, transport or storage of which is now or hereafter prohibited, limited, restricted or regulated under any Environmental Law or by any governmental or regulatory authority, or (iii) that could require investigation, response or remediation, or could support the assertion of any Environmental Claim; and (c) any other chemical, material, gas, substance, or waste, exposure to which, or the presence of which, is now or hereafter prohibited, limited, restricted or regulated by any governmental or regulatory authority. Notwithstanding the foregoing, Hazardous Materials shall exclude any materials (other than asbestos) used, stored or present in the ordinary course of business of the permitted business of Trustor and Tenant and Trustor's licensees and invitees (including, without limitation, office supplies, petroleum products used in automobiles or the storage or warehousing of household or normal business items), but only if (x) such material is used in compliance in all material respects with applicable laws, rules and regulations, (y) there is no disposal, spillage, seepage or contamination at the Property in connection therewith, and (z) such material, in the manner and quality so used did not create a health, safety or environmental hazard.

"Improvements" is defined in Section 1.1(b).

"Indemnified Parties" means Beneficiary, together with any, director, member, officer, employee or attorney of any thereof.

"Insurance Installment" means one-twelfth of the premiums due on the Insurance Policies due on the Pledged Property for the applicable insurance year for which the Insurance Installment is being

calculated, provided that if Trustor shall not have received premium bills from the insurers under such Insurance Policies for such insurance year, the Insurance Installment shall mean 110% of the Insurance Installment for the immediately preceding insurance year, and, upon receipt of such premium bills, the Insurance Installment shall mean the amount obtained by dividing (a) the difference between (i) the premiums due as set forth on such premium bills and (ii) the amount on deposit in the Insurance Fund by (b) the number of installments of Rent Payments scheduled to be paid prior to such premiums becoming due and payable.

"Insurance Policies" is defined in **Section 5.5**.

"Interest Deposit" has the meaning set forth in **Section 7.7(a)**.

"Land" means the real property described in **Exhibit A**.

"Leases" is defined in **Section 1.1(d)**, and, for so long as the Principal Lease is in force and effect, shall include, without limitation, the Principal Lease.

"Legal Requirements" has the meaning set forth in **Section 4.3(b)**.

"Lessees" means any Person which is a lessee or tenant under any Lease, and, for so long as the Principal Lease is in force and effect, shall include, without limitation, the Tenant.

"Liabilities" includes, without limitation, any and all liabilities, debts, and obligations of Trustor to Beneficiary, now or hereafter, each of every kind, nature and description. **"Liabilities"** also includes, without limitation, each obligation to repay all loans, advances, indebtedness, notes, obligations, and amounts now or hereafter at any time owing by Trustor to Beneficiary (including all future advances or the like whether or not given pursuant to a commitment by Beneficiary), whether or not any of such are liquidated, unliquidated, secured, unsecured, direct, indirect, absolute, contingent, or of any other type, nature, or description, or by reason of any cause of action which Beneficiary now or hereafter may hold against Trustor. **"Liabilities"** also includes, without limitation, all notes and other obligations of Trustor now or hereafter assigned to or held by Beneficiary, each of every kind, nature, and description. **"Liabilities"** also includes, without limitation, all interest and other amounts which may be charged to Trustor and/or which may be due from Trustor to Beneficiary from time to time under the Loan and all reasonable out-of-pocket costs and expenses now or hereafter incurred or paid by Beneficiary in respect of this and any other agreement between Beneficiary and Trustor from time to time or instrument furnished by Trustor to Beneficiary (including, without limitation, Costs of Collection, attorneys' reasonable fees, and all court and litigation costs and expenses). **"Liabilities"** also includes, without limitation, any and all obligations of Trustor to act or to refrain from acting in all material respects in accordance with the terms, provisions, and covenants of the within Deed of Trust and of any other agreement between Trustor and Beneficiary or instrument now or hereafter furnished by Trustor to Beneficiary. As used herein, the term "indirect" includes, without limitation, all obligations and liabilities which Beneficiary may now or hereafter incur or become liable for on account of or as a result of any transactions between Beneficiary and Trustor and any which might arise out of any action brought or threatened against Beneficiary, any guarantor or endorser of Liabilities of Trustor or any other person in connection with the Liabilities. The term "indirect" also refers to any direct or contingent liability of Trustor to make payment towards any obligation now or hereafter held by Beneficiary to the extent so held by Beneficiary. Beneficiary's books and records shall be prima facie evidence of Trustor's indebtedness to Beneficiary, absent manifest error.

"Lien" means, with respect to any Person, any mortgage, deed of trust, lien, pledge, charge, security interest or other encumbrance, or any interest or title of any vendor, lessor, Beneficiary or other secured party to or of such Person under any conditional sale or other title retention agreement or capital lease, upon or with respect to any property or asset of such Person (including in the case of stock, stockholder agreements, voting trust agreements and all similar arrangements).

"Loan" means the \$42,800,000 loan, evidenced by the Note, by Beneficiary to Trustor, secured hereby and by certain of the other Loan Documents.

"Loan Documents" means this Deed of Trust, the Note, the Assignment of Leases, the Assignment of Contracts, the Construction Administration Agreement, the Carve-Outs Guaranty, and each other agreement, instrument, certificate and document delivered to Beneficiary in connection with the Loan, and in each case as originally executed or as the same may from time to time be supplemented, modified or amended. Notwithstanding anything to the contrary in any of the aforementioned agreements, neither the Environmental Indemnity Agreement – Borrower nor the Environmental Indemnity Agreement – Guarantor is or shall be considered to be a Loan Document and neither such agreement is secured hereby or by any Loan Document.

"Make-Whole Premium" means an amount equal to the present value of the scheduled interest and principal payments from the date of prepayment to the due date of the Note being redeemed discounted at the Reinvestment Yield (as hereinafter defined), compounded monthly, less the principal balance of the Note being prepaid. If such amount is negative, the Make-Whole Premium shall be zero. The Make-Whole Premium and Reinvestment Yield will be calculated by an independent certified public accountant or investment banking firm of national reputation. **"Reinvestment Yield"** shall mean a rate of interest per annum equal to the yield to maturity as implied by (i) the yields reported, as of 10:00 a.m. (New York City time) on the third business day preceding the date set for redemption (the **"Quote Date"**) on the display designated as "USD" of the Bloomberg Financial Markets Screen (or such other display as may replace page USD of Bloomberg) for actively traded United States Treasury Notes having a maturity closest to the Weighted Average Life of the Note as of the date of prepayment (plus 50 basis points), or (ii) if such yields are not reported as of such time or the yields reported as of such time are not ascertainable, the Treasury Constant Maturity Series Yields reported for the latest day for which such yields have been reported as of the third business day preceding the date of redemption in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded United States Treasury Notes having a constant maturity equal to the Weighted Average Life of the Note as of the date of prepayment. Such implied yield will be determined, if necessary, by (a) converting United States Treasury Note quotations to bond-equivalent yields in accordance with accepted financial practice, and (b) interpolating linearly between the actively traded United States Treasury Notes with the constant maturities (1) closest to and less than such Weighted Average Life and (2) closest to and greater than such **"Weighted Average Life"**. **"Weighted Average Life"** shall mean the sum of all Year Amounts (as hereinafter defined) divided by the principal balance of the Note. A **"Year Amount"** shall equal the amount derived by multiplying the principal amount to be paid on the Note on a Payment Date by the Period Percentage (as hereinafter defined). The **"Period Percentage"**, as calculated separately for each Payment Date shall be the number of days (based upon a 30-day month and a 360-day year) from the redemption date to the applicable Payment Date divided by 360.

"Material" means material in relation to the business, operations, affairs, financial condition, assets, or properties of Trustor.

"Material Adverse Effect" means a material adverse effect on (a) the business, operations, affairs, financial condition, assets or properties of Trustor, or (b) the ability of Trustor to perform its obligations under any of the Loan Documents, or (c) the validity or enforceability of any of the Loan Documents.

"Minimum Maintenance Balance" means \$70,000, commencing on the Completion Disbursement Date.

"Modification Agreement" is defined in Section 3.3(b)(iii).

"Multiemployer Plan" means any Plan that is a "multiemployer plan" (as such term is defined in section 4001(a)(3) of ERISA).

"No Consent Lease Amendments" mean amendments to the Principal Lease into which Trustor may enter without the prior written consent of Beneficiary (but as to which Trustor shall provide written notice, including a copy of such amendment, within five (5) Business Days of entering into such amendment) and which satisfy the following conditions:

(a) such amendment does not reduce the rent payable by the Tenant under the Principal Lease or change the timing of the payment thereof;

(b) such amendment does not reduce the term of the Principal Lease;

(c) such amendment does not release the Tenant from the performance of any duty or obligation under the Principal Lease and does not impose on Trustor any obligation for the performance of any duty or obligation which would require Trustor to incur any cost not unconditionally to be paid in full by the Tenant or the failure of Trustor to perform would result in any right of the Tenant to declare Trustor to be in default under the Principal Lease or any exercise any remedy available to the Tenant at law, in equity or under the Principal Lease;

(d) such amendment does not result in a material reduction of the value of the Property; and

(e) such amendment does not otherwise have a Material Adverse Effect on the rights, interests or security of Beneficiary.

"Non-Recourse Person" is defined in Section 41.

"Note" has the meaning set forth in Recital A hereto.

"Officer's Certificate" means a certificate of manager or of any other officer of Trustor whose responsibilities extend to the subject matter of such certificate.

"Operating Rent" means that portion of the Rent payable by the Principal Tenant under the Principal Lease described in Section 6 of the Principal Lease.

"Organizational Documents" means the certificate of formation, certificate of formation or certificate of limited partnership and the by-laws, operating or management agreement or partnership agreement of any entity.

"Party in Interest" has the meaning set forth in ERISA.

"Paydown Conditions" are defined in Section 3.3(a).

"Paydown Date" is defined in Section 3.3(a)(i).

"Paydown Interest Accrual" is defined in Section 3.3(a)(vi)(C).

"Paydown Option" is defined in Section 3.3(a).

"Paydown Prepayment Consideration" is defined in Section 3.3(a)(vi)(B).

"Payment Date" means the 5th day of each calendar month, commencing May 5, 2005.

"Permits" is defined in Section 1.2(b).

"Permitted Encumbrances" means as of any particular time: (a) zoning laws and use regulations and other similar reservations, rights and restrictions then applicable to the Property and which are not violated by such Property or the use thereof; (b) the rights reserved to or vested in any municipality or public authority by the terms of any right, power, permit or provision of law to terminate such right, power or permit, or to purchase, condemn, appropriate, recapture or designate a purchaser of the Property or any part thereof; (c) Liens for taxes, assessments and other governmental charges either not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted and are bonded or secured through the establishment of a bond or the deposit of monies in an amount at least equal to 125% of the contested amount, so long as such proceedings shall operate to prevent or stay any sale, forfeiture or loss of the Property or any part or interest therein, interfere with the use or possession of the Property or any part thereof or interest therein or impair payment of the rent payments; (d) inchoate materialmen's, mechanics', workmen's, repairmen's or other like Liens arising in the ordinary course of business for the Property and not delinquent; (e) Liens created by the Loan Documents; (f) the Principal Lease; and (g) the Permitted Exceptions.

"Permitted Exceptions" means those items and matters set forth in Schedule B to the Title Policy delivered on the Closing Date.

"Permitted Investment" means any of the following, provided that none of the foregoing shall have a rating assigned a suffix of "R" by Standard & Poor's Ratings Service, a Division of The McGraw-Hill Companies, Inc. ("S&P"), and provided that each such investment shall mature at least one Business Day prior to the date on which the proceeds thereof are expected to be required and so long as (x) such obligations have a predetermined fixed dollar amount of principal due at maturity that cannot change and are not subject to call, liquidation or redemption prior to their stated maturity, (y) interest on such obligations may be fixed or variable, provided that if such interest is variable, such interest is tied to a single interest rate index plus a single fixed spread (if any), and moves proportionately with such index and (z) except in the case of investments described in clauses (f) and (g), such obligations shall mature in less than one year from the date of investment:

(a) obligations which, as to principal and interest, constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, including obligations of federal agencies to the extent such obligations are unconditionally guaranteed by the United States of America;

(b) investments in repurchase agreements of any obligations enumerated in clause (a) above, if Beneficiary shall have received a perfected first security interest in the obligations securing such

repurchase agreements, Beneficiary or its appointed agent shall hold such obligations free and clear of the claims of third parties and shall have possession of such obligations, such repurchase agreements shall be sufficiently collateralized to conform to the requirements of S&P regarding qualified investments for AA or better rated securities, and such obligations held as collateral shall be marked to market not less frequently than each thirty (30) days, provided that in the event Beneficiary receives notice that the collateral is not maintained at the requisite levels, Beneficiary shall either exercise its rights under the repurchase agreement to obtain additional collateral or shall immediately liquidate the collateral;

(c) obligations of the General Services Administration, the United States Maritime Administration, the Small Business Administration, the Federal National Mortgage Association, the Federal Financing Bank, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Farm Credit System and Government National Mortgage Association;

(d) bonds, notes or obligations that are rated AA (or better) by S&P (or are otherwise acceptable thereto) and are fully guaranteed as to principal and interest by a federal agency of the United States;

(e) cash, time or demand deposits with or certificates of deposit or banker's acceptances issued by a bank (as defined in Section 3(a)(2) of the Securities Act) which is rated A+ (or better by S&P) (which may include Beneficiary, a successor thereto or any of their respective affiliates), which is insured by the Federal Deposit Insurance Corporation;

(f) investment agreements or guaranteed investment contracts with an insurance company (as defined in Section 2(13) of the Securities Act), a bank (as defined in Section 3(a)(2) of the Securities Act) or a financial institution guaranteed by an entity the long-term unsecured debt of which is rated not less than AA by S&P; and

(g) a guaranteed investment contract providing for the investment of funds and insuring a minimum or fixed rate of return on investments of such funds, which contract shall:

(i) be an obligation of an insurance company or other corporation whose senior unsecured long-term debt or claims-paying ability is rated by S&P in one of the two highest categories;

(ii) provide that Beneficiary may exercise all of the rights under such contract without the necessity of the taking of any action by any other Person other than Beneficiary and the issuer of such guaranteed investment contract;

(iii) provide that if the obligor thereunder at any time has its then current credit rating less than AA by S&P, Beneficiary may, except as hereinafter provided, terminate such contract without penalty and be entitled to the return of all funds previously invested thereunder, together with accrued interest thereon at the interest rate provided thereunder through the date of delivery of such funds to Beneficiary;

(iv) provide that Beneficiary's interest therein shall be transferable to any successors without the need for any act by Beneficiary or its successors;

(v) provide that the funds reinvested thereunder and accrued interest thereon be returnable to Beneficiary not later than two Business Days prior to any date on which Beneficiary may require such funds;

(vi) provide that Beneficiary may withdraw funds invested without penalty at any time and from time to time to be applied for the purposes established for the applicable accounts established under Section 7; and

(vii) be accompanied by an enforceability opinion from counsel to the obligor under such contract.

"Permitted Transfer" is defined in Section 3.3(a).

"Person" means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a Government Authority.

"Placement Agent" is defined in Section 3.3(a)(i).

"Plan" means an "employee benefit plan" (as defined in section 3(3) of ERISA) that is or, within the preceding five years, has been established or maintained, or to which contributions are or, within the preceding five years, have been made or required to be made, by Trustor or any ERISA Affiliate or with respect to which Trustor or any ERISA Affiliate may have any liability.

"Pledged Property" has the meaning set forth in Section 1.2(g).

"Principal Lease" means the Lease Conveyance Agreement, between Trustor, as landlord, and the County of Orange, California, as tenant, dated February 17, 2005, as amended from time to time.

"Principal Paydown Amount" is defined in Section 3.3(a).

"Prohibited Transaction" has the meaning set forth in ERISA.

"Property" is defined in Section 1.1.

"Proposed Paydown Notice" is defined in Section 3.3(a)(i).

"Proposed Readvance Notice" is defined in Section 3.3(b)(i).

"Qualifying Sale" means any Sale for which the major purpose is to restructure the form of ownership of Trustor among existing or related direct or indirect holders of the equity interests in Trustor, Sales for estate planning purposes or Sales occurring by operation of law.

"Readvance Conditions" is defined in Section 3.3(b).

"Readvance Date" is defined in Section 3.3(b)(i)(B).

"Readvance Option" is defined in Section 3.3(b).

"Readvance Option Period" is defined in Section 3.3(b).

"Readvanced Principal Amount" is defined in Section 3.3(b)(i)(A).

"Real Estate" is defined in Section 1.1(d).

"Release" shall mean the release, deposit, disposal or leakage of any Hazardous Material at, into, upon or under any land, water or air, or otherwise into the environment, including, without limitation, by means of burial, disposal, discharge, emission, injection, spillage, leakage, seepage, leaching, dumping, pumping, pouring, escaping, emptying, placement and the like.

"Rents" is defined in Section 1.1(d), and, for so long as the Principal Lease is in force and effect, shall include, without limitation, all payments by the Tenant under the Principal Lease.

"Responsible Officer" means any managing member and any other officer of Trustor with responsibility for the administration of the relevant portion of this Deed of Trust.

"Sale" is defined in Section 6.2(b).

"Secondary Market Transaction" is defined in Section 42(a).

"Secured Obligations" is defined in Section 1.4.

"Securities Act" means the Securities Act of 1933, as amended.

"Single-Purpose Entity" means a corporation, limited partnership, or limited liability company which, at all times since its formation and thereafter: (a) was organized solely for the purpose of (i) entering into the transactions contemplated by the Loan Documents, including, without limitation, acquiring, owning, operating, managing, leasing, mortgaging, assigning and selling the Property; (ii) acting as a Single-Purpose Entity member of a limited liability company which enters into the transactions contemplated by the Loan Documents; (b) has not and will not engage in any business unrelated to its business, as set forth in **clause (a)**; (c) has not and will not have any assets other than (i) those assets related to the conduct of its business as set forth under **clause (a)**; or (ii) its member interest in the limited liability company which owns the assets described in **clause (a)**; (d) except as otherwise expressly permitted by the Loan Documents, has not and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale, transfer of partnership or membership interests, or amendment of its Organizational Documents; (e) if such entity is a limited partnership, has as its only general partners, general partners which are Single-Purpose Entities which are corporations; (f) if such entity is a corporation, at all relevant times will have at least one Independent Director; (g) if such entity is a limited liability company, has at least one Independent Manager; (h) if such entity is a corporation, the board of directors of such entity may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless all of the directors, including an Independent Director shall have participated in such vote; (i) has not and will not fail to correct any known misunderstanding regarding the separate identity of such entity; (j) without the unanimous consent of all of the partners, directors, members or managers, as applicable, has not and will not with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest: (i) file a voluntary bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally; (ii) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such entity or all or any portion of such entity's properties; (iii) make a general assignment for the benefit of such entity's

creditors, except in connection with the Loan Documents; or (iv) take any action that may be reasonably expected to cause such entity to become insolvent;(k) has maintained and will maintain its accounts, books, records and financial statements, accounting records and other entity documents separate from any other person or entity;(l) has maintained and will maintain its books, records, resolutions and agreements as official records;(m) has not and will not commingle its funds or assets with those of any other entity and will maintain separate bank accounts in its own name;(n) has held and will hold its assets in its own name;(o) has conducted and will conduct its business in its name and has, maintains and uses its own stationery and invoices, which distinguish it from any other person or entity;(p) has paid and will pay its own liabilities out of its own funds and assets;(q) has observed all partnership, corporate or limited liability company formalities including, without limitation: (i) if the entity is a partnership or a limited liability company, holding all partners or members meetings as are required under applicable law and the Organizational Documents thereof, giving proper notice of such meetings as required under applicable law and the Organizational Documents thereof; (ii) if the entity is a corporation, holding all shareholder and board of director meetings, giving proper notice of such meeting, as required under applicable law and the Organizational Documents; and (iii) complying with all other meetings and formalities as required under applicable law and/or Organizational Documents; (r) has maintained and will maintain an arms-length relationship with its Affiliates; (s) has no Debt other than: (i) the Note or (ii) unsecured trade payables (excluding those explicitly reserved for under the Loan Documents) incurred in the ordinary course of business relating to the conduct of its business as contemplated under clause (a) which do not, at any time, exceed, in the aggregate \$250,000 and are not more than 30 days old; (t) has not and will not assume or guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of any other entity; (u) will not acquire obligations or securities of its partners, members or shareholders, as applicable; (v) has allocated and will allocate fairly and reasonably shared expenses, including, without limitation, shared office space and uses separate invoices and checks; (w) except pursuant to the Loan Documents, has not and will not pledge its assets for the benefit of any other person or entity; (x) has held and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other person or entity; (y) has not made and will not make loans to any person or entity; (z) has not and will not identify its partners, members or shareholders, or any affiliates of any of them as a division or part of it; (aa) if such entity is a limited liability company or limited partnership, its Organizational Documents shall provide that such entity will dissolve only upon the bankruptcy of the managing member or general partner thereof; (bb) has not entered and will not enter into or be a party to, any transaction with its partners, members, shareholders or its affiliates except for agreements which are otherwise in the ordinary course of its business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arms-length transaction with an unrelated third party; (cc) has paid and will pay the salaries of its own employees from its own funds; (dd) has maintained and will maintain adequate capital in light of its contemplated business operations; and (ee) if such entity is a limited liability company or limited partnership, and such entity has two or more members or general partners, as applicable, then such entity's Organizational Documents shall provide that such entity shall continue (and not dissolve) for so long as a solvent managing member or general partners, as applicable, exists.

"Special Purpose Provisions" means any provisions of the Borrower's Organizational Documents relating to the Borrower being a Single Purpose Entity.

"Successor Trustor" is defined in Section 3.3(a)(iii).

"Taxes" means all real property, personal property, value added and other taxes on the Pledged Property (but excluding income taxes), all charges for any easement or agreement maintained for the benefit of the Pledged Property, all general and special assessments, levies, permits, inspection and

license fees, and all other charges and Liens, whether of a like or different nature, even if unforeseen or extraordinary, imposed upon or assessed against Trustor, the Pledged Property or arising in respect of the occupancy, use or possession thereof, and includes, without limitation, any payments in lieu of taxes which are required to be paid with respect to the Pledged Property or any part thereof.

"Taxes Amount" is defined in **Section 3.3(c)(i)**.

"Tax Installment" means one-twelfth of the Taxes due on the Property for the applicable tax year for which the Tax Installment is being calculated, provided that if Trustor shall not have received Tax bills from the applicable taxing authorities for such tax year, the Tax Installment shall mean 110% of the Tax Installment for the immediately preceding tax year, and, upon receipt of such tax bills, the Tax Installment shall mean the amount obtained by dividing (a) the difference between (i) the Taxes due as set forth on such tax bills and (ii) the amount on deposit in the Tax Fund by (b) the number of installments of Rent Payments scheduled to be paid prior to such Taxes becoming due and payable.

"Tenant" means the County of Orange, State of California, a body corporate and politic organized under the laws of the State of California.

"Title Policy" means Beneficiary's policy of title insurance delivered in connection with the execution and delivery of this Deed of Trust and the Note.

"Trustor" means Centurion Partners Santa Ana, LLC, a Delaware limited liability company.

"UCC" has the meaning set forth in **Section 10(a)**.

"UCC Collateral" has the meaning set forth in **Section 10(a)**.

3. DEBT.

3.1 Payment of Secured Obligations.

Trustor shall promptly pay when due all amounts due as part of the Secured Obligations and perform, observe and discharge every condition, obligation, covenant and agreement thereof. The Secured Obligations and each part thereof, if not paid when due, shall bear interest at the Default Rate from the due date until paid in full.

3.2 Additional Debt.

Beneficiary may make one or more additional loans to Trustor, such additional loans to be secured on a pari passu basis hereunder as reflected by an amendment and modification to this Deed of Trust so providing, subject to the satisfaction of the Additional Loan Conditions.

3.3 Pay-Down and Readvance.

(a) **Paydown Option.** In connection with a permitted transfer of the Property pursuant to the provisions of **Section 6.2** (a **"Permitted Transfer"**), Trustor shall have a one-time right (the **"Paydown Option"**), exercisable at any time after the completion and acceptance of the Additional Space and the completion of all TI Work, to prepay the Note in any amount in excess of \$1,000 of the then outstanding principal balance of the Note (the **"Principal Paydown Amount"**); provided, however, that Trustor shall

only be entitled to exercise the Paydown Option upon satisfaction of all of the following terms and conditions (collectively, the **"Paydown Conditions"**):

(i) Trustor shall deliver a written notice (the **"Proposed Paydown Notice"**) to Beneficiary, with a copy to CTL Capital LLC (the **"Placement Agent"**), having an address at 300 Park Avenue, Suite 1700, New York, New York 10022, stating Trustor's intention to exercise the Paydown Option. The Proposed Paydown Notice shall be given not less than ten (10) Business Days prior to the date on which Trustor intends to prepay the Principal Paydown Amount pursuant to this **Section 3.3** (the **"Paydown Date"**). The Proposed Paydown Notice shall specify the following:

(A) the amount of the proposed Principal Paydown Amount,

(B) the proposed Paydown Date (which shall be no later than the outside date specified in **Section 3.3(a)**,

(C) a calculation by Trustor of the Make-Whole Premium payable in connection with the prepayment of such proposed Principal Paydown Amount, setting forth the details of such computation (provided that for purposes of this computation, the annual interest rate used to determine the Reinvestment Yield shall mean the current United States Treasury Note yield, without any additional 50 basis point spread),

(D) the proposed Readvance Option Period (as hereinafter defined),

(E) the Paydown Interest Accrual (as hereinafter defined) due in connection with the prepayment of such proposed Principal Paydown Amount,

(F) the Additional Interest Accrual (as hereinafter defined) due in connection with the prepayment of such proposed Principal Paydown Amount and

(G) to the extent not otherwise payable pursuant to **Section 6.2**, a non-refundable fee to Beneficiary in the amount of \$10,000.

(ii) No Default or Event of Default shall be continuing under the Loan Documents on the date of the Proposed Paydown Notice or on the Paydown Date (and Trustor and the Successor Trustor shall deliver a certificate to Beneficiary concurrently with the delivery of the Paydown Notice and on the Paydown Date confirming such matters).

(iii) Each of Trustor and Trustor's transferee (the **"Successor Trustor"**) pursuant to **Section 6.2**.

(A) shall have complied with all terms and conditions set forth in **Section 6.2** with respect to a Permitted Transfer and

(B) shall be a Single-Purpose Entity.

(iv) Immediately after the satisfaction of the other Paydown Conditions and the paydown of the Loan on the Paydown Date, the Property shall be conveyed to the Successor

Trustor (and the Gap Insurer, if any, shall have consented in advance to the conveyance of the Property to the Successor Trustor, to the extent required under the terms of the Gap Insurance).

(v) Within ten (10) Business Days after delivery to Beneficiary of the Proposed Paydown Notice, Beneficiary, after consultation with the Placement Agent, shall deliver a notice to Trustor ("**Beneficiary's Response Notice**") specifying the computation of the Make-Whole Premium (using the computational assumptions set forth in **Section 3.3(a)(i)**), Paydown Interest Accrual and/or the Additional Interest Accrual. Beneficiary's determination of any amount in Beneficiary's Response Notice shall be definitive, absent manifest error; provided, however, that Trustor acknowledges that all of such amounts are estimates only and, to the extent that actual costs of any such items change, as a result of market conditions, newly discovered information or other causes, Trustor shall be solely responsible to pay any additional costs on or before the Paydown Date or such later date on or before the last day of the Readvance Option Period as such amounts are due and payable.

(vi) Not later than one (1) Business Day prior to the Paydown Date, Trustor shall deposit with Beneficiary the sum of the following amounts (collectively, the "**Aggregate Paydown Amount**"), which shall be held by Beneficiary in the Paydown/Readvance Account as security for the performance of Trustor's and Successor Trustor's obligations under this **Section 3.3(a)** and under **Section 3.3(b)-(d)** of this Agreement, but such Aggregate Paydown Amount shall not constitute indebtedness of Trustor or the Successor Trustor under the Loan Documents (and Trustor hereby pledges, assigns and grants to Beneficiary a security interest in and a lien on such Aggregate Paydown Amount):

(A) the Principal Paydown Amount;

(B) the Make-Whole Premium due in connection with the prepayment of the Principal Paydown Amount on the Paydown Date (the "**Paydown Prepayment Consideration**");

(C) the aggregate amount of interest accrued and to accrue on the Principal Paydown Amount from the date of the last payment made under the Note to the Paydown Date (the "**Paydown Interest Accrual**"); and

(D) an amount equal to interest which would have accrued on the Principal Paydown Amount pursuant to the terms of the Note from the Paydown Date until the last day of the Readvance Option Period (the "**Additional Interest Accrual**").

The Aggregate Paydown Amount shall be placed in the Paydown/Payup Account and invested in Permitted Investments selected by Trustor and reasonably approved by Beneficiary.

Upon satisfaction of the Paydown Conditions, the principal amount of the Note shall be deemed to be reduced by the Principal Paydown Amount.

(b) *Readvance Option.* If the Paydown Option shall have been exercised and the Paydown Conditions shall have been satisfied in accordance with **Section 3.3(a)**, the Successor Trustor shall have the option to request a readvance of the Principal Paydown Amount pursuant to this **Section 3.3(b)** (the "**Readvance Option**") on any Business Day between the Paydown Date and the date which is not later than fourteen (14) days after the Paydown Date (the "**Readvance Option Period**"); provided, however,

that the Successor Trustor shall only be entitled to exercise the Readvance Option upon satisfaction of all of the following terms and conditions (collectively, the "**Readvance Conditions**"):

(i) Successor Trustor shall deliver a written irrevocable notice to Beneficiary of Successor Trustor's intention to exercise the Readvance Option (the "**Proposed Readvance Notice**"). The Proposed Readvance Notice shall be given not later than five (5) Business Days prior to the expiration of the Readvance Option Period. The Proposed Readvance Notice shall specify the following:

(A) the amount of the Principal Paydown Amount to be readvanced (which shall be exactly equal to the Principal Paydown Amount paid on the Paydown Date (the "**Readvanced Principal Amount**")), and

(B) the Business Day on which Successor Trustor requests that the readvance shall be made (the "**Readvance Date**").

(ii) No Default nor Event of Default shall be continuing under the Loan Documents on the date of the Proposed Readvance Notice or on the Readvance Date.

(iii) If determined by Beneficiary to be necessary for the sole and exclusive purpose of memorializing the Readvance Option (but not to change or modify the economic terms or rights of the parties), Successor Trustor shall have executed a Deed of Trust Modification Agreement ("**Modification Agreement**"), in a form reasonably approved by Beneficiary, and, provided that the Modification Agreement shall have been executed by Beneficiary, such Modification Agreement shall have been submitted to the appropriate land records office for recording.

(iv) Successor Trustor shall cause to be delivered to Beneficiary, without any cost or expense to Beneficiary, such endorsements to Beneficiary's Title Policy, and to the hazard and liability insurance policies relating to the Property and Collateral and/or Successor Trustor's interest therein as Beneficiary, in the exercise of its reasonable discretion, may deem necessary on the Readvance Date, all in form and substance reasonably satisfactory to Beneficiary, including, without limitation, an endorsement or endorsements to Beneficiary's Title Insurance Policy insuring the lien of Beneficiary in the amount of the Loan, including the Readvanced Principal Amount, as a first priority lien and extending the effective date of such Title Policy to the Readvance Date, with no additional exceptions added to such Title Policy and insuring that fee simple title to the Property is vested in Successor Trustor.

(v) Beneficiary shall have received such due diligence, certificates and legal opinions which were delivered by Trustor or its counsel on the Closing Date from Trustor, Successor Trustor or their respective counsel, as may be reasonably requested by Beneficiary in connection with the exercise of the Readvance Option, in substantially the same form and content as such items were delivered on the Closing Date, including, but not limited to, secretarial and officers' certificates in the form delivered on the Closing Date and opinions of counsel in form and from a counsel reasonably acceptable to Beneficiary for Successor Trustor regarding the authorization, execution and enforceability of the Loan Documents (or of the assumption or assignment agreements delivered with respect thereto), with respect to the Readvance Option and any other legal opinions reasonably requested by Beneficiary or the Gap Insurer.

(vi) Beneficiary shall have received an opinion of counsel in form and from a counsel to Successor Trustor reasonably acceptable to Beneficiary to the effect that

(A) the proposed paydown and readvance shall not be set aside or constitute a preference or a fraudulent conveyance,

(B) in the event that Beneficiary is a trust, the paydown and readvance will not adversely affect the treatment of Beneficiary as an "investment trust" within the meaning of Treasury Regulation §301.7701-4(c),

(C) the paydown or readvance will not result in a realization event under §1001 of the Internal Revenue Code,

(D) if the readvance takes place, Beneficiary shall not be deemed to have received the Make-Whole Premium as income and will not have other adverse tax consequences to Beneficiary (it being understood that the opinions described in this **Section 3.3(b)(vi)** may be so-called "reasoned opinions"), and

(E) the proposed paydown and readvance shall not cause any material risks to the Beneficiary under California law.

(vii) Successor Trustor shall have paid all reasonable out-of-pocket expenses (including, without limitation, reasonable attorneys' fees) incurred by Beneficiary in connection with the execution, review, approval and documentation of the exercise of the Readvance Option.

(viii) The original Trustor shall have released any and all of its right, title and interest in the proceeds of the Principal Paydown Amount and/or the Property.

(c) Provided the Readvance Conditions have been satisfied, on the Readvance Date, Beneficiary shall:

(i) pay from amounts on deposit pursuant to **Section 3.3(a)(vi)** hereof, (i) to the extent not otherwise paid by Successor Trustor, the Deed of Trust recording taxes, transfer taxes and other amounts payable in connection with the readvance of the Principal Paydown Amount (the "**Taxes Amount**") to Beneficiary's title company, or to the Person to whom such payment is required to be made under applicable law, as determined by Beneficiary, as directed by Beneficiary's title company and (ii) all reasonable out-of-pocket expenses (including, without limitation, reasonable attorneys' fees) incurred by Beneficiary in connection with the execution, review, approval and documentation of the exercise of the Paydown Option and the Readvance Option (the "**Expenses Amount**");

(ii) readvance the Readvanced Principal Amount to Successor Trustor; and

(iii) transfer the Additional Interest Accrual to the Payment Fund for payment to Beneficiary on the next succeeding Payment Date, which payment shall be in addition to the interest and principal payable on the next succeeding Payment Date under the Note (calculated as if the paydown pursuant to **Section 3.3(a)** had not occurred); and

(iv) within three (3) Business Days thereafter, return the balance of the Paydown Prepayment Consideration and the Paydown Interest Accrual to Successor Trustor, remaining after payment of the Taxes Amount and the Expenses Amount.

(d) Upon completion of the exercise of the Readvance Option, all of the terms and provisions of the Loan Documents shall apply to and secure the repayment of the Readvanced Principal Amount as though the Readvanced Principal Amount was a portion of the original principal amounts advanced under and evidenced by the Note, and any portion of the Expenses Amount that has not been applied to cover transaction expenses shall be paid to Successor Trustor.

In the event that the Readvance Conditions have not been satisfied by the last day of the Readvance Option Period, then

(i) the Principal Paydown Amount shall be transferred to the Payment Fund,

(ii) the Paydown Prepayment Consideration (and any addition thereto determined by Beneficiary to be necessary to pay the Make-Whole Premium and Prepayment Fee) shall be applied by Beneficiary to the payment of the Make-Whole Premium,

(iii) the Additional Interest Accrual shall be transferred to the Payment Fund,

(iv) the Paydown Interest Accrual shall be applied to the extent determined by Beneficiary, after consultation with the Placement Agent, to be necessary to pay any such sums that are not available from amounts on deposit in the Accounts existing under **Section 7**, and

(v) the Taxes Amount, the Expenses Amount and any unpaid loan transfer fee payable pursuant to the separate agreement between Successor Trustor and the Placement Agent shall be paid by Beneficiary to the extent payable and not otherwise paid by Successor Trustor, and any remaining amounts, if any, shall be paid to Successor Trustor.

(e) In the event that after the delivery of the Proposed Paydown Notice and before the expiration of the Readvance Option Period, Beneficiary reasonably determines, after consultation with the Placement Agent, that, as a result of a reduction in United States Treasury-market yields of 25 basis points or more since the date on which the Aggregate Paydown Amount was deposited with Beneficiary, the amount on deposit pursuant to **Section 3.3(a)(vi)** in respect of the Paydown Prepayment Consideration is insufficient to pay the Make-Whole Premium that would be payable in the event that the Readvance Conditions are not satisfied by the expiration of the Readvance Option Period (using the computational assumptions set forth in **Section 3.3(a)(i)**), then Successor Trustor shall deposit such shortfall with Beneficiary within two (2) Business Days after written notice from Beneficiary to Successor Trustor, and such deposit shall be held as provided in **Section 3.3(a)** and **3.3(b)**.

4. REPRESENTATIONS AND WARRANTIES OF TRUSTOR.

Trustor represents and warrants to Beneficiary that:

4.1 Representations and Warranties Relating to Trustor.

(a) *Due Organization; Good Standing.*

(i) Trustor is a limited liability company duly organized, validly existing and in good standing under the laws of its jurisdiction of formation and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ii) Trustor has the power and authority to own or hold its properties, to transact the business it transacts and proposes to transact, to execute, deliver and perform this Deed of Trust, the Note and each other Loan Document to which it is a party.

(iii) Trustor has no subsidiaries.

(iv) At all times since its formation, Trustor has been a Single-Purpose Entity.

(v) A true and complete copy of Trustor's Organizational Documents have been furnished to Beneficiary. Trustor's Organizational Documents constitute the entire agreement among the members of Trustor and are binding upon and enforceable against all of such members in accordance with their respective terms. There are no other agreements, oral or written, among any of the members of Trustor relating to Trustor. No party is in default of its obligations under Trustor's Organizational Documents and no condition exists which, with the giving of notice and/or the passage of time, would constitute a default under Trustor's Organizational Documents. Trustor will not amend or modify (including adding any provision the effect of which would be to amend or modify or alter the effectiveness of) the provisions of its Organizational Documents relating to it being a Single-Purpose Entity without the prior written consent of Beneficiary.

(b) *Litigation.* There are no actions, suits or proceedings pending or, to the knowledge of Trustor, threatened against or affecting Trustor or any property of Trustor in any court or before any arbitrator of any kind or before or by any Governmental Authority.

(c) *Defaults; Violations.* Trustor is not in default under any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority or in violation of any applicable law, ordinance, rule or regulation of any Governmental Authority, which default or violation, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(d) *Licenses and Permits.* Trustor owns or possesses all licenses, permits, franchises, authorizations, patents, copyrights, service marks, trademarks and trade names, or rights thereto, that are Material, without known conflict with the rights of others, except for those conflicts that, individually or in the aggregate, would not have a Material Adverse Effect.

(e) *ERISA.*

(i) Trustor has no ERISA Plans. Neither Trustor nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in Section 3 of ERISA), and no event, transaction or condition has occurred or exists that would reasonably be expected to result in the incurrence of any such liability by Trustor or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of Trustor or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to such penalty or excise tax provisions or to Section 401(a)(29) or 412 of the Code, other than such liabilities or Liens as would not be individually or in the aggregate Material.

(ii) Trustor and its ERISA Affiliates have not incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate are Material.

(iii) As of the date hereof, Trustor has no postretirement benefit obligations.

(iv) Assuming that the facts set forth in **Schedule 4.1(e)** are true with respect to each Person holding a direct or indirect interest in the Note, the execution and delivery of this Deed of Trust and the issuance and sale of the Note hereunder will not involve any transaction that is subject to the prohibitions of section 406 of ERISA or in connection with which a tax could be imposed pursuant to section 4975(c)(1)(A)-(D) of the Code.

(f) *Other Debt and Obligations.*

(i) Trustor has no Debt other than the Note (other than trade payables incurred in the ordinary course of business).

(ii) As of the date hereof, Trustor is not a party to any Contract other than the Loan Documents, the Principal Lease and those documents listed in **Schedule 4.1(f)**.

(g) *Solvency.* On the Closing Date, after giving effect to the transactions contemplated hereby and by the other Loan Documents, Trustor will not be insolvent within the meaning of Section 101(32) of the Bankruptcy Code or any other similar provision of applicable law. Trustor has not filed a voluntary petition in bankruptcy or has been adjudicated a bankrupt or insolvent, or filed any petition or answer seeking any reorganization, liquidation, dissolution or similar relief under any federal bankruptcy, insolvency or other law relating to relief for debtors, or sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator or liquidator of all or any part of its properties or its interest in the Pledged Property or part thereof. No court of competent jurisdiction has entered an order, judgment or decree approving a petition filed against Trustor seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any federal bankruptcy act, and no other liquidator has been appointed for Trustor or all or any part of its properties or its interest in the Pledged Property or part thereof. Trustor has not given notice to any Governmental Authority or other Person of insolvency or pending insolvency, or suspension or pending suspension of operations. The fair salable value of the business and assets of Trustor is, and after giving effect to the transactions contemplated by this Deed of Trust and each other Loan Document will be, in excess of the amount that will be required to pay its probable liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) on existing debts as they may become absolute and matured. Trustor is not, nor

after giving effect to such transactions, will be engaged in any business or transaction for which it has an unreasonably small capital and no such entity has any intent (i) to hinder, delay or defraud any entity to which it is, or will become, on or after the Closing Date, indebted or (ii) to incur debts that would be beyond its ability to pay as they mature.

(h) *Status under Certain Statutes.* Trustor is not subject to regulation under the Investment Company Act of 1940, as amended, the Public Utility Holding Company Act of 1935, as amended, the Interstate Commerce Act, as amended, or the Federal Power Act, as amended.

(i) *Not a Foreign Person.*

(i) Section 1445 of the Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform Beneficiary that the withholding of tax will not be required in the event of the disposition of the Real Property or Improvements pursuant to the terms of this Deed of Trust, Trustor hereby certifies, under penalty of perjury, that: Trustor is not a foreign corporation, foreign partnership, foreign trust, foreign limited liability company or foreign estate, as those terms are defined in the Code and the regulations promulgated thereunder; and Trustor's chief executive office and principal place of business is the address set forth in the first page of this Deed of Trust.

(ii) Beneficiary may disclose the contents of this certification to the Internal Revenue Service. Trustor acknowledges that any false statements contained in its certifications in this Section 4.1(i) may be punishable by fine, imprisonment or both. Trustor shall execute such further certifications, under penalty of perjury, as Beneficiary shall reasonably require. The certifications and covenants set forth under this Section 4.1(i) shall survive the reconveyance, foreclosure and/or acceptance of a deed in lieu of foreclosure of this Deed of Trust.

4.2 Representations and Warranties Relating to the Loan Documents and the Transactions Contemplated Thereby.

(a) *Due Authorization; Enforceability.* This Deed of Trust and the other Loan Documents have been duly authorized by all necessary action on the part of Trustor, and this Deed of Trust and each other Loan Document to which it is a party constitutes a legal, valid and binding obligation of Trustor enforceable against Trustor in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) *Non-Contravention.* The execution, delivery and performance by Trustor of this Deed of Trust and the other Loan Documents will not (i) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien in respect of any property of Trustor under, any indenture, deed of trust, loan, purchase or credit agreement, lease, Organizational Documents, or any other Material agreement or instrument to which Trustor is bound or by which Trustor or any of its properties may be bound or affected (other than those in favor of Beneficiary), (ii) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Governmental Authority applicable to Trustor or (iii) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to Trustor.

(c) *Consents and Approvals.* No consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by Trustor of this Deed of Trust or any other Loan Document.

(d) *Margin Stock.* No part of the proceeds from the sale of the Note hereunder will be used, directly or indirectly, for the purpose of buying or carrying any margin stock within the meaning of Regulation G of the Board of Governors of the Federal Reserve System (12 CFR 207), or for the purpose of buying or carrying or trading in any securities under such circumstances as to involve Trustor in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). As used in this Section, the terms "*margin stock*" and "*purpose of buying or carrying*" shall have the meanings assigned to them in said Regulation G.

(e) *Trading With the Enemy Act.* Neither the sale of the Note by Trustor hereunder nor its use of the proceeds thereof will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto.

(f) [INTENTIONALLY OMITTED].

(g) *Brokers.* No broker or consultant has been retained by Trustor or any Affiliate of Trustor in connection with the Note or the Loan Documents. Trustor will indemnify, defend and hold the Indemnified Parties harmless from and against all actual out-of-pocket losses, costs, liabilities and expenses arising from the claims of all brokers and consultants relating to the Note and/or the Pledged Property with whom Trustor, any Affiliate of Trustor or any employee or agent of Trustor has dealt, including, without limitation, sales, mortgage or leasing brokers or consultants.

(h) *Insurance Policies.* All Insurance Policies required to be obtained and maintained by Trustor are in full force and effect and the premiums due thereon have been paid. Trustor, the Pledged Property are in compliance with the provisions of such Insurance Policies and the provisions relating to Insurance Policies in the Loan Documents, and no notice of cancellation, termination or default has been received with respect to any such policy.

(i) *Taxes.* Trustor has filed all tax returns required to be filed by Trustor and has paid all taxes due and payable by Trustor.

(j) *Obligations.* Trustor has no liabilities or other obligations, recourse or non-recourse, that arose or accrued prior to the date hereof that, either individually or in the aggregate, could have a Material Adverse Effect. Trustor has no known contingent liabilities or unpaid obligations.

(k) *Leases.* Trustor has not entered into any Lease or other Lease for any of its property or any portion thereof other than the Principal Lease. Trustor has not collected any rent with respect to the Principal Lease more than one month in advance and no security deposit has been paid by the Tenant with respect thereto.

(l) *Offsets.* Trustor has no counterclaims, offsets or defenses with respect to the Note or any other Loan Document.

4.3 Representations and Warranties Relating to the Pledged Property.

(a) *Title to the Pledged Property.*

(i) Trustor is the lawful owner of the Land, and has good and marketable title, to the fullest extent such title may be acquired under applicable law, to the Pledged Property, subject only to Permitted Encumbrances in effect on the date hereof.

(ii) Except for the Permitted Exceptions and as created by the Loan Documents, there are no liens, charges or encumbrances against Trustor or the Pledged Property.

(b) *Compliance with Laws.* Except as set forth in **Schedule 4.3(b)**, the Property complies in all material respects with (i) all applicable zoning, environmental protection, use, land use and building laws, ordinances and regulations existing on the date hereof, (ii) all applicable requirements of federal, state and local laws and with all applicable requirements of any agency, board or commission created under any applicable law or of any other duly constituted public authority (the matters described in the foregoing **clauses (i) and (ii)** being referred to herein as "**Legal Requirements**"), (iii) the Permitted Exceptions and (iv) the Principal Lease. To the knowledge of Trustor, all Material Permits necessary for the use and occupancy of the Property, as currently configured other than the building permit for the Additional Space, in accordance with the Principal Lease and each other Loan Document have been obtained and are in full force and effect.

(c) *Certain Events.*

(i) To the best of Trustor's knowledge after inquiry, there are no pending or proposed special assessments for public improvements or otherwise affecting the Property that may result in such special or other assessments.

(ii) No Condemnation or other proceeding has been commenced or, to Trustor's best knowledge, after appropriate inquiry, is contemplated with respect to all or any portion of Trustor.

(d) *The Property.*

(i) The Property consists of three office buildings and the Additional Space to be constructed to connect such buildings.

(ii) Tenant has the right to require Trustor to convey the Property to the Tenant at the expiration of the Principal Lease for \$100.

(iii) Trustor is not aware of any event, condition or circumstance which would hinder or prevent Trustor being able to obtain all Permits necessary or desirable for the construction of the Additional Space in accordance with the Principal Lease. As of the date hereof, Trustor has obtained the Permits listed in **Part A of Schedule 4.3(d)**, has applications pending for the Permits listed in **Part B of Schedule 4.3(d)** and needs to obtain the Permits listed in **Part C of Schedule 4.3(d)**. Trustor has received no objections to its applications for the Permits listed in **Part B of Schedule 4.3(d)** and has no reason to believe any of the Permits listed in **Part C of Schedule 4.3(d)** will not be obtained in due course.

(e) *Liens and Security Interests.* The filing of this Deed of Trust and the Assignment of Leases in the Official Records of Orange County, California and the filing of UCC financing statements with the Secretary of State of the State of Delaware is all action as is reasonably necessary to establish and perfect the liens and the security interests of Beneficiary under the Loan Documents and to insure their priority as contemplated by the Loan Documents. The taking of such action will constitute all action as will be necessary to establish the liens and security interests of Beneficiary pursuant to the Loan Documents and their priority, and there will be, upon the taking of such actions, no necessity for any further action in order to protect, preserve and continue such liens, security interests and such priority other than the filing of continuation statements with respect to the financing statements.

(f) *Utilities.* All electrical, telephone, water, sanitary, septic or water treatment system and other utility services necessary for the use, operation and maintenance of the Property are, or will be, available at and accessible to the Property.

(g) *Flood Zone.* The Land does not lie within (a) any flood plain or flood-prone area designated on the official maps of the Secretary of Housing and Urban Development, or a flood plain area having special flood hazards identified as such under the Flood Disaster Protection Act of 1983 or any federal, state or local flood or wetlands or aquifer district.

(h) *Tax Lot.* The Property consists of a single tax lot for real estate tax purposes. The only taxing authorities levying Real Estate Taxes on the Property are the Orange County Tax Collector and the City of Santa Ana.

(i) [INTENTIONALLY OMITTED].

(j) *Zoning.*

(i) Except as set forth in **Schedule 4.3(b)**, the Property complies in all material respects with all applicable Legal Requirements. Any required zoning or subdivision approval is based on no real property, or rights appurtenant thereto, other than the Property. The Property is not in material violation of any recorded and, to the best knowledge of Trustor, unrecorded covenants, conditions or restrictions of any kind or nature affecting all or any part of the Property, or any interest therein. To the best knowledge of Trustor, except as set forth in **Schedule 4.3(b)**, the Property can be fully built and rebuilt in the event of casualty or destruction thereof under the permits applicable to Property, subject, however, to non-discretionary requirements of any Governmental Authority. No amendment or change in any such material permit, and no amendment or change in zoning or any other land use control, has been sought or obtained by Trustor or any Affiliate of Trustor, or will be sought or obtained by Trustor or any Affiliate of Trustor, with respect to the Property.

(ii) All Permits required by any Governmental Authority for the operation of the Property and the actual and contemplated uses thereof have been obtained.

(iii) There are no pending or, to the best knowledge of Trustor, threatened actions, suits or proceedings to revoke, attack, invalidate, rescind or modify the zoning of the Property, or any material Permits issued with respect to the Property or any part thereof, or asserting that such Permits or the zoning of the Property do not permit the use of the Property as contemplated by the Loan Documents.

(k) *No Encroachments.* There are no material encroachments on the Land and the Property will not encroach upon any easement, any other interest in real property, any adjoining land or any adjoining street.

(l) *Americans With Disabilities Act.* The Property is in compliance in all material respects with all of the requirements of the Americans with Disabilities Act of 1990 or is not required to comply therewith.

(m) *Taxes.* All Taxes due and owing in respect of, and affecting, the Property have been paid. There are no pending, or to Trustor's best knowledge, proposed special or other assessments for public improvements or otherwise affecting the Property.

(n) *Easements, Access.* As of the date hereof, all easements, cross easements, licenses, air rights and rights-of-way or other similar property interests (collectively, "*Easements*"), if any, necessary for the full utilization of the Property for its intended purposes have been obtained, are described in the Title Policy and are in full force and effect without default thereunder. The Property has direct rights of access to public ways and is, or will be, served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All roads necessary for the use of the Property for its current purposes have been, or will be, completed and are, or will be, available for public use.

(o) *Environmental Representations.* Except as disclosed in that certain Phase I Environmental Site Assessment Update, County of Orange Social Services District Facility, 1928 South Grand Avenue, Santa Ana, California, dated January 10, 2005, by Environmental Business Solutions:

(i) Trustor has received no written notice from any state environmental agency, the United States Environmental Protection Agency or any other Governmental Authority claiming that (A) the Property or any use thereof violates any Environmental Laws or (B) Trustor or any of its employees or agents have violated any of the Environmental Laws with respect to the Property;

(ii) Trustor has incurred no liability to the State or the municipality where the Property is located, to the United States of America or to any other Governmental Authority under any of the Environmental Laws;

(iii) No lien against the Property has arisen under or related to any of the Environmental Laws;

(iv) Trustor has received no written notice of, and to Trustor's knowledge and belief, there exists no investigation, action proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property nor does Trustor know of any basis for such a claim;

(v) Trustor has no knowledge that any Hazardous Materials have been or are currently generated, stored, transported, utilized, disposed of, managed, released or located on, under or from the Property in violation of or allegedly in violation of any of the Environmental Laws;

(vi) Trustor has no knowledge, after due inquiry, of any action or order instituted or threatened by any person or governmental authority arising out of or in connection with the Environmental Laws involving the assessment, monitoring, cleanup, containment, remediation or removal of or damages caused or alleged to be caused by any Hazardous Materials generated, stored, transported, utilized, disposed of, managed, released or located on, under or from the Property; and

(vii) To the best knowledge of Trustor, there are no underground storage tanks on or under the Property.

(p) *Trustor's Knowledge.* For purposes of this Deed of Trust, the Note and the other Loan Documents, the phrases "to the knowledge of Trustor" or similar words (such as "to the best of Trustor's knowledge") shall mean the current actual knowledge of Michael Lutton or Scot Matteson (each an indirect owner of beneficial interests in the Trustor), without any duty of investigation or inquiry of any other person. All references in this Section 4 to Trustor having received written notice shall mean the actual receipt of written notice or written information by Scot Matteson or Michael Lutton.

5. AFFIRMATIVE COVENANTS.

Trustor covenants that so long as the Secured Obligations are outstanding:

5.1 Payment of Note; Partial Prepayment of Note.

(a) Trustor will duly and punctually pay, or cause to be paid, when due the principal of, Make-Whole Premium (if any) and interest on the indebtedness represented by the Note, together with all charges, fees and all other sums required to be paid by it pursuant to the Loan Documents in accordance with the terms of the Note and the other Loan Documents.

(b) If, on or prior to the date which is 180 days after the Closing Date, the Initial Disbursement (as defined in the Construction Administration Agreement) shall not have occurred, Trustor shall, within thirty (30) days thereof, make a mandatory partial prepayment of the Note in the principal amount of \$8,500,000, which prepayment shall be made from monies then on deposit in the Construction Fund, at a price equal to such principal amount, plus accrued and unpaid interest thereon, without any premium.

5.2 Covenants Relating to the Principal Lease.

(a) *Compliance with and Performance of the Principal Lease.* Trustor (i) will comply in all material respects with all provisions of the Principal Lease and will perform all obligations and duties imposed on it under the Principal Lease or will cause such obligations and duties to be performed, all in accordance with the terms and provisions of the Principal Lease; and (ii) will not take, and will not consent to or suffer the taking by the Tenant of, any action under the Principal Lease which would cause a default under or give rise to a right of the Tenant to terminate the Principal Lease or take any offset against, deduction from or reduction of any rent payment.

(b) *Certain Notices.* Trustor will immediately, but in no event later than five (5) Business Days after Trustor receives written notice thereof from the Tenant, give notice to Beneficiary (which notice shall include, without limitation, a copy of the notice given by the Tenant) of the following (i) its receipt from the Tenant of notice that Trustor has failed to perform or caused to be performed any

material obligation or duty imposed by it under the terms and provisions of the Principal Lease and that such failure has not been cured within any applicable cure period; and (ii) its receipt from the Tenant of notice that the Tenant, as a result of any failure to perform or cause to be performed any obligation or duty imposed on Trustor under the terms and provisions of the Principal Lease, intends to (1) terminate the Principal Lease, (2) offset against any rent payment or other payment under the Principal Lease (x) any costs incurred by the Tenant in performing or obtaining from a third party the performance of such obligations or duties or (y) any other amount the Tenant may be permitted to offset under the Principal Lease or applicable law, (3) seek recovery of all or any portion of any rent payment previously made, or (4) reduce any future rent payment.

(c) *Enforcement of Principal Lease.* Trustor will enforce the Principal Lease against the Tenant in accordance with its terms and provisions, and, so long as no notice of Default has been given and no Event of Default shall have occurred and be continuing, shall have sole reasonable control and discretion over the timing and nature of any action to be taken against the Tenant. Promptly, but not more than ten (10) Business Days from becoming aware thereof, Trustor will give notice to Beneficiary of any default or failure of performance by the Tenant of any of the Tenant's obligations under the Principal Lease. Trustor agrees that it shall keep Beneficiary reasonably informed about its efforts to enforce the Principal Lease against the Tenant.

(d) *Rent Invoices.* On or before the fifth (5th) calendar day of each month, Trustor will remit to Tenant an invoice for rent and other charges due and owing by Tenant under the Principal Lease in such manner as shall cause Tenant to receive such invoice not later than twenty (20) days prior to the first calendar day of the next succeeding month. Each such invoice shall direct Tenant to pay such rent and other charges to Trustor as follows:

c/o The Bank of New York
101 Barclay Street, Floor 21W
New York, New York 10286
Attention: New York City Municipal Finance Department
Reference: CTL 2005-6 (Orange County, California)
ABA#: 021000018
GLA #: 111-565
Account #: 313862

Trustor shall cause a copy of each invoice to be delivered to Beneficiary concurrent with Trustor transmitting such invoice to Tenant and shall retain proof of delivery of each such invoice to Tenant for inspection by Beneficiary as and when reasonably requested by Beneficiary.

5.3 Taxes and Other Costs; Tax and Insurance Escrows.

Trustor shall pay, or shall cause the Tenant to pay, prior to delinquency or the imposition of any penalty all real and personal property taxes, assessments, charges, franchises, income, unemployment, old age benefits, withholding, sales, and other taxes assessed against Trustor and/or the Pledged Property, and all insurance premiums relative to the Pledged Property. Trustor shall deliver to Beneficiary, upon request of Beneficiary, evidence of the payment by Trustor of all such items. Trustor agrees that Beneficiary may, at its option upon five (5) Business Days' written notice to Trustor, and from time to time, pay any taxes or insurance premiums, the payment of which is then due, discharge any liens or encumbrances on the Property and any of the Collateral, or take any other action that Beneficiary may deem reasonably proper to repair, insure, maintain, or preserve the Property or any of the Collateral or Beneficiary's rights therein.

Trustor will pay to Beneficiary on demand all amounts so paid or incurred by Beneficiary. The obligation of Trustor to pay such amounts shall be included in the Liabilities of Trustor to Beneficiary and shall accrue interest at the stated interest rate on the Note.

5.4 Actions Affecting the Collateral.

Upon Beneficiary's reasonable request, Trustor shall appear in and contest at its own cost and expense, any action or proceeding purporting to affect the security hereof or of the Loan Documents or Beneficiary's rights or powers; provided, however, that nothing herein contained shall require Trustor to appear in or contest any action or proceeding arising as a result of Beneficiary's gross negligence, willful misconduct, bad faith, or independent business dealings.

5.5 Insurance.

Trustor shall, at all times, provide, maintain and keep in full force and effect or shall cause to be provided, maintained and so kept, the insurance policies listed in **Schedule 5.5** (the "**Insurance Policies**") as of the date hereof and shall comply with the requirements therein set forth. Trustor will provide to Beneficiary each year, promptly following its renewal of the Insurance Policies, evidence of such renewal, which evidence shall include a certification as to the date on which such Insurance Policies shall expire, and a certification that such renewed Insurance Policies comply with the requirements of the Principal Lease. Trustor will not enter into any material amendment or modification of any requirement for Insurance Policies set forth in the Principal Lease or any of its insurance policies without the written consent of Beneficiary. Trustor assigns to Beneficiary all insurance proceeds which it may be entitled to receive. By funding the Loan, Beneficiary acknowledges (a) receipt of evidence satisfactory to Beneficiary of the insurance maintained by Trustor with respect to the Property, and (b) that, notwithstanding anything to the contrary contained in this Deed of Trust, including, without limitation, **Schedule 5.5** attached hereto, such insurance shall be sufficient to satisfy Trustor's insurance obligations under this Deed of Trust, the Note and the other Loan Documents so long as such Insurance Policies remain in full force and effect.

5.6 Condemnation.

(a) Should the Property or any part thereof or interest therein be taken (permanently or temporarily) or damaged by reason of any public improvement or condemnation proceeding or in any other similar manner ("**Condemnation**"), or should Trustor receive any notice or other information regarding such proceeding, Trustor shall give written notice thereof to Beneficiary.

(b) All compensation, awards and other payments or relief with respect to any Condemnation ("**Condemnation Proceeds**") shall be deposited with Beneficiary for application as provided in **Section 5.6(c)**. Trustor will diligently and continuously pursue the collection of any Condemnation Proceeds that may be due following a Condemnation, with Beneficiary's participation.

(c) In the event any portion of the Property is so taken or damaged and the Principal Lease is terminated, Trustor shall cause the proceeds of a Condemnation to be applied to the prepayment of the Note and other Secured Obligations in accordance with the terms thereof.

(d) Trustor hereby absolutely and unconditionally assigns to Beneficiary all condemnation awards, damages and compensation which it may be entitled to receive, all of which shall be paid to Beneficiary to be disposed of as provided in **Section 5.6(c)**. Trustor waives the benefit of any law or

decision contrary thereto, and without limiting the foregoing, unconditionally and irrevocably waives all rights of a property owner granted under California Code of Civil Procedure § 1265.225(a) which provides for allocation of condemnation proceeds between a property owner and a lienholder, and any other law or successor statute of similar import, and hereby agrees to execute such further assignments thereof as Beneficiary may require. If any condemnation proceeds are not sufficient to repay the Secured Obligations in full, Trustor shall immediately pay any remaining balance, together with all accrued interest thereon. If any excess proceeds remain, such excess proceeds shall be promptly delivered by Beneficiary to Trustor. Application or release of any Condemnation Proceeds as provided herein shall not cure or waive any Default or Event of Default hereunder or under any other Loan Document or invalidate any act done as a result of such Default or Event of Default.

5.7 Maintenance of Existence.

Trustor, at its own cost and expense, will maintain its legal existence as a Delaware limited liability company and its license or qualification in each other jurisdiction in which the business, affairs and properties of Trustor require such qualification.

5.8 Notice and Certification with Respect to Bankruptcy Proceedings.

Trustor shall promptly notify Beneficiary of the occurrence of any of the following events with respect to Trustor or any equity holder of either thereof and shall keep Beneficiary informed of the status of any petition filed in bankruptcy (or similar proceeding otherwise commenced): (a) application for or consent to the appointment of a receiver, trustee, liquidator or custodian or the like, or (b) admission in writing of its inability to pay its debts generally as they become due, or (c) general assignment for the benefit of creditors, or (d) adjudication as a bankrupt or insolvent, or (e) commencement of a voluntary case under the Bankruptcy Code or filing of a voluntary petition or answer seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or filing of an answer admitting the material allegations of an insolvency proceeding, or action for the purpose of effecting any of the foregoing, or (f) if without the application, approval or consent of Trustor, a proceeding shall be instituted in any court of competent jurisdiction, under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking an order for relief or an adjudication in bankruptcy, reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like for all or any substantial part of its assets, or other relief in respect thereof under any bankruptcy or insolvency law.

5.9 Compliance with Law.

Trustor will comply in all material respects with all laws, ordinances or governmental rules or regulations to which it is subject, and will obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of its properties or to the conduct of its businesses, in each case to the extent necessary to ensure that non-compliance with such laws, ordinances or governmental rules or regulations or failures to obtain or maintain in effect such licenses, certificates, permits, franchises and other governmental authorizations would not reasonably be expected, individually or in the aggregate, to have a Materially Adverse Effect on the business, operations, affairs, financial condition, properties or assets of Trustor.

5.10 Further Assurances; Protection of Collateral.

Trustor will from time to time execute, if necessary, and deliver all such supplements and amendments hereto and all such financing statements, continuation statements, instruments not inconsistent with the Loan Documents of further assurance, and other instruments reasonably requested by Beneficiary and necessary to (a) grant more effectively and preserve the perfected security interests of the Loan Documents in all or any portion of the Pledged Property, (b) maintain or preserve the security interests pursuant to the Loan Documents, (c) perfect, publish notice of, or protect the validity of, any grant made or to be made by the Loan Documents, or (d) preserve and defend title to the Pledged Property and Beneficiary's rights, thereto against the claims of all Persons and parties.

5.11 Litigation; Attorneys' Fees.

(a) Trustor shall promptly notify Beneficiary of the commencement or threat of commencement of any litigation which seeks to or could materially affect any of the Pledged Property, the lien or security interest of this Deed of Trust, or the rights or powers of Beneficiary or Trustee hereunder. Trustor shall, at its own expense, appear in and defend any such litigation. Beneficiary and Trustee, at their sole cost and expense except as expressly provided below, shall also have the right, but not the obligation, to appear and participate in any such litigation, and, provided, however, that if Beneficiary or Trustee shall have delivered to Trustor a reasonable opinion of counsel to the effect that the selection and retention by Trustor of a single counsel to represent the interests of each of Trustor, Beneficiary and Trustee in any such litigation constitutes a conflict detrimental to the interests of Beneficiary or Trustee, Trustor shall pay all costs and expenses (including costs of evidence of title and attorneys' and experts' fees and costs) of Beneficiary and Trustee in so appearing and participating.

(b) Trustor shall reimburse Beneficiary within ten (10) days of written demand for all reasonable out-of-pocket fees and costs, including attorneys' and experts' fees and costs, incurred by Beneficiary for: (i) enforcement of any of the Secured Obligations, this Deed of Trust or any of its terms, or the exercise of any rights or remedies hereunder and/or at law, in equity or otherwise, whether or not any action or proceeding is filed; (ii) representation of Beneficiary in any bankruptcy, insolvency, reorganization or other debtor-relief or similar proceeding of or relating to Trustor, to any person liable (by way of guaranty, assumption, endorsement or otherwise) upon any of the Secured Obligations, or to the Pledged Property; or (iii) representation of Beneficiary in any action or proceeding relating to the Pledged Property, whether commenced by Beneficiary or any other person, including foreclosure, receivership, lien or stop-notice enforcement, bankruptcy, eminent domain and probate actions or proceedings. All such fees and costs shall bear interest until paid at the stated interest rate on the Note.

5.12 Single-Purpose Entity.

In addition to, and not in limitation of, the covenants set forth herein, Trustor covenants and agrees that it will, at all times that any amounts are due and owing on the Note or other Secured Obligations and for a period of one year and one day thereafter, be a Single-Purpose Entity.

5.13 Release and Indemnification Covenants.

(a) *Indemnity.* Subject to the provisions of **Section 5.13(b), (c) and (d)**, Trustor assumes liability for and agrees to indemnify, defend and hold harmless the Indemnified Parties against any and all actual (but excluding punitive and consequential, unless actually incurred) losses, costs (including, without limitation, reasonable attorneys' fees and expenses), claims, damages or liabilities that may be

imposed upon, incurred by or asserted against any Indemnified Party, in any way relating to or arising out of (i) the Property or any of the Collateral (excluding from the indemnity under this **Section 5.13** any indemnity with respect to Environmental Claims, which indemnities are set forth in **Section 5.23** and the Environmental Indemnity Agreement and are in addition to those set forth in this **Section 5.13**), (ii) any of the Loan Documents or any of the transactions contemplated thereby or the participation by such Indemnified Parties in such transactions, including any defaults thereunder or breaches thereof or untrue statements therein or the enforcement of the terms and provisions of any of the Loan Documents, (iii) any accident, injury to or death of any Persons or loss of or danger to property occurring on or about the Property or any part thereof or the adjoining parking areas, sidewalks, curbs, vaults and vault space, if any, streets or ways, (iv) any use, non-use or condition of the Property or any part thereof or the adjoining parking areas, sidewalks, curbs, streets or ways, including claims or penalties arising from violation of any legal requirement or insurance requirement, as well as any claim based on any patent or latent defect, whether or not discoverable by the Indemnified Party, and any claim the insurance as to which is inadequate, (v) any failure on the part of Trustor to perform or comply with any of the terms of any Loan Document to which it is a party and any breach of any representation made by Trustor herein, (vi) any performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof or (vii) any negligence or tortious act or omission on the part of Trustor or any of its agents, contractors, servants, employees, lessees, licensees or invitees (the foregoing, "Indemnified Claims"). Trustor will cause Beneficiary to be Beneficiary of any indemnities provided by the Tenant under the Principal Lease. The obligations of Trustor under **Section 5.13** shall apply upon the assertion of any Indemnified Claim, and shall apply whether or not an Indemnified Party was negligent or otherwise at fault and whether or not the Indemnified Claim has merit, and shall apply even if the Indemnified Claim was caused or incurred due to the negligence (whether active or passive) or other conduct of any Indemnified Party.

(b) *Notice Requirement.* In case any action shall be brought against one or more of the Indemnified Parties based upon any of the above and in respect of which indemnity may be sought against Trustor, such Indemnified Parties shall promptly notify Trustor in writing, and Trustor shall assume the defense thereof, including the employment of counsel reasonably acceptable to the Indemnified Parties and the payment of all expenses and the right to negotiate and consent to settlement. Any one (1) or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Parties unless the employment of such counsel has been specifically authorized by Trustor. Trustor shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of Trustor or if there be a final judgment for the plaintiff in any such action and Trustor has been notified of the action in the manner required by the first sentence of this **Section 5.13(b)**, Trustor agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment. In addition, in the event that Trustor shall not assume the defense of any matter in which an indemnity is sought, the Indemnified Parties, in addition to any other right they may have, shall be entitled to retain such counsel and prosecute such defense, at the sole cost and expense of Trustor. Trustor may agree to any settlement of an action for which indemnification is sought with the consent of the applicable Indemnified Parties, which consent shall not be unreasonably withheld, provided that no such consent shall be required if Trustor will pay the entire settlement out of its own funds in cash (and shall provide to each Indemnified Party receiving such payment an opinion of counsel to Trustor that such payment does not constitute a voidable preference under the Bankruptcy Code) and/or otherwise fully perform the settlement and the Indemnified Parties make no admission of wrongdoing.

(c) *Legal Fees.* Trustor shall and hereby agrees to indemnify and hold the Indemnified Parties harmless from and against all actual out-of-pocket claims, losses and damages, including reasonable legal fees and reasonable expenses, arising out of any enforcement actions under the Loan Documents or any act of negligence of Trustor or any of its officers, agents, contractors, servants, employees, licensees or invitees in connection with the Property or the Principal Lease, including, but not limited to, any acts Trustor directs Beneficiary to take.

(d) *Exclusion.* Notwithstanding anything to the contrary in this Deed of Trust or the other Loan Documents, no indemnification will be made under this **Section 5.13** or elsewhere in this Deed of Trust nor shall anything contained herein require Trustor to indemnify Beneficiary or any other Indemnified Party for any loss, claim, damage or liability caused by the willful misconduct, gross negligence, bad faith or willful breach of duty or misconduct under any Loan Document of such Indemnified Party, their respective officers, agents, employees, successors or assigns. No willful misconduct, gross negligence, bad faith or willful breach or misconduct by any Indemnified Party shall in any way affect the obligations of Trustor to each other Indemnified Party hereunder.

5.14 ERISA.

(a) Trustor shall not transfer or hypothecate its interest or rights in this Deed of Trust or in the Pledged Property, or attempt to do any of the foregoing or suffer any of the foregoing, nor shall any Person owning a direct or indirect interest in Trustor transfer any of its rights or interest (direct or indirect) in Trustor, attempt to do any of the foregoing or suffer any of the foregoing, nor shall Trustor or any Person owning a direct or indirect interest in Trustor take, without limitation, any action or fail to take any action, if, in any such case, doing so would, assuming that the statements set forth in **Schedule 4.1(e)** are applicable to each Person holding any direct or indirect interest in the Note, (i) cause the Note or the exercise of any of Beneficiary's rights in connection therewith to constitute a Prohibited Transaction (unless Trustor furnishes an opinion of counsel that the same is exempt from the Prohibited Transaction provisions of ERISA and the Code or otherwise does not constitute a Prohibited Transaction), assuming solely for this purpose that Beneficiary is a Party In Interest or a Disqualified Person with respect to an employee benefit plan, if any, which has directly or indirectly invested in Trustor or (ii) otherwise result in Beneficiary being deemed in violation of any applicable provisions of ERISA with respect to the Note. Trustor shall take such steps as are necessary to assure that it (and its members) does not commit any act, or fail to commit any act, the occurrence of which or the failure of which to occur would cause the Note to be a Prohibited Transaction.

(b) If the provisions of this **Section 5.14** are violated, Trustor agrees, at its own cost and expense, to take such steps as Beneficiary shall reasonably request to prevent the occurrence of a Prohibited Transaction or to correct the occurrence of a Prohibited Transaction. Trustor agrees to indemnify, defend and hold the Indemnified Parties free and harmless from and against all loss, costs (including reasonable attorney's fees and expenses), taxes, penalties, damages and expenses any Indemnified Party may suffer by reason of the investigation, defense and settlement of claims based upon a breach of the foregoing provisions. The foregoing indemnification shall survive repayment of the Note for a period of one year.

5.15 Tax and Insurance Certifications.

On or prior to October 15 of each calendar year, Trustor will provide to Beneficiary an Officer's Certificate setting forth Trustor's real property taxes and insurance premiums. Such Officer's Certificate

shall set forth the annual amounts for such categories and monthly amounts for each thereof, as well as the dates that any real property taxes and insurance premiums are required to be paid.

5.16 Compliance With Covenants.

Trustor will not modify, waive in any material respect or release any easements, restrictive covenants or other Permitted Encumbrances, or suffer, consent to or permit the foregoing, without Beneficiary's prior written consent. Trustor will timely comply in all material respects with the terms of all easements, restrictive covenants and all other Permitted Encumbrances. Trustor shall take such further actions as Beneficiary may reasonably request from time to time with respect to such Easements, restrictive covenants or Permitted Encumbrances. Trustor shall observe and comply with any conditions and requirements reasonably necessary to preserve and extend any and all rights, privileges, franchises and concessions that are applicable to the Pledged Property, the use and occupancy thereof, or the business conducted thereat, and will timely comply in all material respects with all regulations, rules, ordinances, statutes, orders and decrees of any Governmental Authority or court applicable to it and/or the Property or any part thereof.

5.17 After Acquired Property.

Trustor will grant to Beneficiary a first priority perfected security interest in and to all equipment and other personal property owned by Trustor, whether or not used in the construction, maintenance and/or operation of the Property, immediately upon acquisition of same or any part of same and will execute any documents to effectuate this Section 5.17.

5.18 Books and Records.

Trustor shall keep and maintain at all times at its principal office complete, true and accurate books of account and records reflecting the results of its operations. Trustor shall permit Beneficiary, its agents, consultants and representatives, upon reasonable notice (which may be given orally or in writing) and at reasonable times during business hours, to examine and audit the books and records of Trustor and make copies thereof, at Trustor's expense. Trustor shall make all records relating to the Pledged Property available to Beneficiary and shall cooperate with any examination, audit or other inquiry (including causing the personnel responsible for the Property to be available to respond to inquiries).

5.19 Certain Zoning Matters.

As soon as practicable after Trustor becomes aware of any event or circumstance which could reasonably result in the Tenant ceasing to occupy the Property, but in no event later than thirty (30) days thereafter, Trustor shall commence such proceedings as are commercially reasonable to obtain such consents, approvals, variances and/or re-zonings as are necessary for the Property to be used, following the vacation thereof by the Tenant, for office space and/or commercial purposes. Trustor shall diligently pursue such consents, approvals, variances and/or re-zonings and use commercially reasonable efforts to obtain the same as promptly as practicable; provided, however, that if Trustor provides a replacement tenant or tenants reasonably acceptable to Beneficiary and no such consent, approval, variance and/or re-zoning is necessary for the payment of rent and other charges by such replacement tenant in an amount sufficient to fully amortize the Loan by its stated maturity date, Trustor shall not be required to obtain any such consent, approval, variance and/or re-zoning.

5.20 Authority of Beneficiary to Exercise Cure Rights.

Trustor hereby authorizes Beneficiary to take such action, during the occurrence of a Default or Event of Default, on behalf of Trustor in order to exercise the rights to cure or eliminate defaults of Trustor under the Principal Lease after giving Trustor at least five (5) Business Days' prior written notice of the same (except in the case of an emergency, in which event no prior notice shall be necessary). Trustor covenants and agrees that immediately upon request by Beneficiary, it shall execute and deliver to the Tenant and Beneficiary such further written evidence of the authorization set forth in this **Section 5.20** as shall be reasonably requested by Beneficiary.

5.21 Restoration of the Property Following Casualty or Condemnation.

Upon the occurrence of a Casualty or Condemnation to the Property, Trustor shall promptly, but in any event within five (5) Business Days, provide written notice to Beneficiary of the occurrence of such Casualty or Condemnation, such notice to describe such Casualty or Condemnation with such reasonable detail as shall then be known to Trustor. To the extent Beneficiary makes proceeds from such Casualty or Condemnation available, Trustor shall thereupon promptly commence the taking of such actions as shall be necessary or appropriate to cause the Tenant to cause the Property to be restored to the condition required in accordance with the Principal Lease, assuming it is then in effect, and otherwise to its condition immediately prior to the occurrence of such Casualty or Condemnation in accordance with the Principal Lease or, if the Tenant and Trustor shall have agreed that the Property is not to be restored or repaired in accordance with the Principal Lease, Trustor shall prepay the Note and the other Secured Obligations in accordance with the terms thereof.

5.22 [INTENTIONALLY OMITTED].

5.23 Environmental Matters.

(a) *Indemnity.* Trustor hereby assume liability for, and, at all times, both before and after the repayment of the Loan, hereby agrees to pay, indemnify, defend, exonerate, protect and save Beneficiary harmless against and from (the following being referred to herein as "**Costs**") any and all Environmental Claims caused by Trustor:

(i) relating to any Hazardous Materials on, in, under, Released from or affecting, all or any portion of the Property, on or before the date hereof, regardless of whether or not caused by or within the control of Trustor, whenever discovered;

(ii) the failure by Trustor to comply in all material respects with the terms and conditions of this Deed of Trust;

(iii) the breach of any representation or warranty contained in this Deed of Trust or any other Loan Document in any material respect, beyond any applicable notice and/or cure periods; or

(iv) the enforcement of this Deed of Trust, including, without limitation, the cost of assessment, containment and/or removal of any and all Hazardous Materials from all or any portion of the Property or any surrounding areas, the cost of any actions taken in response to the presence, release or threat of release of any Hazardous Materials on, in, under or affecting any portion of the Property or any surrounding areas to prevent or minimize such release or threat of

release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with the Environmental Laws in connection with all or any portion of the Property or any surrounding areas which is caused by Trustor.

Notwithstanding anything to the contrary contained herein, Trustor shall not have any obligations or liabilities hereunder to the extent Hazardous Materials (i) were not present on the Property prior to the date Beneficiary acquired title or control to the Property, whether by receivership, foreclosure, exercise of power of sale, acceptance of a deed-in-lieu of foreclosure or otherwise and (ii) were the result of any act or omission of Beneficiary or any agent or representation of Beneficiary.

(b) *Trustor to Keep Property Free of Hazardous Materials.* Trustor shall keep or cause the Property to be kept free from Hazardous Materials (except those substances used by the Tenant in the ordinary course of its business and in compliance with all Environmental Laws) and in compliance with all Environmental Laws, shall not install or use any underground storage tanks, shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Materials by all tenants of space in the improvements (except those substances used by the Tenant in the ordinary course of its business and in compliance with all Environmental Laws), and, without limiting the generality of the foregoing, during the term of this Deed of Trust, shall not install in the improvements or permit to be installed in the improvements asbestos or any substance containing asbestos (except those substances used by the Tenant in the ordinary course of its business and in compliance with all Environmental Laws). Trustor further acknowledges and agrees that Beneficiary has no duty to provide Trustor with any information regarding the Environmental Laws or any interpretation thereof.

(c) *Remediation of Conditions.* Trustor shall immediately, but in no event later than ten (10) Business Days after obtaining any actual knowledge thereof, notify Beneficiary should Trustor become aware of

(i) the presence, or any release or threat of release, of any Hazardous Materials on, under or from the Property, whether or not caused by Trustor,

(ii) any condition or occurrence on the Property that may constitute a material violation of any Environmental Laws,

(iii) any Lien, action or notice affecting the Property or Trustor resulting from any violation or alleged violation of the Environmental Laws,

(iv) the institution of any investigation, inquiry or proceeding concerning Trustor or the Property pursuant to any Environmental Law or otherwise relating to Hazardous Materials, or

(v) the discovery of any occurrence, condition or state of facts which would render any representation or warranty contained in this Deed of Trust incorrect in any material respect if made at the time of such discovery.

Trustor shall, promptly and when and as required by law, at its own expense, take all actions as shall be necessary or advisable for the clean-up of any and all portions of the Property or other affected property, including, without limitation, all investigative, monitoring, removal, containment and remedial actions in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to Beneficiary), and shall further pay or cause to be paid, at no expense to Beneficiary, all clean-up,

administrative and enforcement costs of applicable governmental agencies which may be asserted against the Property. In the event Trustor fails to do so, Beneficiary may, upon five (5) Business Days' prior written notice to Trustor, cause the Property or other affected property to be freed from any Hazardous Materials or otherwise brought into conformance with Environmental Laws and any cost incurred in connection therewith shall be included in Costs and shall be paid by Trustor in accordance herewith. In furtherance of the foregoing, Trustor hereby grants to Beneficiary access to the Property and an irrevocable license to remove any items deemed by Beneficiary to be Hazardous Materials and to do all things Beneficiary shall deem reasonably necessary to bring the Property into conformance with Environmental Laws.

(d) *Inspection by Beneficiary.* Upon the request of Beneficiary, at any time and from time to time during the continuance of an Event of Default under this Deed of Trust or the Loan Documents or at such other time as Beneficiary has reasonable grounds to believe that Hazardous Materials are or have been released, stored or disposed of on or around the Property or that the Property may be in violation of the Environmental Laws, Trustor shall provide, at Trustor's sole expense, an inspection or audit of the Property prepared by a hydrogeologist or environmental engineer or other appropriate consultant approved by Beneficiary indicating the presence or absence of Hazardous Materials on the Property or an inspection or audit of the improvements located on the Property prepared by an engineering or consulting firm reasonably approved by Beneficiary indicating the presence or absence of friable asbestos or substances containing asbestos on the Property. If Trustor fails to provide such inspection or audit within thirty (30) days after such request, Beneficiary may order the same, and Trustor hereby grants to Beneficiary access to the Property and an irrevocable license to undertake such inspection or audit. The cost of such inspection or audit shall be included in Costs and shall be paid by Trustor in accordance with the terms hereof.

(e) *Enforcement and Extension of Principal Lease Indemnities and Obligations.* Trustor covenants and agrees to use commercially reasonable efforts to enforce all obligations of the Tenant under the Principal Lease relating to Hazardous Materials and Environmental Laws.

(f) *Environmental Insurance Policy.* Notwithstanding anything to the contrary contained in this Deed of Trust or any other Loan Document, Beneficiary agrees to reasonably pursue recourse under any environmental insurance policy obtained by Trustor before seeking recovery from Trustor. Trustor covenants and agrees that Trustor shall cause Beneficiary to be an additional named insured under any such environmental insurance policy. Nothing contained herein or in any other Loan Document shall constitute a requirement that Trustor obtain any environmental insurance policy or, if any such environmental insurance policy is obtained at any time, to maintain such environmental insurance policy in effect.

5.24 Construction of the Additional Space; TI Work.

(a) Trustor will cause the Additional Space to be constructed in accordance with the plans and specification and requirements set forth in the Principal Lease and within the time period set forth in the Principal Lease and the Construction Administration Agreement. Trustor will cause all TI Work (as defined in the Construction Administration Agreement) to be completed and performed in accordance with the plans and specifications therefor set forth in the Principal Lease and within the time period set forth in the Principal Lease and the Construction Administration Agreement.

(b) Trustor shall assign to Beneficiary all payment and performance bonds in connection with the Additional Space and the TI Work, as required pursuant to the Construction Administration Agreement.

6. NEGATIVE COVENANTS.

Trustor covenants that so long as the Secured Obligations are outstanding:

6.1 Other Businesses.

Trustor will not conduct any business other than business relating to the leasing, owning, operating or maintaining the Property as contemplated by this Deed of Trust, the other Loan Documents, the Principal Lease and the consummation of the transactions contemplated hereby and by the other Loan Documents and the Principal Lease.

6.2 Sale of the Property.

(a) Except in accordance with the provisions of this **Section 6.2**, Trustor will not cause or permit a Sale of any or all of its properties, including, without limitation, its interest in the Pledged Property without the prior written consent of Beneficiary. Notwithstanding anything to the contrary contained in any Loan Document, Trustor shall have the right, at any time after the completion and acceptance of the Additional Space and the completion of all TI Work, to cause a Sale of all or any of its properties, including the Pledged Property, and cause the Note and the Loan Documents to be assumed by the transferee thereof, subject to compliance with the following conditions:

(i) Trustor has provided written evidence that the Tenant has no right to terminate the Principal Lease as a result of any such Sale;

(ii) the transferee shall be a Single-Purpose Entity, the organizational documents of which shall contain provisions substantially identical to the provisions of the organizational documents of Trustor;

(iii) the transferee shall have executed such agreements and instruments, and shall have delivered certificates and opinions, reflecting its express assumption of all of the terms, conditions and provisions of the Principal Lease, this Deed of Trust, the Note and the other Loan Documents, in form and substance reasonably satisfactory to Beneficiary;

(iv) no Default or Event of Default shall have occurred and be continuing, except any such Default or Event of Default which relates solely to the status of Trustor and not to the performance by Trustor of its obligations under the Loan Documents and which Default or Event of Default will be cured as a result of the removal of Trustor from the transactions contemplated by the Loan Documents as a result of such Sale;

(v) Trustor or such transferee shall deliver an opinion or opinions of counsel to such transferee as to the enforceability of the obligations of the transferee and customary corporate or Trustor related opinions;

(vi) Trustor shall have caused to be delivered to Beneficiary an endorsement to Beneficiary's Title Policy delivered on the Closing Date showing the transfer of ownership of the

Property to the transferee and insuring the lien of Beneficiary in the Property as a first priority lien, subject only to Permitted Encumbrances; and

(vii) Trustor shall have paid to Beneficiary a transfer fee equal to 1.00% of the then outstanding principal amount of the Loan, plus all Beneficiary's reasonable out-of-pocket fees and expenses (including reasonable attorneys' fees and expenses), in connection with such Sale.

(b) For purposes hereof, the term "**Sale**" shall include, without limitation, the following: (1) a conveyance, sale, transfer, disposition or encumbrance, absolute or for security, voluntary or involuntary, of any legal or equitable interest in any of the properties of Trustor, including without limitation the Property or any of the Collateral; (2) any transfer of the ownership of any membership interest in Trustor such that any transferee which, prior to such transfer, owns less than a 49% interest in Trustor, owns more than a 49% interest in Trustor subsequent to the transfer; (3) any merger with or into or consolidation with any other entity (together with any Affiliate); (4) any sale, lease or transfer or other disposition of all or substantially all of the assets of Trustor; or (5) any dissolution or liquidation or cessation of doing business of Trustor or the assumption of obligations by a newly constituted limited liability company, corporation or Trustor, including the assumption by such newly constituted limited liability company, corporation or Trustor of all of the liabilities of Trustor under the Loan Documents.

(c) So long as each of the other conditions set forth in this **Section 6.2** have been satisfied, the payment of the transfer fee required pursuant to **Section 6.2(a)(vii)**, but not the payment of Beneficiary's out-of-pocket fees and expenses, shall be waived in connection with any Qualifying Sale and with respect to the first two Sales which are not Qualifying Sales.

(d) Notwithstanding the foregoing, after the completion and acceptance of the Additional Space and the completion of all TI Work,

(i) transfers of all or part of the interests of Trustor shall be permitted, upon notice to Beneficiary for transfers of direct interests in Trustor but without the necessity of obtaining Beneficiary's consent, provided the Principal Lease is in full force and effect and

(A) any one or more of the guarantors under the Carve-Outs Guaranty, or the spouse, children, heirs or family trust of such guarantors, will have direct or indirect voting control of Trustor after such transfer, or

(B) the individual(s) that will have control of Trustor, if not as described in **clause (A)** are approved by Beneficiary,

(ii) transfers among family members and family trusts shall be permitted as long as

(A) one or more of such guarantors or the spouse, children, heirs or family trust of such guarantors, will have direct or indirect voting control of Trustor after such transfer or

(B) the individual(s) that will have control of Trustor, if not as described in **clause (A)** are approved by Beneficiary, and

(iii) if any person who, immediately prior to such transfer, owned less than fifty percent (50%) of Trustor shall, following such transfer, own more than fifty percent (50%) of

Trustor, a non-consolidation opinion addressing such person and the Trustor shall be delivered to Beneficiary.

The foregoing transfers set forth in this **Section 6.2(d)** shall be deemed Permitted Transfers under this Deed of Trust and shall not be required to comply with the requirements of **Section 6.2(a) – (c)**, inclusive.

6.3 Other Debt.

Trustor will not incur, create, assume or suffer to exist any indebtedness other than the Debt (x) incurred in connection with the Loan Documents or (y) incurred as unsecured trade indebtedness (including, without limitation, trade indebtedness incurred in connection with the construction of the "Additional Space" and the "TI Work" (as such terms are defined in the Construction Administration Agreement)) not reserved for or provided for in the Loan Documents in connection with the operation of the Property in the ordinary course of business which is paid prior to delinquency.

Notwithstanding the foregoing, Trustor shall be permitted to issue unsecured subordinated Debt to one or more Affiliates so long as no payments of principal or interest are due on such subordinated Debt until all amounts due and owing under the Note, any additional loan made pursuant to **Section 3.2(b)** or any other Debt secured hereby (as this instrument may be amended).

6.4 Other Agreements.

(a) Trustor will not (a) enter into any further agreements other than those required by or in connection with this Deed of Trust, the other Loan Documents or the Principal Lease, subsequent to the date hereof other than management, operation and maintenance agreements which are subordinated to Trustor's obligations under this Deed of Trust, the other Loan Documents, and the Principal Lease, (b) grant security interests other than (x) purchase money security interests in equipment and goods acquired in the ordinary course of business and which are not incorporated into or made a part of the Property (unless such purchase money security interests are discharged and released within 45 days) and (y) the security interests in its property required by the aforementioned documents and pursuant to Permitted Encumbrances, or (c) enter into agreements and contracts to rebuild all or any portion of the Property unless sufficient insurance proceeds together with any contributions made by the members of Trustor are available for such rebuilding.

(b) Trustor shall not hereafter enter into any contract, agreement or other arrangement with any Affiliate of Trustor without Beneficiary's prior written consent unless such contract, agreement or other arrangement is in the ordinary course of business and is on commercially reasonable terms and conditions for similar agreements entered into among unaffiliated entities.

6.5 Impairment of Collateral.

(a) Trustor will not knowingly take any action which would

(i) cause the validity or effectiveness of this Deed of Trust, any other Loan Document or any grant of any of the Property or Collateral to be materially impaired, or cause the lien of any Loan Document to be amended, terminated or discharged, or cause any Person to be released from any covenant or obligation under any Loan Document other than in accordance with their respective terms,

(ii) permit any lien, charge, security, deed of trust or other encumbrance (other than the lien of the Loan Documents) to be created on or extend to or otherwise arise upon or burden the Property or Collateral or any part thereof or any interest therein or the proceeds thereof other than Permitted Encumbrances and customary utility, access or communications easements which are necessary or appropriate for the construction and operation of the Property, or

(iii) permit the lien of the Loan Documents not to constitute a valid first priority security interest in the Pledged Property.

(b) Notwithstanding the foregoing, Trustor may

(i) enter into the Principal Lease in compliance with the terms and conditions of this Deed of Trust and

(ii) transfer or dispose of equipment which is being replaced or which is no longer necessary in connection with the operation of the Property, provided that such transfer or disposal will not have a Material Adverse Effect, will not materially impair the utility of the Property, and will not result in a reduction or abatement of, or right of offset against Rent payable under any Lease, and provided that any new equipment acquired by Trustor (and not so disposed of) shall be subject to the Lien of this Deed of Trust.

(c) Trustor may, without the prior written consent of Beneficiary, (i) make immaterial transfers of portions of the Property to governmental authorities for dedication or public use and (ii) grant easements in the ordinary course of business for access, water and sewer lines, telephone and telegraph lines, electric lines or other utilities, provided that no such transfers or easements set forth in the foregoing clauses (i) and (ii) shall materially impair the value, utility and operation of the Property or have a Material Adverse Effect.

6.6 Judgments.

Trustor will not permit any judgment obtained against it in an amount exceeding \$100,000 to remain unpaid for a period of thirty (30) days following the entry thereof without obtaining a stay of execution or bonding or causing such judgment to be bonded.

6.7 Amendments to Documents.

Without Beneficiary's prior written consent, Trustor will not amend or modify any provisions of any Loan Document or the Principal Lease except for No-Consent Lease Amendments.

6.8 No Employees.

Trustor will not have any employees.

6.9 Assignment of Lease; Subletting.

Without Beneficiary's prior written consent, Trustor will not consent, or fail to respond to any request by the Tenant for any consent, to any assignment or sublease by the Tenant of its interest in the Principal Lease or fail to consent thereto if the effect of either thereof would be to release the Tenant from its obligations under the Principal Lease.

6.10 Collection of Rents.

Trustor agrees not to collect or accept the payment of any Rent, or other income or profit from, or on account of, any Lease or the use or occupation of the Pledged Property, more than one (1) month in advance of the time when such payment becomes due unless such amount is delivered to Beneficiary to be applied toward the Secured Obligations in accordance herewith.

7. ESTABLISHMENT OF RESERVE FUNDS.

7.1 Deposit of Rents.

(a) *Direction of Rents.* Trustor has directed the Tenant, and will direct each and every other Lessee of all or any part of the Property to pay all Rents to Beneficiary. In the event that Trustor receives any Rents from Tenant or any such Lessee, Trustor will promptly, within no more than three (3) Business Days, deposit such Rents with Beneficiary.

(b) *Rents as Security for Obligations.* So long as no Event of Default shall be continuing, Beneficiary will hold and apply the Rents as set forth in this **Section 7** as security for the payment and performance by Trustor of the Secured Obligations. During the continuance of an Event of Default, Beneficiary shall be entitled to hold and retain all Rents and apply such Rents as set forth in **Section 16**.

7.2 Creation of Funds.

Beneficiary shall establish the following funds (each, a "*Fund*"), which shall be administered by Beneficiary as set forth in this **Section 7**:

- (a) the Construction Fund;
- (b) the Capitalized Interest Fund;
- (c) the Payment Fund;
- (d) the Tax Fund;
- (e) the Insurance Fund;
- (f) the Capital Maintenance Fund;
- (g) the O&M Fund; and
- (h) the Cash Flow Fund.

7.3 Application of the Construction Fund.

(a) *Deposits to the Construction Fund.* On the Closing Date, Trustor shall deposit the sum of \$12,225,085.00 to the Construction Fund.

(b) *Disbursements from the Construction Fund.* Beneficiary shall disburse monies from the Construction Fund on and subject to the terms and conditions and subject to compliance with the provisions of the Construction Administration Agreement.

7.4 Application of the Capitalized Interest Fund.

(a) *Deposits to the Capitalized Interest Fund.* On the Closing Date, Trustor shall deposit the sum of \$614,000.00 to the Capitalized Interest Fund.

(b) *Disbursements from the Capitalized Interest Fund.* On each Payment Date prior to the Additional Space Rent Commencement Date, Beneficiary shall withdraw from the Capitalized Interest Fund to the extent of monies on deposit therein the difference between the installment of principal, if any, and interest due on such Payment Date on the Note and the amount available pursuant to **Section 7.5(a)**, and apply such monies to the payment of such installment. Upon the occurrence of the Completion Disbursement Date (as defined in the Construction Administration Agreement), any monies remaining on deposit in the Capitalized Interest Fund shall be transferred to the Construction Fund for application as provided in the Construction Administration Agreement in connection with the making of the Completion Disbursement.

7.5 Application of Rent Payments.

Promptly upon the receipt by Beneficiary of any payment of Rent, Beneficiary shall cause such Rent to be applied in the order and according to the priorities set forth below into the Funds listed below:

(a) to the extent such payment of Rent is a payment of Base Rent, by transferring to the Payment Fund the entirety of such Base Rent; and

(b) to the extent such payment of Rent is a payment of Operating Rent, by applying such Operating Rent as follows:

(i) by transferring to the Tax Fund the Tax Installment;

(ii) by transferring to the Insurance Fund the Insurance Installment;

(iii) by transferring to the Capital Maintenance Fund the Capital Maintenance Installment; and

(iv) by transferring all remaining monies to the O&M Fund; *provided, however*, that if at any time Beneficiary does not have sufficient monies from the Rent to make the full amount of the deposits into the Payment Fund, Tax Fund, Insurance Fund or Capital Maintenance Fund as required above, all remaining monies after the application set forth in **clause (a) or clauses (b)(i) through (b)(iii)** above shall be applied to deposit into the Payment Fund and thereafter to such other Funds, in the order set forth above, the amounts of any shortfalls therein.

7.6 Application of Payment Fund.

(a) *Deposits to the Payment Fund.*

(i) Prior to the Additional Space Rent Commencement Date, upon receipt of each payment of Base Rent, Beneficiary shall deposit into the Payment Fund the amount required to be deposited therein pursuant to **Sections 7.4(b) and 7.5(a)**.

(ii) From and after the Additional Space Rent Commencement Date, upon receipt of each payment of Base Rent, Beneficiary shall deposit into the Payment Fund the amount required to be deposited therein pursuant to **Section 7.5(a)**.

(iii) If at anytime there shall be insufficient monies on deposit in the Payment Fund for the payment of the next scheduled installment of principal and interest due on the Note as determined by Beneficiary in its reasonable discretion, Beneficiary shall transfer monies thereto from the Cash Flow Fund, the O&M Fund and the Capital Maintenance Fund, in such order, to the extent of monies on deposit therein.

(b) *Disbursements from Payment Fund.* On each Payment Date, Beneficiary shall apply the monies on deposit in the Payment Fund to the installment of the principal and interest due on the Note on such Payment Date and shall pay such amount to the holder of the Note.

(c) *Application of Payment Fund Following Acceleration of Loan.* If at any time that an Event of Default has occurred and is continuing and Beneficiary has accelerated the Loan and declared all amounts due thereunder to be immediately due and payable, Beneficiary shall transfer all monies then on deposit in any Fund to the Payment Fund and apply such monies to the Secured Obligations in such manner as Beneficiary shall determine to be appropriate in accordance herewith.

7.7 Application of the Tax Fund.

(a) *Deposits to the Tax Fund.* Beneficiary shall deposit into the Tax Fund the amount required to be deposited therein pursuant to **Section 7.5(b)(i)**. If at anytime there shall be insufficient monies on deposit in the Tax Fund for the payment of the Taxes then due and owing on the Property as determined by Beneficiary in its reasonable discretion, Beneficiary shall transfer monies thereto from the Cash Flow Fund, the O&M Fund and the Capital Maintenance Fund, in such order, to the extent of monies on deposit therein.

(b) *Disbursements from Tax Fund.* On or prior to the date when such Taxes become due, as set forth in a certificate of Trustor in the form of **Exhibit B**, Beneficiary shall apply the monies on deposit in the Tax Fund to the payment of Taxes as set forth in such certificate.

7.8 Application of the Insurance Fund.

(a) *Deposits to the Insurance Fund.* Beneficiary shall deposit into the Insurance Fund the amount required to be deposited therein pursuant to **Section 7.5(b)ii)**. If at anytime there shall be insufficient monies on deposit in the Insurance Fund for the payment of the premiums then due and owing on the Insurance Policies as determined by Beneficiary in its reasonable discretion, Beneficiary shall transfer monies thereto from the Cash Flow Fund, the O&M Fund and the Capital Maintenance Fund, in such order, to the extent of monies on deposit therein.

(b) *Disbursements from Insurance Fund.* On or prior to the date when such premiums become due, as set forth in a certificate of Trustor in the form of **Exhibit C**, Beneficiary shall apply the monies on deposit in the Insurance Fund to the payment of such premiums as set forth in such certificate.

7.9 Application of the Capital Maintenance Fund.

(a) *Deposits to the Capital Maintenance Insurance Fund.*

(i) On the Completion Disbursement Date, Beneficiary shall deposit into the Capital Maintenance Fund the sum of \$2,500,000.00.

(ii) Upon receipt of each payment of Rent, Beneficiary shall deposit into the Capital Maintenance Fund the amount required to be deposited therein pursuant to **Section 7.5(b)(iii)**.

(b) *Disbursements from Capital Maintenance Fund.* Beneficiary shall disburse to Trustor from the Capital Maintenance Fund such monies as shall be requisitioned therefrom by Trustor upon presentation of a certificate of Trustor in the form of **Exhibit D** for the payment of the costs of capital repairs and improvements to the Property, including those items designated in the Principal Lease as being the responsibility of Trustor pursuant to Sections 11 through 16 of the Principal Lease.

7.10 Application of the O&M Fund.

(a) *Deposits to the O&M Fund.* Beneficiary shall deposit into the O&M Fund the amount required to be deposited therein pursuant to **Section 7.5(b)(iv)**.

(b) *Disbursements from the O&M Fund.*

(i) Trustor shall disburse from the O&M Fund such monies as shall be requisitioned by Trustor, pursuant to a certificate in the form of **Exhibit E**, for the payment of operating and maintenance expenses of the Property and the performance of its operating and maintenance obligations under the Principal Lease.

(ii) On the last day of each calendar month, Beneficiary shall transfer from the O&M Fund to the Cash Flow Fund all monies on deposit in the O&M Fund in excess of the Minimum Maintenance Balance.

7.11 Application of the Cash Flow Fund.

(a) *Deposits to the Cash Flow Fund.* Beneficiary shall deposit into the Cash Flow Fund the amount required to be deposited therein pursuant to **Section 7.11(b)(ii)**.

(b) *Disbursements from the Cash Flow Fund.*

(i) If at any time there shall be insufficient monies on deposit in any other Fund for the making of any required disbursement therefrom as determined by Beneficiary in its reasonable discretion, Beneficiary shall withdraw from the Cash Flow Fund, to the extent of monies on deposit therein, such monies as shall be necessary to cause such other Fund to have sufficient monies for such disbursement, and shall transfer such monies to such other Fund.

(ii) On the Business Day immediately following each Payment Date, so long as no Event of Default shall be continuing, Beneficiary shall disburse to or to the order of Trustor all monies then on deposit in the Cash Flow Fund.

7.12 Closing of Funds.

When all amounts due and owing on the Secured Obligations have been paid in full and the Secured Obligations fully satisfied, the Funds shall be closed and any remaining amounts on deposit in the Funds shall be paid to Trustor.

7.13 Updates to Amounts.

Trustor shall promptly notify Beneficiary of any changes in any of the amounts required to be deposited or set aside in any of the Funds, and, upon receipt from Trustor of such changes, Beneficiary shall adjust the amounts being reserved in the various Funds hereunder.

7.14 Investment of Monies on Deposit in Funds.

(a) *Investment of Funds.* All monies held in any Fund shall at all times be invested in Permitted Investments, as directed in writing by Trustor; provided, however, that if (i) an Event of Default shall have occurred and be continuing or (ii) Beneficiary is unable to invest the monies held in any Fund in Permitted Investments in accordance with Trustor's investment instructions, Beneficiary shall invest amounts on deposit in the Funds in Permitted Investments with the shortest maturity reasonably available.

(b) *Income on Investments.* All interest or other income earned on all Funds within any Fund shall be retained in the respective Fund where earned and shall be applied as stated in the relevant sections hereof.

(c) *Liability of Beneficiary with Respect to Investments of Monies.* Beneficiary shall not be liable for any loss resulting from the making or disposition of any investment pursuant to the provisions of this Section 7.14, and any such losses shall be charged to the Fund with respect to which such investment was made. Trustor shall bear the risk of any loss resulting from the making or disposition at its direction of any investment pursuant to this Section 7.14.

7.15 Grant of Security Interest.

Without limiting the other grants under the Loan Documents, Trustor hereby grants to Beneficiary a security interest in all of Trustor's present and future right, title and interest in and to each Fund and all deposits, money and funds therein and all proceeds thereof, to secure the Secured Obligations. Trustor irrevocably authorizes Beneficiary to make the deposits, transfers, disbursements and applications provided in Section 7 and elsewhere in this Deed of Trust, and no further request or instruction therefor shall be necessary.

8. FURTHER INDEBTEDNESS.

(a) This Deed of Trust further secures all extensions, renewals, modifications or reamortizations of the Secured Obligations and all increases or additions to the Secured Obligations.

(b) During the continuance of an Event of Default, Beneficiary may, at the option of Beneficiary, pay or perform any Secured Obligations and the amount or cost thereof, with interest at the Default Rate, shall immediately be due from Trustor to Beneficiary. To the extent that any such amounts or costs paid by Beneficiary shall constitute payment of (i) taxes, charges or assessments which may be

imposed by law upon the Property or Real Estate or the Collateral; (ii) premiums on insurance policies covering the Property or Collateral; (iii) out-of-pocket expenses incurred in upholding the lien of this Deed of Trust, including, but not limited to the expenses of any litigation to prosecute or defend the rights and lien created by this Deed of Trust; or (iv) any amount, cost or charge to which Beneficiary becomes subrogated, upon payment, whether under recognized principles of law or equity, or under express statutory authority; then, and in each such event, such amounts or costs, together with interest thereon at the Default Rate, shall be added to the indebtedness secured hereby and shall be secured by this Deed of Trust.

9. ASSIGNMENT OF LEASES AND RENTS.

9.1 Absolute Assignment of Rents.

Trustor absolutely and unconditionally hereby ASSIGNS and TRANSFERS to Beneficiary all of the Rents; reserving to Trustor only the right, prior to any Event of Default hereunder, subject, in any and all events to the direction of the payment of Rents set forth in **Section 5.2(d)**, to collect and receive the Rents as and when (but not more than one month before) they become due and payable, but not otherwise; provided, however, that such right shall terminate immediately and automatically upon any such Event of Default, without notice, and such right is subject to all of the other provisions of this Deed of Trust and all other Loan Documents pertaining to the collection, receipt, use, application and deposit of the Rents. Trustor's right to collect and receive any such Rents is subject to Trustor's agreements set forth in **Section 7.1**. Trustor shall, at the request of Beneficiary, execute such further assignments to Beneficiary of the Rents as Beneficiary may require.

9.2 Rights Upon Event of Default.

(a) During any Event of Default hereunder, Beneficiary may, at any time and without notice, irrespective of whether a notice of Event of Default has been delivered to Trustee, and without regard to the adequacy of the security for the Secured Obligations, in person or by agent or representative with or without bringing any action or proceeding, or by a receiver appointed by a court, do any one or more of the following, in its own name or in the name of Trustor:

- (i) enter upon, take possession of and/or operate the Property, the Collateral or any part thereof;
- (ii) sue for or otherwise collect and receive the Rents (including those past due and unpaid) and apply such Rents (less costs and expenses of operation (including reserves) and collection, including reasonable attorneys' and experts' fees and costs) to the payment of the Secured Obligations in such order and in proportions as Beneficiary in its absolute discretion may determine;
- (iii) dispossess by usual proceedings any lessee defaulting in the payment of Rents;
- (iv) lease the Pledged Property or any part thereof;
- (v) do any other acts which Beneficiary deems proper to protect this Assignment and its interests hereunder until all of the Secured Obligations are paid in full; and
- (vi) exercise any other right permitted by law.

(b) The exercise of any of the foregoing rights shall not cure or waive any Event of Default or notice thereof hereunder or invalidate any act done pursuant to such notice, nor render Beneficiary a mortgagee in possession. Trustor hereby irrevocably authorizes and directs the lessees under the leases to rely upon and comply with any notice or demand by Beneficiary made during the continuance of any Event of Default for the payment to Beneficiary of any rental or other sums which may at any time become due under the leases, or for the performance of any of the lessees' undertakings under the leases, and the lessees shall have no right or duty to inquire as to whether any Event of Default is then existing hereunder. Trustor hereby relieves the lessees from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary.

10. CALIFORNIA UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.

(a) This Deed of Trust shall constitute a security agreement pursuant to the California Uniform Commercial Code for any portion of the Pledged Property which, under applicable law, may be subject to a security interest pursuant to the California Uniform Commercial Code (such portion of the Pledged Property is hereinafter called the "UCC Collateral"), and Trustor hereby grants to Beneficiary a continuing security interest in Trustor's present and future UCC Collateral to secure the Secured Obligations. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Trustor agrees to execute, to the extent required under the California Uniform Commercial Code, and deliver to Beneficiary any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Deed of Trust in such form as Beneficiary may require to perfect a security interest with respect to the UCC Collateral. Trustor hereby authorizes and empowers Beneficiary and irrevocably appoints Beneficiary its agent and attorney-in-fact to execute and file and/or record, on Trustor's behalf or otherwise, in Trustor's or Beneficiary's name, and without signatures if permitted by law, all financing statements and refiling and continuations thereof, applications for registration and like papers and/or to give notices, as Beneficiary deems necessary or advisable to create, preserve and protect any of Beneficiary's rights in or to any of the UCC Collateral. Trustor authorizes Beneficiary to file financing statements in all states, counties and other jurisdictions as Beneficiary may elect, without Trustor's signature if permitted by law. At Beneficiary's election, in addition to or instead of any other description of the UCC Collateral and/or Collateral, any financing statement description may use the terms "all assets," "all personal property" or words to similar effect. Trustor 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 as Beneficiary may reasonably require. Without limitation of the foregoing, if an Event of Default is continuing, Beneficiary shall be entitled immediately to exercise all remedies available to it under the California Uniform Commercial Code.

(b) Any party to any contract subject to the security interest granted herein shall be entitled to rely on the rights of Beneficiary without the necessity of any further notice or action by Trustor. Beneficiary shall not by reason of this Deed of Trust or the exercise of any right granted hereby be obligated to perform any obligation of Trustor with respect to any portion of the UCC Collateral nor shall Beneficiary be responsible for any act committed by Trustor, or any breach or failure to perform by Trustor with respect to any portion of the UCC Collateral.

11. VACATION OF PROPERTY.

Trustor shall not abandon or vacate the Property. If at any time any of the Improvements or Collateral comprising part of the Property shall be unprotected or unguarded or be vacant or deserted for a period of more than ten (10) Business Days, Beneficiary, at Beneficiary's option, and without limitation

to any other right or remedy of Beneficiary, may, upon written notice to Trustor, employ watchmen and may take such other action as Beneficiary deems reasonably necessary to protect the same from waste, depredation or damage; and any moneys expended for such purposes, with interest at the Default Rate from the time of expenditure, shall be paid by Trustor to Beneficiary on demand, shall be added to the Secured Obligations and be secured by this Deed of Trust. In the event of such abandonment or vacation, Beneficiary may, at Beneficiary's option, remove any Collateral from the Property for purposes of preserving Beneficiary's security interest therein.

12. NO IMPAIRMENT OF SECURITY.

Trustor shall not do or suffer any act or forbearance which would impair the security for the Secured Obligations or the lien or enforceability of this Deed of Trust.

13. NOTICES.

All notices and communications provided for hereunder shall be in writing and sent (a) by telecopy if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), or (b) by registered or certified mail with return receipt requested (postage prepaid), or (c) by a recognized overnight delivery service (with charges prepaid). Any such notice must be sent:

if to Beneficiary:

CTL Lending Group, LLC
300 Park Avenue, Suite 1700
New York, New York 10022
Attention: Thomas P. Zarrilli
Telephone: 212-572-6205
Telecopy: 212-572-6424

With copies to:

Duane Morris LLP
380 Lexington Avenue
New York, New York 10168
Attention: Jonathan A. Olick
Telephone: 212-692-1072
Telecopy: 212-692-1020

The Bank of New York
101 Barclay Street, Floor 21W
New York, New York 10286
Attention: New York City Municipal Finance Unit
Telephone: 212-815-7335
Telecopy: 212-815-3455

if to Trustor:

Centurion Partners Santa Ana, LLC
3636 Birch Street, Suite 260
Newport Beach, California 92660
Attention: Scot Matteson & Michael Lutton
Telephone: 949-250-8800
Telecopy: 949-250-8801

with a copy to:

Pircher, Nichols & Meeks
1925 Century Park East, Suite 1700
Los Angeles, California 90067
Attention: Real Estate Notices (MES/EBS/4563.13)
Telephone: 310-201-8900
Telecopy: 310-201-8922

14. ENTRY.

Beneficiary, and its agents, employees, contractors and representatives, upon reasonable advance written notice, shall have the right to enter upon and to inspect the Property at all reasonable times during normal business hours, subject to any rights of or restrictions imposed by any Lessee.

15. EVENTS OF DEFAULT.

An "*Event of Default*" shall exist if any of the following conditions or events shall occur and be continuing:

(a) Trustor defaults in the payment of any principal or Make-Whole Premium, if any, on the Note when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise; or

(b) Trustor defaults in the payment of any monthly installment of principal of or interest on the Note for more than five (5) Business Days after the same becomes due and payable; or

(c) Trustor defaults in the performance of or compliance with any term contained in **Sections 5.2(d), 5.3, 5.5, 5.12, 5.24, 6.2, 6.3, 6.6, 6.7 or 6.9**; provided that if a breach by Trustor under **Section 5.5** is involuntary (i.e., failure of any insurance company), Trustor shall have ten (10) Business Days after to such breach to comply with the provisions of **Section 5.5**; or

(d) Trustor defaults in the performance of or compliance with any term contained herein or in any other Loan Document (other than those referred to in **paragraphs (a), (b) and (c) of this Section 15** and those contained in **Section 5.24**) and such default is not remedied within 30 days after the earlier of (i) a Responsible Officer obtaining actual knowledge of such default and (ii) Trustor receiving written notice of such default (any such written notice to be identified as a "notice of default" and to refer specifically to this **Section 15(d)**), provided, however, that if such default is capable of cure but cannot be cured by being promptly commenced within such 30 day period and thereafter diligently pursued to cure

within such 30 day period, Trustor shall be entitled to such additional reasonable time, not to exceed an aggregate of 90 days, in order to effect such cure; or

(e) any representation or warranty made in writing by or on behalf of Trustor or by any member or officer of Trustor in this Deed of Trust or in any writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect in any material respect on the date as of which made and such representation or warranty is not remedied within 30 days after the earlier of (i) a Responsible Officer obtaining actual knowledge of such default and (ii) the Trustor receiving written notice of such default (any such written notice to be identified as a "notice of default" and to refer specifically to this **Section 15(d)**), provided, however, that if such representation or warranty is capable of cure but cannot be cured by being promptly commenced within such 30 day period and thereafter diligently pursued to cure within such 30 day period, the Trustor shall be entitled to such additional reasonable time, not to exceed an aggregate of 90 days, in order to effect such cure; or

(f) the entry of a decree or order by a court having jurisdiction in the premises adjudging Trustor a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Trustor under the Bankruptcy Code or federal or state law or law of the District of Columbia, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of Trustor or of any substantial part of Trustor's property, or ordering the winding up or liquidation of Trustor's affairs, and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days;

(g) the institution by Trustor of proceedings to be adjudicated a bankrupt or insolvent, or the consent by Trustor to the institution of bankruptcy or insolvency proceedings against it, or the filing by either thereof of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Code or any other applicable Federal or state law or law of the District of Columbia, or the consent by either thereof to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of Trustor of any substantial part of Trustor's property, or the making by either thereof of an assignment for the benefit of creditors, or the admission by either thereof in writing of its inability to pay its debts generally as they become due, or the taking of action by Trustor in furtherance of any such action;

(h) the Tenant gives written notice of the termination of the Principal Lease for any reason whatsoever (other than a termination of the Principal Lease in accordance with its express terms other than as a result of a default thereunder by Trustor) prior to the expiration of the term thereof (except incident to a Condemnation or Casualty as a result of which the Tenant is entitled to terminate the Principal Lease and the Note are prepaid in accordance with the terms thereof) and Trustor has not caused such notice to be rescinded in writing within thirty (30) days; or

(i) the Tenant fails to pay any rent payment within fifteen (15) days of the date upon which such amounts become due in accordance with the terms of the Principal Lease, provided, that such failure by the Tenant shall not constitute an Event of Default hereunder if, prior to the expiration of such fifteen (15) day period, Trustor pays such amount to Beneficiary, provided, further, that if the Tenant fails to make more than three (3) consecutive rent payments or more than twelve (12) rent payments at anytime, Trustor shall have no such cure right.

16. REMEDIES.

16.1 Rights and Remedies Upon Event of Default.

(a) *Remedies Generally.* If an Event of Default in continuing under this Deed of Trust, Beneficiary may, at its sole option, without notice to or demand upon Trustor, do any one or more of the following:

(i) declare any or all of the Secured Obligations immediately due and payable, irrespective of any otherwise-applicable maturity date;

(ii) enter on or into the Property, in person, by agent or by court appointed receiver, and take such action as Beneficiary may determine desirable to complete any unfinished development and/or to manage and operate the Pledged Property and/or to collect the Rents, and Beneficiary may apply any Rents collected against the Secured Obligations without in any way curing or waiving any Event of Default of Trustor;

(iii) foreclose, non-judicially and/or by judicial action, in any order, separately or together, at the same or different times and places, in one sale or any number of separate sales, against some or all of the Property, the Collateral, and/or any other real or personal property security for the Secured Obligations, without waiving any other part thereof;

(iv) require Trustor to assemble any or all of the Collateral and make it available to Beneficiary in a place designated by Beneficiary, and sell the Collateral at the Property or elsewhere, with or without having the Collateral at the place of sale;

(v) without removal, render the Collateral unusable and dispose of it on the Property;

(vi) enter upon the Property and possess and remove any or all of the Collateral without legal process, if Beneficiary can do so without a breach of the peace, or by legal action for possession;

(vii) exercise any or all other remedies now or in the future available to a secured party under the California Uniform Commercial Code;

(viii) appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee;

(ix) pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of Beneficiary may affect or appears to affect the security of this Deed of Trust or the Pledged Property or be prior or superior to the lien of this Deed of Trust;

(x) obtain the appointment of a receiver ex parte and without prior notice to Trustor, which notice Trustor hereby waives; and

(xi) exercise any other legal, equitable or contractual right or remedy against Trustor and/or any security and/or any other person liable (by way of guaranty, assumption, endorsement or otherwise) upon the Secured Obligations.

(b) *Remedies Cumulative.* No remedy provided or permitted under this Deed of Trust is exclusive of any other, or of any remedy provided or permitted by law, equity or any instrument or agreement evidencing, securing, guarantying or relating to any of the Secured Obligations. Each such remedy is cumulative and in addition to every other. No exercise of remedies, including foreclosure, against any part of the Pledged Property shall exhaust or extinguish Beneficiary's rights to exercise remedies, including foreclosure, against any other part of the Pledged Property until the Secured Obligations are paid in full. A sale of less than all of the Pledged Property or any defective or irregular sale made under this Deed of Trust shall not exhaust or extinguish the power of sale provided for in this Deed of Trust or any right or power of sale provided by law, and subsequent sales may be made until the Secured Obligations are paid in full, or the entire Property and Collateral is sold, without defect or irregularity. Beneficiary may exercise any one or more of its remedies at its option without regard to the adequacy of its security.

(c) *Delays and Omissions.* No delay or omission of Trustee or Beneficiary in the exercise of any right, remedy or power accruing upon any Event of Default hereunder shall impair such right, remedy or power or any other, nor shall such delay or omission be deemed a waiver of or acquiescence in any default.

(d) *No Cure or Waiver.* Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Pledged Property, nor any collection of Rents or other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Default, Event of Default or notice thereof under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Trustor has cured all other defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease, or option or a subordination of the lien of this Deed of Trust.

16.2 Sale(s) by Trustee of the Property.

(a) If Beneficiary elects to sell any of the Property (separately from or together with all or any part of the Collateral) under the power of sale herein granted, Trustee shall record and give all notices of default(s), election(s) to sell and sale(s) as may be required by law. Upon the expiration of such time as is required by law, Trustee shall, without demand on Trustor, sell all or such portions of the Property as Beneficiary may direct in its sole discretion (and, if so directed by Beneficiary, all or any portion(s) of the Collateral) upon any terms and conditions specified by Beneficiary and permitted by law, at the time(s) and place(s) fixed in the notice(s) of sale(s) (subject to postponement as provided below), as a whole or in separate parcels or items, and in such order, and in one sale or any number of separate sales, all as Beneficiary may direct in its sole discretion, at public auction(s) to the highest bidder(s) for cash payable at the time of sale(s). Trustor waives all rights (i) to require that the Pledged Property be sold together or separately, (ii) to direct the order in which any of the Pledged Property will be sold, and (iii) to have any of the Pledged Property marshaled upon any sale. Trustee may postpone any sale from time to time by public announcement at the time and place of the sale as fixed by notice or by prior postponement, and may without further notice make such sale at the time fixed by the last postponement.

(b) Any person, including Trustee or Beneficiary, may purchase at such sale. Trustee shall deliver to the purchaser a deed conveying the Property or portion thereof sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof.

(c) Upon a sale by Trustee, and after deducting all costs, expenses, and fees of Trustee and of this trust (including the cost of evidence of title in connection with the sale), Trustee shall apply the proceeds from the sale to the payment of the Secured Obligations in such order as Beneficiary may direct and the remainder, if any, to the person or persons legally entitled thereto.

(d) The power of sale under this Deed of Trust shall not be exhausted by any one or more sales (or attempts to sell) as to all or any portion of the Property remaining unsold, but shall continue unimpaired until all of the Property has been sold by exercise of the power of sale herein contained and all Secured Obligations have been paid in full.

16.3 Acceleration of Indebtedness Upon Sale of the Pledged Property and Upon Change in Ownership, Control, or Membership of Trustor.

(a) In the event Trustor, or any successor in interest to Trustor in the Pledged Property, in a transaction other than a transaction permitted under **Section 6.2** of this Deed of Trust, sells, conveys, alienates, leases (other than pursuant to any leasing program approved by Beneficiary), assigns, transfers, encumbers or disposes of the Pledged Property, or any part thereof or any interest therein, or becomes divested of its title or any interest therein in any manner or way, absolutely or for security, voluntarily or involuntarily, or enters into an agreement to do so, without the prior written consent of Beneficiary, then Beneficiary may, at its election, declare the Secured Obligations, irrespective of any otherwise-applicable maturity date, immediately due and payable without notice.

(b) In addition to any other limitations on the transfer of interests in Trustor set forth herein, if Trustor, or any successor in interest to Trustor in the Pledged Property, is a corporation, trust, limited or general partnership, limited liability company, or joint venture, should there occur a sale, conveyance, transfer, disposition or encumbrance, absolute or for security, voluntary or involuntary, or should an agreement be made to do so, in violation of the terms and conditions of this Deed of Trust without the prior written consent of Beneficiary, with respect to any of the issued and outstanding capital stock of Trustor or such successor (if a corporation), or with respect to any limited partnership interests in Trustor or such successor (if a limited partnership), or with respect to any membership interests in Trustor or such successor (if a limited liability company), or with respect to any beneficial interest in Trustor or such successor (if a trust), or with respect to any general partner, joint venture or membership interest in Trustor or such successor (if a general or limited partnership, joint venture or limited liability company) or if there shall occur such a change in any general partner, managing member or joint venturer in Trustor or such successor, then Beneficiary may, at its election, declare the Secured Obligations, irrespective of any otherwise-applicable maturity date, immediately due and payable without notice.

(c) No waiver of the requirement of consent by Beneficiary as set forth herein shall be effective unless in writing. Consent by Beneficiary to any one or more transactions described in **Sections 16.3(a)** or **16.3(b)** above shall not constitute nor be deemed to be a consent, or waiver of the requirement of consent, as to any future or succeeding transaction. If Beneficiary gives its consent to such a transaction, such transaction shall be subject to this Deed of Trust, and any such transferee shall be deemed to have assumed all obligations hereunder and to be bound by all provisions contained herein. Such assumption shall not, however, release Trustor or any maker or guarantor of the Note or Secured Obligations from any liability thereunder without the express prior written consent to Beneficiary to such release.

16.4 Acceleration of Indebtedness Upon an Event of Bankruptcy or Insolvency.

Beneficiary may, at its election, declare the Secured Obligations, irrespective of any otherwise-applicable maturity date, immediately due and payable, without notice, if (a) any proceeding under the Bankruptcy Code, or under any present or future federal, state or other statute, law or regulation pertaining to bankruptcy, insolvency or other relief for debtors shall be instituted by or against Trustor or any Person who may be liable (by way of guaranty, assumption, endorsement or otherwise) upon the Secured Obligations; or (b) a receiver or custodian shall be appointed for Trustor, such other Person or the Property or any Collateral or if Trustor or such other Person shall make an assignment for the benefit of creditors and if such receiver or custodian shall not be dismissed, or such assignment shall not be voided, within ninety (90) calendar days of such institution, appointment or making.

16.5 Use and Occupancy of Premises.

In connection with Beneficiary's exercise of Beneficiary's rights under this Article, Beneficiary may enter upon, occupy, and use all or any part of the Property or Collateral and may exclude Trustor from the Property or any portion thereof as may have been so entered upon, occupied, or used. Beneficiary shall not be required to remove any of the Collateral from the Property upon Beneficiary's taking possession thereof, and may render any Collateral unusable to Trustor. Further, Beneficiary may make such alterations, renovations, repairs, and replacements to the Property or Collateral, as Beneficiary, in its sole discretion, deems reasonably proper or appropriate. The obligation of Trustor to pay such amounts and all expenses incurred by Beneficiary in the exercise of its rights hereunder shall be included in the Secured Obligations of Trustor to Beneficiary and shall accrue interest at the stated interest rate of the Note.

16.6 Assembly of Collateral.

Beneficiary may require Trustor to assemble the Collateral and make it available to Beneficiary, at Trustor's sole risk and expense, at a place or places which are reasonably convenient to both Beneficiary and Trustor.

16.7 Power of Attorney.

Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's true and lawful attorney, which agency is coupled with an interest, to take, during an Event of Default, any action with respect to the Pledged Property to preserve, protect, or realize upon Beneficiary's interest therein, each at the sole risk, cost and expense of Trustor (except for Beneficiary's gross negligence or willful misconduct), but for the sole benefit of Beneficiary. The rights and powers granted Beneficiary by the within appointment include, but are not limited to, the right and power to: (i) prosecute, defend, compromise, settle, or release any action relating to the Pledged Property; (ii) sign and endorse the name of Trustor on, and to receive as secured party, any of the Pledged Property; (iii) sign and file or record on behalf of Trustor any financing or other statement in order to perfect or protect Beneficiary's security interest; (iv) enter into leases and/or subleases relative to all or a portion of the Pledged Property; (v) exercise the rights of Trustor under any Contract or Lease; and/or (vi) manage, operate, maintain, or repair the Pledged Property. Beneficiary shall not be obligated to perform any of such acts or to exercise any of such power, and shall not be responsible to Trustor except for Beneficiary's gross negligence, willful misconduct and actual bad faith. All powers conferred upon Beneficiary by this Deed of Trust, being coupled with an interest, shall be irrevocable until terminated by a written instrument executed by a duly authorized officer of Beneficiary. Notwithstanding anything to the contrary contained in this Deed

of Trust or the other Loan Documents, if Beneficiary enters into any agreement or document under a power of attorney for Trustor or otherwise as attorney-in-fact for Trustor under any Loan Document, (a) Beneficiary shall not create any liability for Trustor to any assets other than those pledged herein and in the other Loan Documents, and (b) Beneficiary shall send to Trustor written notice of the same, with a copy of the signed agreement or document, within three (3) Business Days of signing the same.

16.8 Appointment of Receiver.

During any Event of Default by Trustor, Beneficiary, as a matter of right and without notice (which notice is hereby waived), and without regard to the then value of the Property or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or sequestrator of the Property, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor.

17. BENEFICIARY'S RIGHT TO PERFORM OBLIGATIONS.

If an Event of Default shall have occurred and is continuing hereunder or under the Note or any other Loan Document, then Beneficiary shall have the right, but not the obligation, upon five (5) days' written notice to Trustor (unless a shorter period shall be reasonably necessary in emergency circumstances or to prevent a default by Trustor under the Principal Lease) to perform same for Trustor and to make all reasonable advances of funds in connection therewith as Beneficiary deems appropriate, in which case all reasonable out-of-pocket costs and expenses so incurred by Beneficiary (including without limitation reasonable attorneys' fees) shall be paid by Trustor on demand, together with interest at the Default Rate from the date of incurrence until the date of payment. If Beneficiary shall elect to perform any such agreement, covenant or obligation, then Beneficiary shall be subrogated to all the rights and remedies of all other persons intended to be or in fact benefitted by the performance of such agreement, covenant or obligation. No such performance by Beneficiary shall be deemed to relieve Trustor from any Event of Default hereunder or impair any right or remedy consequent thereon, and the exercise of the right of performance granted in this Section shall be optional with Beneficiary and not obligatory, and Beneficiary shall not in any case be liable to Trustor for a failure or refusal (a) to exercise any such right, or (b) to continue to exercise such right after having commenced such exercise.

18. FURTHER REMEDIES.

In addition to all other powers and remedies contained herein, Beneficiary shall have the power during an Event of Default:

(a) to institute and maintain such actions, suits and proceedings as it may deem reasonably expedient to prevent any impairment of this Deed of Trust by any act or forbearance which may be unlawful or in violation of this Deed of Trust,

(b) to preserve or protect its interests in the Pledged Property and in the income, revenues, rents and profits arising therefrom, and

(c) to resist and contest the enforcement of or compliance with any legislation or other governmental enactment, rule or other order that Beneficiary may believe is unenforceable, unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order could, in Beneficiary's reasonable opinion, impair the security hereunder or be prejudicial to the

interest of Beneficiary. All costs and expenses (including without limitation reasonable counsel fees) incurred by Beneficiary in doing any of the foregoing shall be paid by Trustor on demand.

19. MARSHALING.

All rights to marshaling of assets of Trustor, including without limitation any such right with respect to the Pledged Property or any part thereof, are hereby waived by Trustor. Without limitation to the foregoing, upon foreclosure of this Deed of Trust, Trustor, and any Person claiming any part of the Property or Collateral by, through or under Trustor, shall not be entitled to a marshaling of Trustor's assets, including without limitation the Property, or any part thereof, or to a sale in inverse order of alienation.

20. SECURITY.

All deposits or other sums at any time credited by or due from Beneficiary to Trustor, and all cash, securities, instruments, or other property of Trustor in the possession of Beneficiary (whether for safekeeping, or otherwise) shall at all times constitute security for the Secured Obligations, and may be applied by Beneficiary against the Secured Obligations at any time whether or not the Secured Obligations are then due or other collateral is then available to Beneficiary.

21. OTHER SECURITY.

During the continuance of any Event of Default by Trustor hereunder, Beneficiary shall be entitled to resort to its several securities (including without limitation any and all guaranties of the Secured Obligations or other Liabilities now or hereafter given by any person) for the payment of the sums secured hereby in such order and manner as it may elect, without impairing its lien in or rights to any of such securities and without affecting the liability of any Person for the Secured Obligations or the Liabilities, except to the extent that the Secured Obligations or the Liabilities shall have been reduced by any actual payment on account of the Secured Obligations or the Liabilities received by Beneficiary from the proceeds of such security. Beneficiary may, in its sole discretion, from time to time release for such consideration, or none, as it may elect, any portion of the Pledged Property, regardless of whether such release in any way impairs or affects the lien of this Deed of Trust or the priority thereof, or improves the position of any subordinate lienholder with respect thereto, and without any liability whatsoever to any such subordinate lienholder or to any transferee of all or any part of such remainder of the Property. Beneficiary may, in its sole discretion, accept an assignment or pledge of any other property without being accountable for so doing to any other lienor, guarantor or other Person primarily or secondarily liable for the payment of the Secured Obligations or the Liabilities.

22. WAIVERS.

(a) To the extent permitted by law, Trustor waives the benefit of all laws now existing or hereafter enacted providing for any appraisalment before sale of any portion of the Pledged Property, extension of the time for performance of the Secured Obligations, or creation or extension of a period of redemption from any sale. Trustor further waives all rights and remedies which Trustor may have or be able to assert by reason of the laws or decisions pertaining to the rights and remedies of sureties.

(b) EACH OF TRUSTOR AND BENEFICIARY (BY ITS ACCEPTANCE OF THIS DEED OF TRUST) HEREBY VOLUNTARILY, KNOWINGLY, INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE (INCLUDING BY

WAY OF JURY TRIAL) IN RESOLVING ANY DISPUTE OR LITIGATION (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG TRUSTOR AND BENEFICIARY ARISING OUT OF OR IN ANY WAY RELATED TO THIS DEED OF TRUST, THE LOAN DOCUMENTS, THE OBLIGATIONS OF TRUSTOR OR BENEFICIARY UNDER THE LOAN DOCUMENTS, OR ACTIONS OF TRUSTOR OR BENEFICIARY RELATING TO SUCH OBLIGATIONS AND/OR THE LENDING RELATIONSHIP WHICH IS THE SUBJECT OF THE LOAN DOCUMENTS. THIS PROVISION AND THE WAIVER SET FORTH HEREIN ARE MATERIAL INDUCEMENTS TO BENEFICIARY TO TAKE THIS DEED OF TRUST AS SECURITY FOR THE NOTE.

(c) Trustor waives the pleading of any statute of limitations as a defense to the Secured Obligations to the fullest extent permissible by law.

(d) Notwithstanding the foregoing, any waiver of defenses of Trustor contained in this Deed of Trust or the other Loan Documents shall be subject to (i) performance of the obligations of Trustor, (ii) any defense or exclusion to the extent expressly provided for in the Loan Documents, including, without limitation, Beneficiary's gross negligence, willful misconduct or bad faith, or (iii) failure of Beneficiary to give any party notice required under this Deed of Trust or the other Loan Documents, to the extent any such notice is required and the failure to give any such notice has a Material Adverse Effect on Trustor that could have been avoided had Trustor been given such notice.

23. NO WAIVERS BY BENEFICIARY.

No failure to exercise, and no delay in exercising, and no course of dealings with respect to, any power, remedy or right under any of the Loan Documents by Beneficiary shall operate as a waiver thereof, nor shall any single or partial exercise by Beneficiary of any power, remedy or right. Each of the remedies provide herein are cumulative and not exclusive of any other remedy provided by (a) law and/or (b) any of the other Loan Documents.

24. CUMULATIVE REMEDIES.

All rights and remedies of Beneficiary hereunder and under the Loan Documents and any other security now or hereafter given with respect to the Secured Obligations or other Liabilities are separate, distinct and cumulative and in addition to the rights and remedies provided by law. The failure of Beneficiary to insist upon strict performance of any term or provision hereof shall not be deemed to be a waiver of such term or provision, or of any right or remedy of Beneficiary. Without limitation to the foregoing, Beneficiary may take action to recover the Secured Obligations or other Liabilities, or any portion thereof, or to enforce any agreements or obligations of Trustor hereunder without prejudice to the right of Beneficiary thereafter to foreclose this Deed of Trust. No act of Beneficiary shall be construed as an election to proceed under any one provision hereof or of the Note or other Loan Documents to the exclusion of any other provision.

25. FURTHER ASSURANCES.

Trustor shall, promptly following the request of Beneficiary, execute, acknowledge, deliver and record or file such further documents and do such further acts as Beneficiary may deem reasonably necessary, desirable or proper to carry out more effectively the purposes of this Deed of Trust or to protect the lien or the security interest granted herein against the rights or interests of third persons, and

Trustor shall pay within ten (10) days of written demand all reasonable out-of-pocket costs connected with any of the foregoing.

26. RELIANCE BY BENEFICIARY.

In the exercise of Beneficiary's rights hereunder, and in taking any other action with respect to the Note, the Secured Obligations or other Liabilities, this Deed of Trust or any other Loan Document, Beneficiary may rely and shall be protected in acting or refraining from acting on any instrument believed by Beneficiary to be genuine and to have been filed or presented to Beneficiary by a proper person, absent manifest error. Beneficiary shall not be liable for any action taken by Beneficiary in good faith and believed by Beneficiary to be authorized hereby or by the Note or any other Loan Document, nor for any action taken or omitted to be taken by Beneficiary in accordance with advice of its attorney.

27. ACCEPTANCE OF LATE AND PARTIAL PAYMENTS.

The acceptance by Beneficiary of the payment of any of the Secured Obligations, other Liabilities or any installment thereof after its due date shall not constitute a waiver of the right to require prompt payment when due of all other and future Secured Obligations, other Liabilities or installments, or to declare a default as herein provided for any failure to so pay, or to proceed with foreclosure or other remedies for any other default then existing. The acceptance by Beneficiary of a portion of any amount due on any Secured Obligation or other Liabilities shall neither cure nor excuse an event of Default caused by failure to pay the whole amount due or affect any notice of default, unless such notice is expressly revoked in writing by Beneficiary. Such acceptance shall not constitute a waiver of Beneficiary's rights to require full payment when due of all other and future sums.

28. PRINCIPAL LEASE LETTER OF CREDIT.

Trustor is obligated under the terms of the Principal Lease to provide a letter of credit (the "Letter of Credit") in the amount of \$250,000 for the benefit of the Tenant as security for the performance by Trustor of certain services required under the Principal Lease. Beneficiary hereby agrees that the issuer of the Letter of Credit (the "LC Bank") shall have the right, upon presentation of written proof of the payment by the LC Bank of a draw on the Letter of Credit to the Tenant, to obtain payment from Beneficiary, from and to the extent of monies on deposit in the Capital Maintenance Fund, of the amount of such draw, subject to satisfaction of the following conditions:

(a) Trustor shall have given Beneficiary written notice identifying the LC Bank;

(b) Trustor shall have caused each of the Persons executing the Carve-Outs Guaranty to execute and deliver to Beneficiary an agreement, in form and substance satisfactory to Beneficiary, to deposit, within five (5) Business Days of written demand therefor, any monies paid by Beneficiary to the LC Bank from the Capital Maintenance Fund, such agreement to not limit any liability of any such Persons under the Carve-Outs Guaranty or any other agreement or instrument to which any such Person is a party for the benefit of Beneficiary, together with Beneficiary's reasonable out-of-pocket fees and expenses in connection with the payment of such amount to the LC Bank and the collection of such monies from such Persons;

(c) The LC Bank shall have no lien on or security interest in any of the monies on deposit at any time in the Capital Maintenance Fund or any other fund maintained hereunder or any of the Pledged Property;

(d) No monies shall be transferred by Beneficiary to the LC Bank for any purpose other than upon delivery of written proof of the making of a draw on the Letter of Credit by the Tenant and the payment thereof by the LC Bank;

(e) Beneficiary shall not pay any amount to the LC Issuer in excess of \$250,000 and Beneficiary shall only pay such amounts subject to monies being then on deposit in the Capital Maintenance Fund;

(f) Upon Trustor delivering to Beneficiary evidence of each of the foregoing conditions, Beneficiary shall execute such agreements and instruments as shall be reasonably necessary, in Beneficiary's sole discretion, to evidence Beneficiary's agreement to disburse monies from the Capital Maintenance Fund on account of such Letter of Credit draws subject to the terms and conditions herein set forth; and

(g) In the event that at any time the amount on deposit in the Capital Maintenance Fund falls below \$1,000,000, all provisions of this Section 28 and Beneficiary's agreements with respect to the Letter of Credit shall terminate.

29. DELIVERY OF DOCUMENTS.

Trustor shall deliver to Beneficiary at any time and from time to time promptly following Beneficiary's reasonable request, all agreements, deeds, contracts, leases, abstracts, insurance policies, title insurance policies, muniments of title, plans, specifications, operating manuals, surveys and other papers and data relating to the Pledged Property, and in case of foreclosure hereof or a conveyance of the Pledged Property in lieu of foreclosure, the same shall be delivered to and, at Beneficiary's option, become the property of the Person obtaining title to the Property.

30. CONTINUING LIEN.

This Deed of Trust creates a continuing lien to secure the full and final payment of the Secured Obligations.

31. BUSINESS PURPOSE.

Trustor represents and warrants to Beneficiary that the Secured Obligations and other Liabilities are incurred solely for a business purpose and not a personal, family, household or agricultural purpose.

32. INTEREST LIMITATION.

Regardless of any provision contained in this Deed of Trust, the Loan Documents, or any document executed or delivered in connection therewith, all agreements between Trustor and Beneficiary, now existing or hereafter arising, are hereby expressly limited so that in no event whatsoever shall the amount paid, or agreed to be paid, to Beneficiary hereof for the use, forbearance or detention of money to be loaned hereunder or otherwise, or for the performance or payment of any covenant or obligation contained herein, exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof exceeds the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance Beneficiary shall ever receive as interest an amount that would exceed the highest lawful rate, such amount that would be excessive interest shall be applied to the reduction of the

principal balance of the Secured Obligations, and, if the principal balance of the Secured Obligations is paid in full, any remaining excess shall forthwith be paid to Trustor, and Trustor agrees to accept such payment from Beneficiary, together with interest on such sums at the maximum lawful rate then in effect. In determining whether the interest paid or payable exceeds the maximum amount permissible under applicable law, Trustor and Beneficiary shall, to the greatest extent permitted under applicable law: (a) characterize any non-principal payment (other than payments which are expressly designated as interest payments hereunder) as an expense or fee rather than as interest; (b) exclude voluntary prepayments and the effect thereof; and (c) amortize, prorate, allocate, and spread the total amount of interest throughout the entire contemplated term of the Secured Obligations so that the interest rate is uniform throughout the term.

33. COVENANTS RUNNING WITH THE LAND.

This Deed of Trust and all agreements and obligations of Trustor hereunder constitute covenants that shall run with the land.

34. PAYMENT OF COSTS.

Trustor shall pay within ten (10) days of written demand all Costs of Collection and all reasonable out-of-pocket expenses of Beneficiary in connection with the preparation, execution, and delivery of this Agreement and of any other documents and agreements between Trustor and Beneficiary, including, without limitation, attorneys' reasonable fees and disbursements, and all expenses which Beneficiary may hereafter incur in connection with the collection of the Liabilities or the protection or enforcement of any of Beneficiary's rights against Trustor, the Property, any Collateral, and any guarantor or endorser of the Liabilities.

35. PARTIAL INVALIDITY.

In the event any one or more of the provisions of this Deed of Trust or the instruments or agreements reflecting the Secured Obligations are held to be invalid, illegal, unenforceable or avoidable in any respect, no other provision of this Deed of Trust, or of any such other instrument or agreement, shall be affected thereby, and such other provisions shall remain binding and enforceable.

36. FIXTURE FILING.

Beneficiary may, at its election, at any time after delivery of this Deed of Trust, use and file executed counterparts hereof as fixture filings under applicable law.

37. NON-RESIDENTIAL PROPERTY.

This Deed of Trust does not cover real property principally improved or to be improved by one or more structures containing in the aggregate four (4) or less residential dwelling units having their own separate cooking facilities.

38. HEADINGS; PRONOUNS.

The headings of the sections of this Deed of Trust are for convenience only and have no meaning with respect to this Deed of Trust or the rights or obligations of Trustor or Beneficiary. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein: words used in

this Deed of Trust are used interchangeably in singular or plural form; "Property" and "Collateral" includes all and singular each and every portion of the Property and Collateral and estate or interest therein; "holder" means any holder from time to time of the Note; "hereof", "herein" and "hereunder" and other words of similar import refer to this Deed of Trust as a whole; "Deed of Trust" includes these presents as supplemented or amended from time to time by written instrument(s) entered into by Trustor and Beneficiary; "Note" includes all written supplements or amendments to the Note from time to time entered into by Trustor and Beneficiary; "Trustor" includes Trustor's, and, to the extent Trustor consists of individuals, each such individual's, heirs, administrators, executors and personal representatives, trustees, successors and permitted assigns; and "Beneficiary" includes Beneficiary's and, to the extent Beneficiary consists of individuals, each such individual's heirs, administrators, executors and personal representatives, trustees, successors and assigns. Whenever the context may require, all pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of pronouns or nouns shall include the plural and vice versa.

39. AMENDMENTS.

This Deed of Trust can not be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

40. GOVERNING LAW.

This Deed of Trust has been executed and delivered in, and is to be construed, enforced and governed according to and by the internal laws of, the State of California, without regard to conflict of law provisions.

41. NON-RECOURSE PROVISIONS.

Notwithstanding anything to the contrary contained herein, in the Note or in any other Loan Document (other than the Carve-Outs Guaranty), except as provided otherwise herein, no Person who directly or indirectly owns any membership or other equity interest in Trustor (each, a "**Non-Recourse Person**") shall have any personal liability for (i) the payment of any sum of money which is or may be payable under the Note or any other Loan Document, including, but not limited to, the repayment of the Note or (ii) the performance or discharge of any covenants, obligations or undertakings of Trustor under any Loan Document, and no monetary or deficiency judgment shall be sought or enforced against Trustor or any Non-Recourse Person with respect thereto. In furtherance of the foregoing, Beneficiary and its successors and assigns, and, without limitation, all other Persons and entities, shall look solely to the Pledged Property for the payment of any claim or for the performance under or in connection with any Loan Document. For purpose of the Loan Documents, neither the negative capital account of any partner or member of Trustor nor the obligation of any partner or member of Trustor or of any Non-Recourse Person to restore a negative capital account or to contribute or advance money to Trustor, any partner or member of Trustor or any Non-Recourse Person shall at any time be an asset of the property of Trustor, any partner or member of Trustor or any Non-Recourse Person.

42. SALE OF LOAN.

(a) Trustor acknowledges that CTL Lending Group LLC, the initial holder of the Note and the initial Beneficiary, or any of its successors and assigns, as Beneficiary, may:

- (i) sell the Loan, the Note and the other Loan Documents to one or more investors as a whole loan,
- (ii) participate the Loan to one or more investors,
- (iii) deposit the Loan, the Note and other Loan Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets, or
- (iv) otherwise sell the Loan or interest therein to investors

(the transactions referred to in clauses (i) through (iv) are hereinafter each referred to as a "**Secondary Market Transaction**").

(b) Trustor shall reasonably cooperate with Beneficiary in effecting any such Secondary Market Transaction and shall cooperate to implement all requirements imposed by any rating agency involved in any Secondary Market Transaction. Trustor, however, shall not be required to modify any documents evidencing or securing the Loan which would modify

- (i) the interest rate payable under the Note,
- (ii) the stated maturity of the Note,
- (iii) the amortization of principal of the Note,
- (iv) the non-recourse provisions of the Loan or
- (v) any other Material economic or non-economic term of the Loan.

(c) Trustor shall provide such information, reliance letters with respect to legal opinions delivered at closing and documents relating to Trustor, any guarantor, the Property and any tenants of the Property as such Beneficiary may reasonably request in connection with such Secondary Market Transaction. In addition, Trustor shall make available to Beneficiary all information concerning its business and operations that Beneficiary may reasonably request. Beneficiary shall be permitted to share all such information with the investment banking firms, rating agencies, accounting firms, law firms and other third-party advisory firms involved with the Loan and the Loan Documents or the applicable Secondary Market Transaction. It is understood that the information provided by Trustor to Beneficiary may ultimately be incorporated into the offering documents for the Secondary Market Transaction and thus various investors may also see some or all of the information. Beneficiary and all of the aforesaid third-party advisors and professional firms shall be entitled to rely on the information supplied by, or on behalf of, Trustor and Trustor indemnifies Beneficiary as to any losses, claims, damages or liabilities that arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in such information or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated in such information or necessary in order to make the statements in such information, or in light of the circumstances under which they were made, not misleading. Without limitation on the foregoing, in no event shall Trustor have liability (by way of certification, indemnity or otherwise) for information or statements contained in third party reports used in connection with the secondary marketing transaction. Beneficiary may publicize the existence of the Loan in connection with its marketing for a Secondary Market Transaction or otherwise as part of its business development, but except to the extent that information regarding Trustor or the Property is public

or Beneficiary is required by court order or other Governmental Authority or applicable law to disclose such information, Beneficiary shall keep information regarding Trustor and the Property confidential; **provided, however,** that Beneficiary may disclose such information to its accountants, attorneys, employees and affiliates that have need of such information, to the National Association of Insurance Commissioners or other regulatory body, financial advisors who agree to hold such information confidential or as necessary in connection with an enforcement action after an Event of Default. So long as no Default or Event of Default shall exist, Trustor shall not be obligated to incur any out-of-pocket costs (other than Trustor's incidental costs, such as photocopying and telephone charges) in connection with any Secondary Market Transaction which occurs after the initial Secondary Market Transaction relating to the Loan.

(d) CTL Lending Group LLC, as initial Beneficiary, has advised Trustor that immediately after the execution and delivery of the Note, this Deed of Trust and the other Loan Documents, it will assign all of its right, title and interest in and to the Note, this Deed of Trust and all other Loan Documents to The Bank of New York, as trustee for CTL 2005-6 Trust, which, upon such assignment, will, for all purposes of the Note, this Deed of Trust and the other Loan Documents, be Beneficiary, and CTL Lending Group, LLC shall thereupon be relieved on any liability hereunder or under any Loan Document to which it is a party.

(e) Notwithstanding anything to the contrary contained in the Loan Documents, in the event of a Secondary Market Transaction, or any other sale or transfer of all or a participation interest in Beneficiary's interest in the Loan, Trustor and all guarantors and indemnitors shall be entitled to deal with and rely upon only one servicer or trustee (having at least ten years experience administering loans) for all owners of interests in the Loan in connection with all matters relating to the Loan and shall not incur any costs greater than those if the initial lender were the only lender (including enforcement costs). Any such transaction shall be at Beneficiary's sole cost and expense, including, without limitation, the cost of any reports, certifications or opinions required of Trustor, any guarantor or any indemnitor in connection with any such transaction. No such transaction shall result in a material increase in the obligations or potential liability of Trustor, any guarantor or any indemnitor under the Loan Documents by reason of any requested covenant, representation, warranty, indemnity or certification or otherwise. So long as no Event of Default shall be continuing, Beneficiary shall not sell an interest in the Loan to a competitor of Trustor. Trustor acknowledges that no insurance company, pension fund or money market investment fund is a competitor of Trustor.

43. TERMINATION; RECONVEYANCE.

(a) This Deed of Trust shall remain in full force and effect until the Secured Obligations are paid and performed in full, and at such time, Beneficiary agrees to execute and deliver such reasonable instruments prepared by Trustor as shall be reasonably necessary to terminate this Deed of Trust and the other Loan Documents. No termination pursuant to this Section shall affect the indemnification provided for in this Deed of Trust which expressly survives the termination hereof.

(b) Upon written request of Beneficiary stating that all of the Secured Obligations have been paid, upon surrender of this Deed of Trust to Trustee for cancellation and retention and upon payment to Trustee of its fees, costs and expenses incurred or to be incurred thereby, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

44. SPECIFIC PERFORMANCE.

The failure by Trustor to perform all and singular Trustor's material obligations hereunder will result in irreparable harm to Beneficiary for which Beneficiary shall have no adequate remedy at law. Consequently, Trustor agrees that such obligations are and shall be specifically enforceable by Beneficiary.

45. RECEIPT OF COPY.

Trustor acknowledges having received a copy of this Deed of Trust.

46. CONCERNING THE TRUSTEE.

46.1 Acceptance of Trust; No Duty to Notify.

Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is under no obligation to notify any party hereto of any action or proceeding in which Trustor, Beneficiary or Trustee is a party, unless brought by Trustee hereunder.

46.2 Substitution of Trustees.

Beneficiary may, from time to time, by written instrument executed and acknowledged by Beneficiary and recorded in the county where the Real Property is located, substitute a successor or successors to any Trustee named herein or acting hereunder.

46.3 Affidavit to Trustee.

Trustee, upon presentation to it of an affidavit signed by or on behalf of Beneficiary setting forth any fact(s) showing a default by Trustor under this Deed of Trust, is authorized to accept as true and conclusive all facts and statements in such affidavit and to act hereunder in complete reliance thereon.

46.4 General Rights of Beneficiary and Trustee.

At any time or from time to time, without liability therefor, without notice and without affecting the liability of any person (including Trustor) for the payment or performance of any of the Secured Obligations or the lien and security interest of this Deed of Trust:

(a) Beneficiary may do any one or more of the following: release any person liable for the payment or performance of any of the Secured Obligations; extend the time or otherwise alter the terms of payment of any of the Secured Obligations; accept additional security therefor of any kind, including deeds of trust and mortgages; and alter, substitute or release any portion of the Pledged Property securing the Secured Obligations;

(b) Beneficiary shall have the right, but not the obligation, to enter upon and take possession of the Property and to make additions, alterations, repairs, or improvements to the Property which Beneficiary may reasonably consider necessary or proper to keep the Property in good condition and repair and to comply with applicable law. Should Trustor fail to make any payment or to do any act as herein provided in connection with the rights granted hereunder, Beneficiary, without obligation to do so and without notice or demand upon Trustor and without releasing Trustor from any obligation hereunder,

may make any payment or do any act in such manner and to such extent as herein provided or as even may deem necessary to protect the security hereof;

(c) Trustee may, upon the written consent of Beneficiary, do any one or more of the following: consent to the making of any map or plot of the Property; join in granting any easements or creating any restrictions on the Property; join in any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust; and reconvey or release any portion of the Pledged Property.

47. NO MERGER.

No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Pledged Property unless Beneficiary consents to a merger in writing.

48. PARTIES BENEFITTED.

Subject to Sections 6.2, 16.2 and 16.3, this Deed of Trust applies to, inures to the benefit of and binds all parties hereto and their respective heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" shall mean the owner and holder, including pledgees, of any of the Secured Obligations.

49. TAX.

In the event of the passage, after the date of this Deed of Trust, of any law deducting from the value of real property, for tax purposes, any lien or charge thereon, or changing in any way the laws now existing for the taxation of deeds of trust or indebtedness secured by deeds of trust for federal, state or local purposes, or changing the manner of collection of any such taxes as to affect this Deed of Trust or the Secured Obligations, Trustor agrees to pay such tax arising from such new law unless it would be illegal to do so. If Trustor fails to do so, Beneficiary may, at its election after ten (10) days written notice to Trustor and without further demand or notice, declare the Secured Obligations immediately due and payable.

50. STATEMENTS OF INDEBTEDNESS.

Trustor agrees to pay Beneficiary reasonable charges, not to exceed the maximum allowed by law, for giving any statement of the status of the Secured Obligations.

51. APPROVALS, CONSENTS, WAIVERS; ACCEPTABILITY TO BENEFICIARY.

No approval, acceptance or consent of Beneficiary required by any provision of this Deed of Trust, nor any statement or waiver of any required approval, acceptance, acceptability, consent or condition, shall be deemed to have occurred unless set forth in writing, signed by Beneficiary, and delivered to Trustor. Any approval, acceptance, consent, waiver or statement of acceptability granted by Beneficiary shall be applicable only to the particular occurrence, circumstance or instance identified in such writing, and shall not constitute a continuing approval, acceptance, consent, waiver or statement of acceptability or be otherwise applicable to any other occurrence, circumstance or instance, whether similar or dissimilar. When this Deed of Trust requires the consent or approval of Beneficiary, or provides that any document, matter, act, event, occurrence or person must be satisfactory or acceptable to Beneficiary or words of similar import, such consent or approval may be given or withheld by Beneficiary, and such document, matter, act, event, occurrence or person must be satisfactory or

acceptable to Beneficiary, in its sole and absolute discretion, unless otherwise expressly provided herein or therein.

52. TIME OF THE ESSENCE.

Time is of the essence of this Deed of Trust and of every part hereof, and Trustor therefore acknowledges that Beneficiary has no obligation to grant any extension of any provision thereof, and any extension which Beneficiary may elect to grant may be conditioned upon such terms and conditions as Beneficiary may impose in its sole discretion.

53. COMPLETION OF CONSTRUCTION.

This Deed of Trust is a construction deed of trust within the meaning of California Uniform Commercial Code section 9334. For purposes of subdivision (h) of said statute, "completion of construction" shall not be deemed to occur prior to completion of all work, and installation or incorporation into the Improvements, of all materials for which sums secured hereby are disbursed by Beneficiary.

54. REQUEST FOR NOTICE.

Trustor requests that a copy of any notice of default or any notice of sale hereunder be mailed to Trustor at the address set forth in the first paragraph hereof.

55. INDEMNITIES IN FAVOR OF BENEFICIARY.

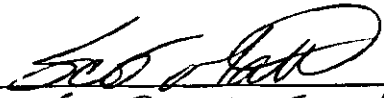
Notwithstanding anything to the contrary contained in this Deed of Trust or the other Loan Documents, any indemnity in this Deed of Trust or the other Loan Documents which runs in favor of Beneficiary shall not (a) relate to any action, suit, claim, demand, cause of action, liability, loss, damage, obligation or cost to the extent attributable to the gross negligence, willful misconduct or bad faith of Beneficiary or Beneficiary's agents; or (b) limit Beneficiary's responsibility for events occurring in respect of the Property while Beneficiary, on its own account, by agent or by receiver, shall have control of the Property. Additionally, if Trustor or any affiliate of Trustor is defending Beneficiary pursuant to an obligation set forth in the Loan Documents, (x) neither Trustor nor its Affiliates shall be obligated to pay for Beneficiary's separate legal fees, expenses or costs, and (y) Beneficiary may not settle any matter to which the subject indemnity relates without the prior written consent of Trustor, which consent shall not be unreasonably withheld, conditioned or delayed.

56. LIMITATION ON BENEFICIARY'S RIGHT TO SETTLE CLAIMS.

If this Deed of Trust or any other Loan Document entitles Beneficiary to settle or compromise any claim (including, without limitation, any insurance claim or any claim that is the subject of any indemnity of the Loan Documents), so long as no Event of Default is continuing, Beneficiary shall not settle or compromise any such claim without the prior written consent of Trustor, such consent not to be unreasonably withheld, conditioned or delayed. Beneficiary shall act in good faith in settling or compromising any such claim.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first above written.

CENTURION PARTNERS SANTA ANA, LLC

By: 
Name: SCOTT MATHESON
Title: Authorized Signatory

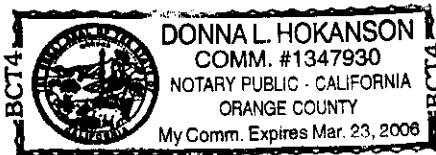
ACKNOWLEDGMENT

STATE OF CALIFORNIA }
 } ss
COUNTY OF ORANGE

On FEBRUARY 17, 2005, before me DONNA L. HOKANSON, NOTARY PUBLIC
personally appeared SCOTT MATTESON personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose name(s) (is) are subscribed to the within instrument and
acknowledged to me that he she/they executed the same in his her/their authorized capacity(ies), and that
by his her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Donna L. Hokanson (This area for official notarial seal)



GOVERNMENT CODE 27361.7

I certify under penalty of perjury that the Notary Seal on the document to which this Statement is attached reads as follows:

NAME OF THE
NOTARY: Donna L. Hokanson
DATE COMMISSION
EXPIRES: 3-23-2006
COUNTY WHERE BOND IS
FILED: Orange
COMMISSION
NUMBER: 1347930 VENDOR#: BC TY

I certify under penalty of perjury and the laws of the State of California that the illegible portion of this document to which this statement is attached reads as follows:

PLACE OF
EXECUTION: LOS ANGELES

DATE 2/22/05

SIGNATURE: 

* Personally know to me (or proved to me on the basis of satisfactory evidence) to be the person(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or entity upon behalf of which the person(s) acted, executed the instrument.

EXHIBIT A

THE LAND

PARCEL 3, IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 6, PAGE 35 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

EXCEPT ALL WATER AND WATER RIGHTS IN OR UNDER SAID LAND, AS RESERVED IN A DEED RECORDED MARCH 23, 1912 IN BOOK 210 PAGE 176 OF DEEDS OF ORANGE COUNTY, CALIFORNIA.

EXHIBIT B

CERTIFICATE OF CENTURION PARTNERS SANTA ANA, LLC
CONCERNING INVOICES FOR TAXES

The undersigned, CENTURION PARTNERS SANTA ANA, LLC (the "**Trustor**"), hereby certifies, pursuant to Section 7.7 of the Deed of Trust, Assignment of Leases, Assignment of Rents, Security Agreement and Fixture Filing dated February 23, 2005 (the "**Deed of Trust**") from Trustor to CHICAGO TITLE COMPANY, as trustee, for the benefit of CTL LENDING GROUP, LLC, its successors and assigns (the "**Beneficiary**"), that attached hereto are the following invoices for Taxes with respect to the Property:

<u>Payee</u>	<u>Date</u>	<u>Amount</u>	<u>Description of Taxes</u>
--------------	-------------	---------------	-----------------------------

Trustor hereby requests that Beneficiary deliver to Trustor, a check or checks, as follows:

<u>Payee</u>	<u>Amount</u>
--------------	---------------

Trustor covenants and agrees that Trustor shall deliver such check(s) to the named payee(s) and shall provide written evidence to Beneficiary of the payment of such Taxes.

Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Deed of Trust.

IN WITNESS WHEREOF, the undersigned has set his name hereto this ____ day of _____, ____.

CENTURION PARTNERS SANTA ANA, LLC

By: _____

Name:

Title: Authorized Signatory

Date:

EXHIBIT C

CERTIFICATE OF CENTURION PARTNERS SANTA ANA, LLC
CONCERNING INVOICES FOR INSURANCE

The undersigned, CENTURION PARTNERS SANTA ANA, LLC (the "**Trustor**"), hereby certifies, pursuant to Section 7.8 of the Deed of Trust, Assignment of Leases, Assignment of Rents, Security Agreement and Fixture Filing dated February 23, 2005 (the "**Deed of Trust**") from Trustor to CHICAGO TITLE COMPANY, as trustee, for the benefit of CTL LENDING GROUP, LLC, its successors and assigns (the "**Beneficiary**"), that attached hereto are the following invoices for premiums for Insurance Policies with respect to the Property:

<u>Payee</u>	<u>Date</u>	<u>Amount</u>	<u>Description of Insurance</u>
--------------	-------------	---------------	---------------------------------

[If applicable:

The undersigned further certifies that Trustor has previously paid the insurance premiums reflected in [all such invoices][the invoices of _____] and that, pursuant to 7.8(b) of the Deed of Trust, Trustor is entitled to be reimbursed for such payment, and that attached hereto is proof of such payment by Trustor.]

[If applicable:

The undersigned further certifies that Trustor has not made any payment in respect of the premiums reflected in such invoices.]

Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Deed of Trust.

IN WITNESS WHEREOF, the undersigned has set his name hereto this ____ day of _____,
_____.

CENTURION PARTNERS SANTA ANA, LLC

By: _____
Name:
Title: Authorized Signatory

Date:

EXHIBIT D

CERTIFICATE OF CENTURION PARTNERS SANTA ANA, LLC
CONCERNING DISBURSEMENTS FOR CAPITAL REPAIR

The undersigned, CENTURION PARTNERS SANTA ANA, LLC (the "**Trustor**"), hereby certifies, pursuant to Section 7.9(b) of the Deed of Trust, Assignment of Leases, Assignment of Rents, Security Agreement and Fixture Filing dated February 23, 2005 (the "**Deed of Trust**") from Trustor to CHICAGO TITLE COMPANY, as trustee, for the benefit of CTL LENDING GROUP, LLC, its successors and assigns (the "**Beneficiary**"), that Trustor has incurred expenses for the capital repairs and improvements to the Property described in the schedule attached hereto and that Trustor is entitled to apply monies on deposit in the Capital Repair Fund maintained by Beneficiary under the Deed of Trust.

Trustor hereby requisitions from Beneficiary the sum of \$ _____, to be paid as set forth on the schedule attached hereto.

[Trustor further certifies that any monies designated to be paid to Trustor constitute reimbursement of amounts previously paid by Trustor and that attached hereto is proof of such payment by Trustor.]

Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Deed of Trust.

IN WITNESS WHEREOF, the undersigned has set his name hereto this ____ day of _____,
_____.

CENTURION PARTNERS SANTA ANA, LLC

By: _____
Name:
Title: Authorized Signatory

Date:

EXHIBIT E

CERTIFICATE OF CENTURION PARTNERS SANTA ANA, LLC
CONCERNING DISBURSEMENTS FOR OPERATING EXPENSES

The undersigned, CENTURION PARTNERS SANTA ANA, LLC (the "**Trustor**"), hereby requests disbursement, pursuant to Section 7.10(b) of the Deed of Trust, Assignment of Leases, Assignment of Rents, Security Agreement and Fixture Filing dated February 23, 2005 (the "**Deed of Trust**") from Trustor to CHICAGO TITLE COMPANY, as trustee, for the benefit of CTL LENDING GROUP, LLC, its successors and assigns (the "**Beneficiary**"), from the O&M Fund of the monies set forth below in respect of the payment of the costs of the performance of its operating and maintenance obligations under the Principal Lease and hereby certifies that Trustor is entitled to apply monies on deposit in the O&M Fund maintained by Beneficiary under the Deed of Trust.

Trustor hereby requisitions from Beneficiary the sum of \$ _____, to be paid as set forth on the schedule attached hereto.

[Trustor further certifies that any monies designated to be paid to Trustor constitute reimbursement of amounts previously paid by Trustor and that attached hereto is proof of such payment by Trustor.]

Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Deed of Trust.

IN WITNESS WHEREOF, the undersigned has set his name hereto this ____ day of _____, _____.

CENTURION PARTNERS SANTA ANA, LLC

By: _____
Name: _____
Title: Authorized Signatory

Date:

SCHEDULE 4.1(e)

ERISA Assumptions

At least one of the following statements is true with respect to each source of funds to be used by any Person (a "**Holder**") who holds any direct or indirect interest in the Note (the "**Source**");

- (a) The Source is assets of an insurance company general account and not assets of an insurance company separate account, and less than 25% of the assets of such general account constitute "plan assets" (within the meaning of ERISA);
- (b) The Source is a "governmental plan" as defined in Title 1, Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**");
- (c) The Source does not include assets allocated to any separate account maintained by the Holder in which any employee benefit plan (or its related trust) has any interest, other than a separate account that is maintained solely in connection with the Holder's fixed contractual obligations under which the amounts payable, or credited, to such plan and to any participant or beneficiary of such plan (including any annuitant) are not affected in any manner by the investment performance of the separate account; or
- (d) the Source is either (i) an insurance company pooled separate account, within the meaning of Prohibited Transaction Exemption ("**PTE**") 90-1 (issued January 29, 1990), or (ii) a bank collective investment fund, within the meaning of the PTE 91-38 (issued July 12, 1991) and, except as the Holder has disclosed to Trustor in writing pursuant hereto, no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or
- (e) the Source constitutes assets of an "investment fund" (within the meaning of Part V of the QPAM Exemption) managed by a "qualified professional asset manager" or "QPAM" (within the meaning of Part V of the QPAM Exemption), no employee benefit plan's assets that are included in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Section V(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, exceed 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM (applying the definition of "control" in Section V(e) of the QPAM Exemption) owns a 5% or more interest in the Trustor and (i) the identity of such QPAM and (ii) the names of all employee benefit plans whose assets are included in such investment fund have been disclosed to Trustor in writing pursuant to this paragraph (v);
- (f) The Source is one or more plans or a separate account or trust fund comprised of one or more plans each of which has been identified in writing pursuant to paragraph (e)(vi); or
- (g) the Source is an "insurance company general account", as such term is defined in PTE 95-60 in respect of which the amount of reserves and liabilities for the general account

contract(s) held by or on behalf of any employee benefit plan (as defined by the annual statement for life insurance companies approved by the National Association of Insurance Commissioners (the "NAIC Annual Statement")) together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other employee benefit plans maintained by the same employer (or affiliate thereof within the meaning of Section V(e) of PTE 95-60) or by the same employee organization in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with the Purchaser's state of domicile.

SCHEDULE 4.1(f)

Other Contracts

Utilities

Water

Fire alarm phone line

Fire alarm phone line

Fire alarm phone line

Electricity

Gas

**City of S A Municipal Service
SBC**

**Southern California Edison
The Gas Company**

Service Contract

window cleaning

on-site maintenance service

roof & exterior paint qtrly maint.

fire alarm service

HVAC service

gate service

landscape (int & ext) service

pest control service

parking lot sweeping service

janitorial service

trash service

All American Window Cleaning
Hoagy Co., Inc.
Hoagy Co., Inc.
Honeywell International, Inc.
JP Air Specialities
Quality Gate Control
Specialty Environments
Stanley Pest Control
Sweep-Rite, Inc.
United Building Services
Waste Management

Miscellaneous

janitorial supplies

automatic sliding door repair

wrought iron gate/fence repair

fire equipment inspection

tenant improvement - bldg C

tenant improvement - paint

plumbing repair

roof repair

tenant improvement - carpet

electrical repair/improvements

tenant improvement - bldg C

plumbing repair

parking lot repair

Amsan/Easterday
Automated Doors.Com
Automated Gate Services
Cal Fire Protection Co
Coastline Development
Commercial Interior Resources
D&E Plumbing
DRI Commercial
Dupont
Interior Electric
Pacific Sundance Construction
Quality Design Plumbing
Regan & Regan Asphalt Paving

SCHEDULE 4.3(b)

Exceptions to Compliance With Laws

1. Such matters as are disclosed in that certain Phase I Environmental Site Assessment Update, County of Orange Social Services District Facility, 1928 South Grand Avenue, Santa Ana, California, dated January 10, 2005, by Environmental Business Solutions.
2. The matters listed in Exhibit J to the Principal Lease.
3. The matters listed in that certain Special Inspection Report, dated June 22, 2004, by Parra Building Consultants addressed to DEI, LLC.
4. The current occupancy of the Property does not comply with applicable zoning laws, except to the extent that the Property, or the use thereof is exempt from applicable law by virtue of the occupancy of the Property by Tenant under the Principal Lease.

SCHEDULE 4.3(d)

Governmental Permits

Part A – Permits Held by Trustor

Part B – Permits for which Applications Have Been Filed

Part C – Permits which Need to be Applied For

Building permit for the Additional Space

SCHEDULE 5.5

Insurance Requirements and Provisions

(a) *Required Insurance.* Trustor shall, at all times, provide, maintain and keep in full force and effect or shall cause to be provided, maintained and so kept, the following insurance policies:

(i) Insurance against loss or damage with respect to the Property and Collateral by fire, vandalism, burglary, theft, riot, flood, hurricane, earthquake, terrorism (subject, as to earthquake and terrorism, to such insurance being commercially available at commercially reasonable rates and with commercially reasonable deductibles) and other hazards insured against by a standard form of extended coverage, in an amount not less than the full replacement cost of the Property, including, without limitation, the cost of debris removal (exclusive of the cost of street, infrastructure, excavations, foundations and footings below the lowest basement floor); and with not more than \$10,000 deductible (\$25,000 deductible for flood, windstorm and earthquake and for terrorism, such deductible as is then commercially available at commercially reasonable rates). The policies of insurance carried in accordance with this **Section (a)(i)** shall provide "Replacement Cost Coverage" and shall provide that the insurer or insurers thereunder shall pay the full cost of any repairs or restoration of the Property and Collateral to its condition immediately prior to any covered casualty and "Stated Value Coverage", insuring the value of the Improvements in an amount not less than the then Outstanding principal balance of the Loan.

(ii) Business interruption insurance and/or loss of "rental value" insurance for the Property and Collateral in an amount at least equal to 18 months of the scheduled installments of principal and interest on the Loan.

(iii) Comprehensive public liability insurance (including, without limitation, coverage for elevators and escalators, if any, on the Property) on an "occurrence basis" against claims for "personal injury", including, without limitation, bodily injury, death or property damage occurring on, in or about the Property and the adjoining street, sidewalks and passageways, such insurance to afford protection to a combined single limit of not less than \$2,000,000 with respect to personal injury or death to any one or more persons and/or damage to property with not more than \$10,000 deductible.

(iv) Worker's compensation insurance (including, without limitation, employer's liability insurance) for all employees of Trustor engaged on or with respect to the Property in an amount at least equal to the coverage typically maintained by similarly situated businesses operating and maintaining similarly situated properties (*i.e.*, office building properties), but, in any event, not less than any amount which Trustor may be required to maintain pursuant to any applicable law.

(v) During such time as any reconstruction on the Land or major repair of the Property is being undertaken, builder's completed value risk insurance against "all risks of physical loss", including, without limitation, collapse coverage, with annual deductibles not to exceed \$10,000 (\$25,000 deductible for flood, windstorm and earthquake and for terrorism, such deductible as is then commercially available at commercially reasonable rates) in nonreporting form, covering the total value of any work performed and equipment, supplies and materials incorporated or to be incorporated into the Property, but no greater than a loss limit of

\$10,000,000. Said policy of insurance shall contain the "permission to occupy upon completion of work or occupancy" endorsement.

(vi) "Boilers and machinery" insurance with respect to damage (not insured against pursuant to **clause (i)**) to boilers, pressure vessels or similar apparatus located in the Improvements from risks normally insured against under boiler and machinery policies with a limit of at least \$250,000.

(vii) Such other additional insurance, and in such amounts, as is then generally being obtained by similarly situated businesses operating and maintaining similarly situated properties and as may be obtained at commercially reasonable rates and subject to commercially reasonable terms as may from time to time be reasonably required in writing by Beneficiary upon at least 60 days' prior written notice to Trustor; provided, however, Beneficiary shall be under no obligation to require, and Trustor shall have no obligation to carry, any such insurance.

(b) *Requirements of Insurance Policies.*

(i) All policies of insurance hereunder shall be issued by companies whose claims paying ability is rated no lower than A- by A.M. Best.

(ii) All policies of insurance described in **clauses (a)(i), (ii), (v), (vii) and (vii)** shall have (as to the sub-limit allocable to the Improvements) attached thereto a Beneficiary's loss payable endorsement for the benefit of Beneficiary in form reasonably satisfactory to Beneficiary and the Placement Agent and evidencing that such coverage of Beneficiary shall be payable notwithstanding (A) any act of negligence of Trustor which might otherwise forfeit such coverage, (B) the occupation or use of the Property or any part thereof for purposes more hazardous than permitted by the policies; (C) any foreclosure or other proceeding or notice of sale relating to the Property or part thereof; or (D) any change in title to or ownership of any part of or interest in the Property. All policies of insurance described in **clause (a)(iii)** shall name Trustor as insured and Beneficiary as additional insureds.

(iii) Trustor shall furnish Beneficiary with an original or a certified and true copy of all policies of required insurance upon written request.

(iv) Subject to the satisfaction of the conditions set forth herein and to the delivery by Trustor of a certificate of an insurance consultant or broker that such policies comply with the terms and provisions hereof, which certificate shall be deemed conclusive evidence that such insurance policies are in compliance with the requirements set forth herein, Trustor may provide any of the required insurance through blanket policies carried by Trustor and its Affiliates and covering more than one location. Trustor shall furnish Beneficiary with a certificate of insurance for each such policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the expiration date.

(v) At least ten (10) Business Days prior to the expiration of each such policy, Trustor shall furnish Beneficiary with evidence reasonably satisfactory to Beneficiary (which evidence shall be an original or a certified and true copy of the certificate of reissuance) of the reissuance of a policy containing insurance in force as required by this Deed of Trust. Trustor shall deliver to Beneficiary at the time of each renewal of the policy, a statement reasonably satisfactory to Beneficiary, as to the then replacement and insurable values of the Property as

determined by the underwriter of fire insurance on the Property or by a qualified appraiser approved by Beneficiary.

(vi) All such policies shall contain a provision that such policies will not be canceled, nonrenewed or materially amended, which term means any reduction in the scope or limits of coverage, without at least thirty (30) Business Days' prior written notice to Beneficiary or such other period of time as is required under California law.

(vii) In the event that Trustor fails to provide, maintain, keep in full force and effect or deliver and furnish to Beneficiary the policies of insurance required hereby, Beneficiary may, but shall be under no obligation to, upon notifying Trustor, procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and the cost of such insurance shall be paid by Beneficiary at Trustor's expense.

(viii) All such policies shall be primary without right of contribution from any other insurance which is carried by Beneficiary, and shall expressly provide that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if they were a separate policy covering each insured.

(c) *Notice of Casualties.* Trustor shall give Beneficiary and each insurer under the applicable insurance policy prompt written notice of the happening of any Casualty to the Property or to any material part thereof.

(d) *Cooperation.* Trustor and Beneficiary shall cooperate in executing and delivering such proofs of loss and other instruments as may be required of Trustor or Beneficiary, respectively, for the purpose of obtaining the recovery of any such insurance monies. Trustor will diligently and continuously pursue the collection of any insurance monies that may be due in the event of loss.

(e) *Payments to Beneficiary.* Subject to the terms of the Principal Lease, if then in effect, all policies maintained pursuant to **clauses (a)(i), (ii), (v), (vi), (vii) or (viii)** shall provide that any proceeds paid under any such policy allocable to the Improvements shall be paid directly to Beneficiary.

(f) *Rights upon Foreclosure.* Trustor hereby appoints Beneficiary its attorney-in-fact, which appointment is irrevocable and coupled with an interest to assign, in the event of the transfer of title pursuant to any foreclosure of the Loan Documents or upon the exercise of any power of sale remedies of Beneficiary hereunder or thereunder, or other transfer of title or assignment of the Property or Collateral in extinguishment, in whole or in part, of the Secured Obligations, all right, title and interest of Trustor in and to all policies of insurance required to be maintained with respect to the Property by this Deed of Trust.

(g) *Annual Certifications; Renewals and Premium Payments.* Trustor shall deliver or shall cause to be delivered to Beneficiary, each year, no later than April 15, a certificate of an independent insurance consultant to the effect that the insurance then being maintained by Trustor with respect to the Property complies with the terms hereof. Such certificate shall provide for acknowledgment thereof by Beneficiary and shall set forth, in the form of a schedule attached thereto, the following items:

(i) the name, type and provider of each policy of insurance then maintained by Trustor with respect to the Property or any part thereof and the amounts of coverage and deductibles maintained thereunder;

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(ii) (x) the replacement cost of the Property then being insured under such insurance policy in the case of the insurance required pursuant to **clause (a)(i)** and confirming that such insurance covers an amount at least equal to the full replacement cost, and (y) the number of months of coverage being provided under the insurance policy required pursuant to **clause (a)(ii)** and the total dollar amount of such coverage;

(iii) the date each such policy will expire; and

(iv) the amount of the premium for each such policy and the date or dates on which such premiums are due.

(h) *Payment of Premiums.* Trustor will pay all premiums with respect to all of the insurance required to be maintained hereunder.

(i) *No Actions Inconsistent with Insurance Policy Requirements.* Trustor shall promptly comply with and conform to (i) all provisions of each such insurance policy and (ii) all requirements of the insurers thereunder applicable to Trustor or the Property or the use, manner of use, occupancy, possession, operation, maintenance, alteration or repair of the Property.

(j) *Loss Adjustments.*

(i) In the event of loss, unless a Default or Event of Default has occurred and is continuing, Trustor shall have the right to adjust, collect and compromise all insurance claims only with the prior written approval of Beneficiary (except that such approval is not required with respect to claims that are for less than \$500,000); and during the pendency of any Default (with respect to which Trustor has been given written notice) or Event of Default, Beneficiary (subject to the satisfaction of the conditions set forth in **clause (k)(iii)**) shall adjust, collect and compromise all such insurance claims.

(ii) So long as no Default or Event of Default shall have occurred and is continuing,

(A) if the Casualty giving rise to the necessity of making an insurance adjustment, collection and compromise is a less-than-total Casualty of the Property, and the Tenant has provided written confirmation or Trustor has provided other evidence satisfactory to Beneficiary in its sole discretion that the Principal Lease will not be terminated as a result of such Casualty, Beneficiary shall approve any such adjustment, collection and compromise, if required by **subparagraph (i)** above, if (x) Trustor shall deliver a certificate to Beneficiary to the effect that the amount of such adjustment, collection and compromise (together with any additional monies which Trustor may advance or provide (it being acknowledged and agreed that nothing contained herein shall require Trustor to advance or provide any such monies)) is sufficient to repair or restore the Property to the condition required under the Principal Lease, within the time period required by the Principal Lease and (y) an independent engineer shall agree that such adjustment, collection and compromise (together with any such additional monies) is sufficient to repair or restore the Property to the condition required under the Principal Lease within the time period required by the Principal Lease; and

(B) if the Casualty giving rise to the necessity of making an insurance adjustment, collection and compromise is a total Casualty of the Property, and the Tenant

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has provided written confirmation or Trustor has provided other evidence satisfactory to Beneficiary in its sole discretion that the Principal Lease will not be terminated as a result of such Casualty, Beneficiary shall approve any such adjustment, collection and compromise, if required by subparagraph (i) above, and the Tenant (to the extent the Tenant's agreement is required to keep the Principal Lease in effect) and Trustor shall have agreed, subject to the Principal Lease and the provisions of the Deed of Trust that the Property is to be repaired or restored, (x) Trustor shall deliver a certificate to Beneficiary to the effect that the Tenant (to the extent the Tenant's agreement is required to keep the Principal Lease in effect) and Trustor have agreed to cause the Property to be restored and that the amount of such adjustment, collection and compromise is sufficient to repair or restore the Property to the condition required under the Principal Lease within the time period required by the Principal Lease, and (y) an independent engineer shall agree that such adjustment, collection and compromise is sufficient to repair or restore the Property to the condition required under the Principal Lease within the time period required by the Principal Lease.

(iii) If a Default or Event of Default shall have occurred and is continuing or if the Tenant has the right under the Principal Lease to terminate the Principal Lease and has not expressly provided written confirmation to Trustor or Trustor has provided other evidence satisfactory to Beneficiary in its sole discretion that the Principal Lease will not be terminated as a result of such Casualty, and Beneficiary shall make such adjustment, collection and compromise, Beneficiary shall make such adjustment, collection and compromise, *provided, however,* that if the Casualty giving rise to the necessity of making an insurance adjustment, collection and compromise is a total Casualty of the Property or is a less than total Casualty and the Tenant is permitted under the Principal Lease to elect to terminate the Principal Lease and has so elected, if the amount of such adjustment, collection and compromise, together with any other amounts on deposit with Beneficiary is sufficient to cause a prepayment of the Note (the sufficiency of which Beneficiary may retain an independent accountant or investment banking firm to determine), no consent of Beneficiary shall be necessary if Beneficiary shall as soon as practicable after receipt of such Casualty Proceeds cause such a redemption to be made.

(iv) To the extent not otherwise retained by or payable to Beneficiary, all Casualty Proceeds payable in respect of any Casualty (x) if the Principal Lease is terminated, shall be deposited with Beneficiary and (y) if the Principal Lease is terminated, shall be deposited in the Payment Fund.

(k) *Payment of Casualty Proceeds to Beneficiary.* In the event any portion of the Property or Collateral is damaged by Casualty, Beneficiary and Trustor shall cause the insurance proceeds received and required to be deposited with Beneficiary pursuant to *clause (k)*. Trustor shall promptly (in no event later than thirty (30) days after collection of insurance proceeds, unless a longer period shall have been agreed to in writing by the Tenant) prepare a restoration schedule and thereafter commence such restoration and complete such restoration within the time period specified by the Principal Lease.

(l) *No Amendment or Modification of Insurance Policies.* Trustor will not enter into any material amendment or modification of any of its insurance policies without the written consent of Beneficiary.