

(e) The term "Hazardous Substances" as used in this Deed of Trust shall include, without limitation, gasoline, petroleum products, explosives, radioactive materials, polychlorinated biphenyls or related or similar materials, or any other substance or material defined as a hazardous or toxic substance or material by any federal, state or local law, ordinance, rule, or regulation.

(f) Trustor shall notify Beneficiary immediately in writing upon learning of:

(i) any spill, discharge or release of any Hazardous Substances on or near the Property that may involve a cleanup cost of One Thousand and 00/100 (\$1,000.00) Dollars or more;

(ii) any circumstances that may result in a violation of this Section 6.18;

(iii) any governmental inquiry or inspection is undertaken or notice issued by any governmental agency or any source whatsoever with respect to Hazardous Substances on, from, affecting, or used, stored or discharged by any occupant of, the Property.

(g) If any investigation, environmental report or governmental investigation or order indicates that there may exist any damage or risk to the Property, or any liability of Trustor relating to any Hazardous Substances, or other environmental conditions with respect to the Property, then unless the holder of the Prior Mortgage, if any, has made a similar demand which Trustor has complied with, and has supplied Beneficiary with evidence of said compliance, Beneficiary may require Trustor to furnish immediately an indemnity bond in an amount determined by Beneficiary, in its discretion, to be sufficient to pay all actual and estimated cleanup costs and to protect against any liens that may arise with respect to such potential cleanup costs. Beneficiary's demand that Trustor post any bond or other security shall not be a waiver of any Default or of any other right or remedy available to Beneficiary.

(h) The obligations and liabilities of Trustor under this Paragraph 6.18 shall survive any entry of a judgment of foreclosure or the delivery of a deed in lieu of foreclosure of this Deed of Trust.

Section 6.19. Asbestos.

(a) Trustor represents and warrants that, to the actual knowledge of Trustor, there is no friable asbestos or any material containing asbestos and deemed hazardous by federal, state or local laws, rules, regulations or orders respecting such material ("Asbestos") on the Property.

(b) Trustor shall not install or permit to be installed Asbestos in the Property. With respect to any such material currently present in the Property, Trustor shall promptly comply with such federal, state or local laws, rules, regulations or orders at

Trustor's sole cost and expense. If Trustor shall fail to comply with any such law, rule, regulation or order such failure shall constitute a Default.

(c) Trustor (x) shall protect, defend, indemnify and hold Beneficiary harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Beneficiary may incur as a result of or in connection with the assertion against Beneficiary or the Property of any claim relating to (i) the presence or removal of any asbestos or asbestos containing substance, including, without limitation, the cost of such removal, or (ii) compliance with any federal, state or local laws, rules, regulations or orders relating thereto, and (y) guarantees to Beneficiary the payment of all costs and expenses which may be incurred by Beneficiary in performing any Asbestos remedial action not performed (or caused to be performed) by Trustor as required under this Deed of Trust.

(d) The obligations and liabilities of Trustor under this Paragraph 6.19 shall survive any entry of a judgment of foreclosure or the delivery of a deed in lieu of foreclosure of this Deed of Trust.

Section 6.20. Modifications. This Deed of Trust, the Note and all other Obligations are subject to Modification (as defined below). To the extent permitted by law, this Deed of Trust secures all Modifications from the date upon which this Deed of Trust was originally recorded, including future loans and extensions of credit and changes in the interest rate, due date, amount or other terms and conditions of any Obligations.

"Modification" shall have the meaning set forth in N.J.S.A. 46:9-8.2 et seq., which statute relates, inter alia, to changes in the interest rate, due date or other terms or conditions of a "mortgage loan", or future advances pursuant to a "line of credit", as defined in that statute.

Section 6.21. No Cooperative or Condominium. Trustor shall not operate the Property, or permit same to be operated as a cooperative or condominium building(s) in which the tenants or occupants participate in the ownership, control, or management of the Property or any part thereof, as tenants, stockholders or otherwise.

Section 6.22. Severability. If any provision of this Deed of Trust or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Deed of Trust nor the application of such provision to any other person or circumstances shall be affected thereby, but rather the same shall be enforced to the greatest extent permitted by law. If the rights and liens created by this Deed of Trust shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the Obligation, the portion of the Obligation which as the result of such invalidity or unenforceability is no longer

secured by the liens and security interests herein granted shall be completely paid prior to the payment of the portion, if any, of the Obligation which shall continue to be secured hereunder, and all payments made on the Obligation shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Obligation.

Section 6.23. Binding Effect. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, personal representatives, successors, and assigns of the parties hereto and shall be covenants running with the Land. The term "Trustor" shall include in their individual capacities and jointly all parties hereinabove named a Trustor. The duties, covenants, conditions, obligations, and warranties of Trustor in this Deed of Trust shall be joint and several obligations of Trustor and, if more than one, of each party named a Trustor hereinabove, and each such party's heirs, personal representatives, successors and assigns. Each party who executes this Deed of Trust and each subsequent owner of the Property, or any part thereof (other than Beneficiary), covenants and agrees that it will perform, or cause to be performed, each term, provision, covenant and condition of this Deed of Trust.

Section 6.24. Counterparts. This Deed of Trust has simultaneously been executed in a number of identical counterparts, each of which, for all purposes, shall be deemed an original. If any Trustor is a corporation, this instrument is executed, acknowledged and delivered by Trustor's officers hereunto duly authorized.

Section 6.25. Choice of Law. THE LOAN SECURED BY THIS DEED OF TRUST WAS NEGOTIATED IN THE STATE OF NEW JERSEY, THIS DEED OF TRUST WAS NEGOTIATED IN THE STATE OF NEW JERSEY, WAS EXECUTED AND DELIVERED BY TRUSTOR AND ACCEPTED BY BENEFICIARY IN THE STATE OF NEW JERSEY, AND THE PROCEEDS OF THE NOTE WERE DISBURSED FROM THE STATE OF NEW JERSEY, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THIS DEED OF TRUST AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW JERSEY APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO CONFLICTS OF LAWS CONSIDERATIONS AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY, ENFORCEMENT AND FORECLOSURE OF THE LIENS AND SECURITY INTERESTS CREATED HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE,

IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW JERSEY SHALL GOVERN THE VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS, AND THE DEBT OR OBLIGATIONS ARISING HEREUNDER, AND THAT THIS SECTION SHALL IN NO EVENT BE CONSTRUED TO PROVIDE THAT THE SUBSTANTIVE LAW OF THE STATE SHALL APPLY TO THE INDEBTEDNESS SECURED BY THIS DEED OF TRUST, OR EVIDENCED BY THE NOTE, THE LOAN AGREEMENT OR THE OTHER LOAN DOCUMENTS, INCLUDING THE CHARGING AND COLLECTION OF INTEREST UNDER THE NOTE OR WITH RESPECT TO THE OTHER OBLIGATIONS AND TO THE ENFORCEMENT OF ALL RIGHTS UNDER THE GUARANTY, WHICH ARE AND SHALL CONTINUE TO BE GOVERNED BY THE SUBSTANTIVE LAW OF THE STATE OF NEW JERSEY. THE PARTIES FURTHER AGREE THAT TRUSTEE AND BENEFICIARY MAY ENFORCE ITS RIGHTS UNDER THE NOTE, THIS DEED OF TRUST, AND THE OTHER LOAN DOCUMENTS INCLUDING ITS RIGHTS TO SUE TRUSTOR TO COLLECT ANY OUTSTANDING INDEBTEDNESS OR TO OBTAIN A JUDGMENT FOR ANY DEFICIENCY FOLLOWING FORECLOSURE IN ACCORDANCE WITH NEW JERSEY LAW AND TRUSTOR HEREBY WAIVES TO THE MAXIMUM EXTENT PERMITTED BY LAW ANY RIGHTS WHICH IT MAY HAVE WITH RESPECT THERETO.

Section 6.26. Jurisdiction. AT BENEFICIARY'S ELECTION, TO BE EXERCISED IN ITS SOLE DISCRETION, ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST TRUSTOR OR BENEFICIARY ARISING OUT OF OR RELATING TO THIS DEED OF TRUST (OTHER THAN AN ACTION FOR JUDICIAL FORECLOSURE OR TO APPOINT A RECEIVER), THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW JERSEY, AND TRUSTOR WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND TRUSTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. TRUSTOR DOES HEREBY DESIGNATE AND APPOINT THE CORPORATION TRUST COMPANY, HAVING AN ADDRESS AT 820 BEAR TAVERN ROAD, WEST TRENTON, NEW JERSEY 08628, AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW JERSEY, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE OF TRUSTOR MAILED OR DELIVERED TO TRUSTOR IN THE MANNER PROVIDED IN THE DEED OF TRUST, SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON TRUSTOR IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW JERSEY. TRUSTOR SHALL GIVE

PROMPT NOTICE TO THE BENEFICIARY OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW JERSEY (WHICH OFFICE SHALL BE DESIGNATED AS THE ADDRESS FOR SERVICE OF PROCESS), AND SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW JERSEY OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO RESTRICT IN ANY MANNER OR IMPOSE ANY CONDITIONS UPON GRANTEE'S OR BENEFICIARY'S RIGHT TO COMMENCE ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS DEED OF TRUST, THE NOTE OR THE OTHER LOAN DOCUMENTS IN THE FEDERAL OR STATE COURTS LOCATED IN THE STATE OF NEVADA.

Section 6.27. Waiver Of Jury Trial. TRUSTOR AND GRANTEE AGREE THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY TRUSTOR OR GRANTEE ON OR WITH RESPECT TO THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. GRANTEE AND TRUSTOR EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, TRUSTOR WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. TRUSTOR ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS DEED OF TRUST AND THAT GRANTEE WOULD NOT EXTEND CREDIT TO TRUSTOR IF THE WAIVERS SET FORTH IN THIS SECTION WERE NOT A PART OF THIS DEED OF TRUST.

ARTICLE VII **SPECIAL STATE PROVISIONS**

In the event of any conflict between the terms and provisions of this Article and any other provision of this Deed of Trust, the terms and provisions of this Article shall govern and control.

Section 7.01. Instrument. This Deed of Trust shall be deemed to be and shall be enforceable as a deed of trust, leasehold deed of trust, security agreement and financing statement.

Section 7.02. Foreclosure. Upon the occurrence of any Default, Beneficiary may request Trustee to proceed with foreclosure under the power of sale which is hereby

conferred, such foreclosure to be accomplished in accordance with the following provisions:

(a) Public Sale. Trustee is hereby authorized and empowered, and it shall be Trustee's special duty, upon such request of Beneficiary to sell the Property, or any part thereof, at public auction to the highest bidder for cash, with or without having taken possession of same. Any such sale (including notice thereof) shall comply with the applicable requirements, if any, governing sales of Nevada real property under powers of sale, conferred by deeds of trust. If there is no statute in force at the time of the sale governing sales of Nevada real property under powers of sale conferred by deeds of trust, such sale shall comply with applicable law, at the time of the sale governing sales of Nevada real property under powers of sale conferred by deeds of trust.

(b) Right to Require Proof of Financial Ability and/or Cash Bid. At any time during the bidding, the Trustee may require a bidding party: (A) to disclose its full name, state and city of residence, occupation, and specific business office location, and the name and address of the principal the bidding party is representing (if applicable), and (B) to demonstrate reasonable evidence of the bidding party's financial ability (or, if applicable, the financial ability of the principal of such bidding party), as a condition to the bidding party submitting bids at the foreclosure sale. If any such bidding party (the "Questioned Bidder") declines to comply with the Trustee's requirement in this regard, or if such Questioned Bidder does respond but the Trustee, in Trustee's sole and absolute discretion, deems the information or the evidence of the financial ability of the Questioned Bidder (or, if applicable, the principal of such bidding party) to be inadequate, then the Trustee may continue the bidding with reservation; and in such event (1) the Trustee shall be authorized to caution the Questioned Bidder concerning the legal obligations to be incurred in submitting bids, and (2) if the Questioned Bidder is not the highest bidder at the sale, or if having been the highest bidder the Questioned Bidder fails to deliver the cash purchase price payment promptly to the Trustee, all bids by the Questioned Bidder shall be null and void. The Trustee may, in Trustee's sole and absolute discretion, determine that a credit bid may be in the best interest of the Trustor and Beneficiary, and elect to sell the Property for credit or for a combination of cash and credit; provided, however, that the Trustee shall have no obligation to accept any bid except an all cash bid. In the event the Trustee requires a cash bid and cash is not delivered within a reasonable time after conclusion of the bidding process, as specified by the Trustee, but in no event later than 3:45 p.m. local time on the day of sale, then said contingent sale shall be null and void, the bidding process may be recommenced, and any subsequent bids or sale shall be made as if no prior bids were made or accepted.

(c) Sale Subject to Unmatured Obligation. In addition to the rights and powers of sale granted under the preceding provisions of this subsection, if default is made in the payment of any installment of the Obligation, Beneficiary may, at Beneficiary's option, at once or at any time thereafter while any matured installment remains unpaid, without

declaring the entire Obligation to be due and payable, orally or in writing direct Trustee to enforce this trust and to sell the Property subject to such unmatured Obligation and to the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of such unmatured Obligation in the same manner, all as provided in the preceding provisions of this subsection. Sales made without maturing the Obligation may be made hereunder whenever there is a default in the payment of any installment of the Obligation, without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this subsection, the unmatured balance of the Obligation or the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of the Obligation.

(d) Partial Foreclosure. Sale of a part of the Property shall not exhaust the power of sale, but sales may be made from time to time until the Obligation is paid in full. It is intended by each of the foregoing provisions of this subsection that Trustee may, after any request or direction by Beneficiary, sell not only the Land and the Improvements, but also the Accessories and other interests constituting a part of the Property or any part thereof, along with the Land and the Improvements or any part thereof, as a unit and as a part of a single sale, or may sell at any time or from time to time any part or parts of the Property separately from the remainder of the Property. It shall not be necessary to have present or to exhibit at any sale any of the Property.

(e) Trustee's Deeds. After any sale under this subsection, Trustee shall make good and sufficient deeds, assignments, and other conveyances to the purchaser or purchasers thereunder in the name of Trustor, conveying the Property or any part thereof so sold to the purchaser or purchasers with general warranty of title by Trustor. It is agreed that in any deeds, assignments or other conveyances given by Trustee, any and all statements of fact or other recitals therein made as to the identity of Beneficiary, the occurrence or existence of any Default, the notice of intention to accelerate, or acceleration of, the maturity of the Obligation, the request to sell, notice of sale, time, place, terms and manner of sale, and receipt, distribution, and application of the money realized therefrom, the due and proper appointment of a substitute trustee, and without being limited by the foregoing, any other act or thing having been duly done by or on behalf of Beneficiary or by or on behalf of Trustee, shall be taken by all courts of law and equity as prima facie evidence that such statements or recitals state true, correct and complete facts and are without further question to be so accepted, and Trustor does hereby ratify and confirm any and all acts that Trustee may lawfully do in the Property by virtue hereof.

Section 7.03. Receiver. Beneficiary, as a matter of right and without regard to the sufficiency of the security for repayment of the Obligation and performance and discharge of the obligations hereunder, without notice to Trustor and without any showing of insolvency, fraud, or mismanagement on the part of Trustor, and without the necessity of filing any judicial or other proceeding other than the proceeding for

appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Property or any part thereof, and of the Rents, and Trustor hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

Section 7.04. INTENTIONALLY DELETED.

Section 7.05. Entire Agreement. THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO.

Section 7.06. Notice of Indemnification. TRUSTOR ACKNOWLEDGES THAT THIS DEED OF TRUST PROVIDES FOR INDEMNIFICATION OF BENEFICIARY BY TRUSTOR.

Section 7.07. Maturity Date. The original stated Maturity Date of the Note is June 30, 2009.

Section 7.08. Due on Sale. The entire Obligation shall be due and payable in full in the event of any sale, conveyance, alienation, Deed of Trust, encumbrance, pledge or other transfer of the Property (or any part thereof) unless expressly permitted by the terms of this Deed of Trust or otherwise consented to in writing by Beneficiary.

Section 7.09. Covenants of NRS 107.030. When not inconsistent with the above, covenant numbers 1, 2 (full replacement value), 3, 4 (Note rate), 5, 6, 7 (a reasonable percentage), 8, and 9 of NRS 107.030 are hereby adopted and made a part of this Deed of Trust.


TRUSTOR HEREBY ACKNOWLEDGES THAT IT HAS RECEIVED
WITHOUT CHARGE A TRUE COPY OF THIS DEED OF TRUST.

EXECUTED as of the date first above written.

WITNESS:

OneCap Partners 2, LLC,
a Nevada limited liability company

By: OneCap Partners MM, Inc., its
Manager



Hazel B. Yeong

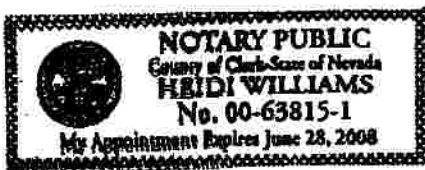
By: 

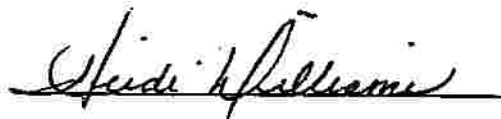
Name: Vincent Hesser
Title: President

STATE OF *Nevada*)
): ss.:
COUNTY OF *Clark*)

I certify that on June 14, 2006, Vincent Hesser came before me in person and
stated to my satisfaction that he:

- (a) made the attached instrument; and
- (b) was authorized to and did execute this instrument on behalf of and as
President of OneCap Partners MM, Inc. the Manager of OneCap Partners 2, LLC, a
Nevada limited liability company (the "Company"), the entity named in this instrument,
as the free act and deed of the Company, by virtue of the authority granted by its
Operating Agreement and its members.





NOTARY PUBLIC

EXHIBITS:

A - Property Description

B - Permitted Exceptions

C - Leases

SCHEDULES:

Schedule of Principal Loan Documents

EXHIBIT "A"

PROPERTY DESCRIPTION

PARCEL ONE (1):

**LOT TWO (2) AS SHOWN ON THAT CERTAIN PARCEL MAP IN FILE 53 OF
PARCEL MAPS, PAGE 93, IN THE OFFICE OF THE COUNTY RECORDER OF
CLARK COUNTY, NEVADA.**

APN No.: 264-25-101-001

PARCEL TWO (2):

**THE SOUTH 1000 FEET OF THE NORTH 2000 FEET (MEASURED AT A RIGHT
ANGLE TO THE NORTH LINE) OF SECTION 25, TOWNSHIP 32 SOUTH,
RANGE 66 EAST, M.D.B. & M.**

APN No.: 264-25-201-001

EXHIBIT "B"

PERMITTED EXCEPTIONS

Those items listed in Schedule B, Section II of the title commitment/proforma issued by Commonwealth Land Title Insurance Company under Escrow No. 06-06-0235-BB.

B-1

31392/0400-1438033v3

98

KF00125

EXHIBIT "C"

LEASES

None.

C-1

31392/0400-1438033v3

SCHEDULE OF PRINCIPAL LOAN DOCUMENTS

1. Loan Commitment dated June 6, 2006;
2. Loan and Security Agreement dated as of the date hereof;
3. Promissory Note dated as of the date hereof;
4. Deed of Trust and with Security Agreement, Financing Statement for Fixture Filing and Assignment of Rents dated as of the date hereof;
5. Document Re-Execution Agreement dated as of the date hereof;
6. Affidavit and Indemnity of Borrower and Guarantors dated as of the date hereof;
7. Assignment of Leases and Rents dated as of the date hereof;
8. Assignment of Licenses, Contracts, Plans, Specifications, Surveys, Drawings and Reports dated as of the date hereof;
9. Guaranty dated as of the date hereof; and
10. UCC-1 Financing Statements dated as of the date hereof; and
11. Closing Statement dated as of the date hereof.

EXHIBIT “4”

SUBORDINATION AND ATTORNMENT AGREEMENT

THIS SUBORDINATION AND ATTORNMENT AGREEMENT (this "Agreement") made as of the 15th day of June, 2006, by and among KENNEDY FUNDING, INC. ("Lender"), GARRY OWEN II, LLC, an Arizona limited liability company ("Option Holder") and ONECAP PARTNERS 2, LLC, a Nevada limited liability company ("Borrower").

WITNESSETH:

WHEREAS, Lender has agreed to make a loan (the "Loan") of up to Twelve Million (\$12,000,000) Dollars to Borrower;

WHEREAS, the Loan will be evidenced by a Promissory Note (the "Note") of even date herewith made by Borrower to order of Lender and will be secured by, among other things, a Deed of Trust, Assignment of Leases and Rents and Security Agreement (the "Deed of Trust") of even date herewith made by Borrower to Lender covering the land (the "Land") described on Exhibit A attached hereto and all improvements (the "Improvements") now or hereafter located on the land (the Land and the Improvements hereinafter collectively referred to as the "Property"); and

WHEREAS, by a First Amended to Purchase and Sale Agreement dated as of June 9, 2006 (which purchase agreement, as the same may have been amended and supplemented, is hereinafter called the "Purchase Agreement"), the Borrower has granted to the Option Holder a limited option to purchase the Land for \$30,000,000 ("Option"); and

WHEREAS, the parties hereto desire to make the Option subject and subordinate to the Deed of Trust.

NOW, THEREFORE, the parties hereto, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

The Option, as the same may hereafter be modified, amended or extended, and all of Option Holder's right, title and interest in and under the Option, are and shall be unconditionally subject and subordinate to the Deed of Trust and the lien thereof, to all the terms, conditions and provisions of the Deed of Trust, to each and every advance made or hereafter made under the Deed of Trust, and to all renewals, modifications, consolidations, replacements, substitutions and extensions of the Deed of Trust; provided, however, and Lender agrees, that so long as (A) no event has occurred and no condition exists, which would entitle Borrower to terminate the Purchase Agreement and/or the Option or would cause, without further action of Borrower, the termination of the Purchase Agreement and/or the Option, (B) the Purchase Agreement and the Option shall

be in full force and effect and shall not have been otherwise modified or supplemented in any way without Lender's prior written consent, (C) Option Holder attorns to Lender, which attornment is hereby acknowledged by Option Holder as effective and self-operative, without the execution of any other instruments, and (D) neither Lender nor its successors or assigns shall be liable under any representation, warranty or covenant contained in the Purchase Agreement or the Option; then, and in such event the Option shall be acknowledged by Lender and Lender will accept the attornment of the Option Holder.

If Lender succeeds to the interest of Borrower or any successor to Borrower (such event, whether a foreclosure, deed-in-lieu of foreclosure or other acquisition, being referred to herein as a "Foreclosure"), in no event shall Lender (i) have any liability for any act or omission of Borrower under the Purchase Agreement or the Option which occurs prior to the date Lender succeeds to the rights of Borrower, nor any liability for claims, offsets or defenses which Option Holder might have had against Borrower, or (ii) be bound by any modification, amendment, extension or cancellation of the Purchase Agreement or the Option not consented to in writing by Lender; and further provided, that nothing herein shall negate the right of Lender after a Foreclosure to exercise the rights and remedies of Borrower under the Purchase Agreement and/or Option. Option Holder further agrees with Lender that Option Holder will not voluntarily subordinate the Purchase Agreement or the Option to any lien or encumbrance without Lender's prior written consent.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute and be construed as one and the same instrument. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Nevada.

All notices to be given under this Agreement shall be in writing and shall be deemed served upon receipt by the addressee if served personally or, if mailed, upon the first to occur of receipt or the refusal of delivery as shown on a return receipt, after deposit in the United States Postal Service certified mail, postage prepaid, addressed to the address of Borrower, Option Holder or Lender appearing below, or, if sent by telegram, when delivered by or refused upon attempted delivery by the telegraph office. Such addresses may be changed by notice given in the same manner. If any party consists of multiple individuals or entities, then notice to any one of same shall be deemed notice to such party.

If to Lender: Kennedy Funding, Inc.
Two University Plaza, Suite 402
Hackensack, New Jersey 07601
Attention: Jeffrey Wolfer

Facsimile No. (201) 342-8373

With a copy to: Cole, Schotz, Meisel, Forman & Leonard P.A.
25 Main Street
Hackensack, New Jersey 07602-0800
Attention: Michael R. Leighton, Esq.
Facsimile No.: (201) 489-1536

If to Borrower: OneCap Partners 2, LLC
5440 W. Sahara Avenue, 3rd Floor
Las Vegas, Nevada 89146
Attn: Mr. Vincent Hesser

With a copy to: Harold Gewerter, Esq.
5440 W. Sahara Ave., Suite #202
Las Vegas, NV 89146
Facsimile No. (702) 382-1759

If to Option Holder: Garry Owen II, LLC
c/o Arizona Land Advisors, LLC
6710 North Scottsdale Road, Suite 210
Scottsdale, Arizona 85253
Attn: Susan Lundquist for David W. Lords
Facsimile No. (480) 483-0000

With a copy to: Jim Valletta, Esq.
Warner Angle Hallam Jackson & Formanek PLC
3550 North Central Avenue, Suite 1500
Phoenix, Arizona 85012-2113
Facsimile No. (602) 234-0419

This Agreement shall apply to, bind and inure to the benefit of the parties hereto and their respective successors and assigns. As used herein "Lender" shall include any subsequent holder of the Deed of Trust.

Option Holder acknowledges that Borrower has assigned to Lender its right, title and interest in and to the rents, issues and profits of the Property pursuant to the Deed of Trust and an Assignment of Leases and Rents executed simultaneously therewith, and that Landlord has been granted the license to collect such rents provided no Event of Default has occurred under, and as defined in, the Deed of Trust.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

LENDER:

KENNEDY FUNDING, INC., a New Jersey corporation

By: 

Print Name: Jeffrey W. Lerner

Print Title: President & CO-CEO

BORROWER:

OneCap Partners 2, LLC, a Nevada limited liability company

By: OneCap Partners MM Inc., its Manager

By: _____

Name: Vincent Hesser

Title: President

OPTION HOLDER:

Garry Owen II, LLC, an Arizona limited liability company

By: _____

Print Name: David W. Lords

Print Title: President

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

LENDER:

KENNEDY FUNDING, INC., a New Jersey corporation

By: _____
Print Name: _____
Print Title: _____

BORROWER:

OneCap Partners 2, LLC, a Nevada limited liability company

By: OneCap Partners MM Inc., its Manager

By: 
Name: Vincent Hesser
Title: President

OPTION HOLDER:

Garry Owen II, LLC, an Arizona limited liability company

By: _____
Print Name: David W. Lords
Print Title: President

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

LENDER:

KENNEDY FUNDING, INC., a New Jersey corporation

By: _____
Print Name: _____
Print Title: _____

BORROWER:


OneCap Partners 2, LLC, a Nevada limited liability company

By: OneCap Partners MM Inc., its Manager

By: _____
Name: Vincent Hesser
Title: President

OPTION HOLDER:

Garry Owen II, LLC, an Arizona limited liability company

By:  _____
Print Name: David W. Lords
Print Title: President

STATE OF NEW JERSEY)


)SS.:

COUNTY OF BERGEN)

I CERTIFY that on June 15, 2006, Jeffrey Wolfer personally came before me and this person acknowledged under oath, to my satisfaction, that he:

(a) executed the attached Subordination and Attornment Agreement;
and

(b) was authorized to and did execute the attached Subordination and Attornment Agreement on behalf of and as President & CEO of Kennedy Funding, Inc., the entity named in this instrument, by virtue of authority granted by its bylaws and board of directors.


Notary Public
Dawn M. Furton
Notary Public of New Jersey
ID # 2297497
My Commission Expires 03/05/08

STATE OF)

): ss.:

COUNTY OF)

I certify that on June ___, 2006, Vincent Hesser came before me in person and stated to my satisfaction that he:

(a) executed the attached Subordination and Attornment Agreement; and

(b) was authorized to and did execute this instrument on behalf of and as President of OneCap Partners MM, Inc. the Manager of OneCap Partners 2, LLC, a Nevada limited liability company (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its Operating Agreement and its members.

Notary Public

STATE OF NEW JERSEY)

)SS.:

COUNTY OF BERGEN)

I CERTIFY that on June __, 2006, _____ personally came before me and this person acknowledged under oath, to my satisfaction, that he:

(a) executed the attached Subordination and Attornment Agreement;
and

(b) was authorized to and did execute the attached Subordination and Attornment Agreement on behalf of and as _____ of Kennedy Funding, Inc., the entity named in this instrument, by virtue of authority granted by its bylaws and board of directors.

Notary Public

STATE OF *Nevada*)

) ss.:

COUNTY OF *Clark*)

I certify that on June 15, 2006, Vincent Hesser came before me in person and stated to my satisfaction that he:

(a) executed the attached Subordination and Attornment Agreement;
and

(b) was authorized to and did execute this instrument on behalf of and as President of OneCap Partners MM, Inc. the Manager of OneCap Partners 2, LLC, a Nevada limited liability company (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its Operating Agreement and its members.

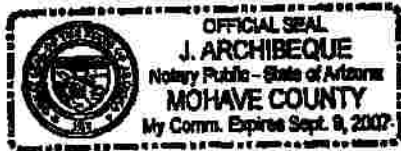


Notary Public

STATE OF Arizona)
COUNTY OF Mohave)SS.:

I certify that on June 15, 2006, David W. Lords came before me in person and stated to my satisfaction that he:

- (a) executed the attached Subordination and Attornment Agreement; and
- (b) was authorized to and did execute this instrument on behalf of and as President of Garry Owen II, LLC, an Arizona limited liability company (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its members and operating agreement.



Archibeque
Notary Public

contained in the Note or any other Loan Document within the applicable cure period, if any, provided therefor in such document; or

(u) upon the failure of Trustor to comply with, satisfy, perform or observe any other term, covenant, condition or agreement of Trustor herein (i.e., any term, covenant, condition or agreement not referred to in any other subparagraph of this Paragraph 3.01), and such failure continues without cure for thirty (30) days after Trustee gives Trustor notice thereof, or if such failure, by its nature, cannot be cured within thirty (30) days, Trustor fails to commence such cure within thirty (30) days after Trustee gives Trustor notice thereof and thereafter to diligently prosecute cure to completion within sixty (60) days.

(v) Vincent Hesser ceases to be the sole shareholder of, or ceases to retain and exercise management and control of OneCap Partners MM Inc., the Manager of Trustor or any transfer of any ownership interest (directly or indirectly) in Trustor occurs in violation of Paragraph 2.20(c) hereof;

(w) OneCap Partners MM Inc. ceases to be the Manager of Trustor; or

(x) any material breach or acceleration or commencement of proceedings (whether non-judicial, judicial, public or private) to foreclose any other lien upon the Property, whether or not such lien is permitted or unpermitted hereunder or prior or subordinate to the lien of this Deed of Trust.

Section 3.02. Beneficiary's Remedies Upon Default. Upon a default, Beneficiary may, at Beneficiary's option, do any one or more of the following:

(a) If Trustor has failed to keep or perform any covenant whatsoever contained in this Deed of Trust, Beneficiary may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be and become a part of the Obligation, and Trustor promises, upon demand, to pay to Beneficiary, at the place where the Obligation is payable, all sums so advanced or paid by Beneficiary, with interest from the date when paid or incurred by Beneficiary at the rate provided in the Loan Agreement, the Note or the Guaranty for past due payment. No such payment by Beneficiary shall constitute a waiver of any default. In addition to the liens and security interests hereof, Beneficiary shall be subrogated to all rights, titles, liens and security interests securing the payment of any debt, claim, tax or assessment for the payment of which Beneficiary may make an advance, or which Beneficiary may pay.

(b) Beneficiary may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate (except as otherwise expressly provided in the Note), notice of acceleration or any other notice or any other action, all of which are hereby waived by Trustor and all other parties

obligated in any manner whatsoever on the Obligation, declare the entire unpaid balance of the Obligation immediately due and payable, and upon such declaration, the entire unpaid balance of the Obligation shall be immediately due and payable.

(c) Irrespective of whether Beneficiary exercises the right provided in Paragraph 3.02(b) above, Beneficiary in person or by agent or by court-appointed receiver may enter upon, take possession of, manage and operate the Property or any part thereof and do all things necessary or appropriate in Beneficiary's sole discretion in connection therewith, including without limitation making and enforcing, and if the same be subject to modification or cancellation, modifying or canceling Leases upon such terms or conditions as Beneficiary deems proper, obtaining and evicting tenants, and fixing or modifying Rents, contracting for and making repairs and alterations, and doing any and all other acts which Beneficiary deems proper to protect the security thereof, including taking any remedial measures resulting from the actual or threatened release of Hazardous Substances on the Property, in which event the decision of Beneficiary as to whether there exists an actual or threatened release of Hazardous Substances shall be deemed reasonable and conclusive; and either with or without so taking possession, in its own name or in the name of Trustor, sue for or otherwise collect and receive the rents, issues and profits including those past due and unpaid, and apply the same less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. Upon request of Beneficiary, Trustor shall assemble and make available to Beneficiary at the site of the real property encumbered hereby any of the Property which has been removed therefrom. The entering upon and taking possession of the Property, or any part thereof, and the collection of any rents, issues and profits and the application thereof as aforesaid shall not cure or waive any default theretofore or thereafter occurring or affect any notice or default hereunder or invalidate any act done pursuant to any such default or notice. Notwithstanding continuance in possession of the Property or any part thereof by Beneficiary, Trustor or a receiver, and notwithstanding the collection, receipt and application of the Rents, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, any other Loan Document or by law or in equity upon or after the occurrence of a Default, including without limitation the right to exercise the power of sale. Any of the actions referred to in this Paragraph 3.02(c) may be taken by Beneficiary irrespective of whether any notice of default or election to sell has been given hereunder and without regard to the adequacy of the security for the indebtedness hereby secured.

(d) Beneficiary may bring an action in any court of competent jurisdiction to foreclose this instrument or to enforce any of the covenants and agreements hereof.

(e) Beneficiary shall have the right, with the irrevocable consent of Trustor hereby given and evidenced by the execution of this Deed of Trust, to appoint itself as receiver or to obtain appointment of a receiver by any court of competent jurisdiction without further notice to Trustor, which receiver shall be authorized and empowered to

enter upon and take possession of the Property, including all personal property used upon or in connection with the real property herein conveyed and all bank accounts encumbered by this Deed of Trust or the Loan Documents and containing funds associated with the Property, to let the Property, to receive all the rents, issues and profits due or to become due, and apply the rents, issues and profits after payment of all necessary charges and expenses to reduction of the Obligation. Trustor hereby assigns the rents, issues and profits to Beneficiary as additional security for the Obligation, together with the Leases and all other documents evidencing the rents, issues and profits bank accounts, and any and all deposits held as security under the Leases. At the option of Beneficiary, the receiver shall accomplish such entry and taking possession of the Property by actual entry and possession or by notice to Trustor. The receiver so appointed by a court of competent jurisdiction shall be empowered to issue receiver's certificates for funds advanced by Beneficiary for the purpose of protecting the value of the Property as security for the Obligation. The amounts evidenced by receiver's certificates shall bear interest at the Default Rate specified in the Note and may be added to the cost of redemption if the owners of the Property, Trustor, or a junior lienholder redeems at the Trustee's Sale.

(f) If any Event of Default occurs, Beneficiary is authorized and empowered, without further notice, to execute or cause the Trustee to execute a written notice of default and of election to cause the Property to be sold as required by law or as otherwise provided herein, and the Trustee shall file such notice for record in each county wherein the Property or any part thereof is situated. After such filing, the Trustee may lawfully foreclose and shall foreclose the lien of this Deed of Trust, and sell and dispose of the Property in masse or in separate parcels (as Beneficiary may elect) and all the right, title, and interest of Trustor therein, at a public auction at any place then authorized by law as may be specified in the notice of such sale, for the price permitted by law (the "Trustee's Sale"), legally required public notice having previously been given of the time and place of such sale. The Trustee, without demand on Trustor, shall sell the Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient in accordance with applicable law, postpone the sale from time to time until it shall be completed and, in every case, notice of postponement shall be given as required by law. Trustee shall execute and deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorneys' fees; (2) cost of any evidence of title procured in connection with such sale; (3)

all sums expended under the terms hereof, not then repaid, with accrued interest as provided herein from date of expenditure; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place.

(g) Upon the occurrence of a Default, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable upon notice of intent to accelerate as set forth in the Note, and to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be fixed by the court. Trustor hereby waives all rights to the marshalling of Trustor's assets encumbered by this Deed of Trust to the fullest extent permitted by law, including the Property, and all rights to require the Property to be sold in several parcels. The proceeds or avails of such a sale pursuant to the foreclosure of this Deed of Trust as a mortgage shall first be applied to pay all reasonable fees, charges, costs of conducting such sale and advertising the Property, and attorneys' fees as herein provided, second to pay to Beneficiary the then outstanding amount of the Obligation with interest at the rate set forth in the Note, and third to the person so entitled, subject to applicable law. Beneficiary may purchase all or any part of the Property at such sale. Any purchaser at such sale shall not be responsible for the application of the purchase money. During any redemption period subsequent to the such sale, the amount of Beneficiary's bid entered at such sale shall bear interest at the maximum lawful rate of interest.

(h) Upon the occurrence of an Event of Default as a result of any of the representations or warranties concerning Hazardous Substances set forth in the Loan Agreement or any other Loan Document being untrue, Beneficiary may commence and maintain an action or actions in any court of competent jurisdiction for breach of contract, whether commenced prior to foreclosure of the Property or after foreclosure of the Property, and to seek the recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses actually incurred by Beneficiary (the "Environmental Costs") incurred or advanced by Beneficiary relating to the cleanup, remediation or other response action required by any applicable law relating to Hazardous Substances or to which Beneficiary believes necessary to protect the Property, it being conclusively presumed between Beneficiary and Trustor that all such Environmental Costs incurred or advanced by Beneficiary relating to the cleanup, remediation or other response action of or to the Property were made by Beneficiary in good faith. All Environmental Costs incurred by Beneficiary under this Section (including without limitation court costs, consultant fees and attorneys' fees, whether incurred in litigation or not and whether before or after judgment) shall be considered Obligation and shall bear interest at the Default Rate established in the Note from the date of expenditure until paid in full.

Beneficiary shall have the right to bid, at the sale of the Property held under Section 6.6 the amount of the Environmental Costs, plus interest at the Default Rate established in the Note, in addition to any other amounts comprising the Obligation.

(i) If this Deed of Trust is foreclosed by the Trustee, the Trustee shall allow a reasonable amount of attorneys' fees for services rendered in the supervision of such foreclosure proceedings as a part of the cost of foreclosure. If the foreclosure proceedings are made through court proceedings, attorneys' fees in an amount determined by the court to be reasonable shall be taxed by the court as a part of the cost of such foreclosure proceedings.

(j) Trustor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Deed of Trust, hereby expressly waives and releases all rights to direct the order in which any of the Property shall be sold and to have the Property and any other property now or hereafter constituting security for the Obligation marshaled upon any foreclosure of the lien of this Deed of Trust. Beneficiary shall have the right to sell the Property as a whole or in separate parcels.

(k) Each right, power, and remedy herein conferred upon Beneficiary or the Trustee is cumulative of every other right or remedy of Beneficiary or the Trustee, whether conferred herein or by law, and may be enforced concurrently.

(l) Beneficiary may, or Trustee may upon written request of Beneficiary, proceed by suit or suits, at law or in equity, to enforce the payment and performance of the Obligation in accordance with the terms hereof and of the Loan Documents, to foreclose the liens and security interests of this Deed of Trust as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction.

(m) After notification, if any, hereafter provided in this Subsection, Beneficiary may sell, lease or otherwise dispose of, at the office of Beneficiary or on the Land or elsewhere, as chosen by Beneficiary, all or any part of the Accessories, in their then condition, or following any commercially reasonable preparation or processing, and each Sale (as used in this Subsection, the term "Sale" means any sale, lease, or other disposition made pursuant to this Subsection) may be as a unit or in parcels, by public or private proceedings, and by way of one or more contracts, and, at any Sale it shall not be necessary to exhibit the Accessories or part thereof being sold. The Sale of any part of the Accessories shall not exhaust Beneficiary's power of sale, but Sales may be made from time to time until the Obligation is paid and performed in full. Reasonable notification of the time and place of any public Sale pursuant to this Subsection, or reasonable notification of the time after which any private Sale is to be made pursuant to this Subsection, shall be sent to Trustor and to any other person entitled under the Code (as hereinafter defined) to notice; provided that if the Accessories or part thereof being

sold are perishable, or threaten to decline rapidly in value, or are of a type customarily sold on a recognized market, Beneficiary may sell, lease or otherwise dispose of the Accessories, or part thereof, without notification, advertisement or other notice of any kind. It is agreed that notice sent or given not less than five (5) calendar days prior to the taking of the action to which the notice relates, is reasonable notification and notice for the purposes of this Subsection.

(u) INTENTIONALLY OMITTED.

(o) Beneficiary may retain the Accessories in satisfaction of the Obligation whenever the circumstances are such that Beneficiary is entitled to do so under the Code.

(p) Beneficiary may buy the Property or any part thereof at any public sale or judicial sale.

(q) Beneficiary may buy the Accessories or any part thereof at any private sale, if the Accessories or part thereof being sold are a type customarily sold in a recognized market or a type subject to widely distributed standard price quotations.

(r) If any payment under this Deed of Trust shall not be received by Beneficiary when due, a late charge of ten cents for each dollar of such payment shall become due to the Beneficiary. Such charge shall be payable with the payment next due and shall be added to the Obligations and be secured by this Deed of Trust.

(s) Beneficiary shall have and may exercise any and all other rights and remedies which Beneficiary may have at law or in equity, or by virtue of any Loan Document, or under the Code, or otherwise.

Section 3.03. Beneficiary as Purchaser. If Beneficiary is the purchaser of the Property or any part thereof, at any sale thereof, whether such sale be under the power of sale hereinabove vested in Trustee or upon any other foreclosure of the liens and security interests hereof, or otherwise, Beneficiary shall, upon any such purchase, acquire good title to the Property so purchased, free of the liens and security interests hereof.

Section 3.04. Other Rights of Beneficiary. Should any part of the Property come into the possession of Beneficiary, whether before or after Default, Beneficiary may use or operate the Property for the purpose of preserving it or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Beneficiary in respect of the Property. Trustor covenants promptly to reimburse and pay to Beneficiary on demand, at the place where the Obligation is payable, the amount of all reasonable expenses (including the cost of any insurance, taxes or other charges) incurred by Beneficiary in connection with Beneficiary's custody, preservation, use or operation of the Property, together with interest thereon from the date incurred by Beneficiary at the rate provided in the Note for past-due principal, and all such expenses, costs, taxes,

interest and other charges shall be and become a part of the Obligation. It is agreed, however, that the risk of loss or damage to the Property is on Trustor, and Beneficiary shall have no liability whatsoever for decline in value of the Property, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured.

Section 3.05. Possession After Foreclosure. If the liens or security interests hereof shall be foreclosed by power of Trustee's sale, by judicial action or otherwise, the purchaser at any such sale shall receive, as an incident to Trustee's ownership, immediate possession of the property purchased, and if Trustor or Trustor's successors shall hold possession of said property or any part thereof, subsequent to foreclosure, Trustor and Trustor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Property so occupied), and anyone occupying such portion of the Property after demand is made for possession thereof shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

Section 3.06. Application of Proceeds. The proceeds from any sale, lease or other disposition made pursuant to this Article, or any rental collected by Beneficiary from the Property, or sums received pursuant to Section 5.01 hereof, or proceeds from insurance which Beneficiary elects to apply to the Obligation, shall be applied by Trustee, or by Beneficiary, as the case may be, as follows: first, to the payment of all expenses of advertising, selling and conveying the Property or part thereof, including reasonable attorneys' fees and reasonable fees and expenses of the Trustee commission; second, to repay any sums expended by Beneficiary or Trustee pursuant to the terms hereof, with interest at the applicable rate hereunder; third, to late charges; fourth, to accrued interest on the Obligation; fifth, to principal on the matured portion of the Obligation; fifth, to prepayment of the unmatured portion, if any, of the Obligation applied to installments of principal in inverse order of maturity; and seventh, the balance, if any, remaining after the full and final payment and performance of the Obligation to the person or persons legally entitled thereto.

Section 3.07. Abandonment of Sale. In the event a foreclosure hereunder is commenced by Trustee in accordance with Subsection 3.02(c) hereof, Beneficiary may, at any time before the sale, direct Trustee to abandon the sale, and (to the extent thereon permitted under then applicable law) may then institute suit for the collection of the Obligation and for the foreclosure of the liens and security interests hereof. If Beneficiary should institute a suit for the collection of the Obligation and for a foreclosure of the liens and security interests hereof, Beneficiary may, at any time before the entry of a final judgment in said suit, dismiss the same and require Trustee to sell the Property or any part thereof in accordance with the provisions of this Deed of Trust.

Section 3.08. Payment of Fees. If any part of the Obligation shall be collected or enforced by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by an option given to the Beneficiary to mature same, or if Beneficiary becomes a party to any suit where this Deed of Trust or the Property or (to the extent thereon permitted under then applicable law) any part thereof is involved, Trustor agrees to pay Beneficiary's reasonable attorneys' and collection fees, and such fees shall be and become a part of the Obligation.

Section 3.09. Indemnification of Trustee. Except for gross negligence or willful misconduct, Trustee shall not be liable for any act or omission or error of judgment. Trustee may rely on any document believed by Trustee in good faith to be genuine. All money received by Trustee shall, until used or applied as herein provided, be held in trust, but need not be segregated (except to the extent required by law), and Trustee shall not be liable for interest thereon. Trustor shall indemnify Trustee against all liability and expenses which Trustee may incur in the performance of Trustee's duties hereunder.

Section 3.10. Substitute Trustee. Beneficiary may appoint a substitute Trustee (a) if Trustee herein named or any substitute Trustee shall die, resign, or fail, refuse or be unable, for any reason, to make any such sale or to perform any of the trusts herein declared; or (b) at the option of Beneficiary from time to time as often and whenever Beneficiary prefers and with or without any reason or cause. Each appointment shall be in writing, but without the necessity of recordation, notice to Trustor, or any other action or formality. Each substitute Trustee so appointed shall thereupon by such appointment become Trustee and succeed to all the estates, titles, rights, powers, trusts and duties of predecessor Trustee. Any such appointment may be executed by Beneficiary or any authorized representative of Beneficiary, and such appointment shall be presumed conclusively to have been executed with due and proper authority. Without limiting the generality of the foregoing, if Beneficiary is a corporation, bank or association, of any type or character, such appointment may be executed in its behalf by any officer of Beneficiary and shall be presumed conclusively to have been executed with due and proper authority without necessity of proof of any action by the board of directors or any superior officer. Wherever herein the word "Trustee" is used, the same shall mean the duly appointed trustee or substitute trustee hereunder at the time in question. Trustee may resign by written notice to Beneficiary.

Section 3.11. INTENTIONALLY OMITTED.

Section 3.12. Release of Collateral. The Beneficiary may release regardless of consideration, the obligation of any Person or Persons liable for payment of any of the Obligations secured hereby, or may release any part of the Property or any other collateral now or hereafter given to secure the payment of the Obligations or any part thereof, without impairing, reducing or affecting the obligations of the Trustor under the

Loan Documents, the remainder of the security of this Deed of Trust or the priority of the rights created by this Deed of Trust.

Section 3.13. Partial Foreclosure. The Beneficiary may from time to time, to the extent permitted by law, take action to recover any sums, whether interest, principal or any other sums required to be paid under the Loan Documents, as the same become due, without prejudice to the right of the Beneficiary thereafter to bring an action of foreclosure, or any other action, for a Default or Defaults by the Trustor existing when such earlier action was commenced. The Beneficiary may, to the extent permitted by law, at the Mortgage's option, cause this Deed of Trust to be foreclosed for any portion of the Obligations or any other sums secured hereby which are then due and payable subject to the continuing lien of this Deed of Trust for the balance of the secured Obligations not then due.

ARTICLE IV SECURITY AGREEMENT

Section 4.01. Security Agreement. This Deed of Trust is also a security agreement between Trustor, as debtor, and Beneficiary, as secured party. Trustor hereby grants to Beneficiary and Beneficiary's successors and assigns, a security interest in those portions of the Property which constitute Accessories and each and every part thereof, and in all proceeds from the sale, lease or other disposition thereof, and in all sums, proceeds, funds and reserves described or referred to in Sections 2.06 and 2.07 hereof. However, the grant of a security interest in proceeds shall not be deemed to authorize any action otherwise prohibited herein. The security interest created hereby is specifically intended to cover and include all leases of the Property, if any, presently existing or hereafter entered into (herein, together with all amendments and supplements thereto made as provided therein, called the "Leases"), between Trustor (or parties acting on behalf of Trustor), as lessor or as successor to or assignee from the lessor, and tenants which occupy the Property under the Leases, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacements of said Leases, together with all the right, title and interest of Trustor, as lessor thereunder, including, without limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive and receipt for any and all of the rents, income, revenues, issues and profits and moneys payable as damages or in lieu of rent and moneys payable as the purchase price of the Property or any part thereof or of awards or claims for money and other sums of money payable or receivable thereunder howsoever payable, and to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which Trustor or any lessor is or may become entitled to do under the Leases, provided, that this provision shall not impair or diminish any obligation of Trustor under the Leases, nor shall any obligation be imposed upon Beneficiary. In addition to Beneficiary's rights hereunder or otherwise, Beneficiary shall have all of the rights of a secured party under the Uniform Commercial Code of the State, (the "Code").

Trustor, from time to time, upon each request of Beneficiary, promptly shall (a) execute and deliver to Beneficiary all financing statements as required by Beneficiary in order to establish or maintain the validity, perfection or priority of the security interest with respect to the Accessories or fixtures; (b) pay to Beneficiary on demand all costs of preparation and filing of financing statements pursuant hereto and all costs of Code searches reasonably required by Beneficiary; and (c) give to Beneficiary a certificate in form satisfactory to Beneficiary listing all trade names of Trustor and under which Trustor operates or intends to operate the Property or any part thereof, and give to Beneficiary advance written notice of any proposed change of any such trade name and of any change of name (or trade name or assumed name), identity or structure of Trustor. A carbon, photographic or other reproduction of this Deed of Trust or of a financing statement executed pursuant hereto is sufficient as a financing statement. This Deed of Trust is, without limitation, intended to be a financing statement filed as a fixture filing with respect to the portions of the Property which are or are to become fixtures, and as a mineral and timber filing. The address of Trustor (debtor) is set forth on the first page hereof and the address of Beneficiary (secured party) from whom information concerning the security interest may be obtained, is set forth on the first page hereof. Trustor is the record owner of the Land, the Improvements and the Accessories.

ARTICLE V SPECIAL PROVISIONS

Section 5.01. Subordinate Financing. In the event of consent by Beneficiary to the granting of a subordinate mortgage, or in the event the above-described right of Beneficiary to declare the Obligation to be immediately due and payable upon the granting of a subordinate mortgage without the prior written consent of Beneficiary is determined by a court of competent jurisdiction to be unenforceable under the provisions of any applicable law, Trustor will not execute or deliver any subordinate mortgage unless (i) it shall contain express covenants to the effect: (a) that the subordinate mortgage is in all respects unconditionally subject and subordinate to the lien and security interest evidenced by this Deed of Trust and each term and provision hereof; (b) that if any action or proceeding shall be instituted to foreclose the subordinate mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Property will be named as a party defendant, nor will any action be taken with respect to the Property which would terminate any occupancy or tenancy of the Property without the prior written consent of Beneficiary; (c) that the rents and profits, if collected through a receiver or by the holder of the subordinate mortgage, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing under the Loan Agreement and the other indebtedness secured hereby, and then to the payment of maintenance, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation and maintenance of the Property; and (d) that if any action or proceeding shall be brought to foreclose the subordinate

mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), written notice of the commencement thereof will be given to Beneficiary contemporaneously with the commencement of such action or proceeding; and (ii) a copy thereof shall have been delivered to Beneficiary not less than ten (10) days prior to the date of the execution of such subordinate mortgage.

Section 5.02. Change in Taxation. Upon passage after the date of this Deed of Trust of any law applicable to this Deed of Trust, the Property or the Beneficiary, deducting from the value of real property or from the value of a lien on real property for the purposes of taxation or lien any indebtedness secured by mortgages or changing in any way the laws for the taxation or mortgages or debts secured by mortgages for State or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on this Deed of Trust or all or any part of the sum secured hereby or the interest thereon, the Beneficiary may declare the whole of the Obligations and the interest accrued thereon, due on a date to be specified by not less than sixty (60) days' written notice to the Trustor, but such declaration shall be ineffective if the Trustor is permitted by law to pay such tax in addition to all other payments required hereunder, without any penalty or charge thereby accruing to the Beneficiary, and if the Trustor pays such tax within such sixty (60) day period.

Section 5.03. Taxes Imposed on Beneficiary. The Trustor shall pay any taxes (except any federal, state, or local income taxes measured by the income of Beneficiary from all sources) imposed on the Beneficiary by reason of its ownership of this Deed of Trust and the Note.

Section 5.04. Recording, Filing and Other Fees. The Trustor shall pay all recording and filing fees, all recording taxes and all other costs and expenses in connection with the preparation, execution and recordation and other manner of perfection of the Loan Documents, and shall reimburse the Beneficiary on demand for all costs and expenses of any kind incurred by the Beneficiary in connection therewith (including, without limitation, attorneys' fees). The Trustor will, at any time on request of the Beneficiary, execute or cause to be executed financing statements, continuation statements, security agreements, or the like, in respect of any Accessories. The Trustor shall pay all filing fees, including fees for filing continuation statements, in connection with such financing statements.

Section 5.05. No Release. The Trustor and any other Person now or hereafter obligated for the payment or performance of all or any part of the Obligations shall not be released from paying and performing such Obligations and the lien of this Deed of Trust shall not be affected by reason of: (a) the failure of the Beneficiary to comply with any request of Trustor, or of any other Person so obligated, to take action to foreclose this Deed of Trust or otherwise enforce any of the provisions of this Deed of Trust or of any of the Obligations secured by this Deed of Trust; (b) the release, regardless of consideration, of the obligations of any Person or Persons liable for payment or

performance of the Obligations or any part thereof; or (c) any agreement or stipulation extending the time of payment or modifying the terms of the Note, and in the event of such agreement or stipulation, the Trustor and all such other Persons shall remain liable under the Loan Documents, as amended by such agreement or stipulation unless expressly released and discharged in writing by the Beneficiary.

Section 5.06. Interest After Maturity. The principal amount of the Obligations and any other amounts secured by this Deed of Trust and, to the extent permitted by law, any accrued interest thereon, shall bear interest from and after maturity of the Obligations, whether or not resulting from acceleration, at the Default Rate, but this shall not constitute an extension of time for payment of the Obligations or such other amounts or accrued interest.

Section 5.07. Indemnification Against Liabilities. To the extent not caused by the gross negligence or willful misconduct of Beneficiary, the Trustor will protect, indemnify, save harmless and defend the Beneficiary from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Beneficiary by reason of: (a) any accident or injury to or death of Persons or loss of or damage to or loss of the use of property occurring on or about the Property or any part thereof or the adjoining sidewalks or curbs, if any, streets, alleys or ways; (b) any use, non-use or condition of the Property or any part thereof or the adjoining sidewalks or curbs, if any, streets, alleys or ways; (c) any failure on the part of the Trustor to perform or comply with any of the terms of the Mortgage; (d) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof made or suffered to be made by or on behalf of the Trustor; (e) any negligence or tortious act on the part of the Trustor or any of its agents, contractors, lessees, licensees or invitees; or (f) any work in connection with any alterations, changes, new construction or demolition of the Property. The Trustor will pay and save Beneficiary harmless against any and all liability with respect to any intangible personal property tax or similar imposition of the Governing Jurisdiction or any subdivision or authority thereof now or hereafter in effect, to the extent that the same may be payable by Beneficiary in respect of this Deed of Trust, the Note or the indebtedness secured thereby. All amounts payable to Beneficiary under this Paragraph 5.10 shall be payable on demand and shall be deemed indebtedness secured by this Deed of Trust and any such amounts which are not paid within ten (10) days after demand therefor by the Beneficiary shall bear interest at the Default Rate from the date of such demand. If any action, suit or proceeding is brought against Beneficiary by reason of any such occurrences, the Trustor, upon request of Beneficiary, will, at the Trustor's expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel designated by the Trustor and approved by the Beneficiary, as the case may be.

Section 5.08. Notice of Acceleration. Whenever the Beneficiary in this Deed of Trust is given the option to accelerate the maturity of all or part of the Obligation upon a Default, the Beneficiary may, to the extent permitted by law, do so without prior notice or demand to or upon the Trustor except for notice of intention to accelerate as set forth in the Note.

Section 5.09. Trustor's Representations. The Trustor represents and warrants that: (a) it is duly organized, validly existing and in good standing under the laws of the State of Nevada, and is duly authorized to do business and is in good standing under the laws of the State of Nevada, and has the right and power and has obtained all necessary authorization to execute and deliver this Deed of Trust and the Note and other Loan Documents to which it is a party and to perform its obligations thereunder in accordance with the terms thereof; (b) the consent of any governmental body, agency or entity is not required (or if required has been obtained) in connection with the execution and delivery of this Deed of Trust; (c) the execution, delivery, and performance by the Trustor of the Loan Documents does not: (i) violate: (A) any existing provision of law, rule, or regulation; (B) Trustor's certificate of formation or limited partnership agreement; (C) any provision of any indenture, agreement or other instrument of which the Trustor is a party or by which it or the Property is bound; or (D) any order of any court or other agency of government binding upon the Trustor; or (ii) result in the creation of any lien, charge, or encumbrance other than the lien created by this Deed of Trust; and (d) the Obligations are not also secured, directly or indirectly, by "margin securities" or "stock" as defined, respectively, in Regulation G and Regulation U issued by the Board of Governors of the Federal Reserve System.

Section 5.10. After Acquired Property. To the extent permitted by law, all personal property and appurtenances to the Property now or hereafter attached to, adjoining or used for or in connection with the Property or any part thereof which is acquired by the Trustor on or after the date hereof shall, immediately upon the acquisition thereof by the Trustor, and without any further mortgage, conveyance, assignment, security agreement or transfer, become subject to the lien of this Deed of Trust. The Trustor shall execute, acknowledge and deliver to the Beneficiary any documents and instruments which the Beneficiary may reasonably request from time to time for better assuring, conveying, assigning, transferring, confirming or perfecting the Beneficiary's security and rights under this Deed of Trust.

Section 5.11. Further Assurances. The Trustor will, at its sole cost and expense, within ten (10) days of a request by the Beneficiary for the same, do, execute, acknowledge and deliver and appropriately file and record, all and every such further acts, conveyances, mortgages, assignments, financing statements, supplemental mortgages, notices, estoppel certificates and assurances as the Beneficiary shall, from time to time, reasonably require for accomplishing the purposes of this Deed of Trust and shall pay the expenses of the filing or recording of the same and reimburse the

Beneficiary for its reasonable legal expenses incurred in connection with the preparation or review thereof. In default of any such execution, acknowledgement, delivery, filing or recording, the Beneficiary may, without limitation, exercise the rights conferred upon it in Paragraph 2.15 hereof to execute, acknowledge and file or record any such instrument for and on behalf of the Trustor, as attorney-in-fact of the Trustor (which appointment is coupled with an interest and irrevocable), and shall be entitled to reimbursement for its reasonable expenses in connection therewith.

ARTICLE VI MISCELLANEOUS

Section 6.01. Release and Reconveyance. If all of Trustor's obligations under the Loan Documents are paid in full in accordance with the terms of the Loan Documents, no Default then exists hereunder and no Event of Default then exists under any other Loan Document, and if Trustor shall well and truly perform all of Trustor's covenants contained herein, then this conveyance shall become null and void and be released, and the Property (or so much thereof not previously released pursuant to Paragraph 2.20(d) hereof) shall be reconveyed to Trustor, at Trustor's request and expense.

Section 6.02. Rights Cumulative. Beneficiary shall have all rights, remedies and recourses granted in the Loan Documents and available at law or in equity (including, without limitation, those granted by the Code and applicable to the Property or any portion thereof), and the same (a) shall be cumulative and concurrent; (b) may be pursued separately, successively or concurrently against Trustor or others obligated for the Obligation or any part thereof, or against any one or more of them, or against the Property, at the sole discretion of Beneficiary; (c) may be exercised as often as occasion therefor shall arise, it being agreed by Trustor that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse; and (d) are intended to be, and shall be, nonexclusive. All rights and remedies of Beneficiary hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise, with respect to the Property.

Section 6.03. Waiver. Any and all covenants in this Deed of Trust may, from time to time, by instrument in writing signed by Beneficiary and delivered to Trustor, be waived to such extent and in such manner as Beneficiary may desire, but no such waiver shall ever affect or impair Beneficiary's rights, remedies, powers, privileges, liens, titles and security interests hereunder except to the extent so specifically stated in such written instrument. No waiver of any Default on the part of Trustor or a breach of any of the provisions of this Deed of Trust or of any Loan Document shall be considered a waiver of any other or subsequent Default or breach, and no delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers, and likewise no exercise or enforcement of any rights or powers hereunder shall be held to exhaust such rights and powers, and every such right and

power may be exercised from time to time. No notice to or demand on Trustor in any case shall of itself entitle Trustor to any other or further notice or demand in similar or other circumstances. The granting of any consent or approval by Beneficiary shall be limited to the specific instance and shall not waive or exhaust the requirement of consent or approval in any other instance. Except as otherwise specified herein, in any instance hereunder where Beneficiary's approval or consent is required or the exercise of Beneficiary's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Beneficiary, and Beneficiary shall not for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner regardless of the reasonableness of the request or of Beneficiary's judgment.

Section 6.04. Payments. Remittances in payment of any part of the Obligation other than in the required amount in funds immediately available at the place where the Obligation is payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Beneficiary in funds immediately available at the place where the Obligation is payable (or such other place as Beneficiary, in Beneficiary's sole discretion, may have established by delivery of written notice thereof to Trustor) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Beneficiary of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be a Default.

Section 6.05. INTENTIONALLY OMITTED.

Section 6.06. Change of Security. Any part of the Property may be released, regardless of consideration, by Beneficiary from time to time without impairing, subordinating or affecting in any way the lien, security interest and other rights hereof against the remainder. The lien, security interest and other rights granted hereby shall not be affected by any other security taken for the Obligation or any part thereof. The taking of additional security, or the extension, renewal or rearrangement of the Obligation or any part thereof, shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser or guarantor or improve the right of any junior lienholder, and this Deed of Trust, as well as any instrument given to secure any renewal, extension or rearrangement of the Obligation or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Property not expressly released until the Obligation is fully paid and performed.

Section 6.07. Controlling Agreement. The parties hereto intend to conform strictly to the applicable usury laws. All agreements between Trustor (and any other party liable for any part of the Obligation) and Beneficiary, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no event whatsoever, whether by reason of acceleration of the maturity of the Obligation or

otherwise, shall the interest contracted for, charged or received by Beneficiary hereunder or otherwise exceed the maximum amount permissible under applicable law. If from any circumstances whatsoever interest would otherwise be payable to Beneficiary in excess of the maximum lawful amount, the interest payable to Beneficiary shall be reduced automatically to the maximum amount permitted under applicable law. If Beneficiary shall ever receive anything of value deemed interest under applicable law which would apart from this provision be in excess of the maximum lawful amount, the amount which would have been excessive interest shall be applied to the reduction of the principal amount owing on the Obligation and not to the payment of interest, or if such amount which would have been excessive interest exceeds the unpaid principal balance of the Obligation, such excess shall be refunded to Trustor, or to the maker of the Note or other evidence of indebtedness if other than Trustor. All interest paid or agreed to be paid to Beneficiary shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term, including any renewal or extension, of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the maximum permitted by applicable law. The terms and provisions of this Section shall control and supersede every other provision of all existing and future agreements between Trustor, the maker of the Note or other evidence of indebtedness if other than Trustor, and Beneficiary.

Section 6.08. Effect of Transfer on Trustor's Liability. If the ownership (legal or beneficial) of the Property or any part thereof becomes vested in a person other than Trustor, or in the event of a change in ownership (legal or beneficial) (except as expressly permitted by and in compliance with Section 2.20(e) hereof) of any Trustor other than an individual, Beneficiary may, without notice to or consent of Trustor or Trustor's successors, deal with such successor or successors in interest with reference to this Deed of Trust and the Obligation either by way of forbearance on the part of Beneficiary, or extension of time of payment of the Obligation, or release of all or any part of the Property or any other property securing payment of the Obligation, or otherwise, without in any way modifying or affecting Beneficiary's rights and liens hereunder or the liability of Trustor or any other party liable for payment of the Obligation, in whole or in part.

Section 6.09. Waiver of Right to Marshal. Trustor hereby waives all rights of marshaling in event of any foreclosure of the liens and security interests hereby created.

Section 6.10. Subrogation. To the extent that proceeds of the Obligation are used to renew, extend or pay any outstanding debt or to perform any obligation, such proceeds have been advanced by Beneficiary at Trustor's request, and Beneficiary shall be subrogated to all liens, security interests, rights, priorities, powers, titles, equities and interests owned or held by any owner or holder of such outstanding debt or obligation, however remote, irrespective of whether the same are released of record, and all of the same are recognized as valid and subsisting and are renewed, continued and preserved in force to secure the Obligation; provided, however, that if and to the extent Beneficiary

desires in each case, the terms and provisions hereof and of the other Loan Documents shall govern the rights and remedies of Beneficiary and shall supersede the terms, provisions, rights, and remedies under any lien, security interest, charge or other encumbrance to which Beneficiary is subrogated hereunder.

Section 6.11. Covenant to Perform. Trustor and each subsequent owner of the Property, or any part thereof, covenants and agrees that Trustor and any subsequent owner will perform or cause to be performed, each and every condition, term, provision and covenant of this Deed of Trust.

Section 6.12. Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and a person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Beneficiary: Kennedy Funding, Inc.
Two University Plaza, Suite 402
Hackensack, New Jersey 07601
Attention: Jeffrey Wolfer
Facsimile No. (201) 342-8373

With a copy to: Cole, Schotz, Meisel, Forman & Leonard P.A.
25 Main Street
Hackensack, New Jersey 07602-0800
Attention: Michael R. Leighton, Esq.
Facsimile No.: (201) 489-1536

If to Trustor: OneCap Partners 2, LLC
5440 W. Sahara Avenue, 3rd Floor
Las Vegas, Nevada 89146
Attn: Mr. Vincent Hesser

With a copy to: Harold Gewerter, Esq.
5440 W. Sahara Ave., Suite #202
Las Vegas, NV 89146
Facsimile No. (702) 382-1759

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a business day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a business day.

Section 6.13. No Representations by Beneficiary. By accepting or approving anything required to be observed, performed or fulfilled, or to be given to the Beneficiary pursuant to this Deed of Trust, including, without limitation, any certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, the Beneficiary shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by the Beneficiary.

Section 6.14. Certain Definitions. The following terms shall, for all purposes of this Deed of Trust, have the respective meanings herein specified unless the context otherwise requires:

(a) the "Trustor" shall mean the Trustor herein named any and subsequent owner or owners of the Property and its or their respective heirs, legal representatives, successors and assigns;

(b) the "Beneficiary" shall mean the Beneficiary herein named and any subsequent holder or holders of this Deed of Trust, and its or their respective heirs, legal representatives, successors and assigns;

(c) "Person" (whether or not capitalized) shall mean an individual, corporation, limited liability company, partnership, joint venture, trust, unincorporated organization or government, or any agency or political subdivision thereof, or any business or legal entity; and

(d) "Lease" shall mean every lease, license or occupancy agreement for the use or hire of all or any portion of the Property which shall be in effect at the date hereof, or which shall hereafter be entered into by or on behalf of the Trustor. Capitalized terms used herein but not defined herein shall have the meaning ascribed thereto in the Loan Agreement.

Section 6.15. Miscellaneous.

(a) This Deed of Trust and its provisions cannot be changed, waived, discharged or terminated orally but only by an agreement in writing, signed by the party against whom enforcement of the change, waiver, discharge or termination is sought, and the same shall then be effective only for the period and on the conditions and for the specific instances and purposes specified in such writing. No notice to or demand on the

Trustor in any case shall entitle the Trustor to any other or further notice or demand in similar or other circumstances. No course of dealing between the Trustor and Beneficiary or any failure or delay on the part of the Beneficiary in exercising any rights or remedies hereunder shall operate as a waiver of any rights or remedies of the Beneficiary and no single or partial exercise of any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder.

(b) Wherever pursuant to this Deed of Trust, the Beneficiary exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to the Beneficiary, the decision of the Beneficiary to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall, except as otherwise set forth herein, be in the sole discretion of the Beneficiary and shall be final and conclusive.

(c) This Deed of Trust shall be construed without any regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted.

(d) All terms and words used in this Deed of Trust, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

(e) The section and paragraph headings in this Deed of Trust are for convenience of reference only and shall not limit or otherwise affect any of the terms hereof.

(f) If any words or phrases in this Deed of Trust have been stricken out or otherwise eliminated, this Deed of Trust shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Deed of Trust and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated.

(g) The words "herein," "hereby," "hereunder," and words of similar import shall be construed to refer to this Deed of Trust as a whole, and not to any particular Paragraph, unless expressly so stated.

(h) All covenants contained herein shall run with the Property until the Obligations have been, satisfied.

(i) The Trustor is hereby prohibited from exercising against the Beneficiary any right or remedy which it might otherwise be entitled to exercise against any one or more (but less than all) of the individual parties constituting the Beneficiary, including, without limitation, any right of set-off or any defense.

Section 6.16. Trustor's Waivers. The Trustor, for itself and its successors and assigns, hereby irrevocably waives and releases to the extent permitted by law, and whether now or hereafter in force, (a) the benefit of any and all valuation and appraisement laws; (b) any right of redemption after the date of any sale of the Property upon foreclosure, whether statutory, common law or otherwise, in respect of the Property; (c) all exemption laws whatsoever and all moratoriums, extensions or stay laws or rules, or orders of Court in the nature of any one or more of them; and (d) any right to have the Property marshaled upon any foreclosure of this Deed of Trust.

Section 6.17. Intentionally Omitted.

Section 6.18. Environmental Matters.

(a) Trustor represents and warrants that there are no Hazardous Substances (hereinafter defined) in or on the Property other than such as may have been disclosed to Beneficiary in writing prior to the date hereof.

(b) Without Beneficiary's prior written consent which may be granted or withheld in Beneficiary's sole discretion, Trustor shall make or permit no use of the Property that would involve the generation, storage, treatment, discharge, handling, refining, release or disposal of any Hazardous Substances (as defined below).

(c) At its sole cost and expense, Trustor shall, and shall cause any tenant or occupant of the Property to, comply with all applicable federal, state and local laws, rules, regulations and orders with respect to the discharge, generation, removal, transportation, storage, treatment and handling of Hazardous Substances, including but not limited to the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by the Superfund Amendment and Reauthorization Act of 1986, the federal Resource Conservation and Recovery Act, as amended, the federal Water Pollution Control Act, the federal Clean Air Act, the federal regulations promulgated pursuant to any of the foregoing, together with all rules and regulations promulgated thereunder, as amended from time to time, pay immediately when due the cost of removal of Hazardous Substances, and keep the Property free and clear of any lien imposed pursuant to such laws, rules, regulations or orders. In the event Trustor fails to do so, Beneficiary may declare this Deed of Trust to be in Default.

(d) Trustor shall indemnify Beneficiary and hold Beneficiary harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Beneficiary may incur as a result of or in connection with the assertion against Beneficiary or the Property of any claim relating to the presence or removal of any hazardous waste or substance referred to in this paragraph, or compliance with any federal, state or local laws, rules, regulations or orders relating thereto unless such claim arises solely from Beneficiary's gross negligence or willful misconduct.

Appendix “2”

Receipt/Conformed Copy

Requestor:

NEVADA TITLE COMPANY

06/15/2006 14:05:45 T20060106320

Book/Instr: 20060615-0005324

Trust Deed Page Count: 53

Fees: \$66.00 N/C Fee: \$0.00

APN: 264-25-101-001

264-25-201-001

#06-06-0235-BB

WHEN RECORDED, RETURN TO:

Cole, Schotz, Meisel, Forman & Leonard, P.A.
Court Plaza North
25 Main Street
P.O. Box 800
Hackensack, New Jersey 07602-0800
Attention: Michael R. Leighton, Esq.

Frances Deane
Clark County Recorder

**DEED OF TRUST WITH SECURITY
AGREEMENT, FINANCING STATEMENT FOR FIXTURE
FILING AND ASSIGNMENT OF RENTS**

THIS DEED OF TRUST, made as of the 15th day of June, 2006, by ONECAP PARTNERS 2, LLC, a Nevada limited liability company, having an address at 5440 W. Sahara Avenue, Third Floor, Las Vegas, Nevada 89146 ("Trustor"), in consideration of the debt and trust hereinafter mentioned does hereby GRANT, BARGAIN, SELL, TRANSFER, ASSIGN and CONVEY and WARRANT in trust unto NEVADA TITLE COMPANY, Trustee (as hereinafter defined), with Power of Sale, located at 2500 N. Buffalo Drive, Suite 150, Las Vegas Nevada 89128, the following described property (all of which is sometimes referred to collectively herein as the "Property") for the benefit of KENNEDY FUNDING, INC., a New Jersey corporation, having an office at Two University Plaza, Hackensack, New Jersey 07601, and their respective successors and assigns, as agent for the lenders identified in the Note defined hereinbelow, in each case having an address in care of the above identified agent (all such lenders being collectively referred to herein as "Beneficiary"):

(i) the real property situated in the County of Clark, State of Nevada (the "State"), which is more particularly described in Exhibit A attached hereto and made a part hereof for all purposes the same as if set forth herein verbatim, together with all right, title and interest Trustor may have or acquire in and to (a) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the real property or the Improvements (as hereinafter defined); (b) any strips or gores between the real property and abutting or adjacent properties; and (c) all water and water rights, timber, crops and mineral interests pertaining to the real property (such real estate and other rights, titles and interests being hereinafter sometimes called the "Land");

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(ii) all buildings, structures and other improvements (such buildings, structures and other improvements being hereinafter sometimes called the "Improvements") now or hereafter situated on the Land;

(iii) all fixtures, systems, and articles of personal property, of every kind and character, now owned or hereafter acquired by Trustor (Trustor's successors or assigns), which are now or hereafter attached to the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing, including, but without limiting the foregoing, all of the following items now owned or hereafter acquired by Trustor, any and all fixtures, systems, heating, ventilating, air conditioning, refrigerating, plumbing, sewer, lighting, generating, cleaning, storage, incinerating, waste disposal, sprinkler, fire extinguishing, communications, transportation (of people or things, including, but not limited to, stairways, elevators, escalators and conveyors), data processing, security and alarm, laundry, food or drink preparation, storage or serving, gas, electrical and electronic, water, and recreational uses or purposes; all tanks, pipes, wiring, conduits, ducts, doors, partitions, rugs and other floor coverings, wall coverings, windows, drapes, window screens and shades, awnings, fans, motors, engines and boilers; decorative items and art objects; and files, records and books of account (all of which are herein sometimes referred to together as the "Accessories");

(iv) all (a) plans and specifications for the Improvements; (b) contracts relating to the Land or the Improvements or the Accessories or any part thereof; (c) deposits including, but not limited to, Trustor's rights in tenants' security deposits (if any), deposits with respect to utility services to the Land or the Improvements or the Accessories or any part thereof, and any deposits or reserves hereunder or under any other Loan Document (as hereinafter defined) for taxes, insurance or otherwise, funds, accounts, contract rights, instruments, documents, commitments, general intangibles, notes and chattel paper used in connection with or arising from or by virtue of any transactions related to the Land or the Improvements or the Accessories or any part thereof; (d) permits, licenses, franchises, certificates and other rights and privileges obtained in connection with the Land or the Improvements or the Accessories or any part thereof; (e) leases, rents, royalties, bonuses, issues, profits, revenues and other benefits of the Land, the Improvements and the Accessories; and (f) other properties, rights, titles and interests, if any, specified in any Section or any Article of this Deed of Trust as being part of the Property;

(v) all proceeds, products, consideration, compensation and recoveries, direct or consequential, cash and noncash, of or arising from, as the case may be, (a) the properties, rights, titles and interests referred to above in paragraphs (i), (ii), (iii) and (iv); (b) any sale, lease or other disposition thereof, subject, however, to paragraph 2.20(d)

hereof; (c) each policy of insurance relating thereto (including premium refunds); (d) the taking thereof or of any rights appurtenant thereto by eminent domain or sale in lieu thereof for public or quasi-public use under any law; and (e) any damage thereto whether caused by such a taking (including change of grade of streets, curb cuts or other rights of access) or otherwise caused; and

(vi) other interests of every kind and character, and proceeds thereof, which Trustor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in paragraphs (i), (ii), (iii), (iv), and (v) and all property used or useful in connection therewith, including, but not limited to, remainders, reversions and reversionary rights or interests.

TO HAVE AND TO HOLD the Property, unto Trustee and Trustee's successors, substitutes or assigns, in trust and for the uses and purposes herein set forth, forever, together with all rights, privileges, hereditaments and appurtenances in anywise appertaining or belonging thereto, subject only to the Permitted Exceptions (herein so called) listed on Exhibit B attached hereto to the extent that the same are valid, subsisting and affect the Property), and Trustor, for Trustor and Trustor's successors, hereby agrees to warrant and forever defend, all and singular, the Property unto Trustee and Trustee's successors or substitutes in this trust against the claim or claims of all persons claiming or to claim the same or any part thereof, subject, however, as aforesaid.

ARTICLE I **THE OBLIGATION**

Section 1.01. Deed of Trust. The expression "this Deed of Trust," as used herein, shall mean this Deed of Trust, With Security Agreement and Financing Statement for Fixture Filing and Assignment of Rents, and all rights, title, interest, liens, security interests, powers and privileges created hereby or arising by virtue hereof. This Deed of Trust is given to secure payment and performance of the Obligation (as hereinafter defined), including the indebtedness described in Section 1.2.

Section 1.02. Obligation. The word "Obligation," as used herein, shall mean all of the indebtedness, obligations and liabilities described as follows:

(a) the indebtedness, obligations and liabilities of the Trustor arising under that certain Promissory Note of even date herewith ("Note") in the principal amount of TWELVE MILLION and 00/100 (\$12,000,000.00) DOLLARS, executed by Trustor (sometimes also hereinafter referred to as "Borrower") and payable to Beneficiary, evidencing a loan in that principal amount (the "Loan") that Beneficiary has made to Trustor, bearing interest as therein specified, containing an attorneys' fee clause, interest and principal being payable as therein specified, or arising under this Deed of Trust or under any document identified in the Schedule of Principal Loan Documents annexed

hereto or under any other documents evidencing, securing or now or hereafter executed in connection with the Loan (each a "Loan Document;" collectively, "Loan Documents");

(b) all other and additional indebtedness, liabilities and obligations, of every kind and character, of Trustor now or hereafter existing in favor of Beneficiary, regardless of whether they are direct, indirect, primary, secondary, joint, several, joint and several, liquidated, unliquidated, fixed or contingent, and regardless of whether the same may, prior to their acquisition by Beneficiary, be or have been payable to some other person or entity, it being the intention and contemplation of Trustor and Beneficiary that future advances may be made to Trustor by Beneficiary for a variety of purposes, that Trustor may guarantee the obligations of others to Beneficiary, and that Beneficiary may, from time to time, acquire from others obligations of Trustor to such others, or that Trustor may otherwise hereafter be or become further indebted to Beneficiary, and that payment and repayment of all of the foregoing are intended to and shall be part of the indebtedness secured hereby up to a principal amount of TWELVE MILLION and 00/100 DOLLARS (\$12,000,000). Trustor grants to Beneficiary the right to record notice that this Deed of Trust is security for additional amounts and obligations not specifically mentioned herein but that constitute indebtedness or obligations of the Trustor for which Beneficiary may claim this Deed of Trust as security. This provision is to be governed by NRS 106.300 to 106.400 as amended or supplemented; and

(c) any and all renewals, replacements, modifications, rearrangements, amendments or extensions of all or any part of the indebtedness, obligations and liabilities described or referred to in Subsections 1.2(a) and 1.2(b) preceding.

Trustor, and each party at any time claiming an interest in or lien or encumbrance against the Property, agrees that all advances made by Beneficiary from time to time under any of the Loan Documents, and all other portions of the Obligation herein referred to, shall be secured by this Deed of Trust with priority as if all of the same had been advanced, had arisen or become owing or performable on the date of this Deed of Trust, no reduction of the outstanding principal balance under the Loan Agreement shall extinguish, release or subordinate any rights, titles, interests, liens, security interests, powers or privileges intended, created or arising hereunder or under any other Loan Document, and this Deed of Trust shall remain in full force and effect as to any subsequent advances or subsequently arising portions of the Obligation without loss of priority until the Obligation is fully paid, performed and satisfied, all agreements and obligations, if any, of Beneficiary for further advances have been terminated and this Deed of Trust has been released of record by Beneficiary.

ARTICLE II
CERTAIN REPRESENTATIONS, WARRANTIES
AND COVENANTS OF TRUSTOR

Section 2.01. Payment and Performance of Obligations. The Trustor shall pay and perform the Obligations when due in accordance with the provisions of the Loan Documents; and if any Default (hereinafter defined) shall be made in the performance of any of the Obligations, the Beneficiary shall have the remedies granted to the Beneficiary under the Loan Documents and under applicable law.

Section 2.02. Indebtedness Secured. This Deed of Trust has been given and is intended to secure the full and prompt payment and performance of each and all of the Obligations. This Deed of Trust shall remain in full force and effect with respect to all of the Property until all the Obligations shall have been paid and performed in full. If the Trustor shall well and truly pay and perform the Obligations at the time and times, and in the manner mentioned in the Loan Documents and shall well and truly abide by and comply with each and every term, covenant and condition set forth in the Loan Documents, then this conveyance shall be and become null and void and shall be released and reconveyed at the expense of the Trustor but if there shall be any Default, then the Obligations shall become immediately due and payable at the option of the Beneficiary, without any notice to Trustor or any other party (other than notice of intention to accelerate as set forth in the Note), all of which notices of Default, intent to accelerate or acceleration hereby are waived.

Section 2.03. Title to Property.

(a) The Trustor represents and warrants that: (i) it has an indefeasible estate in fee simple in the Land and Improvements and Accessories (subject to the Permitted Exceptions); (ii) it has the good and unrestricted right, full power and lawful authority to mortgage the Property; (iii) it has obtained any and all consents and approvals necessary or required for the making of this Deed of Trust; and (iv) the making of this Deed of Trust will not violate any contract or agreement to which the Trustor is a party.

(b) The Trustor does hereby and shall forever warrant and defend its title to and fee simple interest in the Property (subject to the Permitted Exceptions) and the validity and priority of the lien of this Deed of Trust to the Beneficiary and its successors and assigns, against all claims and demands whatsoever of any Person (hereinafter defined). There are no defenses or offsets to this Deed of Trust or to any of the Obligations as of the date hereof.

(c) The Trustor represents and warrants to the Beneficiary that any building hereafter constructed on the Land (while such Land is owned by Trustor and remains subject to this Deed of Trust) shall be in compliance with all applicable zoning and

building codes, ordinances and regulations, shall lie wholly within the boundaries of the Land, and shall be an independent and self-contained operating unit.

(d) The Trustor shall execute, acknowledge and deliver to the Beneficiary any documents and instruments which the Beneficiary may reasonably request from time to time for the better assuring, conveying, assigning, transferring, confirming or perfecting the Beneficiary's security and rights under this Deed of Trust.

Section 2.04. Liens. The Trustor shall not, directly or indirectly, create or suffer or permit to be created, or to stand, against the Property or any portion thereof, or against the rents, issues and profits therefrom, any lien, charge, mortgage, deed of trust, adverse claim or other encumbrance (herein collectively referred to as a "lien"), whether senior or junior in lien to this Deed of Trust, other than the lien of this Deed of Trust and the Permitted Exceptions; provided, however, that nothing contained in this Paragraph 2.04 shall require the Trustor to pay any real estate taxes or other Impositions (as hereinafter defined) prior to the time when same are required to be paid under this Deed of Trust. The Trustor will keep and maintain the Property free from all liens arising in connection with the supply of labor or materials relating to the construction, alteration, modification or repair of the Improvements or the Property. The Trustor agrees to discharge the same of record by payment or bond within thirty (30) days after the filing thereof. Notwithstanding anything to the contrary contained herein, in no event shall the Trustor do or permit to be done, or omit to do or permit the omission of, any act or thing, where such act or omission would impair the security of this Deed of Trust.

Section 2.05. Impositions. The Trustor shall pay, at least five days before the date due, all real estate taxes, personal property taxes, assessments, water and sewer rates and charges, license fees, all charges which may be imposed for the use of vaults, chutes, areas and other space beyond the lot line and abutting the public sidewalks in front of or adjoining the Land, and all other governmental levies and charges (collectively, the "Impositions"), of every kind and nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, which shall be assessed, levied, confirmed, imposed or become a lien upon or against the Property or any part thereof, or which shall become payable with respect thereto. The Trustor shall deliver to the Beneficiary, within twenty (20) days after the due date of each payment in connection with the Impositions or any assessment for local improvements ("Assessment"), the original or a true photostatic copy of the official receipt evidencing such payment or other proof of payment satisfactory to the Beneficiary.

Section 2.06. Insurance.

(a) The Trustor shall provide, at its sole cost and expense, and keep in force for the benefit of itself and the Beneficiary, with respect to the Land, Improvements and Accessories: (i) comprehensive general liability insurance against claims for bodily injury, death or property damage; (ii) workers' compensation insurance as required by

law; and (iii) special form property insurance (including loss of rents for a minimum period of one year) and endorsements for coverages for flood, earthquake, windstorm, earth movement, sinkholes, demolition, increased cost of construction and contingent operation of building laws coverages, on a replacement cost basis to cover the full insurable value of the Improvements, Accessories and other insurable improvements; and (iv) such other insurance with respect to the Property or any part thereof or any replacements or substitutions therefor, as the Beneficiary may reasonably require.

(b) The policies of insurance required by Subparagraph 2.06(a) hereof shall be with companies, in forms and amounts, and for such reasonable periods as the Beneficiary shall require from time to time, and shall insure the respective interests of the Trustor and the Beneficiary. The full amount of the proceeds of any insurance covering real property or tangible personal property subject to a lien or security interest in favor of the Beneficiary granted pursuant to any of the Loan Documents in the case of each separate loss in excess of \$10,000 (a "Major Loss") required under clause (iii) of Subparagraph 2.06(a) hereof, shall be payable to the Beneficiary pursuant to a non-contributing loss payee endorsement satisfactory to the Beneficiary. Certificates of Insurance and true photocopies of the original policies and renewals thereof covering the risks required to be insured against in accordance with this Deed of Trust, bearing satisfactory evidence of payment of all premiums thereon for the succeeding one year period, shall be delivered to and held by the Beneficiary, and within five (5) days of demand by the Beneficiary the Trustor shall deliver to the Beneficiary the original policies and renewals, replacements or endorsements thereof and shall assign to the Beneficiary said policies of insurance as additional security for the indebtedness and other obligations secured hereby. At least twenty (20) days prior to the expiration of each policy required to be provided by the Trustor, the Trustor shall deliver Certificates of Insurance evidencing renewal or replacement thereof along with true photocopies of any endorsements or any renewal or replacement policies to the Beneficiary with satisfactory evidence of payment of all premiums thereon.

(c) All insurance policies required in accordance with this Deed of Trust shall: (1) include effective waivers by the insurer of all rights of subrogation against the Trustor, the Beneficiary, any lessee or other occupant of all or any part of the Property, or any other Person which controls, is controlled by or is under common control with any of the foregoing; (2) provide that the full amount of the proceeds of such insurance (other than the proceeds from the insurance required under clause (iii) of Subparagraph 2.06(a) hereof) shall, in the case of each separate Major Loss, be payable notwithstanding: (A) any act, failure to act or negligence of or violation of warranties, declarations or conditions contained in such policy by any named insured; (B) the occupation or use of the Improvements or the Land for purposes more hazardous than permitted by the terms thereof; (C) any foreclosure or other action or proceeding taken by the Beneficiary pursuant to any provision of this Deed of Trust; or (D) any change in title to or ownership of the Property; (3) provide that no cancellation, reduction in amount or material change

in coverage thereof shall be effective until at least thirty (30) days after receipt by the Beneficiary of written notice thereof; and (4) be reasonably satisfactory to the Beneficiary in all other respects. The Trustor shall not permit any condition to exist with respect to the Property which would wholly or partially invalidate any of the insurance thereon.

(d) The Beneficiary shall have the right but not the obligation, on behalf of the Trustor, to adjust and compromise any claims under such insurance in the case of a Major Loss, collect and receive the proceeds thereof and execute and deliver all proofs of loss, receipts, vouchers, checks, drafts, releases and other documents in connection with such claims. The Beneficiary is hereby irrevocably appointed attorney-in-fact for the Trustor (which appointment is coupled with an interest) for such purposes, and the Trustor shall, upon request of the Beneficiary, promptly execute any proofs of loss, receipts, vouchers, checks, drafts, releases, and other documents in connection with such claims.

(e) The Beneficiary may deduct from the proceeds of the insurance required to be obtained by the Trustor pursuant to Subparagraph 2.06(a) hereof, other than the insurance required under clauses (i) and (ii) thereof, any expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by it in connection with obtaining such proceeds, and the Beneficiary may, at its option, release the balance of such proceeds to the Trustor for the restoration of the Property ("Restoration") or apply the balance of such proceeds in reduction or satisfaction of all or part of the Obligations, whether or not then due and payable (in such order of priority as is stipulated in the Note). Upon the occurrence of any Default all of the Trustor's right, title and interest in and to all such policies, including unearned premiums thereon, shall be deemed assigned to the Beneficiary. The application of such insurance proceeds toward the payment or performance of the Obligations shall not be deemed a waiver by the Beneficiary of its right to receive payment or performance of the remainder of the Obligations and the interest thereon in accordance with the provisions of the Loan Documents.

(f) In the event of a sale, transfer or other disposition by the Beneficiary of any of the property of the Trustor, the purchaser, assignee or transferee of such property shall succeed to all of the rights of the Trustor, including any right to unearned premiums, in and to all policies of insurance which the Trustor is required to maintain under this Paragraph 2.06 and to all proceeds of such insurance.

(g) The Trustor's policies of insurance may be maintained under "blanket policies" insuring the Property and other property owned by the Trustor, provided that such blanket policies shall: (i) separately set forth the amount of the insurance applicable to the Property (except as to the insurance required under clauses (i) and (ii) of Subparagraph 2.06(a) hereof), (ii) otherwise comply with the provisions of this Paragraph 2.06, and (iii) afford the same protection to the Beneficiary as, in the

Beneficiary's judgment, would be provided by policies individually applicable to the Property.

(h) Trustor shall not obtain or permit to be obtained separate insurance concurrent in form or contributing in the event of loss with the insurance the Trustor is required to maintain under the provisions of this Paragraph 2.06.

Section 2.07. Condemnation.

(a) The Trustor shall give notice to the Beneficiary immediately upon the Trustor's learning of the commencement of any action or proceeding to take all or any part of the Property by exercise of the right of condemnation or eminent domain or of any action or proceeding to close or to alter the grade of any street on or adjoining the Land. The Beneficiary may participate together with the Trustor in any such actions or proceedings in the name of the Beneficiary or, whenever necessary, in the name of the Trustor, and the Trustor shall deliver to the Beneficiary such instruments as the Beneficiary shall request to permit such participation. The Trustor shall not settle any such action or proceeding or agree to accept any award or payment without the prior consent of the Beneficiary (which consent Beneficiary may deny in its sole discretion), and the total of all awards made or allowed with respect to all right, title and interest in and to the Property or the portion or portions thereof taken or affected by such condemnation or eminent domain proceeding and any interest thereon (hereinafter collectively called the "Award") is hereby assigned to and shall be paid to the Beneficiary and the amount received shall be retained and applied as provided in Subparagraph 2.07(b) hereof.

(b) The Obligations may be accelerated at the option of the Beneficiary after giving notice of intention to accelerate as set forth in the Note as a result of the exercise of the right of condemnation or eminent domain (sometimes hereinafter referred to as a "Taking"): (I) in respect of any part of the Property that causes any of the results described in the next sentence hereof or (II) in respect of all of the Property. With respect to a partial Taking, the right of acceleration described in the preceding sentence shall be applicable if as a result of such partial Taking so much of the balance of the Property is taken as will, in the Beneficiary's reasonable opinion, materially and adversely affect the extent to which the Collateral (defined in the Loan Agreement) secures the Obligations, in which event the Beneficiary shall retain and apply the Award toward payment and performance of the Obligations (in such order of priority as is stipulated in the Note); provided, however, that to the extent that the net amount of the Award actually received by the Beneficiary shall exceed the amount required to satisfy in full the then total amount of the Obligations, the Beneficiary shall pay over to the Trustor the amount of such excess and provided, further, that until Beneficiary actually receives payment of the net amount of the Award in an amount equal to the then total amount of the Obligations, the Obligations shall continue unimpaired. If there is a Taking of a portion of the Property in any such proceeding and the Beneficiary does not accelerate the Obligations,

then at the option of the Beneficiary, the Award shall be: (i) retained and applied by the Beneficiary toward the payment of the Obligations in such order of priority as is stipulated in the Note; or (ii) disbursed by the Beneficiary, in accordance with the Project Completion Reserve disbursement provisions set forth in the Loan Agreement, to pay the cost to restore any Improvements existing on the portion of the Property not Taken as nearly as practicable to the condition that existed prior to such Taking. In no event shall the Beneficiary be required to discharge this Deed of Trust and reconvey the Property until the Obligations are fully paid and the Beneficiary shall not be required to release from the lien of this Deed of Trust until the Obligations are fully paid any portion of the Property so Taken until the Beneficiary receives the entire amount of Award for the portion so Taken.

(c) The application of the Award toward payment of the Obligations or restoration of Improvements shall not be deemed a waiver by the Beneficiary of its right to receive payment or performance of the balance of the Obligations in accordance with the provisions of the Loan Documents. The Beneficiary shall have the right, but shall be under no obligation, to question the amount of the Award, and the Beneficiary may accept same without prejudice to the rights that the Beneficiary may have to question such amount. In any such condemnation or eminent domain action or proceeding the Beneficiary may be represented by attorneys selected by the Beneficiary, and all sums paid by the Beneficiary in connection with such action or proceeding (including, without limitation, reasonable attorneys' fees and disbursements) shall, on demand, be immediately due from the Trustor to the Beneficiary and the same shall be added to the Obligations and shall be secured by this Deed of Trust.

(d) Notwithstanding any Taking by condemnation or eminent domain, closing of, or alteration of the grade of, any street or other injury to or decrease in value of the Property by any public or quasi-public authority or corporation, the Obligations shall continue to bear interest at the rate payable pursuant to the Note until the Award shall have been actually received by the Beneficiary, and any reduction in the Obligations resulting from the application by the Beneficiary of the Award shall be deemed to take effect only on the date of such receipt.

Section 2.08. Restoration. If: (a) the Property includes Improvements or Accessories (whether now existing or hereafter made), and such Improvements or Accessories shall be damaged or destroyed, in whole or in part, by fire or other casualty, or by any Taking in condemnation proceedings or the exercise of any right of eminent domain; and (b) the Beneficiary releases or agrees to release to the Trustor the proceeds of any insurance payable to the Beneficiary or the proceeds of the Award, less any expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the Beneficiary in obtaining same, and upon conditions satisfactory to the Beneficiary; then the Trustor shall promptly restore, replace or rebuild the same to as nearly as possible the value, quality and condition they were in immediately prior to such

fire or other casualty or Taking, with such alterations or changes as may be approved in writing by the Beneficiary. The Trustor shall give immediate notice to the Beneficiary of any damage or destruction to the Property by fire or other casualty.

Section 2.09. Deposits for Impositions and Insurance. Notwithstanding anything to the contrary contained in any of the Loan Documents, upon demand by the Beneficiary at any time and from time to time, the Trustor shall deposit with the Beneficiary on the first day of each month an amount equal to one twelfth (1/12th) of the sum of (collectively, the "Annual Payments"): (i) the aggregate annual payments for the Impositions; (ii) the annual insurance premiums on the policies of insurance required to be obtained and kept in force by the Trustor under this Deed of Trust; and (iii) all other periodic charges (other than interest and principal under the Note) arising out of the ownership of the Property or any portion thereof which are or with notice or the passage of time or both will become a lien against the Property or any part thereof. In addition, upon demand by the Beneficiary at any time and from time to time, the Trustor shall deposit with the Beneficiary such sum of money which, together with such monthly installments, shall be sufficient to pay all of the Annual Payments at least forty-five (45) days prior to the due date thereof. If the amount of any of the Annual Payments are not ascertainable at the time any deposit is required to be made, the deposit shall be made on the basis of the Beneficiary's estimate thereof, which the Beneficiary may change from time to time. The funds so deposited with the Beneficiary shall, provided that no Default shall have occurred under this Deed of Trust, be applied in payment of all of the Annual Payments when due to the extent that the Trustor shall have deposited funds with the Beneficiary for such purpose. In the event of any Default the funds deposited with the Beneficiary may, at the option of the Beneficiary, be retained and applied toward the payment of any or all of the Obligations, in such order of priority as is stipulated in the Note, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by the Beneficiary. The whole of the Obligations shall become due and payable at the option of the Beneficiary after the giving of notice of intention to accelerate as set forth in the Note and the failure of the Trustor to deliver payment of any of such deposits or after the failure of the Trustor to deliver to the Beneficiary, within ten (10) days after request by the Beneficiary, a statement certified by an authorized officer of the Trustor, specifying the current amounts of all of the Annual Payments. At any time when deposits are required to be made under this Paragraph 2.09, the Trustor shall furnish the Beneficiary with a bill for each of the Annual Payments and/or such other documents necessary for their payment at least twenty (20) days prior to the date they first become due. Upon an assignment of this Deed of Trust, the Beneficiary shall have the right to pay over the balance of such deposits in its possession which have not been applied to the Obligations to the assignee, and thereupon the Beneficiary shall be completely released from all liability with respect to such deposits and the Trustor shall look solely to the assignee in reference thereto. The provisions of the preceding sentence shall apply to each and every assignment or transfer of such deposits to a new assignee.

Beneficiary agrees not to exercise its rights under this Section 2.09 provided that no Default has occurred and provided that Trustor has at all times fully, faithfully and timely complied with all of the provisions of Sections 2.05 and 2.06 of this Deed of Trust. Nothing contained herein shall be deemed to extend the Maturity Date for the Loan established in the Note.

Section 2.10. Maintenance and Alterations.

(a) If the Property includes Improvements and Accessories (whether now existing or hereafter made), the Trustor shall put, keep and maintain such Improvements and Accessories in the same or better order, condition and repair as they were in upon original installation, and the Trustor shall make or cause to be made, as and when the same shall become necessary, all structural and non-structural repairs, whether exterior or interior, ordinary or extraordinary, foreseen or unforeseen in a good and workmanlike manner. The Trustor shall not commit or suffer any waste or abandonment of the Land, the Improvements or Accessories, and shall not demolish or remove or permit the demolition or removal of the Improvements or Accessories, or any part thereof, without the prior written consent of the Beneficiary in each instance.

(b) The Trustor shall not make any alterations to all or any part of the Improvements or Accessories, or construct additions to all or any part of the Improvements or construct any new or additional buildings on the Property without the prior written consent of the Beneficiary in each instance, which consent shall not be unreasonably withheld or delayed, and then only upon terms and conditions satisfactory to the Beneficiary.

Section 2.11. Compliance with Laws.

(a) The Trustor shall promptly comply with, or cause to be complied with, all present and future laws, statutes, ordinances, rules, regulations and other requirements of all governmental authorities whatsoever having jurisdiction of or relating to all or any part of the Property and the sidewalks, curbs and alleys adjoining or abutting the Land, and the condition, repair, maintenance, use and occupation thereof if non-compliance therewith would result in imposition of any fine, penalty, lien or criminal liability on Trustor or the Property, or would result in commencement of proceedings for foreclosure or forfeiture of Trustor's interest in the Property, and the Trustor shall promptly make, or cause to be made, all changes, alterations and improvements to the Property necessary to comply with all such present and future laws, statutes, ordinances, rules, regulations and other requirements to the extent aforesaid. Except as otherwise set forth in the next sentence hereof, the Trustor shall not initiate, support, assist or acquiesce in any change in the zoning classification of the Property or any part thereof without the prior written consent of the Beneficiary.

(b) The Trustor shall promptly perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions of all instruments of record affecting the Property, non-compliance with which may affect the security of this Deed of Trust, or shall impose any duty or obligation upon the Trustor, and the Trustor shall do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor, or of constituting any portion of, the Property.

(c) Notwithstanding anything to the contrary contained herein, the Trustor shall not use or permit the use of the Property in any manner which would impair or adversely affect the value or utility of the Property or increase the risk of fire or other casualty.

Section 2.12. Leasing.

(a) The Trustor shall not, without the prior written approval of the Beneficiary in each instance, which approval shall not be unreasonably withheld or delayed: (i) enter into or change, amend or modify, in any manner whatsoever, any Lease; (ii) terminate or cancel, or accept a surrender or suffer or permit any cancellation, termination or surrender of, any Lease, in any manner whatsoever or (iii) receive, collect or accept, or permit the receipt, collection or acceptance of, any prepayment of rent or other charges under any Lease for more than one month, except that the Trustor may, at the time of the execution of any Lease, accept rent security deposits, which shall be held by the Trustor in accordance with Subparagraph 2.12(b) hereof.

(b) The Trustor shall at all times fully and promptly comply with, keep and perform all of the terms, covenants, provisions and conditions of any and all Leases on the part of the landlord thereunder to be complied with, kept and performed, and will not do or permit anything to be done which will constitute a breach of any of the terms, covenants, provisions and conditions of any of such Leases. The Trustor shall enforce the performance and observance of each and every term, covenant, provision and condition of each and every Lease to be performed or observed on the part of the tenant thereunder. The Trustor shall give prompt notice to the Beneficiary of: (i) any notice received by the Trustor of any default by the landlord under any Lease; (ii) the commencement of any action or proceeding by any tenant the purpose of which shall be the cancellation of any Lease or a diminution or abatement of the rent payable thereunder; or (iii) the interposition by any tenant of any defense or counterclaim in any action or proceeding brought by the Trustor against such tenant; and the Trustor will cause a copy of any process, pleading or notice received or served by the Trustor in reference to any such action, defense or claim to be promptly delivered to the Beneficiary. The Trustor shall hold in trust all security deposits and advance rent given on account of any Lease, and deposit such security in a bank or trust company and shall not mingle such funds with other funds. The Trustor shall repay or apply such funds only in accordance with the provisions of the applicable Leases.

Section 2.13. Assignment of Rents. The Trustor hereby absolutely and unconditionally assigns to the Beneficiary the rents, issues and profits of the Property as further security for the payment and performance of the Obligations, and the Trustor grants to the Beneficiary the right to enter the Property for the purpose of collecting the same and to let the Property, or any part thereof, and to apply said rents, issues and profits, after payment of all necessary charges and expenses, on account of the Obligations. This assignment and grant shall continue in effect until the Obligations are fully paid and performed. The Beneficiary hereby waives the right to enter the Property for the purpose of collecting said rents, issues and profits, and the Trustor shall be entitled to collect, receive and use said rents, issues and profits, until the occurrence of a Default under this Deed of Trust. The Trustor shall, from time to time upon request by the Beneficiary, execute, acknowledge and deliver to the Beneficiary, in form satisfactory to the Beneficiary, separate assignments confirming the foregoing assignment. The Beneficiary shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by the Trustor under any Lease or other agreement affecting all or any part of the Property, and the Trustor hereby agrees to indemnify the Beneficiary for and save it harmless from, any and all liability arising from any such Lease or other agreement or any assignments thereof, and no assignment of any such Lease or other agreement shall place the responsibility for the control, care, management or repair of all or any part of the Property upon the Beneficiary, nor make the Beneficiary liable for any negligence in the management, operation, upkeep, repair or control of all or any part of the Property resulting in injury, death or property damage. The Beneficiary or the receiver shall be liable to account only for rents and profits actually received by the Beneficiary or the receiver as the case may be. Concurrently herewith, Trustor has executed and delivered an Assignment of Leases and Rents in favor of Beneficiary, identified in the Schedule of Principal Loan Documents attached hereto, with respect to the Property. The terms of such Assignment of Leases and Rents shall control in the event of any conflict with the terms of this Paragraph 2.13.

Section 2.14. No Claims Against Beneficiary.

(a) Nothing contained in this Deed of Trust shall constitute any consent or request by the Beneficiary, express or implied, for the 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 be construed to permit the making of any claim against the Beneficiary in respect of labor or services or the furnishing of any materials or other property or any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Deed of Trust.

(b) If the Trustor shall request the Beneficiary's approval or consent to any matter and the Beneficiary shall fail or refuse to give such consent or approval, the Trustor shall not be entitled to any damages for any withholding or delay of such

approval or consent by the Beneficiary, it being intended that the Trustor's sole remedy shall be an action for injunction or specific performance and that such remedy shall be available only in those cases where the Beneficiary shall have expressly agreed in writing not to unreasonably withhold its consent or approval or where as a matter of law the Beneficiary may not unreasonably withhold its consent or approval.

Section 2.15. Beneficiary's Right to Perform Trustor's Covenants.

(a) If the Trustor shall fail to fully and promptly pay, perform or observe any of the Obligations prior to the expiration of any applicable grace period, then, in any such event, the Beneficiary may, at its option, but without any obligation to do so, and without waiving or releasing the Trustor from any of the Obligations, pay any Obligation or cost or perform any Obligation or act or take such action as the Beneficiary deems necessary or desirable in order to cause such Obligation to be paid, performed or observed, as the case may be. The Trustor hereby expressly grants to the Beneficiary, and agrees that the Beneficiary shall have, the absolute and immediate right to enter in and upon the Property or any part thereof to such extent and as often as the Beneficiary, in its sole discretion, deems necessary or desirable for such purpose. The Beneficiary may pay and expend such sums of money as the Beneficiary, in its sole discretion, deems necessary or desirable for any such purpose, and the Trustor hereby agrees to pay to the Beneficiary, on demand, all such sums so paid or expended by the Beneficiary, together with interest thereon from the date of each such payment or expenditure at the Default Rate established in the Note (hereinafter, the "Default Rate"). Any interest which has been paid by the Trustor to the Beneficiary pursuant to this Paragraph 2.15 in excess of the maximum interest rate permitted by law shall be deemed payment in reduction of the principal amount of the Obligations. All sums paid or expended by the Beneficiary pursuant to this Paragraph 2.15, and the interest thereon, shall be added to and included in the Obligations and shall be secured by the lien of this Deed of Trust.

(b) The Trustor hereby irrevocably appoints the Beneficiary its true and lawful attorney-in-fact in its name or otherwise, to do any and all acts and to execute any and all documents which may be reasonably necessary or, in the opinion of the Beneficiary, desirable to preserve any rights of the Trustor in, to or under the Leases or to effectuate any rights of the Beneficiary under this Paragraph 2.15 or contained elsewhere in this Deed of Trust. The foregoing power of attorney is coupled with an interest.

Section 2.16. Certificates of Trustor. The Trustor, upon request of the Beneficiary, shall certify to the Beneficiary or to any proposed assignee of this Deed of Trust, by an instrument in form satisfactory to the Beneficiary, duly acknowledged, the amount then owing on the obligations, the date to which any interest thereon has been paid, and whether any offsets or defenses exist against payment thereof or performance of any Obligation, within five (5) days if the request is personally delivered, or within seven (7) days if the request is made by mail. The Beneficiary and any proposed assignee of this Deed of Trust shall have the right to rely on such certification.

Section 2.17. Inspection and Financial Reports. The Beneficiary and its authorized agents and employees shall have the right, at the Beneficiary's option, to enter into the Property at all reasonable times for the purpose of inspecting the same. The Trustor will furnish to the Beneficiary, within thirty (30) days after a request therefor, but not more than once a year, a detailed statement in writing, covering the period of time specified in such request, showing all income derived from the operation of the Property, and all disbursements made in connection therewith, and containing a list of the names of all tenants and occupants of the Property, the portion or portions of the Property occupied by each such tenant and occupant, the rent and other charges payable under the terms of their leases or other agreements and the period covered by such leases or other agreements.

Section 2.18. Accounting and Other Information. The Trustor will keep books and records of account in accordance with generally accepted accounting principles, consistently applied, in which full, true and correct entries shall be made of all dealings and transactions relative to the Trustor and the Property. Upon request of Beneficiary made from time to time, a copy of said books and records of account, certified by a general partner of Trustor, Trustor shall make available to the Beneficiary, at an office of the Beneficiary within the State of New Jersey, and the originals of such books and records shall be open to the inspection of the Beneficiary and its accountants and its other duly authorized representatives at Trustor's principal place of business within the state in which the Property is located during regular business hours. The Trustor further covenants that it will, within a reasonable time after any request by the Beneficiary, furnish or cause to be furnished to the Beneficiary such other information with respect to the Trustor or the Property as the Beneficiary may from time to time reasonably request.

Section 2.19. Assignment. This Deed of Trust is assignable by the Beneficiary without notice to the Trustor, and any assignment of the same by the Beneficiary shall operate to vest in such assignee the same right, title and interest as was vested in the Beneficiary and all rights and powers herein conferred.

Section 2.20. Due on Sale.

(a) To the extent permitted by law, except as otherwise set forth in Paragraph 2.20(d) and in Paragraph 2.20(e) below, the Property shall not be sold, transferred or conveyed, in whole or in part, whether voluntarily or involuntarily, by operation of law or otherwise, or lease the entire premises, without, in each instance, the prior written consent of Beneficiary. No mortgage, deed of trust, lien or other encumbrance shall be made or filed against or with respect to the Property, without the prior written consent of Beneficiary. In the event any such mortgage, deed of trust, lien or other encumbrance shall be made or filed and Beneficiary elects not to accelerate, such forbearance may be predicated on such terms and conditions as Beneficiary may, in its sole discretion, require, including, but not limited to, Beneficiary's approval of the transferee's creditworthiness and management ability, the execution and delivery to Beneficiary by

transferee prior to the sale, transfer, assignment, lease or conveyance of a written assumption agreement containing such terms as Beneficiary may require, including, but not limited to, a payment of a part of the principal amount of the Obligation, an increase in the rate of interest payable on the Obligation, the payment of an assumption fee, a modification of the terms of the Obligation and such other terms as Beneficiary may require, or Beneficiary may require any of such modifications of the terms of the Obligation without requiring an assumption thereof by the transferee. Should the Property be sold, traded, transferred, assigned, exchanged, leased or otherwise disposed of without the prior written consent of Beneficiary and should payment of any portion of the Obligation thereafter be accepted by Beneficiary, such acceptance shall not be deemed a waiver of the requirement of Beneficiary's consent in writing thereto or with respect to any other sale, trade, transfer, assignment, exchange, lease or other disposition. No conditional bill of sale or chattel mortgage shall be made or filed against any Accessories without the prior written consent of Beneficiary. If any such conditional bill of sale or chattel mortgage is made or filed with or without Beneficiary's prior written consent, then after the occurrence of a Default all right, title and interest of Trustor in and to all deposits and payments made thereon are hereby assigned to Beneficiary.

(b) If the Trustor enters into an installment sale contract or sells, conveys, alienates, assigns, mortgages or transfers the Property, or any part thereof or interest therein in any manner, or leases all or substantially all of the Property or the Improvements, whether voluntary or involuntary, or by operation of law or otherwise, then the Beneficiary shall have the right, at its option, at any time thereafter to declare the Obligations immediately due and payable. No waiver of this right or delay in the exercise thereof shall operate as a waiver thereof unless the Beneficiary shall have executed and delivered to the Trustor a written waiver of such right. Trustor shall give Beneficiary monthly reports summarizing in reasonable detail all Builder Contracts entered into during the preceding month.

(c) Any sale, assignment, lease, transfer, pledge, or other disposition, whether voluntary or involuntary, by operation of law or otherwise, of any partnership, membership or other ownership interest or shares of stock in the Trustor, shall be deemed to be a transfer of the Property for the purposes of this Section 2.20; provided, however, that Trustor shall be permitted to sell, assign or transfer any membership or other ownership interest in the Trustor if such sale, assignment or transfer does not change the control, management or majority ownership of Trustor.

ARTICLE III
RESPECTING DEFAULTS AND REMEDIES OF BENEFICIARY

Section 3.01. Default. The term "Default," as used herein, shall mean the occurrence of any one or more of the following events:

- (a) a default in the payment of any installment of principal or interest when due under the Note; or
- (b) a default in the payment of any other sum when due hereunder or under the Note or any other Loan Document; or
- (c) default in (i) keeping in force the insurance which the Trustor is required to maintain under Paragraph 2.06 hereof or (ii) delivering or assigning the insurance policies or renewals or certificates thereof, or in reimbursing the Beneficiary for premiums paid by it on such insurance; or
- (d) upon the actual or threatened waste, removal, alteration or demolition of any part of the Property; or
- (e) default in complying with Trustor's obligations under Paragraph 2.12 hereof or upon the assignment by the Trustor of any Lease or of the whole or any part of the rents, income or profits arising from the Property without the prior written consent of the Beneficiary; or
- (f) if the Trustor or any guarantor of all or part of the Obligations (a "Guarantor") becomes insolvent; or
- (g) if the Trustor or any Guarantor generally does not pay its debts as they become due; or
- (h) if the Trustor or any Guarantor makes an assignment for the benefit of creditors; or
- (i) if the Trustor or any Guarantor calls or causes to be called a meeting of creditors for the composition of debts; or
- (j) if there shall be filed by or with the consent or authorization of the Trustor or any Guarantor a petition in bankruptcy for liquidation or for reorganization, or a custodian, receiver or agent is appointed or authorized to take charge of its properties, or the Trustor or any Guarantor authorizes any such action; or
- (k) if there shall be filed against the Trustor or any Guarantor a petition in bankruptcy, for liquidation, or for reorganization, or a custodian, receiver, or agent is appointed or authorized to take charge of its properties and the Trustor or such Guarantor,

as the case may be, has not consented to or authorized such action and such action is not dismissed within sixty (60) days; or

(l) the exercise of the right of condemnation or eminent domain in respect of all of the Property or so much of the Property as gives Trustee the right of acceleration as set forth in Paragraph 2.07(b) hereof; or

(m) upon the Trustor directly or indirectly creating, suffering or permitting to be created or to stand against the Property or any portion thereof or against the rents, issues and profits therefrom, any other lien (other than any mechanic's or materialmen's liens that are discharged within the time and in accordance with Section 2.04 hereof), charge, mortgage, deed of trust or other encumbrance (other than the Permitted Exceptions), without in each instance obtaining the Beneficiary's prior written consent thereto; or

(n) upon the filing of a lien by the United States so as to affect all or any part of the Property and such lien not being discharged (by bond or otherwise) within ten (10) days after Trustor receives notice of the filing thereof; or

(o) upon the merger, consolidation, liquidation or dissolution or sale or lease or transfer of all or substantially all of the assets of the Trustor or any Guarantor or the filing of any notice of intention to do so; or

(p) upon the Trustor entering into an installment sales contract or selling, conveying, transferring, mortgaging, leasing or otherwise alienating or encumbering the Property or any portion thereof or any interest therein in any manner, whether voluntary or involuntary or by operation of law or otherwise, without the prior written consent of the Beneficiary, except as otherwise provided in Paragraph 2.20(d), or upon the title or equity of redemption in the Property being acquired, in whole or in part, by voluntary or involuntary transfer, grant or assignment by any person, firm, corporation or entity other than the Trustor or the Beneficiary; or

(q) if any representation or warranty of the Trustor set forth in this Deed of Trust or in any other Loan Document or in any other writing given to the Beneficiary in connection with the Obligations shall have been incorrect in any material respect as of the time when the same shall have been made; or

(r) default in the performance of the Trustor's obligations under Paragraph 2.16 hereof; or

(s) upon the occurrence of an Event of Default under the Loan Agreement or any other Loan Document; or

(t) upon the failure of Trustor or any Guarantor to comply with, satisfy or perform or observe any other term, covenant, condition or agreement of such party

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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5 VINCENT W. HESSER, an individual,

6 Appellant,

7 vs.

8 KENNEDY FUNDING, INC., a New Jersey
9 corporation,

10 Respondent.

Electronically Filed
Aug 03 2010 01:04 p.m.
Supreme Court No. 55654
Tracie K. Lindeman

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17 **APPEAL FROM EIGHTH JUDICIAL**
18 **DISTRICT COURT**

19 **APPENDIX TO**
20 **APPELLANTS' OPENING BRIEF**

21
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CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on the 3rd day of August 2010, I personally served a true copy of the foregoing APPENDIX TO APPELLANT’S OPENING BRIEF, by placing a true copy thereof in the United States Mail, postage fully prepaid, addressed as follows:

Richard F. Holley, Esq.
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/s/ Michele Aceves
An Agent of HAROLD P. GEWERTER, ESQ., LTD.