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Gary W. Ott  
Recorder, Salt Lake County, UT  
FOUNDERS TITLE  
BY: eCASH, DEPUTY - EF 27 P.

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Recording requested by, and after recording, please return to:  
Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, New York 10017  
Attn: Christopher Garcia

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

made by

CENTRAL REFRIGERATED SERVICE, INC., Trustor

to

FOUNDERS TITLE COMPANY, as Trustee

for the use and benefit of

MORGAN STANLEY SENIOR FUNDING, INC., as Collateral Agent, Beneficiary

Dated as of November 12, 2013  
Location: Salt Lake County, Utah

**THIS DEED OF TRUST SECURES FUTURE ADVANCES.**

**NOTE TO RECORDER:** THIS INSTRUMENT IS TO BE INDEXED AND/OR FILED AS BOTH A DEED OF TRUST AND A FINANCING STATEMENT FILED AS A FIXTURE FILING.

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ACCOMMODATION RECORDING ONLY  
FOUNDERS TITLE COMPANY MAKES NO  
REPRESENTATION AS TO CONDITION  
OF TITLE NOR DOES IT ASSUME  
ANY RESPONSIBILITY FOR VALIDITY  
SUFFICIENCY OR AFFECT OF THIS  
DOCUMENT OR THE RECORDING THEREOF

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

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, FINANCING STATEMENT AND FIXTURE FILING, dated as of November 12, 2013 is made by CENTRAL REFRIGERATED SERVICE, INC., a Nebraska corporation ("Trustor"), whose address is 2200 South 75<sup>th</sup> Avenue, Phoenix, Arizona 85043, to Founders Title Company whose address is 746 East Winchester Street, Suite 100, Salt Lake City, Utah 84107 as trustee (in such capacity, "Trustee") for the use and benefit of MORGAN STANLEY SENIOR FUNDING, INC., as Collateral Agent (in such capacity, "Beneficiary") whose address is 1 Pierrepont Plaza, 7<sup>th</sup> Floor, Brooklyn, New York 11201. References to this "Deed of Trust" shall mean this instrument and any and all renewals, modifications, amendments, supplements, extensions, consolidations, substitutions, spreaders and replacements of this instrument.

Background

A. Trustor, affiliates of the Trustor and Beneficiary have entered into a Guarantee and Collateral Agreement dated as of December 21, 2010 (as amended, supplemented, restated, replaced, substituted or otherwise modified from time to time, the "Security Agreement") with respect to the obligations under that certain Second Amended and Restated Credit Agreement, dated as of March 7, 2013 (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Credit Agreement"), among Swift Transportation Co., LLC, a Delaware limited liability company (the "Borrower"), Swift Transportation Company ("Holdings"), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), Morgan Stanley Senior Funding, Inc., as Collateral Agent, Morgan Stanley Senior Funding, Inc. and Wells Fargo Bank, National Association, as co-Syndication Agents, and Bank of America, N.A., as Administrative Agent.

B. The Credit Agreement requires the Trustor to deliver a duly executed copy of this Deed of Trust.

C. Trustor is the owner of the fee simple estate in the parcel(s) of real property described on Schedule A attached hereto (the "Land"), and owns all of the buildings, improvements, structures, and fixtures now or subsequently located on the Land (the "Improvements"; the Land and the Improvements being collectively referred to as the "Real Estate").

NOW, THEREFORE, in consideration of the premises and for other valuable consideration, the receipt and sufficiency of which the parties hereto hereby acknowledge, Trustor hereby agrees with the Beneficiary, for the ratable benefit of the Secured Parties, as follows:

Granting Clauses

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustor agrees that to secure the prompt and complete payment and performance in full when due (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code) of all Secured Obligations;

TRUSTOR HAS CONVEYED, GRANTED, BARGAINED, SOLD, ALIENATED, ENFEOFFED, RELEASED, ASSIGNED, TRANSFERRED, TRUST, WARRANTED AND SET OVER AND BY THESE PRESENTS DOES HEREBY CONVEY, GRANT, BARGAIN, SELL, ALIEN, ENFEOFF, RELEASE, ASSIGN, TRANSFER, WARRANT AND SET OVER TO TRUSTEE AND ALSO TO THE TRUSTEE'S SUCCESSORS, ASSIGNS AND SUBSTITUTES, IN TRUST WITH POWER OF SALE FOR THE BENEFIT OF BENEFICIARY, FOR THE RATABLE BENEFIT OF THE SECURED PARTIES, A CONTINUING DEED OF TRUST LIEN ON AND SECURITY INTEREST IN ALL OF THE FOLLOWING AND DOES HEREBY FURTHER GRANT, SELL AND CONVEY TO BENEFICIARY, FOR THE RATABLE BENEFIT OF THE SECURED PARTIES, INSOFAR AS ANY PROPERTY CONSTITUTES PERSONAL PROPERTY, A SECURITY INTEREST IN AND TO, TRUSTOR'S RIGHT, TITLE AND INTEREST IN AND TO ALL OF THE FOLLOWING:

(a) the Real Estate;

(b) all right, title and interest Trustor now has or may hereafter acquire in and to the Improvements or any part thereof and all the estate, right, title, claim or demand whatsoever of Trustor, in possession or expectancy, in and to the Real Estate or any part thereof;

(c) all right, title and interest of Trustor in, to and under all easements, rights of way, licenses, operating agreements, abutting strips and gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water and flowage rights, development rights, air rights, mineral and soil rights, plants, standing and fallen timber, and all estates, rights, titles, interests, privileges, licenses, tenements, hereditaments and appurtenances belonging, relating or appertaining to the Real Estate, and any reversions, remainders, rents, issues, profits and revenue thereof and all land lying in the bed of any street, road or avenue, in front of or adjoining the Real Estate to the center line thereof;

(d) all of the fixtures, chattels, business machines, machinery, apparatus, equipment, furnishings, fittings, appliances and articles of personal property of every kind and nature whatsoever, and all appurtenances and additions thereto and substitutions or replacements thereof (together with, in each case, attachments, components, parts and accessories) currently owned or subsequently acquired by Trustor and now or subsequently attached to, or contained in or used or usable in any way in connection with any operation or letting of the Real Estate, including but without limiting the generality of the foregoing, all screens, awnings, shades, blinds, curtains, draperies, artwork,

carpets, rugs, storm doors and windows, furniture and furnishings, heating, electrical, and mechanical equipment, lighting, switchboards, plumbing, ventilating, air conditioning and air-cooling apparatus, refrigerating, and incinerating equipment, escalators, elevators, loading and unloading equipment and systems, stoves, ranges, laundry equipment, cleaning systems (including window cleaning apparatus), telephones, communication systems (including satellite dishes and antennae), televisions, computers, sprinkler systems and other fire prevention and extinguishing apparatus and materials, security systems, motors, engines, machinery, pipes, pumps, tanks, conduits, appliances, fittings and fixtures of every kind and description (all of the foregoing in this paragraph (e) being referred to as the "Equipment");

(e) all right, title and interest of Trustor in and to all substitutes and replacements of, and all additions and improvements to, the Real Estate and the Equipment, subsequently acquired by or released to Trustor or constructed, assembled or placed by Trustor on the Real Estate, immediately upon such acquisition, release, construction, assembling or placement, including, without limitation, any and all building materials whether stored at the Real Estate or offsite, and, in each such case, without any further deed, conveyance, assignment or other act by Trustor;

(f) all right, title and interest of Trustor in, to and under all leases, subleases, underlettings, concession agreements, management agreements, licenses and other agreements relating to the use or occupancy of the Real Estate or the Equipment or any part thereof, now existing or subsequently entered into by Trustor and whether written or oral and all guarantees of any of the foregoing (collectively, as any of the foregoing may be amended, restated, extended, renewed or modified from time to time, the "Leases"), and all rights of Trustor in respect of cash and securities deposited thereunder and the right to receive and collect the revenues, income, rents, issues and profits thereof, together with all other rents, royalties, issues, profits, revenue, income and other benefits arising from the use and enjoyment of the Trust Property (as defined below) (collectively, the "Rents");

(g) all unearned premiums under insurance policies now or subsequently obtained by Trustor relating to the Real Estate or Equipment and Trustor's interest in and to all proceeds of any such insurance policies (including title insurance policies) including the right to collect and receive such proceeds, subject to the provisions relating to insurance generally set forth below; and all awards and other compensation, including the interest payable thereon and the right to collect and receive the same, made to the present or any subsequent owner of the Real Estate or Equipment for the taking by eminent domain, condemnation or otherwise, of all or any part of the Real Estate or any easement or other right therein;

(h) to the extent not prohibited under the applicable contract, consent, license or other item unless the appropriate consent has been obtained, all right, title and interest of Trustor in and to (i) all contracts from time to time executed by Trustor or any manager or agent on its behalf relating to the ownership, construction, maintenance, repair, operation, occupancy, sale or financing of the Real Estate or Equipment or any part thereof and all agreements and options relating to the purchase or lease of any portion of

the Real Estate or any property which is adjacent or peripheral to the Real Estate, together with the right to exercise such options and all leases of Equipment, (ii) all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Real Estate or any part thereof, and (iii) all drawings, plans, specifications and similar or related items relating to the Real Estate; and

(i) all proceeds, both cash and noncash, of the foregoing;

All of the foregoing property and rights and interests now owned or held or subsequently acquired by Trustor and described in the foregoing clauses (a) through (c) are collectively referred to as the "Premises", and those described in the foregoing clauses (a) through (i) are collectively referred to as the "Trust Property."

TO HAVE AND TO HOLD the Trust Property and the rights and privileges hereby Trust unto Beneficiary, its successors and assigns for the uses and purposes set forth, until the First Lien Secured Obligations are fully paid and performed.

In the event of a conflict between the terms of this Deed of Trust and the Credit Agreement or the Initial Other First Lien Agreement, then (to the extent permitted by law), the terms of the relevant Loan Document shall prevail. In the event of a conflict between the terms of this Deed of Trust and the Intercreditor Agreement, the terms of the Intercreditor Agreement shall prevail. In the event of a conflict between the terms of this Deed of Trust and any Secured Document other than the Credit Agreement, the Initial Other First Lien Agreement or the Intercreditor Agreement, the terms of this Agreement shall prevail.

This Deed of Trust covers present and future advances and re-advances, in the aggregate amount of the Secured Obligations, made by the Secured Parties for the benefit of Trustor, and the lien of such future advances and re-advances shall relate back to the date of this Deed of Trust.

#### Terms and Conditions

Trustor further represents, warrants, covenants and agrees with Beneficiary and the Secured Parties as follows:

1. Defined Terms. Capitalized terms used herein (including in the "Background" and "Granting Clauses" sections above) and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement or the Security Agreement, as applicable. References in this Deed of Trust to the "Default Rate" shall mean the interest rate applicable pursuant to Section 2.08(b) of the Credit Agreement.

2. Warranty of Title. Trustor warrants that it has record title in fee simple to the Real Estate, and good title to the rest of the Trust Property, subject only to the matters that are set forth in Schedule B of the title insurance policy being issued to Beneficiary to insure the lien of this Deed of Trust and any other Lien or encumbrance as permitted by the Credit Agreement (the "Permitted Exceptions"). Trustor shall warrant, defend and preserve such title and the lien of

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this Deed of Trust against all claims of all persons and entities (not including the holders of the Permitted Exceptions). Trustor represents and warrants that it has the right to Deed of Trust the Trust Property.

3. Payment of Secured Obligations. Trustor shall pay and perform the Secured Obligations at the times and places and in the manner specified in the Loan Documents.

4. Requirements. Trustor shall comply with all covenants, restrictions and conditions now or later of record which may be applicable to any of the Trust Property, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of any of the Trust Property, except where a failure to do so could not reasonably be expected to have a material adverse effect (considered both individually and together with other such failures) on (i) the current business, operations or condition (financial or otherwise) of the Trustor, (ii) the current use of the Trust Property or (iii) the value of the Trust Property (assuming its current use).

5. Payment of Taxes and Other Impositions. (a) Prior to the date on which any fine, penalty, interest or cost may be added thereto or imposed, Trustor shall pay and discharge all taxes, charges and assessments of every kind and nature, all charges for any easement or agreement maintained for the benefit of any of the Real Estate, all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges, vault taxes and all other public charges even if unforeseen or extraordinary, imposed upon or assessed against or which may become a lien on any of the Real Estate, or arising in respect of the occupancy, use or possession thereof, together with any penalties or interest on any of the foregoing (all of the foregoing are collectively referred to herein as the "Impositions"), except where (i) the validity or amount thereof is being contested in good faith by appropriate proceedings, (ii) the Trustor has set aside on its books adequate reserves with respect thereto in accordance with GAAP, or (iii) except as otherwise permitted by the Credit Agreement. Upon written request by Beneficiary, Trustor shall deliver to Beneficiary evidence reasonably acceptable to Beneficiary showing the payment of any such Imposition. If by law any Imposition, at Trustor's option, may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Trustor may elect to pay such Imposition in such installments and shall be responsible for the payment of such installments with interest, if any.

(b) Beneficiary may pay any Imposition after the date such Imposition shall have become delinquent, and add to the Secured Obligations the amount so paid, together with interest from the time of payment at the Default Rate. Any sums paid by Beneficiary in discharge of any Impositions shall be (i) a lien on the Premises secured hereby prior to any right or title to, interest in, or claim upon the Premises subordinate to the lien of this Deed of Trust, and (ii) payable on demand by Trustor to Beneficiary together with interest at the Default Rate as set forth above.

6. Insurance. (a) Trustor shall maintain, with financially sound and reputable companies, insurance policies (i) insuring the Real Estate against loss by fire, explosion, theft and such other casualties in amounts not less than the usual amounts insured for in the same general area by companies engaged in the same or similar business, and (ii) insuring Trustor, the Beneficiary and the other Secured Parties against liability for personal injury and property

damage relating to such Real Estate, such policies to be in such form and amounts and having such coverage as may be reasonably satisfactory to the Beneficiary. All such insurance shall (i) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by the Beneficiary of written notice thereof, (ii) name the Beneficiary as an additional insured party or loss payee, or (iii) include deductibles consistent with past practice or consistent with industry practice.

(b) If any portion of the Premises is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable agency, Trustor shall maintain or cause to be maintained, flood insurance in an amount equal to the lesser of: (i) the minimum amount required, under the terms of the coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the debt if replacement cost coverage is not available for the type of buildings insured), or (ii) the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended.

(c) Trustor promptly shall comply with and conform in all material respects to (i) all provisions of each such insurance policy, and (ii) all requirements of the insurers applicable to Trustor or to any of the Trust Property or to the use, manner of use, occupancy, possession, operation, maintenance, alteration or repair of any of the Trust Property. Trustor shall not use or permit the use of the Trust Property in any manner which would permit any insurer to cancel any insurance policy or void coverage required to be maintained by this Deed of Trust.

(d) If Trustor is in default of its obligations to insure or deliver any such prepaid policy or policies, then Beneficiary, at its option upon 10 Business Days' notice to Trustor, may effect such insurance from year to year at rates substantially similar to the rate at which Trustor had insured the Premises, and pay the premium or premiums therefor, and Trustor shall pay to Beneficiary on demand such premium or premiums so paid by Beneficiary with interest from the time of payment at the Default Rate.

(e) If the Trust Property, or any part thereof, shall be destroyed or damaged and the reasonably estimated repair or replacement cost thereof would exceed \$500,000, Trustor shall give prompt notice thereof to Beneficiary. All insurance proceeds paid or payable in connection with any damage or casualty to the Real Estate shall be applied in the manner specified in the Credit Agreement.

(f) In the event of foreclosure of this Deed of Trust or other transfer of title to the Trust Property, all right, title and interest of Trustor in and to any insurance policies then in force shall pass to the purchaser or grantee to the extent permitted by applicable law.

7. Restrictions on Liens and Encumbrances. Except for the lien of this Deed of Trust and the Permitted Exceptions and except as may be expressly permitted by the Credit Agreement, Trustor shall not further Deed of Trust, nor otherwise encumber the Trust Property nor create or suffer to exist any lien, charge or encumbrance on the Trust Property, or any part thereof, whether superior or subordinate to the lien of this Deed of Trust and whether recourse or non-recourse.

8. Due on Sale and Other Transfer Restrictions. Except as expressly permitted under the Credit Agreement, Trustor shall not sell, transfer, convey or assign all or any portion of, or any interest in, the Trust Property.

9. Condemnation/Eminent Domain. Promptly upon obtaining knowledge of the institution of any proceedings for the condemnation of the Trust Property, or any material portion thereof, Trustor will notify Beneficiary of the pendency of such proceedings. All awards and proceeds relating to such condemnation shall be deemed Net Cash Proceeds and applied in the manner specified in the Credit Agreement.

10. Leases. Except as expressly permitted under the Credit Agreement, including, but not limited to, Section 7.02 of the Credit Agreement, Trustor shall not (a) execute an assignment or pledge of any Lease relating to all or any portion of the Trust Property other than in favor of Beneficiary, or (b) execute or permit to exist any Lease of any of the Trust Property.

11. Further Assurances. To further assure Beneficiary's rights under this Deed of Trust, Trustor agrees promptly upon reasonable demand of Beneficiary to do any act or execute any additional documents (including, but not limited to, security agreements on any personalty included or to be included in the Trust Property and a separate assignment of each Lease in recordable form) as may be reasonably required by Beneficiary to confirm the lien of this Deed of Trust and all other rights or benefits conferred on Beneficiary by this Deed of Trust.

12. Beneficiary's Right to Perform. If Trustor fails to perform any of the covenants or agreements of Trustor, within the applicable grace period, if any, provided for in the Credit Agreement, Beneficiary, without waiving or releasing Trustor from any obligation or default under this Deed of Trust, may (but shall be under no obligation to), at any time upon 10 Business Days' written notice to Trustor pay or perform the same, and the amount or cost thereof, with interest at the Default Rate, shall immediately be due from Trustor to Beneficiary and the same shall be secured by this Deed of Trust and shall be a lien on the Trust Property prior to any right, title to, interest in, or claim upon the Trust Property attaching subsequent to the lien of this Deed of Trust. No payment or advance of money by Beneficiary under this Section shall be deemed or construed to cure Trustor's default or waive any right or remedy of Beneficiary.

13. Remedies. (a) Upon the occurrence and during the continuance of any Event of Default, Beneficiary may immediately take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Trustor and in and to the Trust Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such manner as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Beneficiary:

(i) Beneficiary may, to the extent permitted by applicable law, (A) institute and maintain an action of Deed of Trust foreclosure against all or any part of the Trust Property, (B) institute and maintain an action on the Credit Agreement, the Security Agreement, or any other Loan Document, (C) sell all or part of the Trust Property (Trustor expressly granting to Beneficiary the power of sale), or (D) take such other action at law or in equity for the enforcement of this Deed of Trust or any of the Loan Documents as the law may allow. Beneficiary



may proceed in any such action to final judgment and execution thereon for all sums due hereunder, together with interest thereon at the Default Rate and all costs of suit, including, without limitation, reasonable attorneys' fees and disbursements. Interest at the Default Rate shall be due on any judgment obtained by Beneficiary from the date of judgment until actual payment is made of the full amount of the judgment; and

(ii) Beneficiary may personally, or by its agents, attorneys and employees and without regard to the adequacy or inadequacy of the Trust Property or any other collateral as security for the Secured Obligations enter into and upon the Trust Property and each and every part thereof and exclude Trustor and its agents and employees therefrom without liability for trespass, damage or otherwise (Trustor hereby agreeing to surrender possession of the Trust Property to Beneficiary upon demand at any such time) and use, operate, manage, maintain and control the Trust Property and every part thereof. Following such entry and taking of possession, Beneficiary shall be entitled, without limitation, (x) to lease all or any part or parts of the Trust Property for such periods of time and upon such conditions as Beneficiary may, in its discretion, deem proper, (y) to enforce, cancel or modify any Lease and (z) generally to execute, do and perform any other act, deed, matter or thing concerning the Trust Property as Beneficiary shall deem appropriate as fully as Trustor might do.

(b) In case of a trustee's sale or foreclosure sale, the Real Estate may be sold, at Beneficiary's election, in one parcel or in more than one parcel and Beneficiary is specifically empowered (without being required to do so, and in its sole and absolute discretion) to cause successive sales of portions of the Trust Property to be held.

(c) In the event of any breach of any of the covenants, agreements, terms or conditions contained in this Deed of Trust, Beneficiary shall be entitled to enjoin such breach and obtain specific performance of any covenant, agreement, term or condition and Beneficiary shall have the right to invoke any equitable right or remedy as though other remedies were not provided for in this Deed of Trust.

(d) It is agreed that if an Event of Default shall occur and be continuing, any and all proceeds of the Trust Property received by Beneficiary shall be held by Beneficiary for the benefit of the Secured Parties as collateral security for the Secured Obligations (whether matured or unmatured), and shall be applied in payment of the Secured Obligations in the manner set forth in Section 7.5 of the Security Agreement.

14. Right of Beneficiary to Credit Sale. Upon the occurrence of any sale made under this Deed of Trust, whether made under the power of sale or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Beneficiary may bid for and acquire the Trust Property or any part thereof. In lieu of paying cash therefor, Beneficiary may make settlement for the purchase price by crediting upon the Secured Obligations or other sums secured by this Deed of Trust, the net sales price after deducting therefrom the expenses of sale and the cost of the action and any other sums which Beneficiary is authorized to deduct under this Deed of Trust. In such event, this Deed of Trust, the applicable Loan Documents and documents evidencing expenditures secured hereby may be presented to the person or persons conducting the sale in order that the amount so used or applied may be credited upon the Secured Obligations as having been paid.

15. Appointment of Receiver. If an Event of Default shall have occurred and be continuing, Beneficiary as a matter of right and upon five (5) Business Days' prior written notice to Trustor, unless otherwise required by applicable law, and without regard to the adequacy or inadequacy of the Trust Property or any other collateral or the interest of Trustor therein as security for the Secured Obligations, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers, other manager, trustee, liquidator or conservator of the Trust Property, without requiring the posting of a surety bond, and without reference to the adequacy or inadequacy of the value of the Trust Property or the solvency or insolvency of Trustor or any other party obligated for payment of all or any part of the Secured Obligations, and whether or not waste has occurred with respect to the Trust Property, and Trustor hereby irrevocably consents to such appointment. Any such receiver or receivers or manager 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 this Deed of Trust, including, without limitation and to the extent permitted by law, the right to enter into leases upon reasonable terms with respect to all or any part of the Trust Property, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Trust Property unless such receivership is sooner terminated.

16. Extension, Release, etc. (a) Without affecting the lien or charge of this Deed of Trust upon any portion of the Trust Property not then or theretofore released as security for the full amount of the Secured Obligations, Beneficiary may, from time to time and without notice, agree to (i) release any person liable for the indebtedness borrowed or guaranteed under the Loan Documents, (ii) extend the maturity or alter any of the terms of the indebtedness borrowed or guaranteed under the Loan Documents or any other guaranty thereof, (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 Trust Property, (v) take or release any other or additional security for any obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto.

(b) No recovery of any judgment by Beneficiary and no levy of an execution under any judgment upon the Trust Property or upon any other property of Trustor shall affect the lien of this Deed of Trust or any liens, rights, powers or remedies of Beneficiary hereunder, and such liens, rights, powers and remedies shall continue unimpaired.

(c) If Beneficiary shall have the right to foreclose this Deed of Trust or to direct a Beneficiary to exercise its power of sale, Trustor authorizes Beneficiary at its option to foreclose the lien of this Deed of Trust (or direct Beneficiary to sell the Trust Property, as the case may be) subject to the rights of any tenants of the Trust Property. The failure to make any such tenants parties defendant to any such foreclosure proceeding and to foreclose their rights, or to provide notice to such tenants as required in any statutory procedure governing a sale of the Trust Property by Beneficiary, or to terminate such tenant's rights in such sale, will not be asserted by Trustor as a defense to any proceeding instituted by Beneficiary to collect the Secured Obligations or to foreclose the lien of this Deed of Trust.

(d) Unless expressly provided otherwise, in the event that ownership of this Deed of Trust and title to the Trust Property or any estate therein shall become vested in the same person or entity, this Deed of Trust shall not merge in such title but shall continue as a valid lien on the Trust Property for the amount secured hereby.

17. Security Agreement under Uniform Commercial Code. (a) It is the intention of the parties hereto that this Deed of Trust shall constitute a "security agreement" within the meaning of the Uniform Commercial Code (the "Code") of the State in which the Trust Property is located. If an Event of Default shall occur and be continuing under this Deed of Trust, then in addition to having any other right or remedy available at law or in equity, Beneficiary shall have the option of either (i) proceeding under the Code and exercising such rights and remedies as may be provided to a secured party by the Code with respect to all or any portion of the Trust Property which is personal property (including, without limitation, taking possession of and selling such property) or (ii) treating such property as real property and proceeding with respect to both the real and personal property constituting the Trust Property in accordance with Beneficiary's rights, powers and remedies with respect to the real property (in which event the default provisions of the Code shall not apply). If Beneficiary shall elect to proceed under the Code, then ten (10) Business Days' notice of sale of the personal property shall be deemed reasonable notice and the reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Beneficiary shall include, but not be limited to, reasonable attorneys' fees and legal expenses. At Beneficiary's request, and upon reasonable prior written notice delivered to Trustor by Beneficiary, Trustor shall assemble the personal property and make it available to Beneficiary at a place designated by Beneficiary which is reasonably convenient to both parties.

(b) Certain portions of the Trust Property are or will become "fixtures" (as that term is defined under the Code) on the Land, and this Deed of Trust, upon being filed for record in the real estate records of the county wherein such fixtures are situated, shall operate also as a financing statement filed and indexed as a fixture filing in accordance with the applicable provisions of said Code upon such portions of the Trust Property which are fixtures and any personal property that may now be or hereafter become fixtures. The addresses of the Trustor, as debtor, and Beneficiary, as secured party, are set forth in the first page of this Deed of Trust.

(c) The real property to which the fixtures relate is described in Schedule A attached hereto. The record owner of the real property described in Schedule A hereto is Trustor. The name, type organization and jurisdiction of organization of the debtor for purposes of this financing statement are the name, type of organization and jurisdiction of organization of the

Trustor set forth in the first paragraph of this Deed of Trust, and the name of the secured party for purposes of this financing statement is the name of the Beneficiary set forth in the first paragraph of this Deed of Trust. The mailing address of the Trustor/debtor is the address of the Trustor set forth in the first paragraph of this Deed of Trust. The mailing address of the Beneficiary/secured party from which information concerning the security interest hereunder may be obtained is the address of the Beneficiary set forth in the first paragraph of this Deed of Trust. Trustor's organizational identification number is 10032618.

18. Assignment of Rents. (a) Trustor hereby assigns to Beneficiary all of Trustor's right, title and interest in, to and under the Leases and the Rents as further security for the payment of and performance of the Secured Obligations, and Trustor grants to Beneficiary the right to enter the Trust Property for the purpose of collecting the same and to let the Trust Property or any part thereof, and to apply the Rents on account of the Secured Obligations. The foregoing assignment and grant is present and absolute and shall continue in effect until the Secured Obligations are fully paid and performed, but Beneficiary hereby waives the right to enter the Trust Property for the purpose of collecting the Rents and Trustor shall be entitled to collect, receive, use and retain the Rents until the occurrence and during the continuance of an Event of Default under this Deed of Trust. Such right of Trustor to collect, receive, use and retain the Rents may be revoked by Beneficiary upon the occurrence and during the continuance of any Event of Default under this Deed of Trust by giving not less than five (5) Business Days' prior written notice of such revocation to Trustor; and in the event such notice is given, Trustor shall pay over to Beneficiary, or to any receiver appointed to collect the Rents, any lease security deposits in Trustor's possession or under Trustor's control. Trustor shall not accept prepayments of installments of Rent to become due for a period of more than one month in advance (except for security deposits and estimated payments of percentage rent, if any).

(b) Trustor has not affirmatively done any act which would prevent Beneficiary from, or limit Beneficiary in, acting under any of the provisions of the foregoing assignment.

(c) Except for any matter disclosed in the Loan Documents, no action has been brought or, so far as is known to Trustor, is threatened, which would interfere in any way with the right of Trustor to execute the foregoing assignment and perform all of Trustor's obligations contained in this Section.

19. Additional Rights. The holder of any subordinate lien or subordinate Deed of Trust on the Trust Property shall have no right to terminate any Lease whether or not such Lease is subordinate to this Deed of Trust nor shall Trustor consent to any holder of any subordinate lien or subordinate Deed of Trust joining any tenant under any Lease in any action to foreclose the lien or modify, interfere with, disturb or terminate the rights of any tenant under any Lease. By recordation of this Deed of Trust all subordinate lienholders and the Beneficiaries and beneficiaries under subordinate Deed of Trusts are subject to and notified of this provision, and any action taken by any such lienholder or beneficiary contrary to this provision shall be null and void. Any such application shall not be construed to cure or waive any Default or Event of Default or invalidate any act taken by Beneficiary on account of such Default or Event of Default.

20. Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in the notice provisions of the Credit Agreement.

21. No Oral Modification. Neither this Deed of Trust nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Beneficiary and the Trustor, subject to any consent required in accordance with the Credit Agreement or the Intercreditor Agreement.

22. Partial Invalidity. In the event any one or more of the provisions contained in this Deed of Trust shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included. Notwithstanding anything contained in this Deed of Trust or in any provisions of any Loan Document, the obligations of Trustor and of any other obligor under any Loan Documents shall be subject to the limitation that Beneficiary shall not charge, take or receive, nor shall Trustor or any other obligor be obligated to pay to Beneficiary, any amounts constituting interest in excess of the maximum rate permitted by law to be charged by Beneficiary.

23. Trustor's Waiver of Rights. (a) Trustor hereby voluntarily and knowingly releases and waives any and all rights to retain possession of the Trust Property after the occurrence and during the continuation of an Event of Default hereunder and the exercise by Beneficiary of its remedies hereunder and any and all rights of redemption from sale under any order or decree of foreclosure (whether full or partial), pursuant to rights, if any, therein granted, as allowed under any applicable law, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirectly) by, through or under each constituent of Trustor and on behalf of each and every person acquiring any interest in the Trust Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of each constituent of Trustor and all such other persons are and shall be deemed to be hereby waived to the fullest extent permitted by applicable law or replacement statute. Each constituent of Trustor shall not invoke or utilize any such law or laws or otherwise hinder, delay, or impede the execution of any right, power or remedy herein or otherwise granted or delegated to Beneficiary, but shall permit the execution of every such right, power, and remedy as though no such law or laws had been made or enacted.

(b) To the fullest extent permitted by law, Trustor waives the benefit of all laws now existing or that may subsequently be enacted providing for (i) any appraisal before sale of any portion of the Trust Property, (ii) any extension of the time for the enforcement of the collection of the Secured Obligations or the creation or extension of a period of redemption from any sale made in collecting such debt and (iii) exemption of the Trust Property from attachment, levy or sale under execution or exemption from civil process. 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, exemption, extension or redemption, or requiring foreclosure of this Deed of Trust before exercising any other remedy granted hereunder and Trustor, for Trustor and its successors and assigns, and for any and all persons ever claiming any interest in the Trust 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 (except as expressly provided in the Loan

Documents) or declare due the whole of the secured indebtedness and marshalling in the event of exercise by Beneficiary of the foreclosure rights, power of sale, or other rights hereby created.

24. Remedies Not Exclusive. Beneficiary shall be entitled to enforce payment and performance of the Secured Obligations and to exercise all rights and powers under this Deed of Trust or under any of the other Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by Deed of Trust, security agreement, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement shall prejudice or in any manner affect Beneficiary's rights to realize upon or enforce any other security now or hereafter held by Beneficiary, it being agreed that Beneficiary shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary in such order and manner as Beneficiary may determine in its absolute discretion. No remedy herein conferred upon or reserved to 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 Beneficiary or to which either may otherwise be entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Beneficiary, as the case may be. In no event shall Beneficiary, in the exercise of the remedies provided in this Deed of Trust (including, without limitation, in connection with the assignment of Rents to Beneficiary, or the appointment of a receiver and the entry of such receiver on to all or any part of the Trust Property), be deemed a "Beneficiary in possession," and Beneficiary shall not in any way be made liable for any act, either of commission or omission, in connection with the exercise of such remedies.

25. Multiple Security. If (a) the Premises shall consist of one or more parcels, whether or not contiguous and whether or not located in the same county, or (b) in addition to this Deed of Trust, Beneficiary shall now or hereafter hold or be the beneficiary of one or more additional Deed of Trusts, liens, deeds of trust or other security (directly or indirectly) for the Secured Obligations upon other property in the State in which the Premises are located (whether or not such property is owned by Trustor or by others) or (c) both the circumstances described in clauses (a) and (b) shall be true, then to the fullest extent permitted by law, Beneficiary may, at its election, commence or consolidate in a single foreclosure action all foreclosure proceedings instituted in accordance with the terms and conditions of this Deed of Trust against all such collateral securing the Secured Obligations (including the Trust Property), which action may be brought or consolidated in the courts of, or sale conducted in, any county in which any of such collateral is located. Trustor acknowledges that the right to maintain a consolidated foreclosure action is a specific inducement to Beneficiary to extend the indebtedness borrowed pursuant to or guaranteed by the Loan Documents, and Trustor expressly and irrevocably waives any objections to the commencement or consolidation of the foreclosure proceedings in a single action and any objections to the laying of venue or based on the grounds of forum non conveniens which it may now or hereafter have. Trustor further agrees that if Beneficiary shall be prosecuting one or more foreclosure or other proceedings against a portion of the Trust Property or against any collateral other than the Trust Property, which collateral directly or indirectly secures the Secured Obligations, or if Beneficiary shall have obtained a judgment of foreclosure and sale or similar judgment against such collateral, then, whether or not such proceedings are being

maintained or judgments were obtained in or outside the State in which the Premises are located, Beneficiary may commence or continue any foreclosure proceedings and exercise its other remedies granted in this Deed of Trust against all or any part of the Trust Property and Trustor waives any objections to the commencement or continuation of a foreclosure of this Deed of Trust or exercise of any other remedies hereunder based on such other proceedings or judgments, and waives any right to seek to dismiss, stay, remove, transfer or consolidate either any action under this Deed of Trust or such other proceedings on such basis. Neither the commencement nor continuation of proceedings to foreclose this Deed of Trust, nor the exercise of any other rights hereunder nor the recovery of any judgment by Beneficiary in any such proceedings or the occurrence of any sale in any such proceedings shall prejudice, limit or preclude Beneficiary's right to commence or continue one or more foreclosure or other proceedings or obtain a judgment against any other collateral (either in or outside the State in which the Premises are located) which directly or indirectly secures the Secured Obligations, and Trustor expressly waives any objections to the commencement of, continuation of, or entry of a judgment in such other sales or proceedings or exercise of any remedies in such sales or proceedings based upon any action or judgment connected to this Deed of Trust, and Trustor also waives any right to seek to dismiss, stay, remove, transfer or consolidate either such other sales or proceedings or any sale or action under this Deed of Trust on such basis. It is expressly understood and agreed that to the fullest extent permitted by law, Beneficiary may, at its election, cause the sale of all collateral which is the subject of a single foreclosure action at either a single sale or at multiple sales conducted simultaneously and take such other measures as are appropriate in order to effect the agreement of the parties to dispose of and administer all collateral securing the Secured Obligations (directly or indirectly) in the most economical and least time-consuming manner.

26. Successors and Assigns. All covenants of Trustor contained in this Deed of Trust are imposed solely and exclusively for the benefit of Beneficiary, and its successors and assigns, and no other person or entity shall have standing to require compliance with such covenants or be deemed, under any circumstances, to be a beneficiary of such covenants, any or all of which may be freely waived in whole or in part by Beneficiary at any time if, in its sole discretion, such a waiver is deemed advisable. All such covenants of Trustor shall run with the land and bind Trustor, the successors and assigns of Trustor and all subsequent owners, encumbrancers and tenants of the Trust Property, and shall inure to the benefit of Beneficiary and its successors and assigns. If there shall be more than one Trustor, the obligations of the Trustors shall be joint and several.

27. No Waivers, etc. Any failure by Beneficiary to insist upon the strict performance by Trustor of any of the terms and provisions of this Deed of Trust shall not be deemed to be a waiver of any of the terms and provisions hereof, and Beneficiary, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Trustor of any and all of the terms and provisions of this Deed of Trust to be performed by Trustor. Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Trust Property, any part of the security held for the Secured Obligations without, as to the remainder of the security, in any way impairing or affecting the lien of this Deed of Trust or the priority of such lien over any subordinate lien or Deed of Trust.

28. Governing Law, etc. This Deed of Trust shall be governed by and construed and interpreted in accordance with the laws of the State in which the Trust Property is located, except that Trustor expressly acknowledges that by their respective terms the other Loan Documents shall be governed and construed in accordance with the laws of the State of New York, and for purposes of consistency, Trustor agrees that in any in personam proceeding related to this Deed of Trust the rights of the parties to this Deed of Trust shall also be governed by and construed in accordance with the laws of the State of New York governing contracts made and to be performed in that State.

29. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Deed of Trust shall be used interchangeably in singular or plural form and the word "Trustor" shall mean "each Trustor or any subsequent owner or owners of the Trust Property or any part thereof or interest therein," the word "Beneficiary" shall mean "Beneficiary or any successor agent for the Lenders," the word "person" shall include any individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, or other entity, and the words "Trust Property" shall include any portion of the Trust Property or interest therein. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. The captions in this Deed of Trust are for convenience or reference only and in no way limit or amplify the provisions hereof.

30. Enforcement of Expenses; Indemnification. (a) Trustor agrees to pay or reimburse the Beneficiary and each Lender for all its reasonable and documented out-of-pocket costs and expenses incurred in collecting against Trustor or enforcing or preserving any rights under this Deed of Trust, including, without limitation, the reasonable and documented fees and disbursements of one local counsel to each Lender retained by the Beneficiary in each relevant jurisdiction and of one primary counsel to the Beneficiary.

(b) Trustor agrees to pay, and to save the Beneficiary and the Lenders harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Trust Property or in connection with any of the transactions contemplated by the Loan Documents.

(c) Trustor agrees to pay, and to save the Beneficiary and the Lenders harmless from, any and all liabilities obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Deed of Trust to the extent the Trustor would be required to do so pursuant to Section 10.04 of the Credit Agreement.

(d) The agreements in this Section 30 shall survive repayment of the Secured Obligations and all other amounts payable under the Loan Documents.

31. Last Dollars Secured; Priority. This Deed of Trust secures only a portion of the indebtedness owing or which may become owing by Trustor to the Secured Parties. The parties



agree that any payments or repayments of such indebtedness shall be and be deemed to be applied first to the portion of the indebtedness that is not secured hereby, it being the parties' intent that the portion of the indebtedness last remaining unpaid shall be secured hereby. If at any time this Deed of Trust shall secure less than all of the principal amount of the Secured Obligations, it is expressly agreed that any repayments of the principal amount of the Secured Obligations shall not reduce the amount of the lien of this Deed of Trust until the lien amount shall equal the principal amount of the Secured Obligations outstanding.

32. Release; Termination. (a) Upon (i) the Disposition of any portion of the Trust Property in accordance with the Credit Agreement or (ii) the occurrence of the Termination Date, the liens and security interests granted herein shall automatically terminate with respect to (A) such portion of the Trust Property (In the case of clause (i)) or (B) all of the Trust Property (in the case of clause (ii)). Upon the Disposition or termination, the Beneficiary will, at the Trustor's sole expense, deliver to Trustor, without any representations, warranties or recourse of any kind whatsoever, all termination statements, releases and similar documents that Trustor shall reasonably request to evidence such termination; provided that the Beneficiary shall not be required to take any action or execute or deliver any document if doing so would violate the terms of the Loan Documents.

(b) Upon any assignment, transfer or other disposition of all or any portion of the Trust Property in accordance with the terms of the Loan Documents, the Liens of the Beneficiary in such Trust Property shall be automatically released. The Beneficiary shall execute and deliver to Trustor, at such Trustor's expense, all termination statements, releases and similar documents that the Trustor may reasonably request to evidence the release of such item of Trust Property from the Lien granted hereby; provided that the Beneficiary shall not be required to take any action or execute or deliver any document if doing so would violate the terms of the Loan Documents.

(c) Any execution and delivery of termination statements, releases or other documents pursuant to this Section 32 shall be without recourse to or warranty by the Beneficiary.

#### Trustee Provisions

(a) Acceptance by Trustee. Trustee accepts its duties and obligations under this Deed of Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

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

(c) Substitute Trustee. In case of the resignation of the Trustee, or the inability (through death or otherwise), refusal or failure of the Trustee to act, or at the option of Beneficiary or the holder(s) of a majority of the Secured Obligations for any other reason (which reason need not be stated), a substitute Trustee ("Substitute Trustee") may be named, constituted and appointed by Beneficiary or the holder(s) of a majority of the Secured Obligations, without other formality than an appointment and designation in writing, which appointment and designation shall be full evidence of the right and authority to make the same and of all facts therein recited, and this conveyance shall vest in the Substitute Trustee the title, powers and duties herein conferred on the Trustee originally named herein, and the conveyance of the Substitute Trustee to the purchaser(s) at any sale of the Property of any part thereof shall be equally valid and effective. The right to appoint a Substitute Trustee shall exist as often and whenever from any of said causes, the Trustee, original or Substitute Trustee, resigns or cannot, will not or does not act, or Beneficiary or the holder(s) of a majority of the Secured Obligations desires to appoint a new Trustee. No bond shall ever be required of the Trustee, original or Substitute Trustee. The recitals in any conveyance made by the Trustee, original or Substitute, shall be accepted and construed in court and elsewhere as prima facie evidence and proof of the facts recited, and no other proof shall be required as to the request by Beneficiary or the holders(s) of a majority of Secured Obligations to the Trustee to enforce this Deed of Trust, or as to the notice of or holding of the sale, or as to any particulars thereof, or as to the resignation of the Trustee, original or Substitute, or as to the inability, refusal or failure of the Trustee, original or Substitute Trustee, to act, or as to the election of Beneficiary or the holder(s) of a majority of the Secured Obligations to appoint a new Trustee, or as to appointment of a Substitute Trustee, and all prerequisites of said sale shall be presumed to have been performed; and each sale made under the powers herein granted shall be a perpetual bar against Trustor and the heirs, personal representatives, successors and assigns of Trustor. Trustee, original or substitute, is hereby authorized and empowered to appoint any one or more persons as attorney-in-fact to act as Trustee under it and in its name, place and stead in order to take any actions that Trustee is authorized and empowered to do hereunder, such appointment to be evidenced by an instrument signed and acknowledged by said Trustee, original or Substitute Trustee; and all acts done by said attorney-in-fact shall be valid, lawful and binding as if done by said Trustee, original or Substitute Trustee, in person

34. State Specific Provisions.

(a) Conflicts. To the extent of any inconsistency between this Section and the other provisions of this Deed of Trust, the terms and provisions of this Section shall govern and control.

(b) Uniform Commercial Code. All references to the Uniform Commercial Code shall be deemed to be references to Utah Code Annotated Sections 70A-1-101, et. seq. (the "Utah UCC"). In particular, all references to Article 9 of the Uniform Commercial Code shall be deemed to be references to Article 9a of the Utah UCC and all references to subsections of Article 9 shall be to corresponding subsections of Article 9a of the Utah UCC notwithstanding the fact that the State of Utah has adopted an alternate numbering system for such subsections.

(c) Utah Trust Deed Act. In the event of any inconsistency between of the provisions of the Deed of Trust and the provisions of *Utah Code Annotated* Title 57, the provisions of *Utah Code Annotated* Title 57 shall control. In addition, in the event of any amendment to the provisions of *Utah Code Annotated* Title 57 or other provisions of *Utah Code Annotated* referenced in the Deed of Trust, the Deed of Trust shall, at the sole election of Beneficiary, be deemed amended to be consistent with such amendments or Beneficiary may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

(d) Duration of Deed of Trust; Release. This Deed of Trust and all of the terms, conditions, and obligations contained in this Deed of Trust shall continue in full force and effect until such time as all indebtedness under the Secured Obligations have been fully and finally paid and performed, at which time this Deed of Trust shall be void, and Lender agrees to cause Trustee to execute an instrument evidencing the satisfaction of all obligations under this Deed of Trust and releasing this Deed of Trust as required pursuant to *Utah Code Annotated* Section 57-1-38. As a condition to such release, Trustor agrees to reimburse Lender for Lender's and Trustee's reasonable out-of-pocket expenses incurred in connection with the release, and Trustor shall also pay Lender a reasonable processing fee in connection with such release, neither of which shall be in excess of the maximum amount permitted by *Utah Code Annotated* Section 57-1-21.5 .

(e) Mechanic's Liens. Section 2.10 of the Deed of Trust is hereby amended as follows solely with respect to Liens and Encumbrances which are subject to Title 38 Part 1 of *Utah Code Annotated*:

(i) If any construction or renovation occurs on the Trust Property, Trustor shall timely comply with all requirements of Title 38 Part 1 of *Utah Code Annotated* with regard to filings and notices and further agrees that Lender may file a Notice of Commencement and Notice of Completion as contemplated by *Utah Code Annotated* Section 38-1-31 and *Utah Code Annotated* Section 38-1-33, in each case in the State Construction Registry of the State of Utah. Trustor shall cause Lender to be named as a person interested in receiving electronic notices of all filings with respect to the Premises in the State Construction Registry in accordance with *Utah Code Annotated* Section 38-1-27(3). Trustor shall also provide to Lender copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Premises. Trustor shall, upon completion of the Improvements, promptly file a notice of completion in the State Construction Registry as permitted by *Utah Code Annotated* Section 38-1-33.

(ii) Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Premises, or any part thereof or interest therein whether inferior or superior to this Deed of Trust and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected or that hereafter may be erected on the Premises regardless of by whom such services, labor or materials

may have been contracted, provided, however, that Trustor shall have the right to contest any such claim or lien so long as Trustor previously records a notice of release of lien and substitution of alternate security as contemplated by *Utah Code Annotated* Section 38-1-28 and otherwise complies with the requirements of *Utah Code Annotated* Section 38-1-28 to release the Trust Property from such lien or claim. Notwithstanding the foregoing, Trustor may, with the prior written consent of Lender, contest the amount of any such lien or claim related to services, labor or materials in accordance with *Utah Code Annotated* Section 38-1-28(7) without previously recording a notice of release of lien and substitution of alternate security.

(iii) If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, or if Trustor shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Lender, Lender may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Premises from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account Trustor of and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by *Utah Code Annotated* Section 38-1-28 or other applicable law, or otherwise by giving security for such claim. Trustor shall, immediately upon demand therefor by Lender, pay to Lender an amount equal to all costs and expenses incurred by Lender in connection with the exercise by Lender of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any Bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Note.

(f) Mixed Collateral Personal Property Remedies. It is the express understanding and intent of the parties that as to any personal property interests subject to Article 9a of the Utah UCC, Beneficiary, upon an Event of Default, may proceed under the Utah UCC or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect of real property, and treat both real and personal property interests as one parcel or package of security as permitted by *Utah Annotated Code* § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with *Utah Annotated Code* § 57-1-30 or other applicable law.

(g) Rents Upon Default. No credit shall be given by Beneficiary for any sum or sums received from the Rents of the Trust Property until the money collected is actually received by Beneficiary at its principal office, or at such other place as Beneficiary shall designate in writing, and no such credit shall be given for any uncollected Rents or other uncollected amounts or bills, nor shall such credit be given for any Rents derived from the Trust Property after foreclosure or other transfer of the Trust Property (or part thereof from which rents, issues and/or profits are derived pursuant to the Security Agreement or by agreement) to Beneficiary or any other third party. Receipt of Rent by Beneficiary shall not be deemed to constitute a pro-tanto payment of the indebtedness evidenced by,

or arising under, the Security Agreement, the Credit Agreement, this Deed of Trust or any of the other Loan Documents, but shall be applied as provided above.

(h) Security Agreement. In addition to the provisions of Section 17 entitled "Security Agreement under Uniform Commercial Code", this Security Agreement shall also be effective as a financing statement covering as-extracted minerals or the like (including oil and gas) and accounts subject to *Utah Annotated Code* § 70A-9a-301(d) and is to be filed for record in the real estate records of the county where the Property is situated. The mailing address of Trustor and the address of Beneficiary from which information concerning the security interest may be obtained are set forth above.

(i) Remedies. If an Event of Default occurs, in addition to any other rights and remedies provided by the Security Agreement, Beneficiary, or any person designated by Beneficiary or the Lenders acting by or through Trustee, may (but shall not be obligated to) take any action (separately, concurrently, cumulatively, and at any time and in any order) permitted under any applicable laws, without notice, demand, presentment, or protest (all of which are hereby waived), to protect and enforce Beneficiary's, Lenders' or Trustee's rights under the Loan Documents or applicable laws including the following actions:

(i) Power of Sale. After the lapse of such time as may then be required by *Utah Annotated Code* § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Annotated Code* § 57-1-25 and Section 57-1-26 or other applicable law, Trustee, without demand on Borrower, shall sell the Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Lenders may determine (but subject to Borrower's statutory right under *Utah Annotated Code* § 57-1-27 to direct the order in which the Trust Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; *provided*, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Annotated Code* § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with *Utah Annotated Code* § 57-1-28, conveying the Trust Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale as follows:

FIRST: To the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's and attorney's fees actually incurred not to exceed the amount which may be provided for in the Security Agreement.

SECOND: To payment of the obligations secured by the Security Agreement.

THIRD: The balance, if any, to the person or person's legally entitled to the proceeds, or the trustee, in the trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with *Utah Code Annotated* § 57-1-29.

(ii) Upon any sale made under or by virtue of this section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Beneficiary may bid for and acquire the Trust Property, whether by payment of cash or by credit bid in accordance with *Utah Annotated Code* § 57-1-28(1)(b). In the event of a successful credit bid, Beneficiary shall make settlement for the purchase price by crediting upon the Secured Obligations of Borrower secured by this Security Agreement such credit bid amount. Beneficiary, upon so acquiring the Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.

(iii) For purposes of *Utah Code Annotated* Section 57-1-28, Borrower agrees that all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts, if any, owing from time to time under the Note shall constitute a part of and be entitled to the benefits of Beneficiary's lien upon the Property, and (ii) Beneficiary may add all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts owing from time to time under the Note to the principal balance of the Note, and in either case Beneficiary may include the amount of all unpaid late charges in any credit bid Beneficiary may make at a foreclosure sale of the Property pursuant to this Security Agreement.

(iv) In the event of any amendment to the provisions of *Utah Code Annotated* Title 57 or other provisions of *Utah Code Annotated* referenced in this Security Agreement, this Security Agreement shall, at the sole election of Lender, be deemed amended to be consistent with such amendments or Lender may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

(v) Personal Property. It is the express understanding and intent of the parties that as to any personal property interests subject to Article 9a of the Utah Uniform Commercial Code, Lender, upon an Event of Default, may proceed under the Utah Uniform Commercial Code or may proceed as to both real and personal property interests in accordance with the provisions of this Security Agreement and its rights and remedies in respect of real property, and treat both real and personal property interests as one parcel or package of security as

permitted by *Utah Annotated Code* § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with *Utah Annotated Code* § 57-1-30 or other applicable law.

(vi) Deficiency. Borrower agrees to pay any deficiency arising from any cause, to which Beneficiary or Lender may be entitled after applications of the proceeds of any sale, Beneficiary may commence suit to collect such deficiency in accordance with *Utah Annotated Code* § 57-1-32 or other applicable law.

(vii) Reinstatement. If Borrower, Borrower's successor interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Security Agreement and the Loan with three (3) months of the recordation of a notice of default in accordance with *Utah Annotated Code* § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by *Utah Annotated Code* § 57-1-31-(2), as delivered by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale.

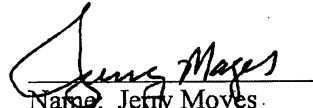
34. Intercreditor Agreement. Notwithstanding anything to the contrary contained in this Deed of Trust, the liens, security interests and rights granted pursuant to this Deed of Trust with respect to the Trust Property shall be subject to the terms and conditions of (and the exercise of any right or remedy by the Trustee and Beneficiary hereunder shall be subject to the terms and conditions of) that certain Intercreditor Agreement dated December 21, 2010 (the "Intercreditor Agreement") by and among Collateral Agent, Beneficiary, Trustor, and certain affiliates of Trustor as set forth therein. In the event of any conflict between this Deed of Trust and the Intercreditor Agreement, the Intercreditor Agreement shall control, and no right, power, or remedy granted to the Trustee or Beneficiary hereunder shall be exercised by the Trustee or Beneficiary in contravention of the Intercreditor Agreement. Without limiting the generality of the foregoing, and notwithstanding anything herein to the contrary, all rights and remedies of the Trustee and the Beneficiary shall be subject to the terms of the Intercreditor Agreement, and, with respect to the Trust Property, until the First Priority Obligations Payment Date (as such term is defined in the Intercreditor Agreement) any obligation of the Trustor hereunder with respect to the delivery or control of any Trust Property, shall be deemed to be satisfied if the Trustor complies with the requirements of the similar provision of the applicable First Priority Document (as such term is defined in the Intercreditor Agreement) or the Intercreditor Agreement to the extent the provisions of the Intercreditor Agreement related to such Trust Property or provision.

[Remainder of this page intentionally left blank.]

This Deed of Trust has been duly executed by Trustor as of the date first set forth above and is intended to be effective as of such date.

CENTRAL REFRIGERATED SERVICE,  
INC., a Nebraska corporation

By:



Name: Jeff Moyes

Title: CEO



ACKNOWLEDGEMENT

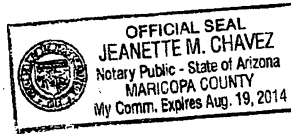
STATE OF ARIZONA )  
 ) SS  
COUNTY OF MARICOPA )

The foregoing instrument was acknowledged before me this 7TH day of November, 2013, by JERRY MOYES, the CEO of CENTRAL REFRIGERATED SERVICE, INC., as Trustor.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Jeanette M. Chavez*  
\_\_\_\_\_  
Signature

My Commission Expires: *August 19, 2014*



(Space above for official notarial seal)

Schedule A

Description of the Land

Parcel 1: (14-24-126-005)

Beginning at a point which lies South 0°06'42" West 80.00 feet, South 85°26'00" West 66.22 feet, South 0°06'42" West 1050.00 feet and South 89°40'44"; West 445.00 feet from the North Quarter Corner of said Section 24, Township 1 South, Range 2 West, Salt Lake Base and Meridian; said point also lies on the South Line of the Gates Rubber Company Property and running thence South 0°06'42" West 60.00 feet; thence 89°40'44" West 90 feet; thence North 0°06'42" East 60.00 feet to the Southwest corner of the Gates Rubber Company Property; thence North 89°40'44" East 90.00 feet along the South Line of the Gates Rubber Company Property to the point of Beginning.

Parcel 2: (14-24-176-002)

All of Lots 25, 26 and 27, Block 5, Plat "A", Town of El Dorado, as is on file and of record in the office of the County Recorder of Salt Lake County, State of Utah. Together with any interest that may be held by Seller in any streets or alleyways adjacent to or running along the boundaries of said Lots 25, 26 and 27 as may have been defined by County resolution or otherwise.

Parcel 3: (14-24-201-009)

Part of the North Half of Section 24, Township 1 South, Range 2 West, Salt Lake Base and Meridian, situated in the County of Salt Lake, State of Utah, described as follows:

Beginning at a point which lies South 0°06'42" West 80.00 feet from the North Quarter Corner of said Section 24, to a point on the South line of the 2100 South Freeway right of way line and running thence North 89°53'03" East 330.72 feet along said South line; thence South 0°05'53" West 586.45 feet; thence North 89°49'59" East 330.87 feet; thence South 0°05'04" West 1998.47 feet to the East-West center of Section line; thence South 89°40'47" West 1263.69 feet along said East-West center of Section line; thence North 0°06'42" East 1532.08 feet to the South line of the Gates Rubber Company property; thence North 89°40'44" East 535.00 feet along said South line to the Southeast Corner of the Gates Rubber Company property; thence North 0°06'42" East 1050.00 feet along the East line of the Gates Rubber Company Property to the South line of the 2100 South Frontage Road; thence North 85°26'00" East 66.22 feet along said South line to the point of beginning.

Excluding from the above described property all the property formerly known as Lots 25, 26 and 27, Block 5, Town of El Dorado Plat "A", together with one-half (1/2) the vacated street and alleys abutting said lots.

Also excepting therefrom the following:

Beginning at a point which lies South 0°06'42" West 80.00 feet, South 85°26'00" West 66.22 feet, South 0°06'42" West 1050.00 feet and South 89°40'44" West 445.00 feet from the North Quarter Corner of said Section 24, Township 1 South, Range 2 West, Salt Lake Base and

Meridian; said point also lies on the South line of the Gates Rubber Company Property and running thence South 0°06'42" West 60.00 feet; thence South 89°40'44" West 90.00 feet; thence North 0°06'42" East 60.00 feet to the Southwest Corner of the Gates Rubber Company Property; thence North 89°40'44" East 90.00 feet along the South line of the Gates Rubber Company Property to the point of beginning.

Also excepting therefrom the following:

Part of the Northeast Quarter of Section 24, Township 1 South, Range 2 West, Salt Lake Base and Meridian, described as follows:

Beginning at a point which lies South 0°06'42" West 80.00 feet, North 89°53'03" East 330.72 feet and South 0°05'53" West 586.45 feet from the North Quarter Corner of Section 24, Township 1 South, Range 2 West, Salt Lake Base and Meridian (said point lies on an East line of the property conveyed to Richard D. Simon in the certain Special Warranty Deed recorded June 14, 1994 as Entry No. 5849753 in Book 6961 at Page 1889 of Official Records), and running thence North 89°49'59" East 330.87 feet along a North line of said Richard D. Simon property; thence South 0°05'04" West 263.31 feet along the East of said Richard D. Simon property; thence South 89°49'59" West 330.93 feet; thence North 0°05'53" East 263.31 feet to the point of beginning.

Also less and excepting therefrom:

This is part of the Warranty Deed dated the 10th of October, 1997 from Dick Simon Trucking, Inc. grantor to Richard D. Simon, grantee:

Part of the North Half of Section 24, Township 1 South, Range 2 West, Salt Lake Base and Meridian, described as follows:

Beginning at a point which lies South 0°06'42" West 80.00 feet; North 89°53'03" East ; South 0°05'53" West 586.45 feet; North 89°49'59" East 330.87 feet and South 0°05'04" West 1615.47 feet from the North Quarter Corner of said Section 24 and running thence South 0°05'04" West 383.00 feet to the East-West center of Section line; thence South 89°40'47" West 350.00 feet along the East-West center of Section line; thence North 0°05'04" East 383.00 feet; thence North 89°40'47" East 350.00 feet to the point of beginning.

Excepting the South 33.00 feet for a public road right of way.

The following is shown for information purposes only: 14-24-201-009 14-24-176-002 14-24-126-005

The address of said property is: 5175 West 2100 South, West Valley City, UT 84120 5203 West 2100 South, West Valley City, UT 84120 5281 West 2100 South, West Valley City, UT 84120