



*Dana DeBeauvoir*

Dana DeBeauvoir, County Clerk  
Travis County, Texas

Jan 29, 2021 03:56 PM Fee: \$ 158.00

**2021021243**

\*Electronically Recorded\*

When Recorded, Return To:  
FROST BANK  
P.O. Box 1600  
San Antonio, Texas 78296  
Loan Documentation Department, SOF 3<sup>rd</sup> Floor  
Ref: 6904031-9001

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**



**DEED OF TRUST,  
SECURITY AGREEMENT - FINANCING STATEMENT**

THE STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS           §

As of the 29th day of January, 2021, Concordia University Texas, a Texas non-profit corporation (hereinafter, whether one or more, jointly and severally called "Grantor"), whose mailing address is 11400 Concordia University Drive, Austin, Texas, 78726, in consideration of the debt and trust hereinafter mentioned, does hereby GRANT, BARGAIN, SELL, TRANSFER, ASSIGN and CONVEY unto DAN J. GUARINO, Trustee (as hereinafter defined), the following described property (all of which is sometimes referred to collectively herein as the "Property"):

(i) the real estate situated in Travis County, Texas, 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 of Grantor 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");

(ii) all buildings, covered garages, air conditioning, towers, open parking areas, structures and other improvements of any kind or nature, and any additions, alterations, betterments or appurtenances thereto, (the "Improvements") now or hereafter situated placed or constructed on the Land;

(iii) all fixtures, systems, machinery, building and construction materials, of every kind and character, now owned or hereafter acquired by Grantor, which are now

or hereafter attached to or situated in, on or about 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, any and all fixtures, equipment, machinery, systems, facilities and apparatus for 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), 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; but excluding inventory and other trade or business movable personal property (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, including without limitations, contracts for the purchase or sale of any of the Property; (c) deposits, (including, but not limited to, earnest money deposits or letters of credit under purchase or sale contracts, Grantor's rights in tenants' security deposits, deposits with respect to utility services to the Land, or the Improvements or the Accessories or any part thereof, refundable or reimbursable tap fees, commitment fees or development costs), 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 (including, but not limited to, trademarks, trade names and symbols), 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 (as hereafter defined), Rents (as hereafter defined) and other benefits of the Land, the Improvements and the Accessories; (f) awards, remunerations, reimbursements, settlements and/or compensation made by any governmental authority, including, but not limited to those for municipal utility district or other utility costs; and (g) 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; and

(v) all (a) proceeds of or arising from the properties, rights, titles and interests referred to above in paragraphs (i), (ii), (iii) and (iv), including, but not limited to, proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance relating thereto (including premium refunds), proceeds of 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 proceeds arising out of 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 (b) other interests of every kind and character, and proceeds thereof, which Grantor 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) and (iv) and all property used or useful in connection therewith, including, but not limited to, remainders, reversions and reversionary rights or interests, but expressly excluding inventory and other trade or business movable personal property. In the event the estate of Grantor in and to any of the Property is a leasehold estate, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other further or additional title, estates, interest or rights which may exist now or at any time be acquired by Grantor in or to the property demised under the lease creating such leasehold estate and including Grantor's rights, if any, to the property demised under such lease and, if fee simple title to any of such property shall ever become vested in Grantor such fee simple interest shall be encumbered by this Deed of Trust in the same manner as if Grantor had fee simple title to said property as of the date of execution hereof.

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 Grantor, for Grantor and Grantor'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. *Beneficiary.* This Deed of Trust as used herein, the expression "this Deed of Trust" shall mean this Deed of Trust, Security Agreement - Financing Statement, and all rights, title, interest, liens, security interests, powers and privileges created hereby or arising by virtue hereof, are given to secure payment and performance of the Obligation (as hereinafter defined), including the indebtedness described in Section 1.02 hereof payable to the order of FROST BANK, a Texas state bank ("Beneficiary"), whose mailing address is P.O. Box 1600, San Antonio, Texas 78296. The word "Beneficiary," as used herein, shall mean Beneficiary named in this Section and all subsequent holders of the Note at the time in question.

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 evidenced by that certain tax-exempt promissory note (the "Note") of even date herewith, incorporated herein by this reference, executed by the Grantor, payable to the order of Woodloch Cultural Education Facilities Finance Corporation, a Texas non-profit corporation (the "Issuer") and assigned to the Beneficiary in the principal amount of FIFTY-THREE MILLION

FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$53,500,000.00), bearing interest as therein specified, containing an attorney's fee clause, interest and principal being payable as therein specified;

(b) all indebtedness, obligations and liabilities described in or arising pursuant to the provisions of this Deed of Trust, the Construction Loan Agreement among the Issuer, Grantor and the Beneficiary ("Loan Agreement"), any Interest Rate Protection Agreement (as defined in the Loan Agreement), any other security agreement, mortgage, deed of trust, collateral assignment, pledge agreement, loan agreement, contract or assignment of any kind, now or hereafter existing, as security for or in connection with payment of the Obligation or any part thereof and of any other document evidencing, securing or executed in connection with the Obligation as amended, modified or restated, ratified, confirmed, extended or supplemented (herein referred to individually as a "Loan Document" and collectively as the "Loan Documents");

(c) all other and any additional debts, obligations and liabilities of every kind and character of Grantor, whether now or hereafter existing, whether related or unrelated to the purpose of the Note, in favor of Beneficiary, regardless of whether such debts, obligations and liabilities be direct or indirect, primary, secondary, joint, several, joint and several, fixed or contingent, unsecured or secured by additional or different securities, it being contemplated by Grantor and Beneficiary that Grantor may hereafter become indebted to Beneficiary in further sum or sums provided, however, that this Deed of Trust shall not secure any indebtedness of Grantor to Beneficiary which under any circumstances is prohibited by the Texas Finance Code or any other law; and

(d) any and all renewals, modifications, rearrangements, amendments, extensions or increases of all or any part of the indebtedness, obligations and liabilities described or referred to in Subsections 1.02(a), 1.02(b) and 1.02(c) preceding.

Grantor, 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 Note 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 GRANTOR

Section 2.01. Warranties and Representations. Grantor represents, warrants and undertakes that:

- (a) Grantor has full right and authority to execute and deliver this Deed of Trust;
- (b) Grantor has, in Grantor's own right, good and indefeasible title in fee simple to the Property free from any encumbrance superior to the indebtedness hereby secured, subject only to the Permitted Exceptions;
- (c) no part of the Property is Grantor's homestead of any type or character and this Deed of Trust is and shall continue to be a valid and enforceable lien and security interest against the Property until the Obligation is fully discharged;
- (d) Grantor is solvent and no proceeding under any Applicable Bankruptcy Laws (as hereinafter defined) is pending or threatened by or against any it, or any affiliate of it, as a debtor;
- (e) if Grantor is a corporation, partnership, limited liability company, trust or other entity, Grantor is and shall until the Obligation is fully discharged continue to be (i) duly organized and validly existing in good standing under the laws of the state of Grantor's organization, and in good standing under Texas law, (ii) in compliance with all conditions prerequisite to Grantor's lawfully doing business in the State of Texas and (iii) possessed of all power and authority necessary to own, encumber and operate the Property;
- (f) all Loan Documents executed by Grantor have been duly authorized, executed and delivered by Grantor, and the obligations thereunder and the performance thereof by Grantor in accordance with their terms are within Grantor's powers and are not in contravention of any law, agreement or restriction to which Grantor or the Property is subject;
- (g) the loan evidenced by the Note is solely for the purpose of carrying on or acquiring a business of Grantor, and is not for personal, family, household or agricultural purposes;
- (h) Grantor's mailing address as set forth herein is true and correct;
- (i) all reports, financial statements and other information heretofore furnished to Beneficiary by or on behalf or at the request of Grantor with respect to the Property, Grantor, any guarantor or other party liable for payment or performance of the Obligation or any part thereof are, and all of the same hereafter furnished to Beneficiary will when furnished be, true, correct and complete in all material respects and do not, or will not, omit any fact, the inclusion of which is necessary to prevent the facts contained therein from being materially misleading;

(j) since the date of the financial statements of Grantor furnished to Beneficiary, no material adverse change has occurred in the financial condition of Grantor or any such other party, and, except as heretofore disclosed in writing to Beneficiary, Grantor or any such other party has not incurred any material liability, direct or indirect, fixed or contingent; and

(k) the Property is taxed separately without regard to any other real estate and the Land constitutes a legally subdivided lot under all applicable laws and regulations (or, if not subdivided, no subdivision or platting of the Land is required under applicable laws or regulations), and for all purposes may be mortgaged, conveyed or otherwise dealt with as an independent parcel.

Section 2.02. Covenants. Grantor, for Grantor and Grantor's successors and permitted assigns, hereunder covenants, agrees and undertakes to

- (a) pay and perform the Obligation in accordance with the terms thereof;
- (b) pay or cause to be paid, before delinquent, all taxes and assessments of every kind or character in respect of the Property or any part thereof and, from time to time upon request of Beneficiary, to furnish to Beneficiary evidence satisfactory to Beneficiary of the timely payment of such taxes and assessments and governmental charges (the word "assessments" as used herein includes not only assessments and charges by any governmental body, but also all other assessments and charges of any kind, including, but not limited to, assessments or charges for any utility or utility service, easement, license or agreement upon, for the benefit of, or affecting the Property, and assessments and charges arising under subdivision, condominium, planned unit development or other declarations, restrictions, regimes or agreements);
- (c) purchase policies of insurance with respect to the Property in accordance with the Loan Agreement;
- (d) comply with all federal, state, or municipal laws, rules, ordinances and regulations applicable to the Property and Grantor's ownership, use and operation thereof, and comply with all, and not violate any, easements, restrictions, agreements, covenants and conditions with respect to or affecting the Property or any part thereof;
- (e) at all times maintain, preserve and keep the Property in good repair and condition and presenting a first class appearance, and from time to time, make all necessary and proper repairs, replacements and renewals, and not commit or permit any waste on or of the Property, and not to do anything to the Property that may impair its value and not permit any condition to exist on the Property that would permit an insurer to cancel or increase the premium for any insurance policy or invalidate such policy in whole or in part;
- (f) promptly pay all bills for labor and materials incurred in connection with the Property and never permit to be created or to exist in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and security interests hereof, for any such bill, and in any event never permit to be created or exist in respect of the Property or any part thereof any other

or additional lien or security interest on a parity with or superior to any of the liens or security interests hereof;

(g) from time to time, at the request of Beneficiary, (i) promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in any other Loan Document or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver and record and/or file such further instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents or leases) and perform such further acts and provide such further assurances as may be necessary, desirable or proper, in Beneficiary's opinion, to carry out more effectively the purposes of this Deed of Trust and such other instruments and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof or thereof to be covered hereby or thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property; (iii) execute, acknowledge, deliver, procure, and file and/or record any document or instrument (including specifically, but without limitation, any financing statement) deemed advisable by Beneficiary to protect the liens and the security interests herein granted against the rights or interests of third persons, and Grantor will pay all costs connected with any of the foregoing, and (iv) cause the Loan Documents requested by Beneficiary and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded, and reified in such manner and in such places as Trustee or Beneficiary shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, documentary stamp taxes, fees, and other charges;

(h) continuously maintain Grantor's existence and right to do business in Texas;

(i) at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens or security interests created hereby, or upon the Obligation or any part thereof, immediately pay all such taxes; provided that, if such law as enacted makes it unlawful for Grantor to pay such tax, Grantor shall not pay nor be obligated to pay such tax, and in the alternative, Grantor may, in the event of the enactment of such a law, and must, if it is unlawful for Grantor to pay such taxes, prepay the Obligation in full within sixty (60) days after demand therefor by Beneficiary;

(j) not cause or permit the Accessories or any part thereof, to be removed from the county and state where the Land is located, except items of the Accessories which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes having a value equal to or greater than the replaced items when new;

(k) not seek or acquiesce in a zoning reclassification of any portion of the Property or grant any easement, dedication, plat or restriction (or allow any easement to become enforceable by prescription), except as permitted in the Loan Documents, covering any portion of the Property, or remove, release or terminate any easement, dedication, plat or restriction previously approved by Beneficiary, without Beneficiary's prior written consent except as permitted in the Loan Documents;

(l) not, without the prior written consent of Beneficiary, permit any drilling or exploration for or extraction, removal or production of any mineral, natural element, compound or substance from

the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof and agree to defend, indemnify, save and hold Beneficiary, its officers, agents, servants, employees, successors and assigns harmless from any and all claims, liabilities, losses or expenses which may be incurred by Beneficiary, and any and all other expenses or losses, either direct or consequential, which are attributable, or alleged in any way to be attributable, to the development and exploitation of mineral rights in, on or around the Property by Grantor or any other party; and

(m) subject to the provisions of Section 7.07 hereof, pay on demand all reasonable and bona fide out-of-pocket costs, fees and expenses and other expenditures, including, but not limited to, reasonable attorneys' fees and expenses, paid or incurred by Beneficiary or Trustee to third parties incident to this Deed of Trust or any other Loan Document (including, but not limited to, reasonable attorneys' fees and expenses in connection with the negotiation, preparation and execution hereof and of any other Loan Document and any amendment hereto or thereto, any release hereof, any consent, approval or waiver hereunder or under any other Loan Document, the making of any advance under the Note, and any suit to which Beneficiary or Trustee is a party involving this Deed of Trust or the Property) or incident to the enforcement of the Obligation or the exercise of any right or remedy of Beneficiary under any Loan Document.

### ARTICLE III

#### DEFAULTS AND REMEDIES OF BENEFICIARY

Section 3.01. *Default.* The term "Default," as used herein, shall mean the occurrence of an Event of Default as defined in the Loan Agreement.

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 Grantor 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 Grantor promises, upon demand, to pay to Beneficiary, at the place where the Note 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 Note 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, notice of acceleration or any other notice or any other action, all of which are hereby waived by Grantor 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) 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:

(i) 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, with or without having taken possession of same. Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of Section 51.002 of the Texas Property Code or, if and to the extent such statute is not then in force, with the applicable requirements, at the time of the sale, of the successor statute or statutes, if any, governing sales of Texas 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 Texas 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 Texas real property under powers of sale conferred by deeds of trust.

(ii) 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 indebtedness and to the rights, powers, liens, security interests and assignments securing or providing recourse for payment of such unmatured indebtedness, 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.

(iii) 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 and performed 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 any part 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.

(iv) 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 Grantor, conveying the Property or any part thereof so sold to the purchaser or purchasers with general warranty of title by Grantor. 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, or as to the occurrence or existence of any Default, or as to the acceleration of the maturity of the Obligation, or as to the request to sell, notice of sale, time, place, terms and manner of sale, and receipt, distribution and application of the money realized therefrom, or as to the due and proper appointment of a substitute trustee, and, without being limited by the foregoing, as to 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 the said statements or recitals state facts and are without further question to be so accepted, and Grantor does hereby ratify and confirm any and all acts that Trustee may lawfully do in the premises by virtue hereof.

(d) 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 Note or 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.

(e) Beneficiary, as a matter of right and without regard to the sufficiency of the security, and without any showing of insolvency, fraud or mismanagement on the part of Grantor, 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 income, rents, issues and profits thereof.

(f) Beneficiary may enter upon the Land, take possession of the Property and remove the Accessories or any part thereof, with or without judicial process, and, in connection therewith, without any responsibility or liability on the part of Beneficiary, take possession of any property located on or in the Property which is not a part of the Property and hold or store such property at Grantor's expense.

(g) Beneficiary may require Grantor to assemble the Accessories or any part thereof, and make them available to Beneficiary at a place to be designated by Beneficiary which is reasonably convenient to Grantor and Beneficiary.

(h) 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 Grantor 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 ten (10) 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.

(i) Beneficiary may surrender the insurance policies maintained pursuant to Subsection 2.02(c) hereof or any part thereof, and receive and apply the unearned premiums as a credit on the Obligation and, in connection therewith, Grantor hereby appoints Beneficiary as agent and attorney-in-fact for Grantor to collect such premiums.

(j) 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.

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

(l) 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.

(m) 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.

(n) Beneficiary may apply the reserves, if any, required by Section 6.03 hereof toward payment of the Obligation.

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, unless the sale was made subject to an unmatured portion of the Obligation and Beneficiary elects that no merger occur.

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. Grantor covenants promptly to reimburse and pay to Beneficiary on demand, at the place where the Note 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 Grantor, 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 Grantor or Grantor's successors shall hold possession of said property or any part thereof, subsequent to foreclosure, Grantor and Grantor'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 the proceeds from the surrender of any insurance policies pursuant to Subsection 3.02(i) hereof, or any Rents collected by Beneficiary from the Property (except Rents received pursuant to Article V hereof), or the reserves required by Section 6.03 hereof, or sums received pursuant to Section 6.01 hereof, or proceeds from insurance which Beneficiary elects to apply to the Obligation pursuant to Section 6.02 hereof, 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; second, to accrued interest on the Obligation; third, to principal on the matured portion of the Obligation; fourth, to prepayment of the unmatured portion, if any, of the Obligation applied to installments of principal in inverse order of maturity; and fifth, 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 may then institute suit for the collection of the Note and for the foreclosure of the liens and security interests hereof. If Beneficiary should institute a suit for the collection of the Note 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 the Note or any other 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 any part thereof is involved, Grantor agrees to pay Beneficiary's 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. GRANTOR 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 Grantor, 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.

#### ARTICLE IV

##### SECURITY AGREEMENT AND FINANCING STATEMENT

This Deed of Trust is also a security agreement between Grantor, as debtor, and Beneficiary, as secured party. Grantor hereby grants to Beneficiary and Beneficiary's successors and assigns, a security interest in those portions of the Property, other than the Land and Improvements, which constitute personal property (excluding inventory and other trade or business movable personal property), whether tangible or intangible, 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 6.01, 6.02 and 6.03 hereof. However, the grant of a security interest in proceeds shall not be deemed to authorize any action otherwise prohibited herein. In addition to Beneficiary's rights hereunder or otherwise, Beneficiary shall have all of the rights of a secured party under the Texas Business and Commerce Code, as amended (the "Code"). Furthermore, without limiting Beneficiary's rights hereunder, Grantor authorizes Beneficiary to file financing statements and amendments thereto under the provisions of the Code. In addition, Grantor, from time to time, upon each request of Beneficiary, shall promptly (a) execute and deliver to Beneficiary such other documents as required by Beneficiary in order to establish or maintain the validity, perfection or priority of the security interest with respect to the personal property 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 Grantor and under which Grantor 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 Grantor. 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 mineral, crop and timber filing. The address of Grantor (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 in Section 1.01 hereof. Grantor is the record owner of the Property. Grantor's jurisdiction of organization is Texas.

## ARTICLE V

### ASSIGNMENT OF LEASES AND RENTS

#### Section 5.01. Assignment of Leases and Rents.

(a) Grantor hereby assigns to Beneficiary all of Grantor's right, title and interest in and to all current and future Leases (as defined below) and Rents (as defined below) pursuant to the terms of the Texas Assignment of Rents Act (Sections 64.001 et. seq. of the Texas Property Code) ("TARA"). Except as otherwise defined in this Article V and Deed of Trust, capitalized terms shall have the same meaning ascribed to them in TARA.

(b) Without in any way limiting Grantor's obligations under the Loan Documents, at any time upon the occurrence and during the continuance of any Default, Beneficiary may deliver written notice as provided in TARA in accordance with Section 7.12 hereof to Grantor and within five (5) days after delivery of such notice, and without further notice and cure period (Grantor hereby waiving the 30 day notice requirement provided for in TARA and any right to withhold any amount permitted under Section 64.060(a) of TARA for expenses), Grantor will remit to Beneficiary payment of all prepaid Rents for future periods, accrued, unpaid Rents and Rents accruing thereafter to Beneficiary, without any deduction, setoff, or other reduction of any kind. Neither this assignment nor the receipt of Rents by Beneficiary shall effect a *pro tanto* payment of the Obligation and no credit shall be given to Grantor for any Rents until the money is actually received and is applied to the Obligation by Beneficiary. No such credit shall be given for any Rents collected or released after foreclosure or other transfer of the Property to Beneficiary or any other third party.

(c) Beneficiary may apply all such sums or any part thereof it receives, after the payment of all of its expenses (including, without limitation, costs and attorneys' fees), to one or more of the following: (i) on the Obligation secured by this Deed of Trust in such manner as Beneficiary elects (without regard to Section 64.058 of the Texas Property Code) until paid in full, whether due or not, (ii) as otherwise permitted under the terms of this Deed of Trust or any of the other Loan

Documents, or (iii) as specifically hereafter agreed to with Grantor in writing with respect to the payment received.

The term "Leases" shall mean all existing and future leases, subleases, lettings, licenses, concessions and other agreements (whether written or oral) including, without limitation, any and all extensions, renewals, modifications and replacements thereof, pursuant to which any Tenant is granted a right to possess, use or occupy all or any portion of the Land and/or the Improvements, together with every guarantee of the performance of the Tenant thereunder, provided that in no event shall any agreements with students for use of residential facilities be included within the definition of "Leases" for the purpose of this Deed of Trust. The term "Rents" shall mean all rents, income, receipts, revenues, issues, profits and proceeds (including Cash Proceeds) to be derived from Tenants of the Property or any part thereof, including, but not limited to, minimum rents, additional rents, percentage rents, deficiency rents and liquidated damages following default under a Lease, all proceeds payable under any policy of insurance covering the loss of Rents resulting from untenability caused by destruction or damage to the Property or otherwise, and all of Grantor's rights to recover monetary amounts from any Tenant in bankruptcy, including, without limitation, rights of recovery for use and occupancy and damage claims arising out of lease defaults, including rejections, under any Applicable Bankruptcy Law, together with any sums of money that may now or at any time hereafter become due and payable to Grantor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and future oil, gas and mineral Leases, provided that in no event shall revenues from students for use of residential facilities be included within the definition of "Rents" for the purposes of this Deed of Trust.

Section 5.02. Warranties Concerning Leases and Rents. Grantor represents and warrants that:

- (a) Grantor has good title to the Leases and Rents and authority to assign them, and no other person or entity has any right, title or interest therein;
- (b) all existing Leases are valid, unmodified and in full force and effect, except as indicated herein, and no default exists thereunder;
- (c) unless otherwise provided herein, no Rents have been or will be assigned, mortgaged or pledged;
- (d) no Rents have been or will be anticipated, waived, released, discounted, set off or compromised;
- (e) except as indicated in the Leases, Grantor has not received any funds or deposits from any Tenant for which credit has not already been made on account of accrued Rents; and
- (f) all Leases shall specify U.S. addresses for notice to Tenants, and prohibit prepayment of Rent more than one month in advance and contain waivers.

Section 5.03. Grantor's Covenants of Performance. Grantor covenants to:

- (a) perform all of its obligations under the Leases and give prompt notice to Beneficiary of any failure to do so;
- (b) give immediate notice to Beneficiary of any notice Grantor receives from any tenant or subtenant under any Leases, specifying any claimed default by any party under such Leases, excluding, however, notices of default under residential leases;
- (c) enforce the tenant's obligations under the Leases;
- (d) defend, at Grantor's expense, any proceeding pertaining to the Leases, including, if Beneficiary so requests, any such proceeding to which Beneficiary is a party;
- (e) neither create nor permit any encumbrance upon its interest as lessor of the Leases, except this Deed of Trust and any other encumbrances permitted by this Deed of Trust; and
- (f) cause all Leases executed after the date hereof to be expressly made subject to the provisions of TARA and include the following covenants:

(i) that upon the receipt by Tenant of a Notice to Pay Rents to Person Other Than Landlord ("NPROL") provided by Beneficiary pursuant to Section 64.055 of TARA, whether prior to or after a Default, Tenant shall (1) immediately turn over all Rents and Proceeds Beneficiary is entitled to collect under Section 64.053 of TARA; (2) not deduct any portion of the Rents for any purpose, notwithstanding any other provision of TARA, this Deed of Trust or other Loan Document; and (3) shall pay all Rents as they accrue to the Beneficiary; and

(ii) that Tenant waives any right to delay payment of rent contemplated by Section 64.055(d) of TARA or numbered paragraph 3 of the statutory form of NPROL set forth in Section 64.056 of TARA.

Section 5.04. Prior Approval for Actions Affecting Leases. Grantor shall not, without the prior written consent of Beneficiary:

- (a) receive or collect Rents more than one month in advance;
- (b) encumber or assign future Rents;
- (c) waive or release any material obligation of any Tenant under the Leases;



- (d) cancel, terminate or modify any of the Leases; cause or permit any cancellation, termination or surrender of any of the Leases; or commence any proceedings for dispossession of any Tenant under any of the Leases, except upon default by the Tenant thereunder;
- (e) renew or extend any of the Leases, except pursuant to terms in existing Leases;
- (f) permit any assignment of the Leases; or
- (g) enter into any Leases after the date hereof.

Section 5.05. Settlement for Termination. Grantor agrees that no settlement for damages for termination of any of the Leases under any Applicable Bankruptcy Law shall be made without the prior written consent of Beneficiary, and any check in payment of such damages will be made payable to both Grantor and Beneficiary, whether or not a Default then exists. Grantor hereby assigns any such payment to Beneficiary to be applied to the Obligation as Beneficiary may elect and agrees to endorse any check for such payment to the order of Beneficiary.

Section 5.06. Beneficiary in Possession. Beneficiary's acceptance of this assignment shall not, prior to entry upon and taking possession of the Property by Beneficiary, be deemed to constitute Beneficiary a "mortgagee in possession," nor obligate Beneficiary to appear in or defend any proceedings relating to any of the Leases or to the Property, take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under the Leases, or assume any obligation for any deposits delivered to Grantor by any tenant and not delivered to Beneficiary. Beneficiary shall not be liable for any injury or damage to any person or property in or about the Property.

Section 5.07. Appointment of Attorney. Grantor hereby irrevocably appoints Beneficiary its attorney-in-fact, coupled with an interest, empowering Beneficiary to subordinate any Leases to this Deed of Trust.

Section 5.08. Indemnification. GRANTOR HEREBY INDEMNIFIES AND HOLDS BENEFICIARY (WHICH SHALL INCLUDE THE DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES, REPRESENTATIVES AND AGENTS OF BENEFICIARY AND ANY PERSONS OR ENTITIES OWNED OR CONTROLLED BY, OWNING OR CONTROLLING, OR UNDER COMMON CONTROL OR AFFILIATED WITH BENEFICIARY) HARMLESS FROM ALL LIABILITY, DAMAGE OR EXPENSE IMPOSED ON OR INCURRED BY BENEFICIARY FROM ANY CLAIMS UNDER THE LEASES, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS BY GRANTOR WITH RESPECT TO PAYMENTS OF RENTS MADE DIRECTLY TO BENEFICIARY AFTER DEFAULT AND CLAIMS BY ANY TENANT FOR SECURITY DEPOSITS OR FOR RENTAL PAYMENTS MORE THAN ONE (1) MONTH IN ADVANCE AND NOT DELIVERED TO BENEFICIARY. ALL AMOUNTS INDEMNIFIED AGAINST HEREUNDER, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, IF PAID BY BENEFICIARY SHALL BEAR INTEREST AT THE

MAXIMUM LAWFUL RATE AND SHALL BE PAYABLE BY GRANTOR IN ACCORDANCE WITH SECTION 1.01 HEREOF. THE FOREGOING INDEMNITIES SHALL NOT TERMINATE UPON THE FORECLOSURE, RELEASE OR OTHER TERMINATION OF THIS DEED OF TRUST BUT WILL SURVIVE FORECLOSURE OF THIS DEED OF TRUST OR CONVEYANCE IN LIEU OF FORECLOSURE AND THE REPAYMENT OF THE OBLIGATION AND THE DISCHARGE AND RELEASE OF THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS.

Section 5.09. *Records*. Upon request by Beneficiary, Grantor shall deliver to Beneficiary executed copies of all Leases, Rent rolls in a format acceptable to Beneficiary and copies of all records relating thereto.

Section 5.10. *Merger*. There shall be no merger of the leasehold estates, created by the Leases, with the fee estate of the Land without the prior written consent of Beneficiary.

Section 5.11. *Right to Rely*. Grantor hereby irrevocably authorizes and directs the Tenants to pay Rents, including all accrued, but unpaid Rents to Beneficiary upon receipt of written notice from Beneficiary as provided in TARA, without further consent of Grantor. Any such payment to Beneficiary shall constitute payment to Grantor under the Leases. The provisions of this Section are intended solely for the benefit of the Tenants and shall never inure to the benefit of Grantor or any person claiming through or under Grantor, other than a Tenant who has not received such notice. The assignment of Rents set forth in Section 5.01 is not contingent upon any notice or demand by Beneficiary to the Tenants.

## ARTICLE VI

### SPECIAL PROVISIONS

Section 6.01. *Condemnation Proceeds*. Beneficiary shall be entitled to receive any and all sums which may be awarded or become payable to Grantor for the condemnation of the Property or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Grantor for damages caused by public works or construction on or near the Property. All such sums are hereby assigned to Beneficiary and Grantor shall, upon request of Beneficiary, make, execute, acknowledge and deliver any and all additional assignments and documents as may be necessary from time to time to enable Beneficiary to collect and receipt for any such sums. Beneficiary shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums. Any sums received by Beneficiary as a result of condemnation shall be applied to installments on the Obligation in inverse order of maturity.

Section 6.02. *Insurance Proceeds*. The proceeds of any and all insurance upon the Property shall be collected by Beneficiary and Beneficiary shall have the option, in Beneficiary's sole discretion, to apply any proceeds so collected either to the restoration of the Property or to the liquidation of the Obligation.

Section 6.03. Reserve for Taxes, Assessments and Insurance Premiums. Upon Grantor's failure to perform the covenants of this Deed of Trust concerning the delivery to Beneficiary of evidence of the payment of taxes and insurance premiums on the Property and upon written request by Beneficiary, Grantor shall create a fund or reserve for the payment of all insurance premiums, taxes and assessments against or affecting the Property by paying to Beneficiary, on the first day of each calendar month prior to the maturity of the Note, a sum equal to the premiums that will next become due and payable on the property insurance policies covering the Property or any part thereof, plus taxes and assessments next due on the Property or any part thereof as estimated by Beneficiary, less all sums paid previously to Beneficiary therefor divided by the number of months to elapse before one (1) month prior to the date when such premiums, taxes and assessments will become due; such sums to be held by Beneficiary without interest, unless interest is required by applicable law, for the purposes of paying such premiums, taxes and assessments. Any excess reserve shall, at the discretion of Beneficiary, be credited by Beneficiary on subsequent reserve payments or subsequent payments to be made on the Note by the maker thereof, and any deficiency shall be paid by Grantor to Beneficiary on or before the date when such premiums, taxes and assessments shall become delinquent. In the event there exists deficiency in such fund or reserve at any time when taxes, assessments or insurance premiums are due and payable, Beneficiary may, but shall not be obligated to, advance the amount of such deficiency on behalf of Grantor and such amounts so advanced shall become a part of the Obligation, shall be immediately due and payable, and shall bear interest at the rate provided in the Note from the date of such advance through and including the date of repayment. Transfer of legal title to the Property shall automatically transfer the interest of Grantor in all sums deposited with Beneficiary under the provisions hereof or otherwise.

Section 6.04. Right to Accelerate Upon Transfer. If Grantor shall sell, convey, assign or transfer all or any part of the Property or any interest therein or any beneficial interest in Grantor, Beneficiary may, at Beneficiary's option, without demand, presentment, protest, notice of protest, notice of intent to accelerate, notice of acceleration or other notice, or any other action, all of which are hereby waived by Grantor and all other parties obligated in any manner on the Obligation, declare the Obligation to be immediately due and payable, which option may be exercised at any time following such sale, conveyance, assignment or transfer, and upon such declaration the entire unpaid balance of the Obligation shall be immediately due and payable. Beneficiary may, in Beneficiary's sole discretion and at Grantor's request, decide not to exercise said option, in which event Beneficiary's forbearance may be predicated on such terms and conditions as Beneficiary may, in Beneficiary's 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 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 by the Obligation, the payment of an assumption fee, a modification of the term 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 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 or

other disposition. Notwithstanding the foregoing, said option shall not apply in case of sales or transfers of items of the Accessories which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes having a value equal to or greater than the replaced items when new.

Section 6.05. *Subordinate Financing.* If Grantor, without the prior written consent of Beneficiary, executes or delivers any pledge, security agreement, mortgage or deed of trust covering all or any portion of the Property (hereinafter called "Subordinate Mortgage"), Beneficiary may, at Beneficiary's option, which option may be exercised at any time following such pledge, security agreement, mortgage or deed of trust, without demand, presentment, protest, notice of protest, notice of intent to accelerate, notice of acceleration or other notice, or any other action, all of which are hereby waived by Grantor and all other parties obligated in any manner on the Obligation, declare the Obligation to be immediately due and payable. 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, Grantor 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 liens and security interests evidenced by this Deed of Trust and each term and provision hereof, including, without limitation, the Assignment of Leases and Rents; (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 Lease without the prior written consent of Beneficiary; (c) that the Rents, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the Obligation, including principal and interest due and owing on or to become due and owing on the Note 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 6.06. *Environmental Matters; Compliance with Laws.* Grantor warrants and represents to Beneficiary that (a) the occupancy, operation, and use of the Property shall not violate any applicable law, statute, ordinance, rule, regulation, order, writs, injunctions, decrees, or determination of any governmental authority or any board of fire underwriters (or other body exercising similar functions), or any restrictive covenant or deed restriction (of record or otherwise) affecting the Property, including, without limitation, applicable zoning ordinances and building codes, the Americans with Disabilities Act of 1990, flood disaster laws and Applicable Environmental Laws, as they may be amended from time to time (hereinafter sometimes collectively called the "Applicable Regulations"); (b) Grantor and any lessee of space from Grantor in the Property shall obtain all

permits, licenses, or similar authorizations required by reason of any Applicable Regulations relating to pollution and the protection of health and the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems (hereinafter sometimes collectively called "Applicable Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as each is amended from time to time; and (c) the use that Grantor intends to make, or intends to allow, of the Property will not result in the disposal of or release of any hazardous substance or solid waste onto or into the Property, or any part thereof, in violation of any Applicable Environmental Laws. The terms (as used in this Deed of Trust) "hazardous substance" and "release" have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") have the meanings specified in RCRA. If either CERCLA or RCRA is amended to broaden the meaning of any term defined thereby, the broader meaning shall apply to this provision after the effective date of the amendment. Moreover, to the extent that Texas law establishes a meaning for "hazardous substance", "release", "solid waste", or "disposal" that is broader than that specified in either CERCLA or RCRA, the broader meaning shall apply.

Grantor agrees to give prompt written notices to Beneficiary of: (i) any proceeding or inquiry by any governmental or nongovernmental entity or person with respect to the presence of any hazardous substance on, in, under, from or about the Property, the migration thereof from or to other property, the disposal, storage, or treatment of any hazardous substance generated or used on, under or about the Property, (ii) all claims made or threatened by any third party against Grantor or the Property or any other owner or operator of the Property relating to any loss or injury resulting from any hazardous substance, and (iii) Grantor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any investigation or cleanup of the Property pursuant to any Applicable Environmental Law. Grantor shall permit Beneficiary to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Property in connection with any Applicable Environmental Law or hazardous substance, and Grantor shall pay all attorneys' fees incurred by Beneficiary in connection therewith. If any remedial work is required by Applicable Environmental Law or is reasonably necessary in the opinion of Beneficiary, Grantor shall commence and thereafter diligently prosecute to completion all such remedial work within thirty (30) days after written demand by Beneficiary for performance thereof (or such shorter period of time as may be required under any Applicable Environmental Law). All remedial work shall comply with Applicable Environmental Laws after consultation and approval by the governing authority under the Applicable Environmental Law. Remedial work shall be performed by contractors approved in advance by Beneficiary, and under the supervision of a consulting engineer approved by Beneficiary. All costs and expenses of such remedial work shall be paid by Grantor including, without limitation, Beneficiary's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such remedial work. If Grantor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such remedial work, Beneficiary may, but shall not be required to, cause such remedial work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall become part of the Obligation.

Beneficiary (through its officers, employees and agents) at any reasonable time and from time to time, either prior to or after Default in this Deed of Trust or under the Note secured hereby, may employ persons (the "Site Reviewers") to conduct environmental site assessments ("Site Assessments") on the Property to determine whether or not there exists on the Property any environmental condition which might result in any liability, cost or expense to the owner, occupier or operator of the Property arising under the Applicable Environmental Laws. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Beneficiary (so as not to unreasonably interfere with the operation of the Property). The Site Reviewers are authorized at their own risk to enter upon the Property and to perform above and below-the-ground testing (including, without limitation, taking of core samples) to determine environmental damage or presence of any hazardous substance or solid waste in, on or under the Property and such other tests as may be necessary or desirable, in the opinion of the Site Reviewers, to conduct Site Assessments. Grantor will supply to the Site Reviewers such historical and operational information available to Grantor regarding the Property as may be requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. The cost of performing such Site Assessments will be paid by Grantor upon demand of Beneficiary, which, if not paid, will be added to the indebtedness secured by this Deed of Trust.

GRANTOR SHALL INDEMNIFY, DEFEND (WITH COUNSEL SELECTED BY BENEFICIARY) AND HOLD BENEFICIARY, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND ATTORNEYS AND ALL PARTIES ACTING ON BEHALF OF BENEFICIARY (THE "INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST, AND REIMBURSE INDEMNIFIED PARTIES WITH RESPECT TO, ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LOSS, DAMAGE, LIABILITIES, COSTS, AND EXPENSES (INCLUDING ATTORNEY'S FEES AND COURT COSTS) OF EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, FIXED OR CONTINGENT, ASSERTED AGAINST OR INCURRED BY INDEMNIFIED PARTY AT ANY TIME AND FROM TIME TO TIME BY REASON OF OR ARISING OUT OF ANY VIOLATION OF AN APPLICABLE ENVIRONMENTAL LAW AND ALL MATTERS ARISING OUT OF ACTS, OMISSIONS, EVENTS, OR CIRCUMSTANCES RELATING TO THE PROPERTY, GRANTOR OR GRANTOR'S BUSINESS (INCLUDING, WITHOUT LIMITATION, THE PRESENCE ON THE PROPERTY OR RELEASE FROM OR TO THE PROPERTY OF HAZARDOUS SUBSTANCES OR SOLID WASTES DISPOSED OF OR OTHERWISE RELEASED AND GRANTOR'S BREACH OF ANY OF ITS COVENANTS, REPRESENTATIONS OR INDEMNITIES UNDER THIS PROVISION), REGARDLESS OF WHETHER THE ACT, OMISSION, EVENT, OR CIRCUMSTANCE CONSTITUTED A VIOLATION OF ANY APPLICABLE ENVIRONMENTAL LAW AT THE TIME OF THE EXISTENCE OR OCCURRENCE. THE REPRESENTATIONS, COVENANTS, WARRANTIES AND INDEMNIFICATIONS HEREIN CONTAINED SHALL SURVIVE THE RELEASE AND/OR JUDICIAL OR NON-JUDICIAL FORECLOSURE (OR TRANSFER IN LIEU THEREOF) OF THE LIEN OF THIS DEED OF TRUST.

Section 6.07. Appraisals. Upon written request of Beneficiary, Grantor agrees to reimburse Beneficiary for the full cost of narrative appraisals of the Property, such appraisals being required

from time-to-time in Beneficiary's sole discretion to re-evaluate the current value of the Property due to (a) a deterioration of Grantor's revenue from the Property, (b) an increase in Grantor's operating expenses for the Property, or (c) other events which would suggest a deterioration in the value of the Property. Each appraisal shall be ordered directly by Beneficiary from an appraiser satisfactory to Beneficiary and shall be in form and substance necessary to comply with all laws and regulations affecting Beneficiary. Grantor shall reimburse Beneficiary for any requested appraisal expense within thirty (30) days from the date of the written request by Beneficiary. Appraisals may be ordered by Beneficiary at any time in its sole discretion, but Grantor is required to reimburse Beneficiary for only one appraisal in any calendar year. Failure of Grantor to reimburse Beneficiary for any requested appraisal (not to exceed one appraisal in any twelve-month period) shall constitute a Default under this Deed of Trust.

Section 6.08. *Waiver of Deficiency Statute.* (a) In the event an interest in any of the Property is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale, Grantor agrees as follows. Notwithstanding the provisions of Section 51.003, 51.004 and 51.005 of the Texas Property Code (as the same may be amended from time to time), and to the extent permitted by law, Grantor agrees that Beneficiary shall be entitled to seek a deficiency judgment from Grantor and any other party obligated on the Note equal to the difference between the amount owing on the Note and the amount for which the Property was sold pursuant to judicial or nonjudicial foreclosure sale. Grantor expressly recognizes that this section constitutes a waiver of the above-cited provisions of the Texas Property Code which would otherwise permit Grantor and other persons against whom recovery of deficiencies is sought or any guarantor independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Property as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Grantor further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Property for purposes of calculating deficiencies owed by Grantor, any guarantor, and others against whom recovery of a deficiency is sought.

(b) Alternatively, in the event the waiver provided for in subsection (a) above is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time): (i) the Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Property will be repaired or improved in any manner before a resale of the Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Property for cash promptly (but no later than twelve (12) months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Property, including, without limitation, brokerage commissions, title insurance, a survey of the Property, tax prorations, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Property shall be further discounted to account for any estimated holding costs associated with maintaining the Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (iii) above), and other maintenance, operational and ownership expenses; and (v) any

expert opinion testimony given or considered in connection with a determination of the fair market value of the Property must be given by persons having at least five (5) years experience in appraising property similar to the Property and who have conducted and prepared a complete written appraisal of the Property taking into consideration the factors set forth above.

Section 6.09. *Collateral Protection Notice.* In case of Grantor's failure to keep the Property properly insured as required herein, Beneficiary, after notice to Grantor, at its option may (but shall not be required to) acquire such insurance as required herein at Grantor's sole expense. **TEXAS FINANCE CODE SECTION 307.052 COLLATERAL PROTECTION INSURANCE NOTICE: (A) GRANTOR IS REQUIRED TO (i) KEEP THE MORTGAGED PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT SPECIFIED HEREIN; (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER OR OTHERWISE AS PROVIDED HEREIN; AND (iii) NAME BENEFICIARY AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS AS PROVIDED HEREIN; (B) SUBJECT TO THE PROVISIONS HEREOF, GRANTOR MUST, IF REQUIRED BY BENEFICIARY, DELIVER TO BENEFICIARY A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND (C) SUBJECT TO THE PROVISIONS HEREOF, IF GRANTOR FAILS TO MEET ANY REQUIREMENT LISTED IN THE FOREGOING SUBPARTS (A) OR (B), BENEFICIARY MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF GRANTOR AT GRANTOR'S EXPENSE.**

## ARTICLE VII

### MISCELLANEOUS

Section 7.01. *Covenants Running with the Land; Release.* The Obligation contained in this Deed of Trust and the other Loan Documents are intended by Grantor, Beneficiary, and Trustee to be, and shall be construed as, covenants running with the Property until the lien of this Deed of Trust has been fully released by Beneficiary. If the Obligation is paid in full in accordance with the terms of this Deed of Trust and the Loan Documents, and if Grantor shall well and truly perform all of Grantor's covenants contained herein, then this conveyance shall become null and void and be released at Grantor's request and expense and Beneficiary shall have no further obligation to make advances under and pursuant to the provisions hereunder or in the Loan Documents.

Section 7.02. *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 Grantor 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 Grantor 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 7.03. 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 Grantor, 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 Grantor 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 Grantor in any case shall of itself entitle Grantor 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 7.04. 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 Note 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 Note is payable (or such other place as Beneficiary, in Beneficiary's sole discretion, may have established by delivery of written notice thereof to Grantor) 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 7.05. Exceptions to Covenants. Grantor shall not be deemed to be permitted to take any action or to fail to take any action with respect to any particular covenant or condition contained herein or in any of the Loan Documents if the action or omission would result in the breach of any other covenant or condition contained herein or in any of the Loan Documents which has not been specifically waived or consented to by Beneficiary, nor shall Beneficiary be deemed to have consented to any such act or omission if the same would provide cause for acceleration of the Obligations as a result of the breach of any other covenant or condition contained herein or in any of the Loan Documents which has not been specifically waived or consented to by Beneficiary.

Section 7.06. 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 collateral, or the amendment, extension, renewal, increase 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 amendment, renewal, extension, increase 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 and discharged.

Section 7.07. Controlling Agreement. The parties hereto intend to conform strictly to the applicable usury laws. All agreements between Grantor (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 in inverse order of maturity 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 Grantor, or to the maker of the Note or other evidence of indebtedness if other than Grantor. 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.

Section 7.08. Effect of Transfer on Grantor's Liability. If the ownership (legal or beneficial) of the Property or any part thereof becomes vested in a person other than Grantor, or in the event of a change in ownership (legal or beneficial) of any Grantor other than an individual, Beneficiary may, without notice to or consent of Grantor or Grantor'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 Grantor or any other party liable for payment of the Obligation, in whole or in part.

Section 7.09. Waiver of Right to Marshal. Grantor hereby waives all rights of marshaling in the event of any foreclosure of the liens and security interests hereby created.

Section 7.10. *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 Grantor'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 7.11. *Reliance by Beneficiary.* Grantor recognizes and acknowledges that in entering into the loan transaction evidenced by the Loan Documents and accepting this Deed of Trust, Beneficiary is expressly and primarily relying on the truth and accuracy of the foregoing warranties and representations set forth in Section 2.01 hereof without any obligation to investigate the Property and notwithstanding any investigation of the Property by Beneficiary; that such reliance exists on the part of Beneficiary prior hereto; that such warranties and representations are a material inducement to Beneficiary in making the loan evidenced by the Loan Documents and the acceptance of this Deed of Trust; and that Beneficiary would not be willing to make the loan evidenced by the Loan Documents and accept this Deed of Trust in the absence of any of such warranties and representations.

Section 7.12. *Notice.* (a) All notices, requests, demands or other communications required or permitted to be given pursuant to this Deed of Trust shall be in writing and given by (i) personal delivery, (ii) expedited delivery service with proof of delivery, or (iii) United States mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address set forth on the first page hereof and will be deemed to have been received either, in the case of personal delivery, as of the time of personal delivery, in the case of expedited delivery service, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of mail, upon deposit in a depository receptacle under the care and custody of the United States Postal Service. Either party will have the right to change its address for notice hereunder to any other location within the continental United States by notice to the other party of such new address at least 30 days prior to the effective date of such new address. (b) Beneficiary and Grantor agree that no notices or other communications by electronic means between such parties or their representatives in connection with this Deed of Trust or any instrument executed in connection herewith shall constitute a transaction, agreement, contract or electronic signature under the Electronic Signatures in Global and National Commerce Act, any version of the Uniform Electronic Transactions Act or any other statute governing electronic transactions, unless otherwise specifically agreed to in writing.

Section 7.13. *Enforceability.* 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 7.14. *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 "Grantor" shall include in their individual capacities and jointly all parties hereinabove named a Grantor. The duties, covenants, conditions, obligations, and warranties of Grantor in this Deed of Trust shall be joint and several obligations of Grantor and, if more than one, of each party named a Grantor 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 7.15. *Headings; Construction.* The headings which have been used throughout this Deed of Trust have been inserted for convenience of reference only and do not constitute matter to be construed in interpreting this Deed of Trust. Words of any gender used in this Deed of Trust shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise. The words "herein," "hereof," "hereunder" and other similar compounds of the words "here" when used in this Deed of Trust shall refer to the entire Deed of Trust and not to any particular provision or section.

Section 7.16. *Counterparts.* To facilitate execution, this Deed of Trust may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Deed of Trust to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

Section 7.17. *Controlling Law; Venue.* This Deed of Trust is executed and delivered as an incident to a lending transaction negotiated and consummated in Bexar County, Texas, and shall be governed by and construed in accordance with the laws of the State of Texas. Grantor, for itself and its successors and assigns, hereby irrevocably (a) submits to the nonexclusive jurisdiction of the state and federal courts in Texas, (b) waives, to the fullest extent permitted by law, and objection that it may now or in the future have to the laying of venue of any litigation arising out

of or in connection with any Loan Document brought in the District Court of Bexar County, Texas, or in the United States District Court for the Western District of Texas, San Antonio, Division, (c) waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum, and (d) agrees that any legal proceeding against any party to any Loan Document arising out of or in connection with any of the Loan Documents may be brought in one of the foregoing courts. Grantor agrees that service of process upon it may be made by certified or registered mail, return receipt requested, at its address specified herein. Nothing herein shall affect the right of Beneficiary to serve process in any other manner permitted by law or shall limit the right of Beneficiary to bring any action or proceeding against Grantor or with respect to any of Grantor's property in courts in other jurisdictions. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Grantor acknowledges that these waivers are a material inducement to Beneficiary's agreement to enter into agreements and obligations evidenced by the Loan Documents that Beneficiary has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in this section are irrevocable, meaning that they may not be modified either orally or in writing, and these waivers apply to any future renewals, extensions, amendments, modifications, or replacements in respect of the applicable Loan Document. In connection with any litigation, this Deed of Trust may be filed as a written consent to a trial by the court.

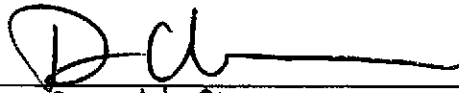
Section 7.18 *Purposes*. The Note is given for certain sums to be advanced for construction of Improvements pursuant to the Loan Agreement. This Deed of Trust is a construction mortgage as that term is defined in the Texas Business and Commerce Code. The Note is also given in renewal and extension of all sums left owing and unpaid by Grantor herein upon that one certain promissory note in the principal sum of \$40,000,000.00, dated September 24, 2013, executed by Grantor and payable to the order of Trinity Higher Education Facilities Corporation and assigned to Regions Capital Advantage, Inc., more fully described in and secured by a Deed of Trust and Security Agreement of even date therewith, duly recorded under Document No. 2013183412 of the Official Public Records of Real Property of Travis County, Texas, upon the Property, and a Financing Statement filed October 17, 2013, recorded under Document No. 2013190235 of the Official Public Records of Real Property of Travis County, Texas, upon the fixtures located on the Property which liens are hereby expressly acknowledged by Grantor to be a valid and subsisting liens against the Property and the fixtures located on the Property, and it is expressly agreed that said liens are hereby renewed, extended and continued in full force and effect to secure the payment of the Note.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**  
**(Signatures on following page)**

EXECUTED to be effective as of the date first above written.

**GRANTOR:**

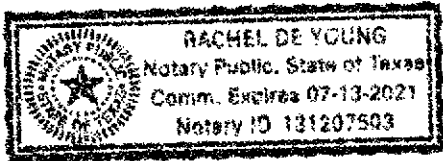
CONCORDIA UNIVERSITY TEXAS,  
a Texas non-profit corporation


By:   
Name: Donald Christian  
Title: President, CEO

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 27<sup>th</sup> day of January, 2021, by Donald Christian, President of Concordia University Texas, a Texas non-profit corporation, on behalf of said corporation.



  
Notary Public in and for the State of Texas

**Schedule of Exhibits:**

- Exhibit A - Land
- Exhibit B - Permitted Exceptions

**EXHIBIT A  
TO  
DEED OF TRUST, SECURITY AGREEMENT AND FINANCING STATEMENT**

**Property**

Lot 2, Block A of the AMENDED PLAT OF LOTS 2, 3 AND 4, SCHLUMBERGER SUBDIVISION, a subdivision in Travis County Texas, according to the map or plat thereof, recorded under Document No. 200800034 of the Official Public Records of Travis County, Texas

11-GF# 202003460 MDG  
RETURN TO: HERITAGE TITLE  
401 CONGRESS, SUITE 1500  
AUSTIN, TEXAS 78701

**EXHIBIT B**  
**TO**  
**DEED OF TRUST, SECURITY AGREEMENT AND FINANCING STATEMENT**

**Permitted Exceptions**

1. The following restrictive covenants of record:

Volume 85, Page 121D of the Plat Records of Travis County, Texas;  
Document No. 200000066 of the Official Public Records of Travis County, Texas (“Official Public Records”);  
Document No. 200800034 of the Official Public Records;  
Volume 3752, Page 244 of the Deed Records of Travis County, Texas;  
Document No. 2000029698, as further affected by Document Nos. 2005236010, 2007060159 of the Official Public Records;  
Document No. 2007057257 of the Official Public Records;  
Document No. 2007057258 of the Official Public Records;  
Document No. 2007060163 of the Official Public Records;  
Document No. 2007213689 of the Official Public Records;  
Document No. 2008168630 of the Official Public Records; and  
Document No. 2014152007 of the Official Public Records, all as recorded in Travis County, Texas.

2. Public utility easements 7.5 and 10 feet in width as shown on the plats recorded in Volume 85, Page 121D of the Plat Records and under Document No(s). 200000066 and 200800034 of the Official Public Records.
3. Public utility easements 5 feet in width and drainage easements of varied width as shown on the plats recorded under Document No(s). 200000066 and 200800034 of the Official Public Records.
4. Electric easement 25 feet in width along the property line(s), as shown by the Plat(s) recorded in Volume 85, Page 121D] of the Plat Records and under Document No(s). 200000066 and 200800034 of the Official Public Records.
5. A 1/4 non-participating royalty interest in all oil, gas and other minerals, as set forth by instrument recorded in Volume 3012, Page 1623 of the Deed Records of Travis County, Texas. Said mineral estate not traced further herein.
6. Drainage easement granted to the public, by instrument dated February 20, 1985, recorded in Volume 9082, Page 625 of the Real Property Records of Travis County, Texas.
7. A 1/2 non-participating royalty interest in all oil, gas and other minerals, as set forth by instrument(s) recorded in Volume 9118, Page 163 of the Real Property Records of Travis County, Texas. Said mineral estate not traced further herein.
8. Gas pipe line and appurtenances easement granted to Southern Union Gas Company by instrument dated September 20, 1985, recorded in Volume 9443, Page 687 of the Real Property Records of



Travis County, Texas, as further affected by assignments recorded under Document Nos. 2003002159 and 2014018447 of the Official Public Records.

9. Sanitary sewer easement granted to the City of Austin, by instrument dated October 17, 1985, recorded in Volume 9450, Page 317 of the Real Property Records of Travis County, Texas.
10. Sanitary sewer easement granted to the City of Austin, by instrument dated October 17, 1985, recorded in Volume 9450, Page 323 of the Real Property Records; further affected by partial release filed under Document No. 2006238631 of the Official Public Records.
11. Wastewater line easement granted to the City of Austin, by instrument dated December 19, 1996, recorded in Volume 12845, Page 844, further affected by Volume 13117, Page 496 and Volume 13117, Page 498 of the Real Property Records of Travis County, Texas.
12. Waterline easement granted to the City of Austin, by instrument dated May 20, 1998, recorded in Volume 13189, Page 467 of the Real Property Records of Travis County, Texas.
13. Access, utility and signage easement granted to Archstone Communities Trust, by instrument dated February 9, 2000, recorded under Document No. 2000078762 of the Official Public Records.
14. Drainage easement granted to the City of Austin, by instrument dated August 15, 2000, recorded under Document No. 2001032114, further affected by amendment recorded under Document No. 2001052174 of the Official Public Records.
15. The terms, conditions and stipulations of that certain Dedication of Right-of-Way dated August 15, 2000, recorded under Document No. 2001032115 of the Official Public Records.
16. The terms, conditions and stipulations of that certain Agreement Concerning Development Rights dated March 30, 2007, recorded under Document No. 2007060158 of the Official Public Records.
17. The terms, conditions and stipulations of that certain Easement Agreement for Roadway, Sewer and Miscellaneous Development dated March 30, 2007, recorded under Document No. 2007060161 of the Official Public Records.
18. The terms, conditions and stipulations of that certain Agreement of Covenants, Conditions and Restrictions dated March 30, 2007, recorded under Document No. 2007060163 of the Official Public Records.
19. The terms, conditions and stipulations of that certain System Installation and Service Agreement with Time Warner Cable dated April 4, 2007, recorded under Document No. 2007075454 of the Official Public Records.
20. The terms, conditions and stipulations of that certain Conservation Easement Agreement dated May 31, 2007, recorded under Document No. 2007106613, as amended by instrument recorded under Document No. 2014105816, both of the Official Public Records.

21. Water line easement granted to the City of Austin, by instrument dated August 27, 2007, recorded under Document No. 2007167174 of the Official Public Records.
22. Terms, conditions and stipulations of that certain Declaration of Easements and Restrictive Covenants Regarding the Maintenance of Drainage Facilities for Concordia University dated November 6, 2007, recorded under Document No. 2007213688 of the Official Public Records.
23. Water easement granted to the City of Austin, by instrument dated May 2, 2008, recorded under Document No. 2008093767 of the Official Public Records.
24. Underground utility easement granted to Pedernales Electric Cooperative, Inc., by instrument dated January 4, 2008, recorded under Document No. 2008151339 of the Official Public Records.
25. Water easement granted to the City of Austin, by instrument dated October 3, 2008, recorded under Document No. 2008167608 of the Official Public Records.
26. Wastewater easement granted to the City of Austin, by instrument dated October 3, 2008, recorded under Document No. 2008167609 of the Official Public Records.
27. Water easement granted to the City of Austin, by instrument dated October 3, 2008, recorded under Document No. 2008167610 of the Official Public Records.
28. The terms, conditions and stipulations of that certain Declaration of Easements and Restrictive Covenants Regarding the Maintenance of Drainage Facilities for Independence Ridge dated October 3, 2008, recorded under Document No. 2008168630 of the Official Public Records.
29. Electric distribution easement granted to Pedernales Electric Cooperative, Inc., by instrument dated August 6, 2010, recorded under Document No. 2010187602 of the Official Public Records.
30. Exclusive water line for subterranean tunnel easement granted to the City of Austin, by instrument dated May 3, 2011, recorded under Document No. 2011068641 of the Official Public Records.
31. Water lines easement granted to the City of Austin, by instrument dated September 29, 2014, recorded under Document No. 2014152008 of the Official Public Records.
32. The terms, conditions and stipulations of that certain Drainage Easement with Permitted Obstructions and Required Maintenance dated September 29, 2014, recorded under Document No. 2014152009 of the Official Public Records.
33. Electric distribution easement granted to Pedernales Electric Cooperative, Inc., by instrument dated April 16, 2015, recorded under Document No. 2016017718 of the Official Public Records.