

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

927



**FROM:** Economic Development Agency

**SUBMITTAL DATE:**  
May 23, 2012

**SUBJECT:** French Valley Airport - Memorandum of Lease, Recognition Agreement, Ground Lease Estoppel Certificate and Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Memorandum of Lease, Recognition Agreement, Ground Lease Estoppel Certificate, and Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing between the County of Riverside and Copperhead, LLC;
2. Authorize the Chairman of the Board to sign the Memorandum of Lease, Recognition Agreement and Ground Lease Estoppel Certificate; and

(Continued)

*Robert Field*

Robert Field  
Assistant County Executive Officer/EDA

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2011/12

**COMPANION ITEM ON BOARD AGENDA:** No

**SOURCE OF FUNDS:** N/A

<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:** APPROVE

BY: *Jennifer L. Sargent*

**County Executive Office Signature** Jennifer L. Sargent

FORM APPROVED COUNTY COUNSEL  
BY: *Annie T. Sahhar* 5/15/12  
DATE  
Departmental Concurrence

Dept't Recomm.:  Consent  Policy  
Per Exec. Ofc.:  Consent  Policy

**Prev. Agn. Ref.:** 3.35 of 2/29/00; 3.17 of 6/27/06; 3.34 of 2/27/07; 3.34 of 7/11/0; 3.22 of 5/24/117 | **District:** 3/3 | **Agenda** 3.18

Economic Development Agency

French Valley Airport - Memorandum of Lease, Recognition Agreement, Ground Lease Estoppel Certificate, and Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing

May 23, 2012

Page 2

**RECOMMENDED MOTION:** (Continued)

3. Authorize the Assistant County Executive Officer/EDA, or his designee, to execute any additional documents required by the Memorandum of Lease, Recognition Agreement, Ground Lease Estoppel Certificate and Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing.

**BACKGROUND:**

The County of Riverside as Lessor, entered into a Master Lease with R. W. Martin, Inc., a California corporation as Lessee, on February 11, 2000, approved by the Board of Supervisors of the County of Riverside and executed February 29, 2000, for five acres of land at French Valley Airport. The lease was subsequently amended by a First Amendment and assigned to Copperhead, LLC, on June 27, 2006. On March 31, 2006, Copperhead, LLC, granted a non-exclusive license to use the building on the leasehold. On July 31, 2007, the Board of Supervisors, approved and executed the same set of documents as being contemplated in this action. That approval enabled lessee to obtain private financing to facilitate the construction of new hangars.

On May 24, 2011, the Board of Supervisors approved a Second Amendment to Lease increasing the Leased Premises by approximately 2.59 acres and giving Lessee an additional ten year extension to the lease term, extending the termination date to February 28, 2050, a total of fifty years from the execution date of the original lease.

Lessee now desires to refinance said private financing to take advantage of favorable lending terms. The lender, California Bank and Trust, as a condition of refinancing, requires the Consent of the Lessor (County), in order to enter into the financing agreement, including the execution of a Leasehold Deed of Trust, a Ground Lease Estoppel Certificate, a Recognition Agreement and a Memorandum of Lease, to facilitate the refinancing.

The proposed action is in conformance with the County Lease Agreement and subsequent amendments. County Counsel has reviewed and approved the attached documents as to legal form.

RF:LB:CC:CW:VP:mm 11401

S:\EDCOM\AIRPORTS\FRENCH VALLEY\Copperhead-RWMartin\Recog Agmt, Estoppel & Leasehold Deed of Trust  
5.2.2012\Copperhead - F11 5 9 12 FINAL vp.doc

Recording requested by

When recorded mail to

Copperhead LLC  
PO Box 370  
Fallbrook, CA 92028  
Attn: Mr. John A. Zublin

Space above this line for recorder's use

### MEMORANDUM OF LEASE

This MEMORANDUM OF LEASE ("Memorandum"), dated for reference purposes only 14 February, 2012, between COUNTY OF RIVERSIDE, whose address is Economic Development Agency, 3525 14<sup>th</sup> Street, Riverside, California 92501, Attention: Executive Director ("Landlord"), and COPPERHEAD LLC, a California limited liability company, whose address is PO Box 370, Fallbrook, California 92028, Attention: Mr. John A. Zublin ("Tenant").

#### WITNESSETH:

Landlord and Tenant are delivering this Memorandum to summarize and memorialize that certain Ground Lease executed by Tenant's predecessor in interest, R.W. MARTIN, INC., a California corporation ("Martin"), on February 11, 2000, approved by the Board of Supervisors of the County of Riverside ("Board") and executed by Landlord on February 29, 2000, as amended by that certain First Amendment to Lease executed by Martin on March 23, 2006, approved by the Board on June 14, 2006, and executed by Ground Lessor on June 27, 2006, and further amended by that certain Second Amendment to Lease executed by Tenant on April 25, 2011, and approved by the board on May 24, 2011 ("Ground Lease"). The leasehold estate under the Ground Lease has been assigned to Tenant by that certain Assignment executed by Martin as assignor and Tenant as assignee on March 31, 2006 ("Assignment"). The Assignment has been consented to by Landlord pursuant to that certain Consent of Assignment approved by the Board on June 14, 2006, and executed by Landlord on June 27, 2006:

1. **Premises.** Subject to the terms and conditions of the Ground Lease, which is incorporated herein by reference, Landlord has leased and demised, and does hereby lease and demise, to Tenant, and Tenant has leased and hired, and does hereby lease and hire, from Landlord, that certain real property located in the County of Riverside, State of California, more particularly described in Exhibit A, consisting of approximately 217,800 square feet - 5.00 acres of land, together with an additional 2.59 acres of land, legally described in the following Exhibits: approximately 0.45 acres of land, being legally described in Exhibit A1 - Lot A; approximately 0.61 acres of land, being legally described in Exhibit A1 - Lot B; approximately 0.61 acres of land, being legally described in Exhibit A1 - Lot C; and approximately 0.92 acres

of land, being legally described in Exhibit A2 – Lot D, attached hereto and incorporated by reference herein. Said property is referred to as the "Leased Premises." The Leased Premises shall consist only of the land, not of any tenant-constructed improvements or structures.

2. **Term.** Subject to the terms and conditions of the Ground Lease, the term of the Ground Lease is fifty (50) years, commencing on March 1, 2000, and terminating on February 28, 2050.

3. **Acknowledgment by Tenant and Landlord.** Landlord and Tenant acknowledge and agree that this Memorandum is being recorded in lieu of recording the Lease and in accordance with Section 39 of the Ground Lease, and is solely for the purpose of giving constructive notice of the Lease.

4. **Conflicting Provisions.** In the event that any conflict exists between the terms and conditions of this Memorandum and the terms and provisions of the Ground Lease, the terms and conditions of the Ground Lease shall be deemed controlling in all respects.

5. **Effect of Memorandum.** This Memorandum is solely for notice and recording purposes and shall not be construed to alter, modify, expand, diminish or supplement the provisions of the Ground Lease.

6. **Counterparts.** This Memorandum may be executed by one or more of the parties hereto on any number of separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum on the date(s) set forth by their respective signatures.

**Landlord:**

COUNTY OF RIVERSIDE

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chairman, Board of Supervisors  
John F. Tavaglione

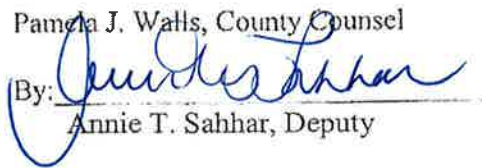
**ATTEST:**

Kecia Harper-Ihem, Clerk of the Board

By: \_\_\_\_\_  
Deputy

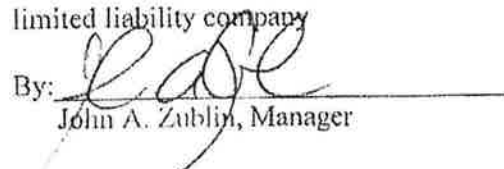
**FORM APPROVED:**

Pamela J. Walls, County Counsel

By:   
Annie T. Sahhar, Deputy

**Tenant:**

COPPERHEAD LLC, a California  
limited liability company

By:   
John A. Zublin, Manager

Date: 15 February 2012

**ACKNOWLEDGMENT**

State of California  
County of San Diego )

On February 15, 2012 before me, Elizabeth A. Bulger, Notary Public  
(insert name and title of the officer)

personally appeared John A. Zublin  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in  
his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Elizabeth A. Bulger* (Seal)



State of California )  
 ) ss.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public (Seal)

State of California )  
 ) ss.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

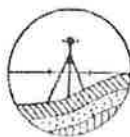
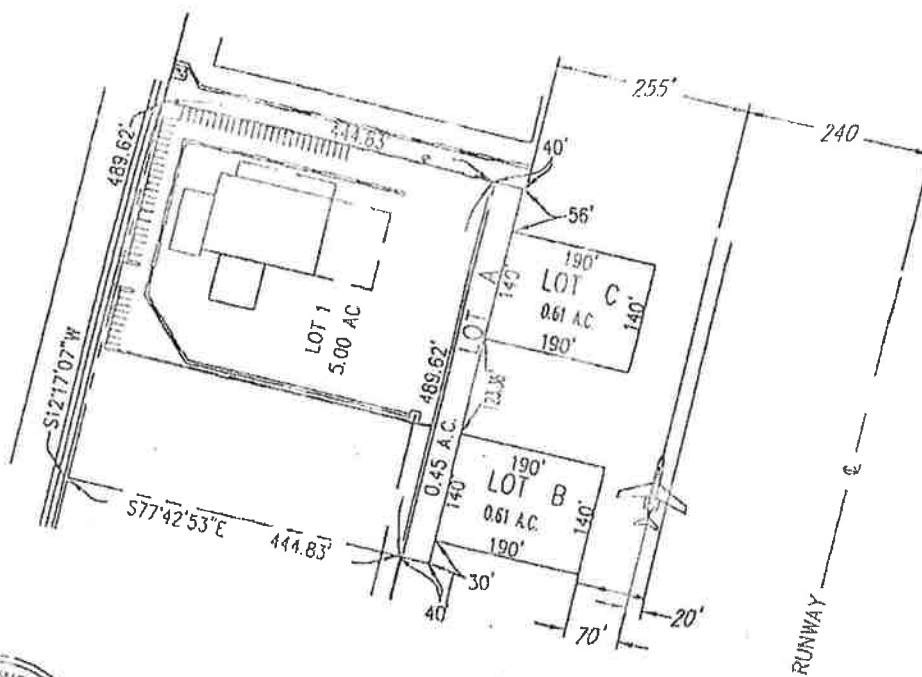
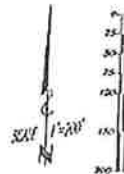
WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public (Seal)

EXHIBIT A EXISTING PARCEL

FRENCH VALLEY AIRPORT  
LEASE EXTENSION

COPPERHEAD, LLC.  
37260 SKY CANYON DR



PLANS PREPARED UNDER SUPERVISION OF

**B&B Engineering, Inc.**

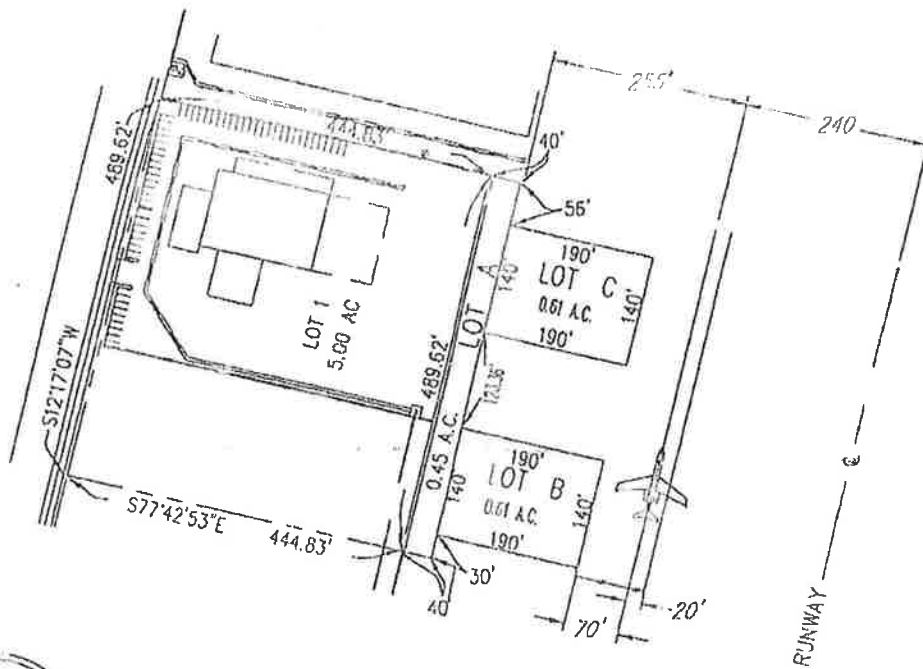
1611-A SOUTH MELROSE DR. #205, VISTA, CA. 92083  
(760) 945-3150



EXHIBIT A1 - LOT A

FRENCH VALLEY AIRPORT  
LEASE EXTENSION

COPPERHEAD, LLC.  
37260 SKY CANYON DR

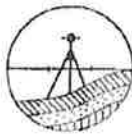
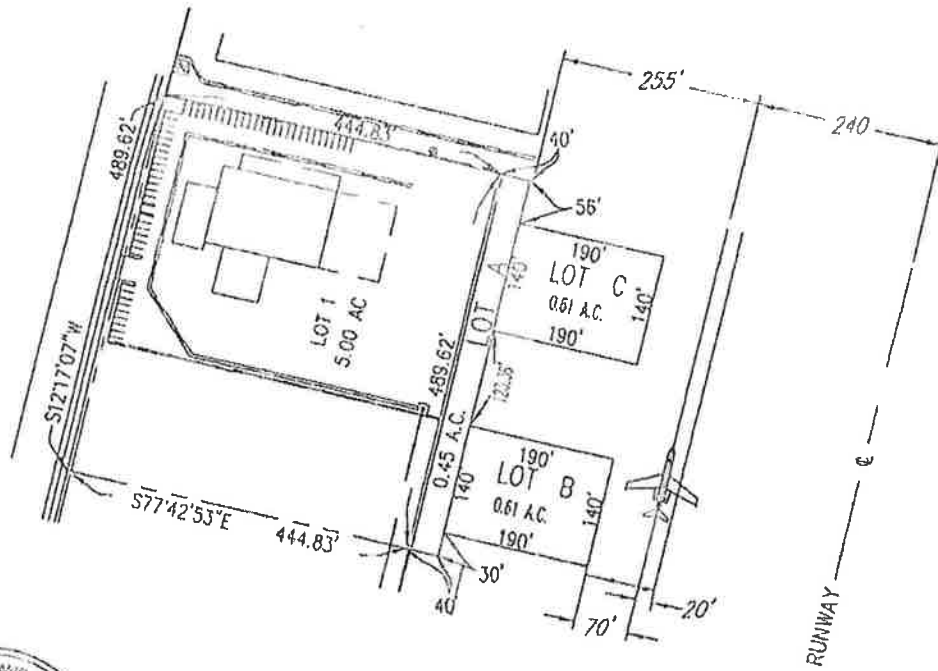
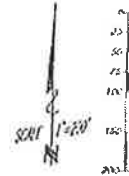


PLANS PREPARED UNDER SUPERVISION OF  
**B&B Engineering, Inc.**  
1611-A SOUTH MELROSE DR. #285, VISTA, CA. 92083  
(760) 945-3150

EXHIBIT A1 - LOT B

# FRENCH VALLEY AIRPORT LEASE EXTENSION

COPPERHEAD, LLC.  
37260 SKY CANYON DR

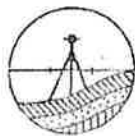
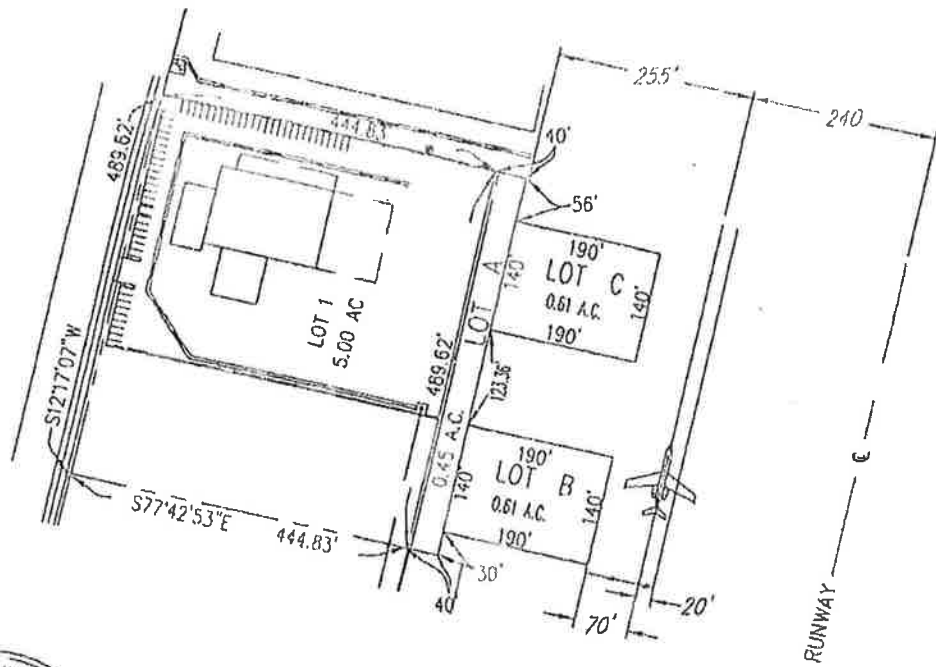
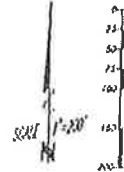


PLANS PREPARED UNDER SUPERVISION OF  
**B&B Engineering, Inc.**  
1611-A SOUTH MELROSE DR. #285, VISTA, CA. 92083  
(760) 945-3150

EXHIBIT A1 - LOT C

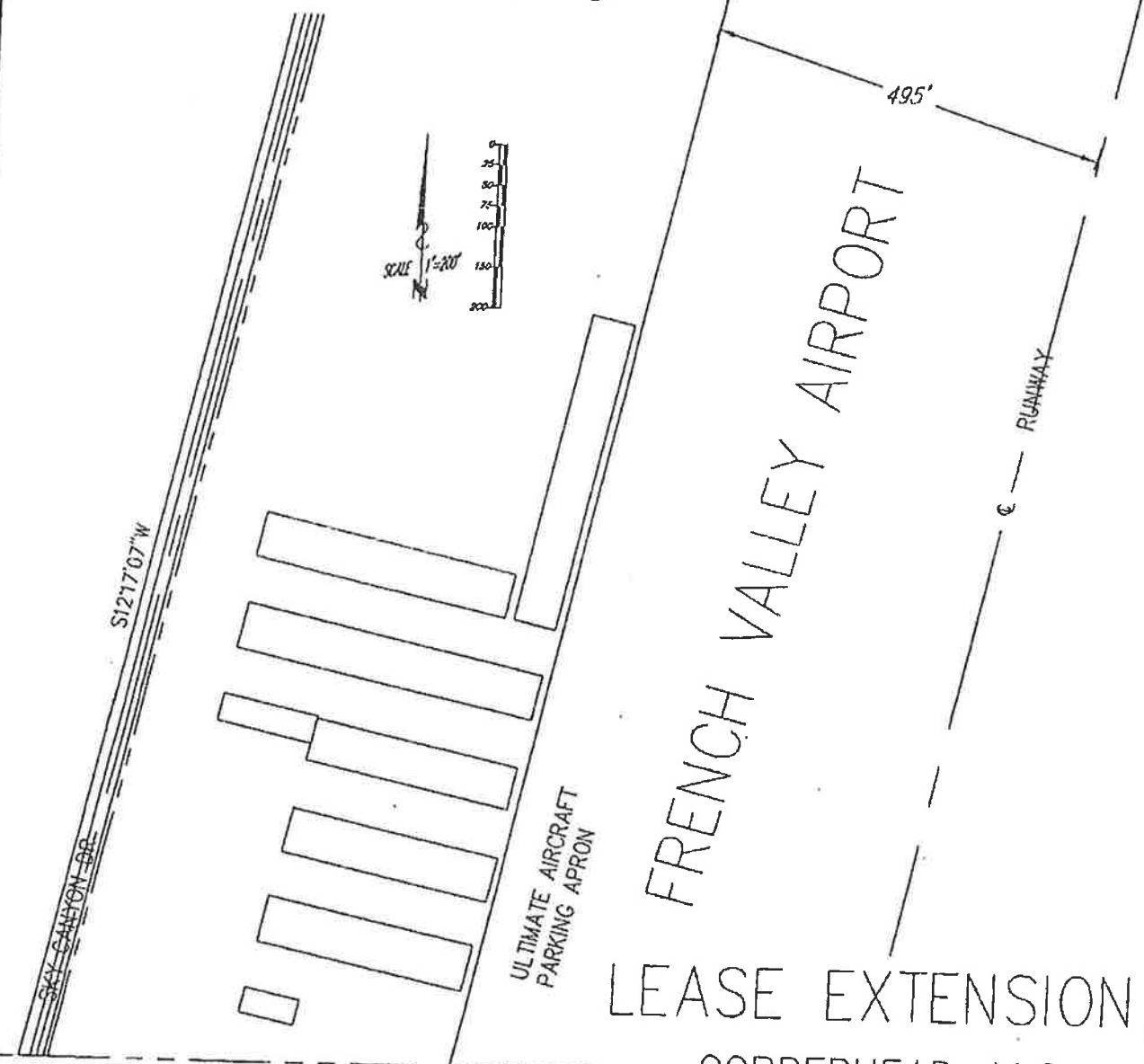
FRENCH VALLEY AIRPORT  
LEASE EXTENSION

COPPERHEAD, LLC.  
37260 SKY CANYON DR



PLANS PREPARED UNDER SUPERVISION OF  
**B&B Engineering, Inc.**  
1611-A SOUTH MELROSE DR. #205, VISTA, CA. 92083  
(760) 945-3150

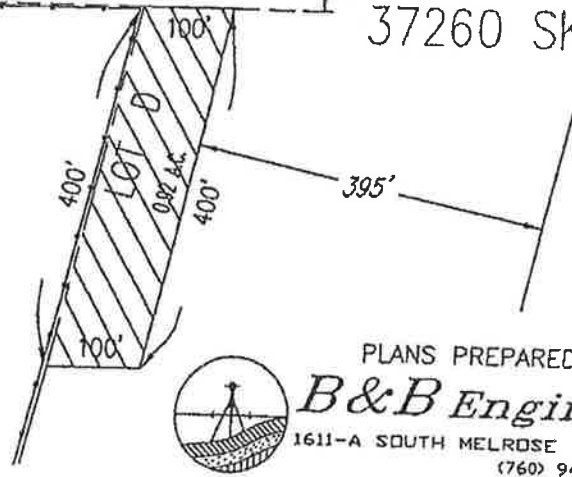
EXHIBIT A2 - LOT D



FRENCH VALLEY AIRPORT

LEASE EXTENSION  
COPPERHEAD, LLC  
37260 SKY CANYON DR

C-BOREL RD (ABANDONED) AND SECTION LINE  
OMH 60'  
S89°53'17"E



PLANS PREPARED UNDER SUPERVISION OF  
**B&B Engineering, Inc.**  
1611-A SOUTH MELROSE DR. #205, VISTA, CA. 92083  
(760) 945-3150

Recording Requested By:

When Recorded Mail To:

CALIFORNIA BANK & TRUST  
11622 El Camino Real, Suite 200  
San Diego, California 92130  
Attention: Real Estate Loan Department

(ABOVE SPACE FOR RECORDER'S USE)

## RECOGNITION AGREEMENT

THIS RECOGNITION AGREEMENT ("Agreement"), dated as of \_\_\_\_\_, 2012, is among CALIFORNIA BANK & TRUST, a California banking corporation ("Bank"), COPPERHEAD LLC, a California limited liability company ("Borrower", also referred to as "Ground Lessee"), and COUNTY OF RIVERSIDE ("Ground Lessor"), with reference to the following:

### RECITALS:

A. Ground Lessor and Ground Lessee's predecessor in interest, R. W. MARTIN, INC., a California corporation ("Martin"), entered into that certain Lease executed by Martin on February 11, 2000, approved by the Board of Supervisors of the County of Riverside ("Board") and executed by Ground Lessor on February 29, 2000, as amended by that certain First Amendment to Lease executed by Martin on March 23, 2006, approved by the Board on June 14, 2006 and executed by Ground Lessor on June 27, 2006, and by that certain Second Amendment to Lease signed by Ground Lessee on April 25, 2011 and by Ground Lessor on May 24, 2011 (as amended, "Ground Lease"), a memorandum of which is recorded in the Official Records of Riverside County, which relates to certain real property located in the County of Riverside, State of California, as more particularly described on Exhibit A attached hereto ("Property"). The leasehold estate under the Ground Lease has been assigned to Ground Lessee by that certain Assignment executed by Martin as assignor and Ground Lessee as assignee on March 31, 2006 ("Assignment"). The Assignment has been consented to by Ground Lessor pursuant to that certain Consent of Assignment approved by the Board on June 14, 2006 and executed by Ground Lessor on June 27, 2006.

B. Bank has agreed to make a loan ("Loan") to Borrower in the amount of One Million Six Hundred Fifty Thousand Dollars (\$1,650,000), which Loan will be secured, in part, by a Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("Deed of Trust") in favor of Bank as beneficiary, encumbering Ground Lessee's leasehold estate in the Property arising under the Ground Lease, which will be recorded in the Official Records of Riverside County, California concurrently with the recordation of this Agreement.

C. Bank is concerned that it would lose the Deed of Trust should the Ground Lease be terminated while the Loan is outstanding, either consensually by agreement between Ground Lessor and Ground Lessee or unilaterally by Ground Lessor upon the default of Ground Lessee under the Ground Lease. To address Bank's concerns, the parties wish to provide that while the Deed of Trust is outstanding, there will be no consensual termination of the Ground Lease without Bank's consent, which will not be unreasonably withheld or delayed, and that with respect to any default by Ground Lessee, Bank shall have certain notice and cure rights as set forth below.

D. Ground Lessor wishes to evidence its prior written consent to the Loan and recordation of the Deed of Trust on the Property. Ground Lessor and Bank also desire to establish certain rights, safeguards, obligations and priorities with regard to their respective interests by means of this Agreement.

#### TERMS OF THE AGREEMENT

IN CONSIDERATION of the mutual covenants of the parties and other good and valuable consideration, Bank and Ground Lessor agree as follows:

1. Ground Lessor Recognition of Bank. Ground Lessor consents to Ground Lessee's encumbrance of its leasehold estate under the Ground Lease by the Deed of Trust, recognizes Bank as the beneficiary thereof, and agrees to afford Bank all of the rights set forth in the Ground Lease and in this Agreement. In the event that Bank or any other person acquires Ground Lessee's interest in the Property pursuant to the exercise of any remedy provided for in the Deed of Trust, or by conveyance in lieu of foreclosure, the Ground Lease shall not be terminated or affected by the foreclosure, conveyance or sale in any such proceeding, and Ground Lessor shall recognize the purchaser or transferee as the new tenant under the Ground Lease, with all the rights and obligations of Ground Lessee thereunder. Except as expressly stated herein to the contrary, this section shall not limit nor impair Ground Lessor's rights under the Ground Lease.

2. Notice of Breach Under Ground Lease. Notwithstanding anything to the contrary set forth in the Ground Lease, Ground Lessor agrees that while the Loan is outstanding, Ground Lessor will not exercise any of its termination remedies unless and until (i) Ground Lessor has delivered to Bank a written notice, describing with reasonable specificity each breach claimed by Ground Lessor to exist, and (ii) the breach has not been cured within the same period after delivery of the written notice as would be available to Ground Lessee pursuant to the Ground Lease.

3. No Consensual Termination. Ground Lessor and Ground Lessee agree that while the Loan is outstanding, they will not terminate or materially amend the Ground Lease without the prior written consent of Bank, which will not be unreasonably withheld or delayed. This section does not apply to a termination by reason of an Event of Default under the Ground Lease as to which Bank has been afforded the notice and opportunity to cure as set forth above.

4. No Fee Mortgages. Ground Lessor represents and warrants that there is no current mortgage or deed of trust encumbering Ground Lessor's fee interest in the Property, and, pursuant to restrictions under its Grant Assurances with the Federal Aviation Administration as it relates to the fee interest in the Property, that it will not impose any such mortgage or deed of trust.

5. Bank's Security Interest in Personal Property and Fixtures. Ground Lessor acknowledges that pursuant to the Deed of Trust, Ground Lessee is granting Bank a security interest in certain of Ground Lessee's tangible and intangible personal property and fixtures ("Collateral"). Ground Lessor consents to such grant of security interests. Ground Lessor and Bank agree that Bank's security interest does not impair any rights, if any, which Ground Lessor may have in the Collateral upon a termination of the Ground Lease.

6. Bank's Right to Insurance Proceeds. Notwithstanding anything to the contrary contained in the Ground Lease, the parties agree that Bank shall be entitled to all insurance proceeds as set forth in Section 4.7 of the Deed of Trust. Notwithstanding Section 4.8(ii) of the Deed of Trust, Bank shall make the insurance proceeds available to repair or reconstruct the Property and shall govern the disbursements of the insurance proceeds as set forth in Section 4.8 of the Deed of Trust.

7. Other Provisions.

(a) All notices, requests and demands to be made hereunder to the parties hereto shall be in writing (at the addresses set forth below) and shall be given by any of the following means: (i)

personal service; (ii) electronic communication, whether by telegram or telecopying (if confirmed in writing sent by certified first class mail, return receipt requested); or (iii) certified first class mail, return receipt requested. Such addresses may be changed by notice to the other parties given in the same manner as provided above. Any notice, demand or request sent pursuant to either clause (i) or clause (ii) hereof shall be deemed received upon such personal service or upon delivery by electronic means, and if sent pursuant to clause (iii) shall be deemed received three (3) days following deposit in the mail.

**To Bank:** California Bank & Trust  
11622 El Camino Real, Suite 200  
San Diego, California 92130  
Attention: Real Estate Loan Department

**To Ground Lessor:** County of Riverside  
Economic Development Agency  
3403 10<sup>th</sup> Street, Suite 300  
Riverside, California 92501  
Attention: Executive Director

**To Ground Lessee:** Copperhead LLC  
P.O. Box 370  
Fallbrook, California 92028  
Attention: Mr. John A. Zublin

(b) This Agreement shall be binding upon and shall inure to the benefit of the successors, assignees and transferees of the parties hereto whether by license, sale, gift, operation of law or otherwise.

(c) This Agreement shall be construed in accordance with the laws of the State of California. None of the parties shall have the right to rely upon any representation or warranty not expressly set forth herein. No provision of this Agreement may be amended or added to except by an agreement in writing signed by each of the parties hereto.

(d) This Agreement shall be construed as a whole and in accordance with its fair meaning and intent, which is to ensure that Bank has the right to protect its rights under the Deed of Trust. This Agreement shall be liberally construed to effect that meaning and intent.

(e) Time is of the essence of each and every one of the provisions herein contained.

(f) Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

(g) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

(h) This Agreement contains the entire agreement between the parties relating to the subject matter hereof. Any oral representations or modifications concerning this instrument shall be of no force or effect. Any subsequent modification must be in writing signed by the party to be charged.

(i) No provision of this Agreement shall be construed or interpreted against any party because that party, or its legal representative, drafted the provision. Captions and organizations are for convenience and shall not be used in construing meaning.

(j) This Agreement may be executed in counterparts each of which shall be deemed an original and all of which shall constitute one and the same Agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any other counterpart of this Agreement and reattached to any other counterpart of this Agreement, identical in form hereto but having attached to it one or more additional signature pages.

(k) A reconveyance of the Deed of Trust shall automatically, without necessity of any other action by the parties, terminate and extinguish this Agreement. Notwithstanding the foregoing, if requested by any party hereto (following a reconveyance of the Deed of Trust), the other parties shall promptly execute a written agreement, in recordable form, sufficient to establish that this Agreement has been fully terminated and extinguished.

To indicate their agreement to the above, the parties or their authorized representatives or officers have signed this document.

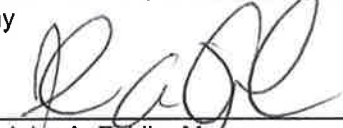
**Bank:**

CALIFORNIA BANK & TRUST, a California banking corporation

By  \_\_\_\_\_  
Its VP/Manager

**Ground Lessee:**

COPPERHEAD LLC, a California limited liability company

By  \_\_\_\_\_  
John A. Zublin, Manager

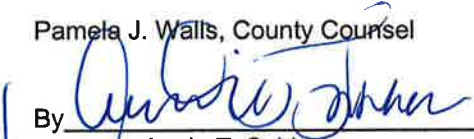
**Ground Lessor:**

COUNTY OF RIVERSIDE

By \_\_\_\_\_  
John Tavaglione  
Chairman, Board of Supervisors

**FORM APPROVED:**

Pamela J. Walls, County Counsel

By  \_\_\_\_\_  
Annie T. Sahhar  
Deputy

**ATTEST:**

\_\_\_\_\_  
Kecia Harper-Ihem  
Clerk of the Board



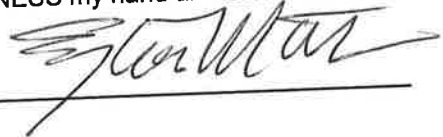
STATE OF CALIFORNIA )  
COUNTY OF SAN DIEGO ) ss.

On MAY 2, 2012, before me, SYLVIA MARTIN, NOTARY PUBLIC (here insert name and title of the officer), personally appeared JOHN ZUBIN

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 



STATE OF CALIFORNIA )  
COUNTY OF SAN DIEGO ) ss.

On MAY 2, 2012, before me, SYLVIA MARTIN, NOTARY PUBLIC (here insert name and title of the officer), personally appeared RANDY FERREN

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

(Seal)



STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_ (here  
insert name and title of the officer), personally appeared \_\_\_\_\_  
\_\_\_\_\_, who proved to me on the basis of satisfactory  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and  
that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_ (here  
insert name and title of the officer), personally appeared \_\_\_\_\_  
\_\_\_\_\_, who proved to me on the basis of satisfactory  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and  
that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## EXHIBIT A

### Legal Description of the Property

The land referred to herein is situated in the State of California, County of Riverside, and described as follows:

#### **PARCEL 1:**

The Northerly 489.62 feet as measured along the Westerly and Easterly lines of that portion of land, being a portion of Section 7, Township 7 South, Range 2 West, San Bernardino Base and Meridian, more particularly described as follows:

COMMENCING at the Southwest corner of said Section 7 as shown by Record of Survey filed in Book 57, Page(s) 81 of Record(s) of Survey of said County;

Hereafter, the following courses are described to follow the courses as described by Exhibit A-1 of the lease agreement dated November 14, 1995 between the County of Riverside and Valley Airport Associates, a California limited liability company, and later transferred and assigned to Domenigoni Family Trust on August 7, 1996;

Thence South 89°53'17" East along the Southerly line of said Section 7 as shown by said Record of Survey, a distance of 999.66 feet;

Thence leaving said section line North 12°17'07" East, a distance of 4,439.85 feet;

Thence at a right angle South 77°42'53" East, a distance of 32.00 feet, to the Southwesterly corner of Parcel 2 described, by Exhibit A-1 of said lease agreement, and the POINT OF BEGINNING;

Thence continuing South 77°42'53" East along the Southerly line of said Parcel 2, a distance of 444.83 feet;

Thence leaving the Southerly line of said parcel (also leaving the boundary described by said lease agreement), and at a right angle South 12°17'07" West, a distance of 1,239.18 feet;

Thence at a right angle North 77°42'53" West, a distance of 444.83 feet;

Thence at a right angle North 12°17'07" East, a distance of 1,239.18 feet, to the POINT OF BEGINNING.

#### **PARCEL 2:**

Lots A, B, C and D as shown in the Exhibits A-1 and A-2 of the Memorandum of Lease dated \_\_\_\_\_, 2012 by and between the County of Riverside, as Landlord, and Copperhead LLC, a California limited liability company, as Tenant, recorded \_\_\_\_\_, 2012 as Instrument No. 2012-\_\_\_\_\_ of Official Records.

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

California Bank & Trust  
11622 El Camino Real, Suite 200  
San Diego, California 92130  
Attention: Real Estate Loan Department

Space Above For Recorder's Use

**LEASEHOLD DEED OF TRUST,  
ASSIGNMENT OF RENTS, SECURITY AGREEMENT  
AND FIXTURE FILING  
[Leasehold Estate]**

This LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made as of May 2, 2012, by and among COPPERHEAD LLC, a California limited liability company ("Trustor"), whose place of business is 37260 Sky Canyon Drive, Hangar 20, Murrieta, California 92563; STEWART TITLE OF CALIFORNIA, INC. ("Trustee"); and CALIFORNIA BANK & TRUST, a California banking corporation ("Beneficiary"), whose place of business is 11622 El Camino Real, Suite 200, San Diego, California 92130.

**ARTICLE 1  
GRANT IN TRUST AND SECURED OBLIGATIONS**

1.1 **Grant in Trust.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustor hereby irrevocably and unconditionally grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, all estate, right, title and interest in the leasehold which Trustor now has or may later acquire in and to the following property (all or any part of which, or interest therein, as the context may require, may be referred to herein as the "Property"):

(a) A leasehold estate in that certain real property, addressed at 37260 Sky Canyon Drive, Hangar 20, Murrieta, California, more particularly described on Exhibit A attached hereto ("Land", which term as used in this Deed of Trust refers solely to the right, title and interest in the leasehold which Trustor now has or may later acquire in the specified real property, it being understood and agreed that the term as used herein does not and shall not be construed to refer to any right, title or interest of the fee owner of such real property, which fee interest is not affected hereby);

(b) Any and all buildings, structures and improvements now or hereafter erected on the Land ("Improvements"), and Trustor's right, title and interest in and to all other improvements that may now or hereafter be constructed upon the Land, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery and other articles attached to said buildings and improvements;

(c) All right, title and interest of Trustor relating to the Land and Improvements arising under that certain Lease executed by Trustor's predecessor in interest, R. W. MARTIN, INC., a California corporation ("R. W. Martin"), on February 11, 2000, approved by the Board of Supervisors of the County of Riverside ("Board") and executed by Ground Lessor on February 29, 2000, as amended by that certain First Amendment to Lease executed by R. W. Martin on March 23, 2006, approved by the Board on June 14, 2006 and executed by Ground Lessor on June 27, 2006, a memorandum of which was recorded in the Official Records of Riverside County on August 7, 2007 as Instrument No. 2007-0508364, as subsequently amended by that certain Second Amendment to Lease signed by Ground Lessee on April 25, 2011 and by Ground Lessor on May 24, 2011 (as amended, "Ground Lease"), as the same may be further amended from time to

time. The leasehold estate under the Ground Lease has been assigned to Trustor by that certain Assignment executed by R. W. Martin as assignor and Trustor as assignee on March 31, 2006 ("Assignment"). The Assignment has been consented to by Ground Lessor pursuant to that certain Consent of Assignment approved by the Board on June 14, 2006 and executed by Ground Lessor on June 27, 2006;

(d) All right, title and interest of Trustor in and to all leases, subleases, subtenancies, licenses, occupancy agreements and concessions covering the Land or the Improvements or any portion thereof or space therein now or hereafter existing, and all right, title and interest of Trustor under the same, including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature ("Leases");

(e) All rents, issues, profits, royalties, revenues, income and other proceeds and benefits derived from the Land or the Improvements;

(f) Any and all building permits, land use entitlements, development rights, sewer capacity, map approvals, trip generation rights, density allocations and other rights or approvals relating to or authorizing the development of the Land;

(g) All right, title and interest of Trustor in and to all options to purchase or lease the Land or any portion or interest of or in the Land, and any greater estate in the Land owned or hereafter acquired;

(h) Any and all interests, estate or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Land;

(i) Any and all easements, parking rights, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same;

(j) All right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right of way of any street, open or proposed, adjoining the Land, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Land;

(k) All right, title and interest of Trustor in and to all tangible personal property owned by Trustor now or at any time hereafter located on or at the Land or the Improvements and primarily used in connection therewith, including, but not limited to, all building materials, goods, machinery, tools, insurance proceeds, equipment (including fire sprinklers and alarm systems, door bell, telephone, air conditioning, heating, refrigerating, electronic monitoring, entertainment, recreational, window or structural cleaning rigs, maintenance, exclusion of vermin or insects, removal of dust, refuse or garbage, and all other equipment of every kind), indoor and outdoor furniture (including beds tables, chairs, planters, desks, sofas, counters, planters, shelves, lockers and cabinets), plumbing fixtures (including pipes, bathtubs, showers, sinks and faucets), wall beds, wall safes, furnishings, appliances (including ice boxes, refrigerators, fans, heaters, stoves, water heaters, dishwashers, trash compactors, ovens of all types, washing machines, dryers, other kitchen and laundry equipment, and incinerators), linens, washing machines and dryers, bar and restaurant equipment, furniture and supplies (including tables, chairs, cutlery, glassware, china, linens, and cleaning supplies), inventory, rugs, carpets and other floor coverings, draperies and drapery rods and brackets, mirrors and mantles, awnings, window shades, Venetian blinds, curtains, lamps, chandeliers and other lighting fixtures, maintenance and other supplies, and trees, shrubs and other landscaping and lawn care and landscaping vehicles and equipment, but not including any interest of Trustor in any aircraft;

(l) All intangible property and rights relating to the Land or Improvements or the operation thereof, including, without limitation, all service marks, trademarks, trade names, advertising campaigns and marketing or promotional materials;

(m) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Trustor with third parties (including all

utility deposits), contract rights (including any and all guaranties and warranties relating to the construction of the Improvements, and the manufacture and installation of fixtures and other personal property, Trustor's rights under listing agreements with licensed real estate brokers and Trustor's rights as seller under executory purchase and sale agreements and related escrow instructions), development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Beneficiary), which arise from or relate to construction on the Land or to any business now or later to be conducted on it, or to the Land and Improvements generally;

(n) All books and records pertaining to the Land, the Improvements, and all of the other Property, including computer-readable media and any computer hardware or software necessary to access and process such media;

(o) All proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Land, Improvements or the other Property into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Land, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; and

(p) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the foregoing.

Notwithstanding anything herein to the contrary, by acceptance of this Deed of Trust Beneficiary acknowledges and agrees that the fee interest of the County of Riverside in the real property described in Section 1.1(a) above is not liened, encumbered or otherwise affected by any of the grants made by Trustor herein.

1.2 **Secured Obligations.** Trustor makes the foregoing grant, conveyance, transfer and assignment in trust, and makes the assignment of rents set forth in Article 2 and grants the security interest set forth in Article 3, for the purpose of securing the following obligations (collectively, "Secured Obligations"), in any order of priority as Beneficiary may choose:

(a) Payment of indebtedness in the total principal amount of One Million Six Hundred Fifty Thousand Dollars (\$1,650,000), with interest thereon, evidenced by that certain promissory note of even date herewith, signed by Trustor, which has been delivered to and is payable to the order of Beneficiary, and which by this reference is hereby made a part hereof, and any and all modifications, extensions and renewals thereof and substitutions therefor ("Note");

(b) Performance of all obligations of Trustor under that certain Loan Agreement of even date herewith between Beneficiary as "Bank" and Trustor as "Borrower" ("Loan Agreement");

(c) Payment and performance of all obligations of Trustor under this Deed of Trust;

(d) Payment of all sums advanced by Beneficiary to protect the Property as permitted herein, with interest thereon at the rate per annum in effect from time to time under the Note;

(e) Payment of all other sums, with interest thereon, which may hereafter be loaned to Trustor or its successors or assigns by Beneficiary, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; and

(f) Payment and performance of all modifications, amendments, extensions and renewals, however evidenced, of any of the Secured Obligations.

This Deed of Trust, the Note, the Loan Agreement and any other instrument (other than a guaranty) given to evidence or further secure the payment and performance of any of the Secured Obligations may sometimes hereafter be referred to collectively as the "Loan Documents". All initially capitalized terms not otherwise defined herein shall have the same meanings as in the Loan Agreement.

## ARTICLE 2 ASSIGNMENT OF RENTS

2.1 **Assignment of Rents.** Trustor hereby irrevocably, absolutely, presently and unconditionally assigns and transfers to Beneficiary all the rents, royalties, issues, profits, revenue, income and proceeds of the Property, whether now due, past due or to become due, including all prepaid rents, security deposits and lease early termination payments (collectively, the "Rents"), and hereby gives to and confers upon Beneficiary the right, power and authority to collect the Rents. This assignment of the Rents is intended to be an absolute assignment from Trustor to Beneficiary and not an assignment for security or the granting of a security interest therein. Trustor shall on demand execute such further assignments to Beneficiary of leases or subleases or rents as Beneficiary may require from time to time.

2.2 **Grant of License.** Beneficiary hereby confers upon Trustor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Section 6.1, shall exist and be continuing. If an Event of Default has occurred and is continuing, Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Trustor, and without regard to the adequacy of Beneficiary's security under this Deed of Trust.

2.3 **Collection of Rents.** Subject to the License granted to Trustor under Section 2.2, Beneficiary has the right, power and authority to collect any and all Rents. Trustor hereby appoints Beneficiary its attorney-in-fact to perform any and all of the following acts, if and at the times when Beneficiary in its sole discretion may so choose:

- (a) Demand, receive and enforce payment of any and all Rents; or
- (b) Give receipts, releases and satisfactions for any and all Rents; or
- (c) Sue either in the name of Trustor or in the name of Beneficiary for any and all Rents.

Beneficiary's right to the Rents does not depend on whether or not Beneficiary takes possession of the Property as permitted under Article 6. Beneficiary may choose to collect the Rents, in its sole, absolute and unfettered discretion, either with or without taking possession of the Property.

2.4 **Application of Rents Collected.** Beneficiary shall apply all Rents collected by it first, to pay any costs and expenses of operation of the Property or collection of the Rents that may be incurred by Beneficiary, Trustee or any receiver; and thereafter, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose. Beneficiary shall have no liability for any funds it does not actually receive.

2.5 **No Loss or Waiver of Remedies.** If an Event of Default occurs while Beneficiary is in possession of all or part of the Property or is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law and in equity, including the right to exercise the power of sale granted under Section 1.1 and Subsection 6.2(d).

2.6 **Beneficiary Not Responsible.** Under no circumstances shall Beneficiary have any duty to produce Rents from the Property. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land and Improvements, Beneficiary is not and shall not be deemed to be:

- (a) A "mortgagee in possession" for any purpose; or

- (b) Responsible for performing any of the obligations of the lessor under any lease; or
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

**ARTICLE 3  
GRANT OF SECURITY INTEREST**

3.1 **Creation of Security Interest.** Trustor as debtor hereby grants Beneficiary as secured party a security interest in all of the Property described in Section 1.1 which under applicable law is personal property (collectively, "Personal Property"), to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the California UNIFORM COMMERCIAL CODE, covering all such Personal Property. If an Event of Default occurs, Beneficiary shall have all the rights, powers and remedies of a secured party under the California UNIFORM COMMERCIAL CODE. All of the rights, powers and remedies of Beneficiary under this Article shall be in addition to all rights, powers and remedies given to Beneficiary by any statute or rule of law, other provision of this Deed of Trust or any other of the Loan Documents or other agreement, shall be cumulative and may be exercised successively or concurrently without impairing or in any way affecting Beneficiary's security interest in the Personal Property.

3.2 **Financing Statements.** Trustor shall execute one or more financing statements and such other documents as Beneficiary may from time to time require to perfect or continue the perfection of Beneficiary's security interest in any Property. Trustor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require. In case Trustor fails to execute any financing statements or other documents for the perfection or continuation of any security interest, Trustor hereby appoints Beneficiary as its true and lawful attorney-in-fact to execute any such documents on its behalf. In addition, Trustor authorizes Beneficiary to authenticate, sign and/or file any such financing statements or amendments without the need for further signature or authentication by Trustor.

3.3 **Fixture Filing.** This Deed of Trust constitutes a financing statement filed as a fixture filing pursuant to the California UNIFORM COMMERCIAL CODE, as amended or recodified from time to time, covering any Property which is now or may later become fixtures attached to the Land or the Improvements. This filing is to be recorded in the real estate records of the county where the Property is located. In that connection, the following information is provided:

Name of Debtor:	Trustor
Address of Debtor:	See page 1 hereof
Debtor's State of Organization:	California
Debtor's Organizational Number:	CA 200534210189
Name of Secured Party:	Beneficiary
Address of Secured Party:	See page 1 hereof

**ARTICLE 4  
RIGHTS AND DUTIES OF THE PARTIES**

4.1 **Representations and Warranties of Trustor.** Trustor represents, warrants and covenants that, except as previously disclosed to Beneficiary in a writing making reference to this warranty:

- (a) Trustor lawfully possesses and holds a leasehold estate in the Land pursuant to the Ground Lease as of the date this Deed of Trust is recorded;



(b) Trustor has or will have good title to all Property other than the Land and Improvements;

(c) Subject to the requirements of the Ground Lease, Trustor has the full and unlimited power, right and authority to encumber its leasehold estate and assign the Rents;

(d) Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Rents, limited only by the provisions of the Ground Lease;

(e) This Deed of Trust creates a first and prior lien on Trustor's leasehold estate in the Land, under the Ground Lease;

(f) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonably future beneficial use and enjoyment of the Land and Improvements, limited only by the provisions of the Ground Lease;

(g) Trustor owns the Personal Property, and any other Property which under applicable law is personal property, free and clear of any security agreements, reservations of title or conditional sales contracts, and there is no financing statement affecting such Personal Property on file in any public office; and

(h) Trustor's place of business, or its chief executive office if it has more than one place of business, is located at the address specified above.

4.2 **Payment and Performance of Secured Obligations.** Trustor shall pay when due the principal of and the interest on the indebtedness evidenced by the Note, charges, fees and all other sums as provided in the Loan Documents, and the principal of and interest on any future advances secured by this Deed of Trust. Trustor shall promptly perform each other Secured Obligation in accordance with its terms.

4.3 **Maintenance, Repair, Alterations.** Trustor shall keep the Property in good condition and repair, and shall not remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or regulations) any of the Improvements; shall complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Land and promptly restore in like manner any Improvements which may be damaged or destroyed, and shall pay when due all claims for labor performed and materials furnished therefor; shall comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Property, or any part thereof, or requiring any alterations or improvements; shall not commit or permit any waste or deterioration of the Property; shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; shall comply with the provisions of applicable lease(s), if this Deed of Trust encumbers a leasehold(s); shall not commit, suffer or permit any act to be done in or upon the Property in violation of any law, ordinance or regulation.

4.4 **Management of the Property.** If at any time the Property is managed other than by Trustor or by an entity controlled by Trustor, Beneficiary shall have the right reasonably to approve the selection of such management, and Trustor shall submit the proposed management contract, and such other information about the manager as Beneficiary reasonably requests, to Beneficiary for its review at least twenty (20) days prior to Trustor's signing and entering into the management contract. If at any time when the Property is being managed other than by Trustor or an entity controlled by Trustor, Beneficiary reasonably determines that the management is not satisfactory for the protection of the Property, Beneficiary shall have the right to require Trustor to change such management so as to be reasonably satisfactory to Beneficiary.

4.5 **Required Insurance.** Trustor shall at all times provide, maintain and keep in force the policies of insurance required in the Loan Agreement.

4.6 **Delivery of Policies; Payment of Premiums.** Trustor shall furnish Beneficiary with an original, or a copy certified by an authorized agent of the insurer, of all policies of required insurance, and an

original certificate of insurance of all such policies, setting forth the coverage as to the Property, the limits of liability as to the Property, the name of the carrier, the policy number and the expiration date. Trustor may provide any of the required insurance through blanket policies carried by Trustor and covering more than one location, upon satisfying Beneficiary that such blanket policies meet all the requirements hereof. At least twenty (20) days prior to the expiration of each such policy, Trustor shall furnish Beneficiary with evidence satisfactory to Beneficiary of the payment of premium and the re-issuance of a policy continuing insurance in force as required by this Deed of Trust. All such policies shall contain a provision that such policies will not be canceled or materially amended, which terms shall include any reduction in the scope or limits of coverage, without at least thirty (30) days prior written notice to Beneficiary. In the event Trustor fails to provide, maintain, keep in force or deliver and furnish to Beneficiary the policies of insurance required by this Deed of Trust, then such failure shall be a default hereunder and Beneficiary may procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and Trustor will pay all premiums thereon promptly upon demand by Beneficiary, and until such payment is made by Trustor the amount of all such premiums, together with interest thereon at the rate per annum in effect from time to time under the Note, shall be secured by this Deed of Trust. At the request of Beneficiary, Trustor shall deposit with Beneficiary, in monthly installments, an amount equal to one-twelfth (1/12th) of the estimated aggregate annual insurance premiums on all policies of insurance required by this Deed of Trust; provided, however, that Beneficiary shall make no such request for monthly deposits unless and until such time (if ever) as an Event of Default (as defined in Section 6.1 below) has occurred, whereupon Beneficiary shall at any and all times thereafter have the right to require such monthly deposits by Trustor, whether or not the Event of Default has been cured. Trustor further agrees, upon Beneficiary's request, to cause all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents, and providing Trustor has deposited sufficient funds with Beneficiary pursuant to this Section, Beneficiary shall pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds deposited with Beneficiary are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Section. Beneficiary may commingle said reserve with its own funds and Trustor shall be entitled to no interest thereon.

#### 4.7 Damages and Insurance and Condemnation Proceeds.

(a) Trustor hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payor to pay to Beneficiary, the following claims, causes of action, awards, payments and rights to payment: (i) all awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use which affects all or part of the Property or any interest in it; and (ii) all other awards, claims and causes of action, arising out of any warranty affecting all or any part of the Property, or for damage or injury to or decrease in value of all or part of the Property or any interest in it; and (iii) all proceeds of any insurance policies payable because of loss sustained to all or part of the Property; and (iv) all interest which may accrue on any of the foregoing.

(b) Trustor shall immediately notify Beneficiary in writing if: (i) any damage occurs or any injury or loss is sustained in any amount to all or part of the Property, or any action or proceeding relating to any such damage, injury or loss is commenced; or (ii) any offer is made, or any action or proceeding is commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property. If Beneficiary chooses to do so, it may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury or loss to all or part of the Property, and it may make any compromise or settlement of the action or proceeding. Beneficiary, if it so chooses, may participate in any action or proceeding relating to condemnation or taking of all or part of the Property, and may join Trustor in adjusting any loss covered by insurance.

(c) All proceeds of these assigned claims, other property and rights which Trustor may receive or be entitled to shall be paid to Beneficiary. In each instance, Beneficiary shall apply those proceeds first toward reimbursement of all of Beneficiary's costs and expenses of recovering the proceeds, including attorneys' fees.

4.8 **Use of Proceeds by Trustor.**

(a) If, in any instance, each and all of the following conditions are satisfied in Beneficiary's reasonable judgment, Beneficiary shall permit Trustor to use the balance of the proceeds assigned under the preceding Section ("**Net Claims Proceeds**") to pay costs of repairing or reconstructing the Property in the manner described below:

(i) The plans and specifications, cost breakdown, construction contract, construction schedule, contractor and payment and performance bonds for the work of repair or reconstruction must all be reasonably acceptable to Beneficiary.

(ii) Beneficiary must receive evidence satisfactory to it that after repair or reconstruction, the outstanding balance of all Secured Obligations will not exceed seventy-five percent (75%) of the value of the Property.

(iii) The Net Claims Proceeds must be sufficient in Beneficiary's determination to pay for the total cost of repair or reconstruction, including all associated development costs and interest projected to be payable on the Secured Obligations until the repair or reconstruction is complete; or Trustor must provide its own funds in an amount equal to the difference between the Net Claims Proceeds and a reasonable estimate, made by Trustor and found acceptable by Beneficiary, of the total cost of repair or reconstruction.

(iv) No Event of Default shall have occurred and be continuing.

(b) If the foregoing conditions are met, Beneficiary shall hold the Net Claims Proceeds in an interest-bearing account and shall disburse them to Trustor to pay costs of repair or reconstruction, on such terms and subject to such conditions as are reasonably established by Beneficiary to govern disbursement of funds, including without limitation providing evidence of costs, percentage completion of repair or reconstruction, application of payments and satisfaction of mechanic's liens. However, if Beneficiary finds that one or more of the foregoing conditions are not satisfied, it shall apply the Net Claims Proceeds to pay or prepay (without premium) some or all of the Secured Obligations in such order and proportions as it in its sole, absolute and unfettered discretion may choose.

(c) Trustor hereby specifically, unconditionally and irrevocably waives all rights of a property owner granted under California CODE OF CIVIL PROCEDURE Section 1265.225(a), which provides for allocation of condemnation proceeds between a property owner and a lienholder, and any other law or successor statute of similar import.

(d) Nothing herein contained shall be deemed to excuse Trustor from repairing or maintaining the Property as provided in Section 4.3 hereof or restoring all damage or destruction to the Improvements, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount, and the application or release by Beneficiary of any insurance proceeds shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice.

4.9 **Assignment of Insurance Policies Upon Foreclosure.** In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Trustor in and to all policies of insurance required by this Deed of Trust shall inure to the benefit of and pass to the successor in interest of Trustor, or the purchaser or grantee of the Property.

4.10 **Indemnification; Subrogation; Waiver of Offset.**

(a) If Beneficiary is made a party defendant to any litigation concerning this Deed of Trust or the Property or any part thereof or interest therein, or the occupancy thereof by Trustor, then Trustor shall

indemnify, defend and hold Beneficiary harmless from all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Beneficiary in any such litigation, whether or not any such litigation is prosecuted to judgment. If Beneficiary commences an action against Trustor to enforce any of the terms hereof or because of the breach by Trustor of any of the terms hereof, or for the recovery of any sum secured hereby, Trustor shall pay to Beneficiary reasonable attorneys' fees and expenses, and the right to such attorneys' fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Trustor breaches any term of this Deed of Trust, Beneficiary may employ an attorney or attorneys to protect its rights hereunder and, in the event of such employment following any breach by Trustor, Trustor shall pay Beneficiary reasonable attorneys' fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of breach. Notwithstanding the foregoing, if an action is actually commenced by either party and such action proceeds to final judgment in favor of Trustor, then (i) Trustor shall have no obligation to pay Beneficiary's attorneys' fees and expenses, and (ii) Beneficiary shall pay Trustor reasonable attorneys' fees and expenses incurred by Trustor in connection with such action.

(b) Trustor waives any and all right to claim or recover against Beneficiary, its officers, employees, agents and representatives, for loss of or damage to Trustor, the Property, Trustor's other property or the property of others under Trustor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

(c) All sums payable by Trustor hereunder shall be paid without notice (except as expressly provided herein), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of, or any condemnation or similar taking of, the Property or any part thereof; (ii) any restriction or prevention of or interference with any use of the Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Land or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary or Trustor, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary or Trustor, or by any court, in any such proceeding; (v) any claim which Trustor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Trustor, or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor.

#### 4.11 Taxes and Impositions.

(a) Trustor shall pay, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including, without limitation, non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Property, which are assessed or imposed upon the Property, or become due and payable, and which create, may create or appear to create a lien upon the Property, or any part thereof, or upon any personal property, equipment or other facility used in the operation or maintenance thereof (all of which taxes, assessments and other governmental and non-governmental charges of like nature are hereinafter referred to as "Impositions"); provided, however, that if, by law, any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Trustor may pay the same, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Property in lieu of or in addition to the Impositions payable by Trustor pursuant to the preceding Subsection, or (ii) a license fee, tax or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, then all such taxes,

assessments or fees shall be deemed to be included within the term "Impositions" as defined herein, and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions or, at the option of Beneficiary, all obligations secured hereby, together with all accrued interest thereon, shall immediately become due and payable. Anything to the contrary herein notwithstanding, Trustor shall have no obligation to pay any franchise, estate, inheritance, income, excess profits or similar tax levied on Beneficiary or on the obligations secured hereby.

(c) Subject to the provisions of Subsection (d) below, Trustor covenants to furnish Beneficiary, within thirty (30) days after the date upon which any such Imposition is due and payable by Trustor, official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payments thereof.

(d) Trustor shall have the right before any delinquency occurs to contest or object to the amount or validity of any such Imposition by appropriate legal proceedings, but this shall not be deemed or construed as in any way relieving, modifying or extending Trustor's covenant to pay any such Imposition at the time and in the manner provided in this Section, unless Trustor has given prior written notice to Beneficiary of Trustor's intent to so contest or object to an Imposition, and unless, at Beneficiary's sole option, Trustor either (i) furnishes a good and sufficient bond as requested by and satisfactory to Beneficiary, or (ii) provides a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

(e) At the request of Beneficiary, Trustor shall pay to Beneficiary, on the day monthly installments of principal and/or interest are payable under the Note, until the Note is paid in full, an amount equal to one-twelfth (1/12th) of the annual Impositions reasonably estimated by Beneficiary as necessary to pay the installment of taxes next due on the Property; provided, however, that Beneficiary shall make no such request for monthly deposits unless and until such time (if ever) as an Event of Default (as defined in Section 6.1 below) has occurred, whereupon Beneficiary shall at any and all times thereafter have the right to require such monthly deposits by Trustor, whether or not the Event of Default has been cured. In such event, Trustor further agrees to cause all bills, statements or other documents relating to Impositions to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents, and providing Trustor has deposited sufficient funds with Beneficiary pursuant to this Section, Beneficiary shall pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds deposited with Beneficiary are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Section. Beneficiary shall not be obliged to pay or allow any interest on any sums held by Beneficiary pending disbursement or application hereunder, and Beneficiary may impound or reserve for future payment of Impositions such portion of such payments as Beneficiary may in its reasonable discretion deem proper, applying the balance to the principal of or interest on the Secured Obligations. If Trustor fails to deposit with Beneficiary (exclusive of that portion of said payments which has been applied by Beneficiary on the principal of or interest on the indebtedness secured by the Loan Documents) sums sufficient to fully pay such Impositions at least thirty (30) days before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary as herein elsewhere provided, or, at the option of Beneficiary, the latter may, without making any advance whatever, apply any sums held by it upon any obligation of Trustor secured hereby. If any default occurs or exists on the part of Trustor in the payment or performance of any of Trustor's obligations under the terms of the Loan Documents, Beneficiary may, at any time and at Beneficiary's option, apply any sums or amounts in its hands received pursuant hereto, or as rents or income of the Property or otherwise, upon any indebtedness or obligation of Trustor secured hereby in such manner and order as Beneficiary may elect. The receipt, use or application of any such sums paid by Trustor to Beneficiary hereunder shall not be construed to affect the maturity of any indebtedness secured by this Deed of Trust or any of the rights or powers of Beneficiary or Trustee under the terms of the Loan Documents or any of the obligations of Trustor under any of the Loan Documents.



(f) Trustor covenants and agrees to use its best efforts to prevent the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Property as a single lien.

4.12 **Utilities.** Trustor shall pay when due all utility charges which are incurred by Trustor for the benefit of the Property or which may become a charge or lien against the Property for gas, electricity, water or sewer services furnished to the Property and all other assessments or charges of a similar nature, whether public or private, affecting the Property or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

4.13 **Actions Affecting Property.** Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and Trustor shall pay all costs and expenses, including cost of evidence of title and attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear.

4.14 **Ground Lease.** Trustor agrees not to amend, change, terminate or modify the Ground Lease or any interest therein without the prior written consent of Beneficiary. Consent to one amendment, change, agreement or modification shall not be deemed to be a waiver of the right to require consent to other, future or successive amendments, changes, agreements or modifications. Trustor agrees to perform all obligations and agreements under the Ground Lease and shall not take any action or omit to take any action which would effect or permit the termination of the Ground Lease. Trustor agrees to promptly notify Beneficiary in writing with respect to any default or alleged default by any party thereto and to deliver to Beneficiary copies of all notices, demands, complaints or other communications received or given by Trustor with respect to any such default or alleged default. Beneficiary shall have the option to cure any such default and to perform any or all of Trustor's obligations thereunder. All sums expended by Beneficiary in curing any such default shall be secured hereby and shall be immediately due and payable without demand or notice and shall bear interest from the date of expenditure at the Default Rate (defined in the Note).

4.15 **Actions by Trustee and/or Beneficiary to Preserve Property.** If Trustor fails to make any payment or to do any act as and in the manner provided in any of the Loan Documents, Beneficiary and/or Trustee, each in its own absolute and unfettered discretion, without obligation so to do and without notice to or demand upon Trustor except as expressly provided for herein, and without releasing Trustor from any obligation, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. In connection therewith (without limiting their general powers), Beneficiary and/or Trustee shall have and are hereby given the right, but not the obligation, (i) to enter upon and take possession of the Property; (ii) to make additions, alterations, repairs and improvements to the Property which they or either of them may reasonably consider necessary or proper to keep the Property in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of either may affect or appears to affect the security of this Deed of Trust or be prior or superior hereto; and (v) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Trustor shall, immediately upon demand therefor by Beneficiary, pay all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing rights, including, without limitation, costs of evidence of title, court costs, appraisals, surveys and attorneys' fees.

4.16 **Survival of Warranties.** Trustor shall fully and faithfully satisfy and perform the obligations of Trustor contained in any of the Loan Documents. All representations, warranties and covenants of Trustor contained therein or incorporated by reference shall survive the close of escrow and funding of the loan evidenced by the Note, and shall remain continuing obligations, warranties and representations of Trustor during any time when any portion of the obligations secured by this Deed of Trust remain outstanding.

4.17 **Additional Security.** In the event Beneficiary at any time holds additional security for any of the obligations secured hereby, Beneficiary may after an Event of Default (as defined in Section 6.1 below) enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder.

4.18 **Appointment of Successor Trustee.** Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Trustor and recorded in the County in which the Property is located, and by otherwise complying with the provisions of the applicable law of the State of California, substitute a successor or successors to the Trustee named herein or acting hereunder.

4.19 **Successors and Assigns.** This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "**Beneficiary**" shall mean the owner and holder of the Note, whether or not named as Beneficiary herein.

4.20 **Inspections.** Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Property for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents.

4.21 **Liens.** If any claim of lien is recorded which affects the Property, Trustor shall, within twenty (20) days after such recording or service, (i) pay and discharge the same, (ii) effect the release thereof by recording or delivering to Beneficiary a surety bond in form and amount satisfactory to Beneficiary, or (iii) provide Beneficiary with other assurance which Beneficiary, in its sole discretion, deems to be satisfactory for the payment of such lien and for the full and continuous protection of Beneficiary from the effect thereof. If Trustor fails to remove any lien on the Property, and fails to provide satisfactory security in lieu of removal of such lien as provided in (ii) above, Beneficiary may pay such lien, or may contest the validity thereof, paying all costs and expenses of contesting the same, including attorneys' fees, and Trustor shall reimburse Beneficiary on demand for all payments made and costs and expenses incurred by Beneficiary in doing so.

4.22 **Trustee's Powers.** Trustee may, at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Property, (i) reconvey any part of the Property, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, or (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof.

4.23 **Beneficiary's Powers.** Beneficiary, without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Land not then or theretofore released as security for the full amount of all unpaid obligations, may from time to time and without notice (i) release any person so liable, (ii) extend the maturity or alter any of the terms of any such obligation, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed at any time at Beneficiary's option, any parcel, portion or all of the Property, (v) take or release any other additional security for any obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto, or (vii) advance additional funds to protect the security hereof and pay or discharge the obligations of Trustor hereunder or under the Loan Documents, and all amounts so advanced, with interest thereon at the rate per annum in effect from time to time under the Note, shall be secured hereby.

4.24 **Financial Statements.** Trustor shall cause to be delivered to Beneficiary, at the times and in the formats prescribed in the Loan Agreement, the financial statements described in the Paragraph of the Loan Agreement captioned "Additional Financial Information". In addition, Trustor shall each year deliver to Beneficiary an annual operating statement for the Property, showing all income received from each tenant and expenses of the Property during the preceding fiscal year, together with a rent roll as of the end of each such fiscal year on such forms as may be prescribed from time to time by Beneficiary which, among other things, shall include the name of each tenant, a description of its leased premises (including square footage, suite number, designation according to rental plan, etc.), the monthly rent paid and the expiration date of each such tenant's lease, certified as to accuracy by Trustor. Unless specified to the contrary in the Loan Agreement, the financial statements and the operating statement shall be prepared in accordance with generally accepted accounting principles, in form reasonably acceptable to Beneficiary, and shall be certified as to accuracy by Trustor. Beneficiary shall have the right from time to time to cause Trustor's books of account and records to

be audited by a certified public accountant chosen by Beneficiary, in order to determine the accuracy of statements delivered to Beneficiary pursuant to this Section. Unless such an audit determines the statement(s) being examined to be materially inaccurate in any respect, then the cost of such audit shall be borne by Beneficiary; otherwise, the cost of such audit shall be borne by Trustor.

4.25 **Trade Names.** At the request of Beneficiary, Trustor shall execute a certificate in form satisfactory to Beneficiary listing the trade names under which Trustor operates or intends to operate the Property, and representing and warranting that Trustor does business under no other trade names with respect to the Property. Trustor shall immediately notify Beneficiary in writing of any change in said trade names and will, upon request of Beneficiary, execute any additional financing statements and other certificates revised to reflect the change in trade name.

4.26 **Reconveyance by Trustee.** Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto".

4.27 **Leasing.** All leases of the Land, the Improvements or any portion thereof shall be upon terms and with tenants approved by Beneficiary in writing prior to Trustor's signing any such lease. Copies of all new leases which affect any portion of the Land or Improvements, together with a statement on Beneficiary's prescribed form signed by the tenant, shall be promptly furnished to Beneficiary. Without Beneficiary's prior written consent, and except to the extent otherwise provided in the paragraph of the Loan Agreement captioned "Approval of Leases", Trustor shall not:

- (a) Accept any deposit or prepayment of rent for any rental period exceeding one (1) month;
- (b) Grant any material lease concessions, except as the same are expressly set forth in the lease and approved in advance by Beneficiary; or
- (c) Amend or allow premature termination of any existing lease to the Land or Improvements or any portion of either.

4.28 **Change in Composition of Trustor.** Without the prior written consent of Beneficiary, Trustor shall abstain from, and shall not cause or permit, to the extent it may do so, any change or transfer of interest in Trustor described in the Paragraph of the Loan Agreement captioned "Change in Borrower".

## ARTICLE 5 ACCELERATION OF MATURITY

### 5.1 **Acceleration on Sale.**

(a) Trustor understands that in making the loan evidenced by the Note, Beneficiary is relying to a material extent upon the business expertise and net worth of Trustor and upon the continuing interest which Trustor has in the Property. Accordingly, except as expressly provided to the contrary herein or in the Loan Agreement, in the event that Trustor, without the prior written consent of Beneficiary, directly or indirectly, voluntarily or involuntarily, sells, assigns, transfers, disposes of or agrees to sell, assign, transfer or dispose of all or any portion of or any interest in the Land or the Improvements (other than a lease in the ordinary course of Trustor's business), or in the event that any partner of Trustor (at any tier) sells, assigns, transfers or disposes of any such partner's interest in Trustor, then the same shall be deemed to increase the risk of Beneficiary, and Beneficiary may then, or at any time thereafter, declare the entire indebtedness secured hereby immediately due and payable, and may exercise all rights and remedies provided herein.



(b) For purposes of this Section, and except for transfers expressly authorized herein or in the Loan Agreement, (i) the terms "sell" and "transfer" shall include, in addition to the common and ordinary meaning of those terms and without limiting their generality, transfers made to subsidiary or affiliated entities, transfers made to a reconstituted partnership, transfers by any partnership (at any tier) to the individual partners or vice versa, transfers by any corporation (at any tier) to its shareholders or vice versa, any corporate merger or consolidation, and any "change in ownership" as that term is used from time to time in California real property taxation law; and (ii) the term "transferee" shall mean purchaser, assignee, grantee or subsequent owner of all or any part of the Land or of any interest in Trustor. Beneficiary's options pursuant to Section 5.1(a) may be exercised at any time after the occurrence of any such event, and the acceptance of one or more installments from any person thereafter shall not constitute a waiver of Beneficiary's option. Beneficiary's approval of any sale, assignment, transfer, pledge or disposition or failure to exercise said option with respect thereto shall not be construed as a waiver of the provisions hereof with regard to any subsequent transaction.

(c) Beneficiary may condition its consent to a sale or transfer upon the fulfillment of certain requirements, including, but not limited to, the following (collectively, "Conditions of Transfer"): (i) that the proposed transferee meet Beneficiary's then-existing credit and other standards with respect to similar loans; (ii) that the transferee specifically assume personal liability for the outstanding balance of the indebtedness secured hereby and the obligations to be performed under the obligation and this Deed of Trust; (iii) that an assumption fee be paid to Beneficiary at the time of the transfer; (iv) that the interest rate payable under the obligation be increased; (v) that a new policy of beneficiary's title insurance be obtained; (vi) that new financing statements be filed; (vii) that the proposed transferee agree to restrictions on further transfers; and (viii) that endorsements to existing policies or new insurance policies be obtained. Beneficiary shall in no event be obligated to consent to any transfer of less than the entire Property (other than a lease in the ordinary course of Trustor's business), or to any transfer in any form, including, but not limited to, a sale and leaseback, which has the effect of creating additional expenses to or charges against the Property.

5.2 **Acceleration on Insolvency of Trustor.** In the event (i) Trustor fails to pay its debts generally as they come due or files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors; or (ii) an involuntary petition is filed against Trustor under any bankruptcy or similar statute and such petition is not set aside or withdrawn or is still in effect within ten (10) days from the date of such filing (or such longer period as is reasonably necessary, provided Trustor promptly commences, and diligently and continuously pursues thereafter, its efforts to have the petition set aside or withdrawn); or (iii) a custodian, receiver or trustee (or other similar official) is appointed to take possession, custody or control of any of the properties of Trustor; or (iv) the Property becomes subject to the jurisdiction of a Federal Bankruptcy Court or successor to that court, or any similar state court; or (v) Trustor makes an assignment for the benefit of Trustor's creditors; or (vi) any portion of Trustor's assets is attached, executed upon or judicially seized in any manner, and such seizure is not discharged within thirty (30) days, then Beneficiary at its option and to the extent permitted by applicable law may, without prior notice, declare all sums secured by this Deed of Trust, irrespective of their stated due date(s), immediately due and payable and may exercise all rights and remedies provided in this Deed of Trust.

## ARTICLE 6 DEFAULT; REMEDIES

6.1 **Events of Default.** Trustor will be in default under this Deed of Trust upon the occurrence of any one or more of the following events (some or all collectively, "Events of Default"; any one singly, an "Event of Default"):

(a) Trustor fails to pay any money as required under this Deed of Trust and does not cure that failure within five (5) days after written notice from Beneficiary or Trustee; or

(b) Trustor fails to perform any obligation arising under this Deed of Trust other than one to pay money, and does not cure that failure within five (5) days after written notice from Beneficiary or Trustee (or such longer period as is reasonably determined by Beneficiary to be necessary for completion of the cure, so long as Trustor begins promptly and thereafter diligently continues to cure the failure); or

(c) Trustor, as lessee under the Ground Lease, fails to perform its obligations thereunder within the notice and cure periods specified therein; or

(d) The surrender, abandonment, termination (other than upon expiration of the term thereof), rescission or subordination of the Ground Lease; or

(e) A default occurs under any of the Secured Obligations and is not cured within the applicable cure period, if any.

6.2 **Acceleration Upon Default; Additional Remedies.** At any time after any Event of Default, Beneficiary may declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Property, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including attorneys' fees) upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such rents, issues and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Property or the collection, receipt and application of rents, issues or profits, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon the occurrence of any Event of Default, including the right to exercise the power of sale.

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, and/or specifically enforce any of the covenants hereof.

(c) Exercise any or all of the remedies available to a secured party under the California UNIFORM COMMERCIAL CODE, including, but not limited to:

(i) Either personally or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Trustor and all others claiming under Trustor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Trustor with respect to the Personal Property or any part thereof; provided, however, Beneficiary shall not obtain control of the Personal Property until such time as Beneficiary is eligible or is within ten (10) days of becoming eligible to record a Notice of Sale pursuant to Section 6.3 and applicable law. In the event Beneficiary demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Documents, Trustor promises and agrees to promptly turn over and deliver complete possession thereof to Beneficiary.

(ii) Without notice to or demand upon Trustor, make such payments and do such acts as Beneficiary may deem necessary to protect its security interest in the Personal Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder, and, in exercising any such powers or authority, pay all expenses incurred in connection therewith;

(iii) Require Trustor to assemble the Personal Property or any portion thereof at a place designated by Beneficiary and reasonably convenient to both parties, and promptly to deliver such Personal Property to Beneficiary, or an agent or representative designated by it. Beneficiary and

its agents and representatives shall have the right to enter upon any or all of Trustor's premises and property to exercise Beneficiary's rights hereunder;

(iv) Sell, lease or otherwise dispose of the Personal Property at public sale, with or without having the Personal Property at the place of sale, and upon such terms and in such manner as Beneficiary may determine. Beneficiary may be a purchaser at any such sale.

Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Beneficiary shall give Trustor at least ten (10) days prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof. Such notice may be mailed to Trustor at the address set forth at the beginning of this Deed of Trust.

(d) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Property to be sold, which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of the County in which the Property is located.

6.3 **Foreclosure by Power of Sale.** If Beneficiary elects to foreclose by exercise of power of sale under Subsection 6.2(d), Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(a) Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Property at the time and place of sale fixed by it in said Notice of Sale, either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(b) After deducting all costs, fees and expenses of Trustee, including costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale first to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the rate per annum in effect from time to time under the Note, then to payment of all other Secured Obligations, and the remainder, if any, to the person or persons legally entitled thereto.

(c) Trustee may postpone the sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

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

6.4 **Appointment of Receiver.** If an Event of Default has occurred and is continuing, Beneficiary as a matter of right and without notice to Trustor or anyone claiming under Trustor, and without regard to the then value of the Property or the interest of Trustor therein, shall have the right to apply to any court having

jurisdiction to appoint a receiver or receivers of the Property, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided in Section 6.2(a) above, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Property unless such receivership is sooner terminated.

6.5 **Remedies Not Exclusive.** Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any of the Secured Obligations and to exercise all rights and powers under this Deed of Trust or under any Loan Document or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Trustee or Beneficiary, or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary, and either of them may pursue inconsistent remedies.

6.6 **Request for Notice.** In accordance with California CIVIL CODE Section 2924b, Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address appearing at the beginning of this Deed of Trust.

6.7 **Environmental Provision.** Without limiting any of the remedies provided in this Deed of Trust or the other Loan Documents, Trustor acknowledges and agrees that the provisions of the Article of the Loan Agreement captioned "Hazardous Substances", the separate Unsecured Environmental Indemnity delivered by Trustor and Section 4.3 of this Deed of Trust, all constitute environmental provisions (as defined in California CODE OF CIVIL PROCEDURE Section 736(f)(2)) made by Trustor relating to the real property security ("Environmental Provisions"), and that Trustor's failure to comply with the Environmental Provisions is a breach of contract such that Beneficiary shall have the remedies provided under California CODE OF CIVIL PROCEDURE Section 736 ("Section 736") for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Beneficiary's action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of California CODE OF CIVIL PROCEDURE Section 726(a) nor shall it constitute a money judgment for a deficiency or a deficiency judgment within the meaning of California CODE OF CIVIL PROCEDURE Section 580a, 580b, 580d or 726(b). Other than the remedy provided under Section 736, all remedies provided for by the Loan Documents are separate and distinct causes of action that are not abrogated, modified, limited or otherwise affected by the remedies provided under California CODE OF CIVIL PROCEDURE Section 736(a).

## ARTICLE 7 MISCELLANEOUS

7.1 **Governing Law.** This Deed of Trust shall be governed by the laws of the State of California. In the event that any provision or clause of any of the Loan Documents conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Documents which can be given effect without the conflicting provision, and to this end the provisions of the Loan Documents are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

7.2 **Trustor Waiver of Rights.** Trustor waives (i) the benefit of all laws now existing or that hereafter may be enacted providing for any appraisalment before sale of any portion of the Property; (ii) any



applicable statute of limitations; and (iii) the benefit of all laws that may hereafter be enacted in any way extending the time for the enforcement of the collection of the Note or the debt evidenced thereby or creating or extending a period of redemption from any sale made in collecting said debt. To the full extent Trustor may do so, Trustor agrees that Trustor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and Trustor, for Trustor, Trustor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Section and now in force, of which Trustor, Trustor's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Trustor expressly waives and relinquishes any and all rights and remedies which Trustor may have or be able to assert by reason of the laws of the State of California pertaining to the rights and remedies of sureties.

7.3 **Usury.** If the limits on interest imposed by Article XV of the California Constitution are judicially determined to be applicable to the Note or any other amount secured hereby by the non-appealable order or judgment of a court with competent jurisdiction, then the total liability for the payments deemed to be interest shall not exceed the maximum interest allowed by Article XV of the California Constitution.

7.4 **Statements of Trustor.** Trustor, within ten (10) days after being given notice by mail, shall furnish to Beneficiary a written statement confirming the unpaid principal of and interest on the Note and any other amounts secured by this Deed of Trust, and stating whether any offset or defense exists against such principal and interest.

7.5 **Notices.** All notices and demands under this Deed of Trust shall be in writing, and shall be deemed served upon delivery, or if mailed, upon the first to occur of receipt thereof or three (3) days after deposit thereof in the United States Postal Service, certified mail, postage prepaid, addressed to the address of Beneficiary or Trustor appearing at the beginning of this Deed of Trust. Notices of change of address may be given in the same manner.

7.6 **Acceptance by Trustee.** Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

7.7 **Captions.** The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

7.8 **Invalidity of Certain Provisions.** If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or not fully secured by the lien of this Deed of Trust. If any provision of the Loan Documents shall be deemed void or unenforceable, it shall not affect the validity of the remaining provisions thereof which shall be considered severable.

7.9 **Subrogation.** To the extent that proceeds of the Note or advances under this Deed of Trust are used to pay any outstanding lien, charge or prior encumbrance against the Property, such proceeds or advances have been or will be advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

7.10 **No Merger.** If both the lessor's and lessee's estates under any lease or any portion thereof which constitutes a part of the Property shall at any time become vested in one owner, this Deed of Trust and

the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Property pursuant to the provisions hereof, any leases or subleases then existing and created by Trustor shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

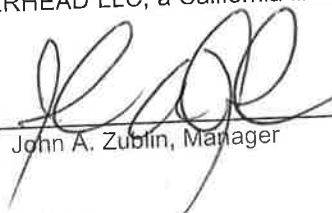
7.11 **Non-Waiver.** The acceptance by Beneficiary of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment when due of all other sums hereby secured or to declare a default as herein provided. The acceptance by Beneficiary of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon the condition that it shall not constitute a waiver of the obligation of Trustor to pay the entire sum then due, and Trustor's failure to pay said entire sum then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid, and Beneficiary or Trustee shall be at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Beneficiary thereafter of further sums on account, or otherwise, entitled to exercise all rights in this instrument conferred upon them, or either of them, upon the occurrence of a default, and the right to proceed with a sale under any notice of default, and election to sell, shall in no way be impaired, whether any of such amounts are received prior or subsequent to such notice. Consent by Beneficiary to any transaction or action of Trustor which is subject to consent or approval of Beneficiary hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive transactions or actions. At any time and from time to time, without liability therefor and without notice, and without releasing or otherwise affecting the liability of any person for payment of any indebtedness hereby secured: (i) Beneficiary at its sole, absolute and unfettered discretion may extend the time for, or release any person now or hereafter liable for, payment of any or all such indebtedness, or accept or release additional security therefor, or subordinate the lien or charge hereof; or (ii) Trustee, upon written request of Beneficiary and presentation of the Note and any additional note(s) and this Deed of Trust for endorsement, may reconvey any part of said Land, consent to the making of any map or plat thereof, join in granting any easement thereof, or join in any such agreement of extension or subordination.

**IN WITNESS WHEREOF**, Trustor has signed and delivered this Deed of Trust as of the date first above written.

**Trustor:**

COPPERHEAD LLC, a California limited liability company

By \_\_\_\_\_

  
John A. Zublin, Manager

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN DIEGO )

On MAY 2, 2012, before me, SYLVIA MARTIN, NOTARY PUBLIC (hereinset  
name and title of the officer), personally appeared JOHN ZUBELIN

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

(Seal)

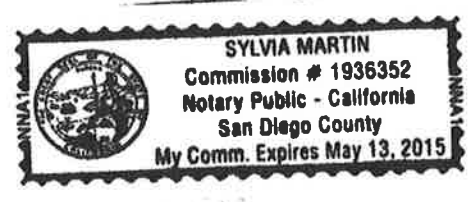


EXHIBIT A

Legal Description

The land referred to herein is situated in the State of California, County of Riverside, and described as follows:

**PARCEL 1:**

The Northerly 489.62 feet as measured along the Westerly and Easterly lines of that portion of land, being a portion of Section 7, Township 7 South, Range 2 West, San Bernardino Base and Meridian, more particularly described as follows:

COMMENCING at the Southwest corner of said Section 7 as shown by Record of Survey filed in Book 57, Page(s) 81 of Record(s) of Survey of said County;

Hereafter, the following courses are described to follow the courses as described by Exhibit A-1 of the lease agreement dated November 14, 1995 between the County of Riverside and Valley Airport Associates, a California limited liability company, and later transferred and assigned to Domenigoni Family Trust on August 7, 1996;

Thence South 89°53'17" East along the Southerly line of said Section 7 as shown by said Record of Survey, a distance of 999.66 feet;

Thence leaving said section line North 12°17'07" East, a distance of 4,439.85 feet;

Thence at a right angle South 77°42'53" East, a distance of 32.00 feet, to the Southwesterly corner of Parcel 2 described, by Exhibit A-1 of said lease agreement, and the POINT OF BEGINNING;

Thence continuing South 77°42'53" East along the Southerly line of said Parcel 2, a distance of 444.83 feet;

Thence leaving the Southerly line of said parcel (also leaving the boundary described by said lease agreement), and at a right angle South 12°17'07" West, a distance of 1,239.18 feet;

Thence at a right angle North 77°42'53" West, a distance of 444.83 feet;

Thence at a right angle North 12°17'07" East, a distance of 1,239.18 feet, to the POINT OF BEGINNING.

**PARCEL 2:**

Lots A, B, C and D as shown in the Exhibits A-1 and A-2 of the Memorandum of Lease dated \_\_\_\_\_, 2012 by and between the County of Riverside, as Landlord, and Copperhead LLC, a California limited liability company, as Tenant, recorded \_\_\_\_\_, 2012 as Instrument No. 2012-\_\_\_\_\_ of Official Records.