

Recording requested by
and when recorded mail to:

O'MELVENY & MYERS
400 South Hope Street
Los Angeles, California 90071-2899
Attn: Mr. Jordan Karp
(045,710-616)

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CAROL DEAN PAGE, DAVIS CNTY RECORDER
1996 MAY 24 4:58 PM FEE 104.00 DEP SW
REC'D FOR FIRST AMERICAN TITLE CO OF UTA

**DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT
AND FIXTURE FILING**

**OBLIGATIONS SECURED HEREBY PROVIDE FOR
A FLUCTUATING INTEREST RATE**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") is made as of May 23, 1996 by **SMITH'S FOOD & DRUG CENTERS, INC.**, a Delaware corporation ("Trustor"), which Trustor has its principal place of business at 1550 S. Redwood Road, Salt Lake City, UT 84104; Attention: General Counsel, to **FIRST AMERICAN TITLE COMPANY OF UTAH**, a Utah corporation ("Trustee"), whose address is 330 East 400 South, Salt Lake City, UT 84111, for the benefit of **BANKERS TRUST COMPANY**, a New York banking corporation, whose address is One Bankers Trust Plaza, 130 Liberty St., 14th Floor, New York, NY 10006 (Attention: Mary Jo Jolly), as Agent for and representative of (in such capacity herein called "Beneficiary") the Lenders and the Interest Rate Exchangers (as hereinafter defined). Terms defined in the Credit Agreement and not otherwise defined in this Deed of Trust have the meaning given to such terms in the Credit Agreement.

PRELIMINARY STATEMENTS

A. Beneficiary and the Lenders named therein have entered into a Credit Agreement dated as of May 23, 1996 (said Credit Agreement, as it may hereafter be amended, supplemented or otherwise modified from time to time, is referred to as the "Credit Agreement") with **SMITH'S FOOD & DRUG CENTERS, INC.**, a Delaware corporation ("Company"), pursuant to which the Lenders have made certain

commitments, subject to the terms and conditions set forth in the Credit Agreement, to extend certain credit facilities to Company.

E 1251285 B 2005 P 807

B. It is contemplated that Company may from time to time enter into Interest Rate Agreements with one or more of the Lenders or their Affiliates (collectively, in such capacity, "**Interest Rate Exchangers**"), and the obligations under any Interest Rate Agreement, or under any guaranty by Trustor of obligations under any such Interest Rate Agreement (including, in either case, the obligation to make payments in the event of early termination of an Interest Rate Agreement), are to be given the benefit of the lien of this Deed of Trust.

C. The Credit Agreement and other Loan Documents (including this Deed of Trust), and any and all Interest Rate Agreements at any time entered into by Company and one or more Interest Rate Exchangers, are hereinafter sometimes collectively referred to as the "**Secured Credit Documents**".

D. It is a condition precedent to the initial extensions of credit by the Lenders under the Credit Agreement that Trustor execute and deliver this Deed of Trust to Beneficiary.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt and sufficiency of which are hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, **IN TRUST, WITH POWER OF SALE**, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, all right, title and interest now owned or hereafter acquired by Trustor in and to the following property (all of the following property being collectively referred to herein as the "**Trust Estate**," and those portions of the Trust Estate located on or directly relating to the Land designated by a particular "Store Number" on the exhibits attached hereto being collectively referred to herein as a "**Mortgaged Property**":

(1) The real property described in *Exhibit A* attached hereto (the "**Fee Land**").

(2) All leasehold estate, right, title and interest in, to and under any and all leases described or referred to in *Exhibit B* attached hereto, and any amendments, modifications, extensions, renewals or substitutions for any of such leases (each such lease, together with any amendments, modifications, extensions, renewals or substitutions therefor being referred to herein as a "**Lease**"), affecting all or portions of the real property described in said *Exhibit B* or described in the recorded documents referred to in said *Exhibit B* (which property descriptions are incorporated herein by this reference) (collectively, the "**Leased Land**"; the Fee Land and the Leased Land being sometimes collectively

referred to as the "Land") or affecting any of the Improvements (as hereinafter defined), including any and all rights to security deposits, advance rentals, and other deposits under any Lease (collectively, "Deposits"); together with any greater estate in the Leased Land or the Improvements now owned or hereafter acquired by Trustor, whether pursuant to the terms of any Lease or otherwise.

E 1251285 B 2005 P 308

(3) Any and all buildings and improvements now or hereafter erected in or on the Land, including all fixtures, attachments, appliances, equipment, machinery and other articles attached to the Land or to such buildings and improvements (collectively, the "Improvements"), all of which shall be deemed and construed to be a part of the realty (excluding, however, any appliances, equipment, machinery and other articles specifically excluded by *Section 1(a)* of the Security Agreement from the definition of "Equipment" contained therein (the "Excluded Equipment")) (the Land and the Improvements being sometimes collectively referred to as the "Property");

(4) All rents, issues, profits, royalties, income and other benefits (collectively, the "Rents") derived from the Property or the ownership, use, management, operation, leasing or occupancy of the Property, subject to the terms of *Article III* below;

(5) All tenements, hereditaments, appurtenances, privileges and other rights and interests now or in the future arising in respect of, benefiting or otherwise relating to the Property, including easements, rights-of-way, development rights, mineral rights, water rights and water stock, including all right, title and interest now owned or hereafter acquired by Trustor in and to any land lying within the right of way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys, driveways, and strips and gores of land adjacent to or used in connection with the Property;

(6) All the estate, interest, right, title, or other claim or demand, both in law and in equity, with respect to, or relating to the ownership, use, management, operation, leasing, or occupancy of the Property, including claims for damages with respect thereto, claims or demands with respect to insurance proceeds, and any and all awards made for the taking of all or any part of the Property by eminent domain, or by any proceeding or purchase in lieu thereof, including without limitation any awards resulting from a change of grade of streets and awards for severance damages (collectively, "Proceeds");

(7) All governmental approvals, authorizations, permits, rights, and entitlements now or hereafter owned by Trustor which have been or will be issued with respect to the Property, which are necessary or useful in connection with the development, construction or operation of the Property or any portion thereof;

FOR THE PURPOSE OF SECURING the prompt payment or 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, 11 U.S.C. §362(a)), of all obligations and liabilities of every nature of Trustor now or hereafter existing under or arising out of or in connection with the Secured Credit Documents, or any of them, and all modifications, extensions and renewals thereof, whether for principal, interest (including interest that, but for the filing of a petition in bankruptcy with respect to Trustor, would accrue on such obligations, whether or not allowable as a claim), reimbursement of amounts drawn under Letters of Credit, fees, expenses, indemnities or otherwise, whether voluntary or involuntary, direct or indirect, absolute or contingent, liquidated or unliquidated, whether or not jointly owed with others, and whether or not from time to time decreased or extinguished and later increased, created or incurred, and all or any portion of such obligations or liabilities that are paid, to the extent all or any part of such payment is avoided or recovered directly or indirectly from Beneficiary or any Lender or Interest Rate Exchanger as a preference, fraudulent transfer or otherwise (all such obligations and liabilities of Trustor under, arising out of or in connection with the Secured Credit Documents being referred to herein as the "**Secured Obligations**").

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST,
TRUSTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:**

**ARTICLE I
CERTAIN OBLIGATIONS OF TRUSTOR**

1.01. Payment of Secured Obligations. Trustor shall duly and punctually pay and perform all Secured Obligations in accordance with their terms.

1.02. Maintenance, Repairs, Alterations, Use. Trustor shall: (a) keep the Trust Estate in good condition and repair; (b) complete or cause to be completed promptly and in a good and workmanlike manner any Improvements which may be now or hereafter constructed on the Property, and pay when due (subject to Trustor's right to contest claims in accordance with *Section 1.08* hereof) all claims for labor performed and materials furnished therefor, other than, so long as no Event of Default exists, any such Improvements the noncompletion of which, and any such claims the nonpayment of which, would not have a material adverse effect on the value, operation or ownership of any Mortgaged Property, or on Beneficiary's lien thereon or security therein; (c) not commit or permit any waste of the Trust Estate; (d) secure and maintain in full force and effect all material permits necessary for the use, occupancy and operation of the Trust Estate; and (e) except as otherwise prohibited or restricted by this Deed of Trust,

do any and all other acts which may be reasonably necessary to protect or preserve the value of the Trust Estate and the rights of Trustee and Beneficiary with respect thereto.

1.03. Insurance.

E 1251285 B 2005 P 810

(a) **Types and Amounts Required.** Trustor shall at all times provide, maintain and keep in force, at no expense to Trustee or Beneficiary, fire and other insurance with respect to the Property as required by the Credit Agreement.

(b) **Policy Requirements.** All policies of insurance maintained with respect to the Property (i) shall name Beneficiary as an additional insured as its interests may appear; (ii) shall contain a standard Lender's Loss Payable endorsement and other non-contributory standard mortgagee protection clauses; and (iii) to the extent obtainable, without the payment of any material additional premium therefor, shall contain an agreement by the insurer that such policy shall not be canceled, and the loss payee and additional insured provisions thereof shall not be amended (other than to add additional insureds), without at least thirty (30) days' prior written notice to Beneficiary. Any policies containing a coinsurance clause shall include a replacement cost endorsement adequate to ensure that the coinsurance clause is rendered inoperative. Trustor may provide any of the required insurance through blanket policies carried by Trustor and covering more than one location, or by policies procured by a tenant or other party holding under Trustor.

(c) **Evidence of Insurance.** Trustor shall furnish Beneficiary with a certificate of insurance for each required policy setting forth the coverage, the limits of liability, the deductibles, if any, the name of the carrier, the policy number, and the period of coverage, which certificates shall be executed by authorized officials of the companies issuing such insurance, or by agents or attorneys-in-fact authorized to issue said certificates. Trustor shall furnish to Beneficiary from time to time, within ten (10) days after each request therefor by Beneficiary, a certificate of Trustor specifying all insurance policies with respect to the Trust Estate and all other policies required hereby then outstanding and in force, and stating whether or not such insurance complies with the requirements of this Section and, if it does not, the manner in which it does not comply.

(d) **Procurement by Beneficiary.** If Trustor fails to provide, maintain, keep in force or deliver to Beneficiary the policies of insurance required by this Deed of Trust (or certificates evidencing same), Beneficiary may (but shall have no obligation to) procure such insurance, or single interest insurance for such risks covering Beneficiary's interests, and Trustor shall pay all premiums therefor 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 Agreed Rate (defined in *Section 2.01* hereof), shall be secured by this Deed of Trust.

(e) **Assignment of Policies upon Foreclosure.** In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Trust Estate 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 Section and any unearned premiums paid thereon shall, without further act, be assigned to and shall inure to the benefit of and pass to the successor in interest to Trustor or the purchaser or grantee of the Trust Estate, and Trustor hereby appoints Beneficiary its lawful attorney-in-fact to execute an assignment thereof and any other document necessary to effect such transfer.

E 1251285 B 2005 P 811

1.04. Casualties; Insurance Proceeds.

(a) **Notice of Casualties.** Trustor shall give prompt written notice thereof to Beneficiary after the happening of any casualty to the Trust Estate resulting or reasonably expected to result in aggregate losses to the Trust Estate in excess of \$500,000 whether or not such casualty is covered by insurance.

(b) **Proceeds to Beneficiary.** Without limiting the provisions of *Section 6.4 B* of the Credit Agreement, all proceeds of insurance that are (i) payable during the existence of an Event of Default in connection with any casualty affecting the Trust Estate, or (ii) payable at any time in connection with any casualty affecting the Trust Estate resulting in aggregate insurance proceeds in excess of \$5,000,000 (in either case, a "Major Casualty"), shall be payable to Beneficiary (other than proceeds which are required to be paid to a landlord and which cannot be paid to Beneficiary or to any other mortgagee or lender or to Trustor in preference to payments to a landlord under any Lease and which proceeds are in fact paid to such landlord in accordance with the terms of such Lease).. Trustor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Beneficiary. If Trustor receives or shall be holding any proceeds of insurance during the existence of an Event of Default or at any time resulting from a Major Casualty, Trustor shall promptly pay over such proceeds to Beneficiary. Trustor shall not settle, adjust or compromise any claims for loss, damage or destruction of the Trust Estate or any part thereof under any policy or policies of insurance as a result of a Major Casualty without the prior written consent of Beneficiary to such settlement, adjustment or compromise; and during the existence of an Event of Default hereunder Beneficiary shall have the sole and exclusive right, and Trustor hereby authorizes and empowers Beneficiary, to settle, adjust or compromise any insurance claims, and any such action taken by Trustor without Beneficiary's written consent shall be null and void.

(c) **Application by Beneficiary.** If at any time an Event of Default has occurred and is continuing, Beneficiary has the option, in its sole and absolute discretion, (i) to apply all or any portion of such proceeds to the Secured Obligations secured hereby, in such order and priority as Beneficiary may determine, or (ii) to apply all or any portion of such proceeds to the restoration of the Trust Estate, subject to

conditions determined by Beneficiary, or (iii) to deliver all or any portion such proceeds to Trustor, subject to conditions determined by Beneficiary.

E 1251285 B 2005 P 812

1.05. Waiver of Subrogation. 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 Trust Estate, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against; *provided, however*, that this waiver of subrogation shall not be effective with respect to any policy of insurance permitted or required by this Deed of Trust if such policy prohibits, or if coverage thereunder would be reduced as a result of, such waiver of subrogation, and Trustor is unable to obtain from a carrier issuing such insurance a policy that, by special endorsement or otherwise, permits such a waiver of subrogation.

1.06. Taxes and Impositions.

(a) **Payment by Trustor.** Notwithstanding *Section 1.08* hereof or any provision of the Credit Agreement to the contrary, but subject to Trustor's contest rights under *Section 1.06(b)* hereof, Trustor shall pay, or cause to be paid, 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 charges resulting from covenants, conditions or restrictions affecting the Trust Estate, which are assessed or imposed upon the Trust Estate, or become due and payable, and which create, may create or appear to create a lien upon the Trust Estate, or any part thereof, other than so long as no Event of Default exists, any such taxes, assessments or charges the nonpayment of which would not have a material adverse effect on the value, operation or ownership of the Trust Estate or any portion thereof, or on Beneficiary's lien thereon or security therein (all of which taxes, assessments and charges, together with any and all other taxes, and charges of a similar kind or nature are collectively 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 or cause it to be paid, 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) **Contest of Assessments.** Trustor shall have the right to contest or object in good faith to the amount or validity of any such Imposition by appropriate proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Trustor's covenant to pay any such Imposition at the time and in the manner provided in this *Section 1.06* unless (i) with respect to any Imposition in excess of \$100,000, Trustor has given prior written notice to Beneficiary, and (ii) with respect to any Imposition (A) the proceedings operate to prevent the sale of the Trust Estate, or any part thereof, or to satisfy such Imposition prior to final determination of such proceedings; or (B) Trustor furnishes a good and sufficient bond or surety

satisfactory to Beneficiary; or (C) Trustor provides a good and sufficient undertaking as required or permitted by law to accomplish a stay of any such sale. **§ 25-1-285 & 2005 P 813**

(c) **Joint Assessment.** Trustor shall not initiate, and, to the maximum extent permitted by law, shall not suffer or permit the joint assessment of any real and personal property any part of which constitutes all or a portion of the Trust Estate, or any other procedure whereby the lien of real property taxes and the lien of personal property taxes shall be assessed, levied or charged to the Trust Estate as a single lien.

1.07. Utilities. Trustor shall pay or shall cause to be paid when due all utility charges which are or may become a charge or lien against the Trust Estate, for gas, electricity, water or sewer services furnished to the Trust Estate, and all other assessments or charges of a similar nature, whether public or private, affecting or related to the Trust Estate or any portion thereof, whether or not such taxes, assessments or charges are or may become liens thereon, other than so long as no Event of Default exists, any such utility charges or other assessments or charges the nonpayment of which would not have a material adverse effect on the value, operation or ownership of the Trust Estate or any portion thereof, or on Beneficiary's lien thereon or security therein.

1.08. Liens. Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Trust Estate, or any part thereof or interest therein which are, appear or are alleged to be prior to the lien of this Deed of Trust, other than (a) any such matters constituting Permitted Encumbrances or otherwise approved by Beneficiary in writing, and (b) any such matters to which this Deed of Trust is hereafter subordinated; *provided, however*, that Trustor may contest or object in good faith to the amount or validity of any such charges by appropriate proceedings, subject to any applicable provisions of **Section 1.08** below. Trustor shall have the right to contest in good faith by appropriate proceedings the validity of any such lien, encumbrance or charge, provided that Trustor shall promptly notify Beneficiary of any such contest, and shall diligently proceed to cause such lien, encumbrance or charge to be removed and discharged but this shall not be deemed or construed in any way as relieving, modifying or extending Trustor's covenant to pay and promptly discharge any such lien, encumbrance or charge unless (i) the proceedings operate to prevent the sale of the Trust Estate, or any part thereof, or to satisfy such lien, encumbrance or charge prior to final determination of such proceedings, or (ii) Trustor furnishes a good and sufficient bond or surety satisfactory to Beneficiary, or (iii) Trustor provides a good and sufficient undertaking as required or permitted by law to accomplish a stay of any such sale. If Trustor fails to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same, without inquiring into the validity of such lien, encumbrance or charge nor into the existence of any defense or offset thereto, by paying the amount claimed to be due, or by procuring the discharge thereof by depositing in a court a bond or the amount claimed or otherwise

giving security for such claim, or by procuring such discharge in such other manner as is or may be prescribed by law. Immediately upon demand therefor by Beneficiary, Trustor shall pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, together with interest thereon from date of expenditure at the Agreed Rate; and, until paid, such sums shall be secured hereby.

E 1251285 B 2005 P 814

1.09. Actions Affecting Trust Estate or Parties. Trustor, at no cost or expense to Beneficiary or Trustee, shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee hereunder. Trustor shall indemnify, defend and hold Trustee and Beneficiary harmless from all liability, damage, cost and expense incurred by Trustee and Beneficiary, or either of them, by reason of any action or proceeding, of whatever kind or nature, concerning the Trust Estate or any part thereof or interest therein, or the occupancy thereof (including, without limitation, Trustee's fees and expenses, the reasonable fees of attorneys for Trustee and for Beneficiary, and other expenses, of whatever kind or nature, incurred by Trustee and Beneficiary, or either of them, as a result of such action or proceeding), whether or not such action or proceeding is prosecuted to judgment or decision, except those arising solely from the gross negligence or wilful misconduct of the indemnitee as determined by a final judgment of a court of competent jurisdiction. Immediately upon demand therefor by Trustee or Beneficiary, Trustor shall pay thereto an amount equal to Trustor's liability to such person under this Section, together with interest thereon from date of expenditure at the Agreed Rate; and, until paid, such sums shall be secured hereby.

1.10. Eminent Domain.

(a) **Notice to Beneficiary.** If any proceeding or action is commenced for the taking of the Trust Estate, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, condemnation or otherwise, or if the same is taken or damaged by reason of any public improvement or condemnation proceeding (any such taking or damage being a "taking"), excluding in each case any such taking or damage that both (i) cannot reasonably be expected to result in an aggregate Award (as hereinafter defined) in excess of \$500,000, and (ii) if effected, will not have a material adverse effect on the value, operation or ownership of any Mortgaged Property or Beneficiary's lien thereon or security interest therein (any taking not excluded by *clause (i)* or *(ii)* being a "Major Taking"), or if Trustor receives any notice or other information (limited to information received in writing, except in the case of a pending action or proceeding) regarding an actual or potential Major Taking (including any proposal to purchase any portion of the Trust Estate in lieu of condemnation), Trustor shall give prompt written notice thereof to Beneficiary.

(b) **Award to Beneficiary.** Beneficiary shall be entitled, at its option, without regard to the adequacy of its security, to investigate and negotiate with the condemnor concerning any Major Taking (and, during an Event of Default, any taking), to commence, appear in and prosecute in its own name any such action or proceeding (but will not exercise such option unless an Event of Default exists or unless Beneficiary shall have determined, in its sole judgment, that Trustor was not diligently proceeding to protect Beneficiary's interests), and, if an Event of Default exists hereunder, to make any compromise or settlement in connection with any taking. Trustor shall not compromise or settle any action or proceeding or agree to any sale in lieu of condemnation during the existence of an Event of Default without the prior written consent of Beneficiary, and any such action by Trustor taken without Beneficiary's written consent shall, at the option of Beneficiary, be null and void. All compensation, awards, damages, rights of action and proceeds (the "Award") awarded to Trustor by reason of any taking are hereby assigned to Beneficiary and Trustor agrees to execute such further assignments of the Award as Beneficiary or Trustee may require. Notwithstanding the foregoing, Trustor shall be entitled to receive the entire Award so long as no Event of Default exists and such Award is used and applied in accordance with *Section 2.4B(iii)(a)* of the Credit Agreement.

(c) **Application by Beneficiary.** If, at any time, an Event of Default has occurred and is continuing, Beneficiary shall have the option, in its sole and absolute discretion, (1) to apply all or any portion of the Award to the Secured Obligations in such order as Beneficiary may determine, whether or not then due and payable, or (2) to apply all or any portion of the Award to the restoration of the Trust Estate, subject to such conditions as Beneficiary may determine in its sole discretion, or (3) to deliver all or any portion of the Award, after such deductions, to Trustor, subject to such conditions as Beneficiary may determine in its sole discretion.

1.11. Survival of Warranties; Full Performance Required. All representations, warranties and covenants of Trustor made to Beneficiary in connection with the indebtedness secured hereby shall survive the execution and delivery of this Deed of Trust and shall remain continuing obligations, warranties and representations of Trustor so long as any portion of the obligations secured by this Deed of Trust remain outstanding; and Trustor shall fully and faithfully satisfy and perform all such obligations, representations, warranties and covenants.

1.12. Other Instruments. Trustor shall punctually pay all amounts due and payable under, and shall promptly and faithfully perform or observe each and every other obligation or condition to be performed or observed under, each deed of trust, mortgage or other lien or encumbrance, lease, sublease, declaration, covenant, condition, restriction, license, order or other instrument or agreement affecting the Trust Estate, in law or in equity, if the failure to perform or observe such obligation or condition could have (i) a material adverse effect on the operation, condition, or value

of any of the Designated Properties, or Beneficiary's lien thereon, or (ii) a Material Adverse Effect.

E 1251285 B 2005 P 816

1.13. Further Acts. Trustor shall do and perform all acts necessary to keep valid and effective the charges and lien hereof, to carry into effect its object and purposes, and shall execute and deliver to Beneficiary at any time, upon request of Beneficiary, all other and further instruments in writing necessary to vest in and secure to Trustee each and every part of the Trust Estate and to Beneficiary the Rents and the rights and interest of Beneficiary therein or with respect thereto; and, upon request by Beneficiary, shall supply evidence of fulfillment of each of the covenants herein contained concerning which a request for such evidence has been made.

1.14. Covenants Regarding the Leases. Trustor hereby covenants, represents and warrants to Beneficiary as follows with respect to each Lease:

(a) **No Default.** As of the date hereof, the Lease is a valid and subsisting lease and is in full force and effect in accordance with its terms. Trustor is the owner of the entire lessee's interest in and under the Lease. To Trustor's knowledge, as of the date hereof, no default has occurred and is continuing under the Lease, except as disclosed in the Credit Agreement. This Deed of Trust is lawfully executed and delivered in conformity with the terms of the Lease and is and will be kept a valid lien on the interests of Trustor therein.

(b) **Encumbrances.** Trustor shall not, without the prior written consent of Beneficiary, (i) except as may be expressly permitted under the Credit Agreement, further encumber its leasehold estate, the Land, or any other portion of the Trust Estate, or (ii) except as required by the Lease as of the date hereof, subordinate or consent to the subordination of the Lease to any underlying lease, mortgage or deed of trust on the lessor's interest in the premises demised by the Lease unless the lessor under such underlying lease or the mortgagee or beneficiary under such mortgage or deed of trust concurrently executes and acknowledges a non-disturbance agreement for the benefit of Beneficiary in form and substance reasonably acceptable to Beneficiary.

(c) **Notices of Default.** Trustor shall notify Beneficiary promptly in writing of (i) any material default by Trustor or the lessor under the Lease and (ii) the receipt by Trustor of any written notice of default from the lessor under the Lease. Trustor shall promptly deliver to Beneficiary a copy of any such written notice of default under the Lease.

(d) **Cooperation with Beneficiary's Efforts to Cure.** If any material default under the Lease shall have occurred and be continuing, upon the written request of Beneficiary, Trustor shall promptly execute, acknowledge and deliver to Beneficiary such instruments as may reasonably be required to permit Beneficiary to cure such default or to permit Beneficiary to take such other action required to enable Beneficiary to

cure or remedy the matter in default and to preserve the security interest of Beneficiary under this Deed of Trust with respect to the Lease. Trustor hereby irrevocably appoints Beneficiary, during the existence of an Event of Default, as its true and lawful attorney-in-fact to do, in its name or otherwise, any and all acts and to execute any and all documents which are necessary to preserve any rights of Trustor under or with respect to the Lease, including, without limitation, the right to effectuate any extension or renewal of the Lease, or to preserve any rights of Trustor whatsoever in respect of any part of the Lease (and the above powers granted to Trustor are coupled with an interest and shall be irrevocable). Notwithstanding the foregoing, under no circumstances shall Beneficiary have any obligation to take any action to cure any default under any Lease.

(e) **Fee Mortgage.** Unless Beneficiary otherwise consents, the acquisition of any fee title or other interest in the Leased Land or the Improvements by Trustor, whether pursuant to an option in the Lease or otherwise, shall not result in a merger of the leasehold estate with such fee title or other interest. In the event that Trustor acquires any such fee title or other interest, such fee title or other interest shall be subject to the terms of this Deed of Trust.

(f) **Rights in Bankruptcy; Claims Against Lessor.**

(i) Trustor shall notify Beneficiary of any filing by or against any lessor under the Lease of a petition under any bankruptcy, insolvency, reorganization, moratorium or similar law (any such law being herein referred to as a "**Bankruptcy Law**"), promptly after learning thereof, setting forth any information available to Trustor as to the date of such filing, the court in which the petition was filed, and the relief sought. Trustor shall promptly deliver to Beneficiary any and all notices, summonses, pleadings, applications and other documents received by Trustor in connection with any such petition and any proceedings relating thereto.

(ii) If the Lease is rejected or disaffirmed by the lessor thereunder (or by any receiver, trustee, custodian or other party who succeeds to the rights of such lessor) pursuant to any Bankruptcy Law, (A) Trustor shall not elect to treat the Lease as terminated under 11 U.S.C. §365(h) or any similar or successor law or right, (B) Trustor shall remain in possession of the leased premises to the extent it is then legally entitled to do so and shall perform all acts necessary for Trustor to retain its right to remain in such possession for the unexpired term of the Lease (including all renewal and extension options), whether such acts are required under the then-existing terms and provisions of the Lease or otherwise, and (C) all of the terms and provisions of this Deed of Trust and the lien created hereby shall remain in full force and effect and shall be extended automatically to such possession, occupancy and interest of Trustor.

(iii) Trustor hereby assigns to Beneficiary the proceeds of any claim that Trustor may have against the lessor under the Lease (or any receiver, trustee, custodian or other party who succeeds to the rights of such lessor) by reason of any breach or any inability of such lessor (or any such successor) to perform the terms and provisions of the Lease (including by reason of a rejection or disaffirmance of the Lease pursuant to any Bankruptcy Law). If an Event of Default has occurred and is continuing, Beneficiary has the sole right to elect either (A) to proceed against such lessor (or such receiver, trustee, custodian or other party) as if Beneficiary were the named lessee under the Lease, in Trustor's name, or in Beneficiary's name as agent for Trustor, and Trustor agrees to cooperate with Beneficiary in such action and shall execute any and all documents required in furtherance of such action, or (B) to have Trustor proceed in Trustor's and Beneficiary's behalf in which event Beneficiary may participate in any such proceedings, and Trustor from time to time will deliver to Beneficiary all instruments requested by Beneficiary or as may be required to permit such participation. So long as no Event of Default has occurred and is continuing, Trustor shall, at its expense, have the right to prosecute any such proceedings in its own behalf.

(g) **Redemption Price to Include Rents Advanced.** To the extent permitted by law, the price payable by Trustor or any other party in the exercise of the right of redemption, if any, from any sale under or decree of foreclosure of this Deed of Trust shall include all rents and other amounts paid and other sums advanced by Beneficiary on behalf of Trustor as the lessee under the Lease.

(h) **Attornment Agreements.** Trustor shall use its reasonable efforts to cause all leases and subleases hereafter entered into by Trustor as lessor or sublessor (and all existing leases and subleases hereafter modified or amended by Trustor as lessor or sublessor thereunder) (each such lease or sublease being a "Tenant Lease", and the lessee or sublessee thereunder being a "Tenant") to provide that if Beneficiary forecloses under this Deed of Trust or, in the case of a Tenant Lease which is a sublease, enters into a new lease with any lessor under the applicable Lease, whether pursuant to any provisions for such a new lease contained in the applicable Lease or otherwise, then the Tenant shall attorn to Beneficiary or its assignee and the Tenant Lease will remain in full force and effect in accordance with its terms notwithstanding such foreclosure or the termination of the applicable Lease.

(i) **Status of the Lease: Modifications.** With respect to each Lease described in *Exhibit B*, Trustor hereby represents and warrants that (1) Trustor is the current lessee under the Lease, (2) the Lease has not been amended, modified, substituted or assigned so as to change the lessee thereunder or the description of the property covered thereby, except as disclosed to Beneficiary in writing, and (3) Trustor has delivered to Beneficiary a true, accurate and complete copy of the Lease as of the date of such delivery. Trustor hereby represents that, to the best of Trustor's knowledge,

Exhibit B accurately sets forth all recording data with respect to the filing or recordation of the Lease or a legally valid memorandum thereof, if the Lease or such a memorandum has been recorded. From time to time, within ten (10) business days following the receipt of a request therefor from Beneficiary, Trustor shall deliver to Beneficiary true and correct copies of any and all amendments to the Lease executed after the date hereof.

E 1251285 B 2005 P 819

The generality of the provisions of this *Section 1.14* relating to the Lease shall not be limited by other provisions of this Deed of Trust setting forth particular obligations of Trustor which are also required of Trustor with respect to the Lease, the Improvements, or the Leased Land.

1.15 Additional Covenants Regarding Designated Properties.

Without limiting Trustor's obligations hereunder and under the other Loan Documents with respect to any other portion of the Trust Estate, Trustor hereby makes the following covenants with respect to those portions, if any, of the Trust Estate as are identified on *Exhibit C* attached hereto (being the "**Designated Properties**", and those portions of the Designated Properties located on or directly relating to the Land and Leases designated by a particular "Store Number" in *Exhibit C* attached hereto being collectively referred to herein as a particular "**Designated Property**"):

(a) Trustor shall not remove or demolish the Improvements on any Designated Property, except as may be required by law or as may be necessary in order to comply with law, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld, provided that, the aggregate value of the Designated Property will not be materially impaired by the removal or demolition of the Improvements or any portion thereof, and if Trustor is required by law to remove or demolish Improvements comprising a portion of a Designated Property, Trustor shall, to the extent practicable, promptly replace such Improvements with Improvements of comparable value and utility (it being understood that the foregoing shall not be construed as requiring Beneficiary's consent for Trustor to undertake a renovation of the Improvements on a Designated Property, unless such renovation would involve the demolition or removal of Improvements representing more than half of the replacement cost of the Improvements currently located on such Designated Property);

(b) Trustor shall comply with all laws, statutes, ordinances, rules, regulations, orders, covenants, conditions and restrictions now or hereafter affecting the Designated Properties or any part thereof or requiring any alterations or improvements, other than any the noncompliance with which would not have a material adverse effect on the value, operation or ownership of any such Designated Property, or on Beneficiary's lien thereon or security therein;

(c) Trustor shall not abandon the Designated Properties or any portion thereof or leave the Designated Properties unprotected, unguarded, vacant or deserted;

(d) Trustor shall not sell, assign, exchange, transfer, abandon, release, relinquish, otherwise encumber or otherwise dispose of any of Trustor's right, title or interest in and to any of the Designated Properties without the prior written consent of Beneficiary except as may be expressly permitted by the Credit Agreement;

(e) Trustor shall promptly and timely perform and observe all the material terms covenants and conditions required to be performed and observed by Trustor as lessee under any Lease relating to any of the Designated Properties (each, a "Designated Lease") and do all things necessary to preserve and to keep unimpaired its rights under any Designated Lease;

(f) Trustor shall promptly upon demand by Beneficiary from time to time, use reasonable efforts (other than payment to the lessor) to obtain from the lessor under any Designated Lease and furnish to Beneficiary the estoppel certificate of such lessor stating the date through which rent has been paid and whether or not there are any defaults under such Designated Lease and specifying the nature of such defaults, if any;

(g) Trustor shall not, without Beneficiary's prior written consent except as may be expressly permitted by the Credit Agreement, surrender, terminate, forfeit, or suffer or permit the surrender, termination or forfeiture of, or change, modify or amend in any material or adverse manner, any Designated Lease;

(h) Trustor shall enforce the material obligations of the lessor under each Designated Lease to the end that Trustor may enjoy all of the material rights granted to it as lessee under any Designated Lease and not waive, excuse, condone or in any way release or discharge the lessor under any Designated Lease of or from such lessor's material obligations, covenants and/or conditions under any Designated Lease, without the prior written consent of Beneficiary, except as required by the provisions of such Designated Lease (e.g., upon sale of the property by the lessor); and

(i) Trustor shall promptly notify Beneficiary of any request made by either party to any Designated Lease for arbitration proceedings pursuant to the Lease and of the institution of any such arbitration proceedings, and promptly deliver to Beneficiary a copy of the determination of the arbitrators in each such arbitration proceeding.

ARTICLE II OTHER COVENANTS AND AGREEMENTS

2.01. Actions by Trustee or Beneficiary to Preserve Trust Estate. If Trustor fails to make any payment or to do any act as and in the manner provided in this Deed of Trust or any other Secured Credit Document, Beneficiary and Trustee, and

each of them, each in its own discretion, without obligation so to do, without notice to or demand upon Trustor and without releasing Trustor from any obligation, may, upon the occurrence and during the continuation of an Event of Default, make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Without limiting the generality of foregoing, Beneficiary shall have the option to cure any default and to perform any or all of Trustor's obligations under any Lease. In exercising such powers (without limiting their general and other powers, whether conferred herein, in the Credit Agreement, or in any other Secured Credit Document), Beneficiary and Trustee, and each of them, shall have and are hereby given the right, but not the obligation,

E 1251285 B 2005 P 821

(a) to enter upon and take possession of the Trust Estate, or any portion thereof;

(b) to make additions, alterations, repairs and improvements to the Trust Estate which they or either of them may consider necessary or proper to keep the Trust Estate in good condition and repair;

(c) 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;

(d) 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 to be prior or superior hereto; and

(e) in exercising such powers, to pay necessary expenses, including employment of counsel and other necessary or desirable consultants.

Immediately upon demand therefor by Beneficiary, Trustor shall pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise of the foregoing rights, including, without limitation, costs of evidence of title, court costs, appraisals, surveys, and receiver's, Trustee's and reasonable attorneys' fees, costs and expenses (including, without limitation, the fees and expenses of attorneys for Trustee), whether or not an action is actually commenced in connection therewith, together with interest thereon, from date of expenditure until Beneficiary has been repaid such amount, at the rate (the "Agreed Rate") which is the lesser of: (x) the Base Rate plus two percent (2%) per annum, or (y) the maximum interest rate that can lawfully be charged by Beneficiary to Trustor on such funds on the date such funds are expended by Beneficiary (interest on each such expenditure being calculated separately at the particular Agreed Rate applicable to such expenditure); and, until paid, Trustor's obligation to repay said sums shall be secured hereby.

2.02. Inspections. Beneficiary, Trustee and the agents, representatives and workmen of each of them, are authorized to enter at any reasonable time upon or in

any part of the Trust Estate (which entry shall be at reasonable times and upon reasonable notice to Trustor, unless an Event of Default shall have occurred and be continuing) to inspect the same or to perform any of the acts authorized hereunder or under the terms of any of the Secured Credit Documents.

2.03. Limited Effect of Indulgences.

E 1251285 B 2005 P 822

(a) Without affecting the liability of any other person liable for the payment of any obligation under any of the Secured Credit Documents, and without affecting the lien or charge of this Deed of Trust upon any portion of the Trust Estate not then or theretofore released as security for the full amount of all unpaid obligations, Beneficiary 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 Trust Estate, (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) By accepting payment or performance of any obligation secured by this Deed of Trust after the payment or performance is due or after the filing of a notice of default and election to sell, Beneficiary shall not have thereby waived its right to require prompt payment or performance, when due, of all other obligations secured hereby, or to declare a default for failure so to pay or perform, or to proceed with the sale under any notice of default and election to sell theretofore given by Beneficiary, or to any unpaid balance of the indebtedness secured hereby. The acceptance by Beneficiary of any sum in an amount less than the entire sum then due is not a waiver of the obligation of Trustor to pay said sum. Trustor's failure to pay the entire sum then due shall be and continue to be a default, notwithstanding the acceptance of partial payment, and, until the entire sum then due shall have been paid, Beneficiary or Trustee shall at all times be entitled to exercise all the remedies herein conferred, and the right to proceed with a sale under any notice of default and election to sell shall in no way be impaired, whether or not such amounts are received prior or subsequent to such notice. No delay or omission of Trustee or Beneficiary in the exercising of any right or power hereunder shall impair such right or power or any other right or power nor shall the same be construed to be a waiver of any default or any acquiescence therein.

2.04. Additional Security. Neither other security now existing or hereafter taken to secure the obligations secured hereby, nor the liability of any maker, surety or endorser with respect to such obligations, or any of them, shall be impaired or affected by the execution of this Deed of Trust or by any of the acts referred to in **Section 2.03**. All additional security shall be taken, considered and held as cumulative. If Beneficiary at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently, or after a sale is made hereunder.

2.05. Execution of Instruments by Trustee. At any time, and from time to time, without liability therefor and without notice, upon written request of Beneficiary, and without affecting the personal liability of any person for payment of the indebtedness or the performance of any other obligation secured hereby or the effect of this Deed of Trust upon the remainder of said Trust Estate, Trustee may (i) reconvey any part of said Trust Estate, (ii) consent in writing to the making of any map or plat thereof or join in granting any easement, right of way, restrictive covenant or other dedication thereon, or (iii) join in any extension agreement, agreement subordinating the lien or charge hereof, or other agreement or instrument relating hereto or to the Trust Estate or any portion thereof.

E 1251285 B 2005 P 823

2.06. Invalidity of Lien. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the Secured Obligations, or if the lien is invalid or unenforceable as to any part of the Trust Estate, the unsecured or partially secured portion of the Secured Obligations 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 Secured Obligations, 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 Secured Obligations which is not secured or is not fully secured by the lien of this Deed of Trust.

2.07. Trustor Waiver of Rights.

(a) Trustor waives, to the fullest extent permitted by law, (i) the benefit of all laws now existing or hereafter enacted providing for any appraisal before sale of any portion of the Trust Estate; and, (ii) whether now existing or hereafter arising or created, (A) 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, (B) all rights and remedies which Trustor may have or be able to assert by reason of the laws of any state pertaining to the rights and remedies of sureties, and (C) except as otherwise herein provided, all rights and remedies which Trustor may have or be able to assert to insurance proceeds, to the proceeds of any action or proceeding in eminent domain affecting the Trust Estate or any portion thereof, and to proceeds of a sale in lieu of such taking.

(b) Unless otherwise expressly provided, all sums secured by this Deed of Trust shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor to pay such sums, and to perform all other obligations of Trustor hereunder or under the Secured Credit Documents shall in no way be released, discharged or otherwise affected by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference by Beneficiary, Trustee or

any third party with any use of the Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Trust Estate 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 Trustee, or any action taken with respect to this Deed of Trust by any trustee or receiver thereof, or by any court in any such proceeding; (v) any claim which Trustor has or might have against Beneficiary or Trustee; (vi) any default or failure on the part of Beneficiary or Trustee 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.

E 1251285 B 2005 P 824

2.08. Appointment of Successor Trustee. Trustee or any successor acting hereunder may resign and thereupon be discharged of the trusts hereunder upon 30 days' written notice to Beneficiary. Regardless of whether such resignation occurs, Beneficiary may, from time to time, substitute a successor or successors to any Trustee named herein or acting hereunder in accordance with any statutory procedure for such substitution; or if Beneficiary, in its sole discretion, so elects, Beneficiary may substitute such successor or successors by recording in the office of the recorder of the county or counties where any of the Property is situated an instrument executed by Beneficiary, and containing the name of the original Trustor, Trustee and Beneficiary hereunder, the recording information for this Deed of Trust is recorded and the name and address of the new Trustee. Such instrument shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties.

2.09. Reconveyance by Trustee.

(a) Upon the written request of Beneficiary and the surrender of this Deed of Trust to Trustee for cancellation or endorsement, and upon payment of Trustee's fees and charges, Trustee shall reconvey, without warranty, all or any part of the Trust Estate 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."

(b) As long as no Event of Default has occurred and is then continuing or would be caused thereby, in the event Trustor sells or transfers for value any portion of the Trust Estate as permitted under *Section 7.7* of the Credit Agreement, Beneficiary, upon Trustor's written request and at Trustor's expense, shall request the Trustee to reconvey of the portion of the Trust Estate that is the subject of such asset sale concurrently with the consummation of such asset sale.

(c) If, through inadvertence, the Trust Estate includes any Lease that requires consent to encumber the interest of Trustor therein, which consent has not been

obtained, Beneficiary, upon Trustor's written request and at Trustor's expense, shall request the Trustee to reconvey the leasehold interest in question; *provided, however*, that following such reconveyance, Trustor shall use its best efforts (in accordance with the terms of the Credit Agreement) to obtain as soon as possible the applicable lessor's consent to the hypothecation of such leasehold interest for the benefit of Beneficiary.

E 1251285 B 2005 P 825

ARTICLE III
ASSIGNMENT OF RENTS, ISSUES AND PROFITS

3.01. Assignment of Rents, Issues and Profits. Trustor hereby assigns and transfers all of the Rents to Beneficiary, and hereby gives to and confers upon Beneficiary the right, power and authority to collect the Rents. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of Beneficiary at any time and from time to time during the continuance of this trust, to demand, receive and enforce payment; to give receipts, releases and satisfactions; to sue, in the name of Trustor or Beneficiary, for all Rents; and to apply the same to the indebtedness secured hereby; *provided, however*, that so long as no Event of Default exists, Trustor shall have the right to collect the Rents, (but not more than ninety (90) days in advance unless the written approval of Beneficiary has first been obtained). The assignment of the Rents in this Article III is intended to be an absolute assignment from Trustor to Beneficiary and not merely the passing of a security interest. Upon request by Beneficiary, Trustor shall, from time to time hereafter, execute and deliver to Beneficiary recordable assignments in form satisfactory to Beneficiary of any or all leases, subleases, licenses, and concession or other agreements with respect to the use or occupancy of the Trust Estate or any portion thereof by any person other than Trustor now or hereafter affecting any portion of the Trust Estate.

3.02. Collection Upon Default. Upon the occurrence of an Event of Default hereunder, Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for Secured Obligations, enter upon and take possession of the Trust Estate, or any part thereof, and, with or without taking possession of the Trust Estate or any part thereof, in its own name sue for or otherwise collect the Rents, including those past due and unpaid; and all prepaid Rents and all other moneys which may have been or may hereafter be deposited with Trustor by any lessee or tenant of Trustor to secure the payment of any rent or for any services thereafter to be rendered by Trustor or for any other obligation of any tenant to Trustor arising under any Lease. Upon the occurrence of any Event of Default, Trustor shall promptly deliver all such Rents and other moneys to Beneficiary, and Beneficiary may apply the same, less costs and expenses of operation and collection (including reasonable attorneys' fees and costs, whether or not suit is brought or prosecuted to judgment), upon any of the Secured Obligations, in such order as Beneficiary may determine, notwithstanding that said indebtedness or the performance of said obligation may not then be due and payable. The collection of the Rents, or the entering upon and taking possession of the Trust Estate, or 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, or be deemed or construed to make Beneficiary a mortgagee-in-possession of the Trust Estate or any portion thereof.

**ARTICLE IV
REMEDIES UPON DEFAULT**

E 1251285 B 2005 P 826

4.01. Events of Default. The occurrence of any event specified in *Section 8* of the Credit Agreement shall constitute an event of default ("Event of Default") hereunder.

4.02. Acceleration Upon Default; Additional Remedies. Upon the occurrence and during the continuation of an Event of Default, whether or not the Secured Obligations are accelerated in accordance with the terms of the Secured Credit Documents, 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 Trust Estate, 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 Trust Estate, or part thereof or interest therein, to increase the income therefrom or to protect the security hereof and, with or without taking possession of the Trust Estate or any part thereof, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, 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 by Trustee, Beneficiary or a receiver of all or any portion of the Trust Estate or the collection, receipt and application of rents, issues or profits thereby, Trustee or Beneficiary shall be entitled to exercise every right provided for herein or in any other Secured Credit Document or by law upon 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, or specifically enforce any of the covenants hereof;

(c) 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 Trust Estate to be sold, which notice Trustee or Beneficiary shall cause to be duly filed for

record in the official records of the county or counties in which the Property is located;
or

E 1251285 B 2005 P 827

(d) Exercise all other rights and remedies provided herein, in any other Secured Credit Document, or in any other document or agreement now or hereafter securing all or any portion of the obligations secured hereby, or provided by law.

4.03. Foreclosure By Power of Sale.

(a) Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(b) 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 is 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 has been given as required by law, sell the Trust Estate 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.

(c) After deducting all costs, fees and expenses of Trustee and of this Trust, including costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: (i) all sums expended under the terms hereof, not then repaid, with accrued interest at the Agreed Rate (as defined in *Section 2.01* hereof); and (ii) all other sums then secured hereby; and shall pay the remainder, if any, to the person or persons legally entitled thereto.

(d) Trustee may postpone sale of all or any portion of the Trust Estate by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement 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.

(e) A sale of less than the whole of the Trust Estate or any defective or irregular sale made hereunder shall not exhaust the power of sale provided for herein; and subsequent sales may be made hereunder until all obligations secured hereby have been satisfied, or the entire Trust Estate sold, without defect or irregularity.

E 1251285 B 2005 P 828

4.04. Appointment of Receiver. If an Event of Default in this Deed of Trust shall have occurred and be 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 Trust Estate 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 Trust Estate, 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 herein and shall continue as such and any such receiver shall exercise all such powers until the date of confirmation of sale of the Trust Estate unless such receivership is sooner terminated.

4.05. Application of Funds After Default. Except as otherwise herein provided, upon the occurrence and during the continuation of an Event of Default hereunder, Beneficiary may, at any time without notice, apply any or all sums or amounts received and held by Beneficiary to pay insurance premiums, Impositions, or either of them, or as rents or income of the Trust Estate, or as insurance or condemnation proceeds, and all other sums or amounts received by Beneficiary from or on account of Trustor or the Trust Estate, or otherwise, upon any indebtedness or obligation of the Trustor secured hereby, in such manner and order as Beneficiary may elect, notwithstanding that said indebtedness or the performance of said obligation may not yet be due according to the terms thereof. The receipt, use or application of any such sums or amounts 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 this Deed of Trust or any other Secured Credit Document, or any obligations of Trustor or any other obligor under any of the other Secured Credit Documents, or to cure or waive any default or notice of default; or to invalidate any act of Trustee or Beneficiary.

4.06. Costs of Enforcement. Upon the occurrence of any Event of Default, Beneficiary and Trustee, and each of them, may employ an attorney or attorneys to protect their rights hereunder. Trustor promises to pay to Beneficiary, on demand, the reasonable fees and expenses of such attorneys and all other costs of enforcing the obligations secured hereby, including but not limited to, recording fees, the expense of a Trustee's Sale Guarantee, Trustee's fees and expenses, receivers' fees and expenses, and all other expenses, of whatever kind or nature, incurred by Beneficiary and Trustee, and each of them, in connection with the enforcement of the obligations secured hereby, whether or not such enforcement includes the filing of a

lawsuit. Until paid, such sums shall be secured hereby and shall bear interest, from date of expenditure, at the Agreed Rate.

E 1251285 B 2005 P 829

4.07. Remedies Not Exclusive. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment of any indebtedness and performance of any other obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under any other Secured Credit Document or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby 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. All rights and remedies existing under this Deed of Trust are cumulative to, and not exclusive of, any rights or remedies otherwise available. Every power or remedy given by this Deed of Trust or any other Secured Credit Document 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. This Deed of Trust may be foreclosed at any time against all or successively against any part or parts of the Trust Estate as Beneficiary may elect, and this Deed of Trust and the right of foreclosure hereunder shall not be impaired or exhausted by one or any foreclosure or by one or any sale and may be foreclosed successively and in parts until all of the Trust Estate shall have been foreclosed and sold.

4.08. Request for Notice. Trustor hereby requests that a copy of any notice of default and any notice of sale hereunder be mailed to Trustor at the address of Trustor set forth in the first paragraph of this Deed of Trust.

ARTICLE V SECURITY AGREEMENT

5.01. Creation of Security Interest. Trustor hereby grants to Beneficiary a security interest in all of Trustor's estate, right, title and interest, now owned or hereafter acquired, in and to the all of the following property other than the Excluded Equipment (collectively, the "Personal Property"), whether now or hereafter existing, as security for the Secured Obligations, upon and subject to all of the terms and conditions set forth in the Security Agreement (which terms are incorporated herein by this reference):

(a) all Rents, Deposits and Proceeds, as hereinabove defined;

(b) all plans, specifications, maps, surveys, studies, reports, permits, licenses, architectural, engineering and construction contracts, books of account, insurance policies and other documents, of whatever kind or character, relating to use, construction upon, occupancy, leasing, sale or operation of the Property, together with the proceeds, including insurance proceeds, thereof; and

E 1251285 B 2005 P 830

(c) all other personal property and fixtures (including, without limiting the generality of the foregoing, goods, equipment, inventory, proceeds and general intangibles, as those terms are defined in the Utah Uniform Commercial Code (the "UCC")) now or at any time hereafter located on or at the Property or used in connection therewith, together with the proceeds, including insurance proceeds, thereof.

This Deed of Trust constitutes a security agreement as that term is used in the UCC and any other state in which any of the Personal Property is located; and Beneficiary shall have all the rights and remedies of a secured party under the UCC as in effect from time to time (including, without limitation, the rights and remedies under Section 9501 of the UCC) as well as all other rights and remedies available hereunder or under the Security Agreement or at law or in equity.

5.02. Fixture Filing. Some of the above goods are or are to become fixtures on the Land. This Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included in the Personal Property, executed by Trustor (as "debtor") in favor of Beneficiary (as "secured party"). The name of a record owner of any portion the Leased Land in which Debtor does not have an interest of record is listed in *Exhibit B*. Information concerning the security interest created hereby may be obtained from Beneficiary, the secured party hereunder, at the address of Beneficiary set forth above.

5.03. Other Security Agreement. Except as otherwise provided in *Section 5.04* below, the rights and obligations of Trustor and Beneficiary with respect to all Personal Property described in the Security Agreement shall be controlled by the terms and provisions of the Security Agreement to the extent, if any, that the provisions of this Deed of Trust are inconsistent therewith. To the extent not inconsistent, the respective rights and obligations of Trustor and Beneficiary hereunder and under the Security Agreement shall be cumulative.

**ARTICLE VI
MISCELLANEOUS**

6.01. Amendments. 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.

E 1251285 8 2005 P 831

6.02. Governing Law. IN ACCORDANCE WITH THE TERMS OF THE SECURED CREDIT DOCUMENTS, THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS DEED OF TRUST AND UNDER THE OTHER SECURED CREDIT DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE INTERNAL LAW OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICTS-OF-LAW RULES AND PRINCIPLES OF SUCH STATE. TRUSTOR AND BENEFICIARY FURTHER ACKNOWLEDGE, AGREE, AND STIPULATE THAT THE STATE OF NEW YORK HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES INVOLVED IN THIS TRANSACTION AND TO THE UNDERLYING TRANSACTIONS SECURED BY THIS DEED OF TRUST. NOTWITHSTANDING THE FOREGOING, THE PARTIES AGREE THAT:

(a) THE PROCEDURES GOVERNING THE ENFORCEMENT BY BENEFICIARY AND TRUSTEE OF PROVISIONAL REMEDIES AGAINST TRUSTOR DIRECTLY RELATING TO THE REAL PROPERTY ENCUMBERED HEREBY, INCLUDING, BY WAY OF ILLUSTRATION BUT NOT LIMITATION, ANY SUCH ACTIONS FOR REPLEVIN, FOR CLAIM OF DELIVERY OF PROPERTY, OR FOR THE APPOINTMENT OF A RECEIVER, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF UTAH;

(b) UTAH LAW SHALL APPLY TO THE EXTENT, BUT ONLY TO THE EXTENT, NECESSARY IN ORDER TO CREATE, TO PERFECT, AND TO FORECLOSE THE SECURITY INTERESTS AND LIENS CREATED HEREBY; *PROVIDED, HOWEVER,* THAT NOTHING IN THIS SECTION SHALL IN ANY EVENT BE CONSTRUED TO PROVIDE THAT THE SUBSTANTIVE LAW OF THE STATE OF UTAH SHALL APPLY TO THE OBLIGATIONS AND INDEBTEDNESS SECURED BY THIS DEED OF TRUST OR EVIDENCED BY THE OTHER SECURED CREDIT DOCUMENTS, WHICH ARE AND SHALL CONTINUE TO BE GOVERNED BY THE SUBSTANTIVE LAW OF THE STATE OF NEW YORK. IN SUCH CONNECTION, THE PARTIES FURTHER AGREE THAT:

(i) BENEFICIARY MAY ENFORCE ITS RIGHTS UNDER THE SECURED CREDIT DOCUMENTS, INCLUDING ITS RIGHT TO SUE TRUSTOR, TO COLLECT ANY OUTSTANDING INDEBTEDNESS, OR TO OBTAIN A JUDGMENT AGAINST TRUSTOR IN UTAH, NEW YORK, OR OTHER STATES FOR ANY DEFICIENCY PRIOR TO OR FOLLOWING

FORECLOSURE, IN ACCORDANCE WITH NEW YORK LAW, AND IF BENEFICIARY OBTAINS A DEFICIENCY JUDGMENT IN A STATE OTHER THAN IN UTAH, THEN BENEFICIARY SHALL HAVE THE RIGHT TO ENFORCE SUCH JUDGMENT IN UTAH, AS WELL AS IN OTHER STATES;

E 1251285 B 2005 P 832

(ii) UTAH'S ONE-ACTION RULE (INCLUDING, WITHOUT LIMITATION, UTAH CODE ANNOTATED §78-37-1) IS INAPPLICABLE TO THE OBLIGATIONS AND INDEBTEDNESS SECURED BY THIS DEED OF TRUST AND TO THE ENFORCEMENT OR REALIZATION BY BENEFICIARY OF ITS RIGHTS AND REMEDIES RELATING THERETO; AND

(iii) UTAH CODE ANNOTATED §78-37-1 SHALL NOT APPLY (A) TO PREVENT OR LIMIT EXERCISE OR ENFORCEMENT OF ANY OTHER RIGHTS OR REMEDIES OF BENEFICIARY (INCLUDING, BUT NOT LIMITED TO, BENEFICIARY'S RIGHT TO OBTAIN A DEFICIENCY JUDGMENT) EITHER PRIOR TO OR FOLLOWING FORECLOSURE OR (B) TO PREVENT OR LIMIT BENEFICIARY'S RIGHT TO FORECLOSE JUDICIALLY OR NONJUDICIALLY FOLLOWING ANY EXERCISE OR ENFORCEMENT OF ANY OTHER RIGHTS OR REMEDIES OF BENEFICIARY.

6.03. Interpretation. In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires; and the word "person" shall include corporation, partnership or other form of association or entity. The captions or headings at the beginning of Articles, Sections and Subsections hereof are for the convenience of the parties, are not a part of this Deed of Trust, and shall not be used in construing it. The terms "including" and "includes" shall be construed as though followed by the words "without limitation." All exhibits and schedules attached to this Deed of Trust are incorporated herein by this reference and made a part hereof. This Deed of Trust is granted for the benefit of Bankers Trust Company in its capacity as agent for and representative of all of the following (i) the Lenders currently party to the Credit Agreement and their successors and permitted assigns pursuant to the terms of the Credit Agreement, as well as such other financial institutions as may hereafter become "Lenders," as that term is defined in the Credit Agreement, and (ii) the Interest Rate Exchangers, if any, and their successors and permitted assigns pursuant to the terms of the applicable Interest Rate Agreements, as well as all Lenders and Affiliates of Lenders who may hereafter become "Interest Rate Exchangers," as that term is defined in the Credit Agreement.

6.04. Severability. In case any provision in or obligation under this Deed of Trust shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such

provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

E 1251285 B 2005 P 833

6.05. Successors and Assigns. This Deed of Trust applies to and shall be binding on and inure to the benefit of all parties hereto and their respective successors and assigns.

6.06. 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.

6.07. Beneficiary Statements. For any statement or accounting regarding the Secured Obligations requested by Trustor, Beneficiary may charge the maximum amount permitted by law at the time of the request for such statement, or if there is no such maximum, then an amount consistent with Beneficiary's customary charges therefor or the actual cost to Beneficiary thereof, whichever is greater.

6.08. Notices. Any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telexed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service, upon receipt of telefacsimile or telex, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed. For the purposes hereof, the address of each party hereto shall be as hereinabove set forth following such party's name (provided that a copy of any notice or other communication to Beneficiary shall also be delivered to Bankers Trust Company, 300 South Grand Avenue, 41st Floor, Los Angeles, CA 90071, Attn: Robert Kolb), or, as to any party, such other address as shall be designated by such party in a written notice delivered to the other parties hereto.

6.09. Nonforeign Entity. Section 1445 of the Internal Revenue Code of 1986, as amended (the "**Internal Revenue Code**") provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform Beneficiary that the withholding of tax will not be required in the event of the disposition of the Trust Estate pursuant to the terms of this Deed of Trust, Trustor hereby certifies, under penalty of perjury, that: (a) Trustor is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code and the regulations promulgated thereunder; (b) Trustor's U.S. employer identification number (EIN) is as set forth on the signature page of this Deed of Trust following Trustor's name; (c) Trustor's principal place of business is at the address set forth on the first page of this Deed of Trust following Trustor's name; and (d) Trustor is duly qualified to do business in Utah. It is understood that Beneficiary may disclose the contents of this certification to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment or both. Trustor covenants and agrees to execute such further certificates, which shall be signed

under penalty of perjury, as Beneficiary shall reasonably require. The covenant set forth herein shall survive the foreclosure of the lien of this Deed of Trust or acceptance of a deed in lieu thereof.

E 1251285 B 2005 P 834

6.10 Variable Interest. The documents evidencing the Secured Obligations secured by this Deed of Trust provide for the payment of interest at a variable rate.

6.11. Exhibits: Recording of Counterparts. This Deed of Trust is being executed in several counterparts, all of which are identical; *provided, however*, that if the Property is located in more than one county, to facilitate recordation, in certain counterparts only the portions of *Exhibit A* and *Exhibit B* that contain descriptions of the Land and the Leases located in the county in which the particular counterpart is to be recorded have been included and other portions of said exhibits are included by reference only. All of such counterparts together shall constitute one and the same instrument. Complete copies of this Deed of Trust containing the entire *Exhibit A* and *Exhibit B* have been retained by Trustor and Beneficiary and recorded in the Official Records of the County of Cache, Utah.

[SIGNATURES ON NEXT PAGE]

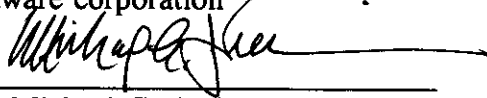
IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

TRUSTOR:

E 1251285 B 2005 P 835

SMITH'S FOOD AND DRUG CENTERS, INC.,
a Delaware corporation

By: _____


Michael C. Frei,
Senior Vice President,
General Counsel and Secretary

Trustor's U.S. Employer Identification Number:

87-0258768

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

E 1251285 B 2005 P 836

The foregoing instrument was acknowledged before me this 21 day of May, 1996 by **MICHAEL C. FREI**, Senior Vice President, General Counsel and Secretary of **SMITH'S FOOD & DRUG CENTERS, INC.**

On May 21, 1996, before me, DIANA GREEN, a Notary Public in and for said State, personally appeared **MICHAEL C. FREI**, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Diana Green
Signature



(seal)

Smith's Store 135
Davis County, UT

E 1251285 B 2005 P 837

LEGAL DESCRIPTION

PARCEL NO 1:

Beginning on the Westerly line of Foxglove Road at a point South 89°45'50" West 1164.04 feet along the Section line from the South quarter corner of Section 12, Township 3 North, Range 1 West, Salt Lake Meridian, in the city of Farmington and running thence South 21° East 115.86 feet along the Westerly line of said road; thence Southeasterly 46.21 feet along the arc of a 330.96 foot radius curve to the right along said road (chord bears South 17° East 46.17 feet); thence South 69° West 60 feet; thence North 21° West 222.30 feet; thence South 69° West 471.94 feet, more or less, to the Northeasterly line of State Highway 89; thence North 21°26'40" West 325.0 feet along said Highway line; thence North 69° East 368.0 feet; thence North 21° West 80.0 feet; thence North 69° East 15.0 feet; thence North 21° West 70.0 feet; thence North 69° East 120.37 feet to a fence line and a point South 89°54'32" West from the intersection of two fence lines 484.0 feet North and 811.34 feet West of a brass cap marking the South Quarter corner of said Section 12; thence North 89°54'32" East 36.73 feet along said fence line; thence South 21° East 522.26 feet along the Westerly line of a proposed road and the Westerly line of said Foxglove Road to the point of beginning. 08-051-0069

NW 13
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N 12
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PARCEL NO. 2:

Beginning at a point on the Easterly line of U.S. Highway 89 and the Northerly line of Shepard Lane, said point also begin South 340.08 feet and West 1606.77 feet from the South Quarter corner of Section 12, Township 2 North, Range 1 West, Salt Lake Base and Meridian (basis of bearing being South 89°45'50" West between said South Quarter corner and the Southwest corner of said Section 12) and running thence; North 21°26'40" West 214.73 feet along the East line of U.S. Highway 89, thence North 69°00'00" East 181.21 feet along the South line of the Smith's parcel; thence South 21°00'00" East 292.80 feet along the West line of the proposed Boyer parcel; thence North 87°29'51" West 195.78 feet along the North line of Shepard Lane to the point of beginning. 08-051-0074

NW 13-3N-1W

PARCEL NO. 3:

A part of the Southwest Quarter of Section 12 and the Northwest Quarter of Section 13, Township 3 North, Range 1 West, Salt Lake Base and Meridian in the City of Farmington, Utah:

08-051-0082

EXHIBIT A
(Fee Land)

Smith's Store 135
Davis County, UT

LEGAL DESCRIPTION CONTINUED

E 1251285 B 2005 P 838

Beginning at a point South 89°45'50" West 1164.04 feet along the Section line and North 21°00' West 60.38 feet along the Westerly line of Foxglove Road and South 69°00' West 63.22 feet from the South Quarter corner of said Section 12; and running thence South 21°00' East 40.00 feet; thence South 69°00' West 10.00 feet; thence North 21°00' West 40.00 feet; thence North 69°00' East 10.00 feet to the point of beginning.

08-051-0082

The above described property also known by the street address of:
1316 North Highway 89, Farmington, Utah 84025.

PARCEL NO. 4:

A non-exclusive easement for 50.00 foot access opening ingress and egress as defined in that certain Grant of Access Opening, recorded March 16, 1987, Instrument No. 776691, Book 1151, Page 4 of Official Records of Davis County, State of Utah.

PT 08-051-0070

W 1/2 13-3N-1W

Smith's Store 140
Davis County, UT

LEGAL DESCRIPTION

PARCEL NO. 1:

E 1251285 B 2005 P 839

A part of the Southeast Quarter of Section 23, Township 5 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey:

BEGINNING at a point on the North line of 2300 North Street (as widened to 33 feet half width) being 218.00 feet West (South 89 Deg. 53'57" West) along the Section line and 33 feet North (North 0 Deg. 03'47" East) from the Southeast corner of said Quarter Section, and running thence West (South 89 Deg. 53'57" West) 610.80 feet; thence North (North 0 Deg. 03'47" East) 108.00 feet; thence West (South 89 Deg. 53'57" West) 86.10 feet; thence North (North 0 Deg. 03'47" East) 364.71 feet to the South line of 2400 North Street; thence East (North 89 Deg. 52'51" East) 729.90 feet to the South line; thence South 0 Deg. 03'47" West 99.94 feet; thence East (North 89 Deg. 53'57" East) 135.00 feet to the West line of the State Highway; thence South (South 0 Deg. 53'47" West) 206.50 feet along said State Highway; thence West (South 89 Deg. 53'57" West) 168.00 feet; thence South (South 0 Deg. 03'47" West) 166.30 feet to the point of beginning.

13-069-0035, 0037, 0039, 0040, 0044,
13-069-0049, 0054

PARCEL NO. 2:

Beginning West 50 feet and North 406.00 feet from the Southwest corner of Section 23, Township 5 North, Range 2 West, Salt Lake Meridian, running thence West 135 feet; thence North 100 feet; thence East 135 feet; thence South 100 feet to the point of beginning.

13-069-~~0049~~ 0059
SE 23-5N-2W

The above described property also known by the street address of:
2353 North Main, Street, Sunset, Utah 84015.

SE 23-5N-2W

flag legal

Smith's Store 149
Davis County, UT

LEGAL DESCRIPTION

E 1251235 B 2005 P 840

A part of the Northwest Quarter of Section 27 and the Southwest Quarter of Section 22, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

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BEGINNING at the Intersection of the South line of Gentile Street and the East line of Fairfield Road, said point being South 89°30'20" East 1460.13 feet along the Section line and North 21°47'40" West 554.43 feet along said East line of Fairfield Road from the Northwest Corner of said Section 27; and running thence Northeasterly 214.88 feet along the arc of a 922.37 foot radius curve to the right (center bears South 15°49'52" East and long chord bears North 80°50'34" East 214.39 feet) along the South line of Gentile Street; thence North 87°31'00" East 61.39 feet along said South line of Gentile Street; thence Northeasterly 110.53 feet along the arc of a 987.94 foot radius curve to the left (center bears North 2°29'00" West and long chord bears North 84°18'42" East 110.47 feet) along said South line of Gentile Street to the West line of Adamswood Road; thence South 42°02'00" East 401.97 feet along said West line of Adamswood Road; thence South 55°03'00" East 67.77 feet along said West line of Adamswood Road; thence South 6°51'00" East 240.64 feet; thence South 68°17'04" West 513.40 feet to the East line of Fairfield Road; thence North 21°47'40" West 752.85 feet along said East line of Fairfield Road to the point of beginning.

11-003-0102 + 0002

LESS AND EXCEPTING that portion deeded to Layton City in that certain Quit-Claim Deed recorded March 17, 1988 as Entry No. 818966 in Book 1223 at Page 903 described as follows:

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A part of the Southwest Quarter of Section 22, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

BEGINNING at the intersection of the South line of Gentile Street and the East line of Fairfield Road; running thence Northeasterly 20.00 feet along the arc of a 922.37 foot radius curve to the right along said South line of Gentile Street; thence South 17°55'50" West 29.52 feet to a point 1 foot perpendicularly distant East of the East line of said Fairfield Road; thence South 21°47'40" East 215.00 feet parallel to the East line of Fairfield Road; thence South 68°21'20" West 1.00 feet to the East line of Fairfield Road; thence North 21°47'40" West 240.00 feet along said East line of the point of beginning.

The above described property also known by the street address of:
1170 East Gentile Street, Layton, Utah 84040

11-003-0102
11-003-0002

Smith's Store 1309
Davis County, UT

E 1251285 B 2005 P 841

LEGAL DESCRIPTION

PARCEL NO. 1:

A part of the Southwest Quarter of Section 20 and the Southeast Quarter of Section 19, Township 4 North, Range 12 West, Salt Lake Meridian: Beginning at a point which is 425.13 feet North 89°54'40" East along the Quarter section line and 35.00 feet South 0°13'10" West from the West Quarter corner of said Section 20; running thence South 0°13'10" West 494.27 feet; thence Westerly along the arc of 258.24 foot radius curve to the left 196.33 feet (Long chord bears North 21°33'38" West 191.64 feet) thence North 43°20'26" West 433.75 feet; thence North 89°54'40" East 370.02 feet to the point of beginning.

10-069-0053

PARCEL NO. 2:

Beginning on the East line of a 66 foot street at a point North 89°54'40" East 424.5 feet along the Quarter Section line and South 0°11'20" West 35 feet parallel to the West line from the Northwest corner of the said Southwest Quarter of Section 20, Township 4 North, Range 1 West; Salt Lake Meridian: Thence South 0°11'20" West 518.08 feet; thence North 89°54'40" East 663.0 feet; thence North 0°11'20" East 518.08 feet; thence South 89°54'40" West 663 feet to point of beginning.

10-069-0050

PARCEL NO. 3:

Beginning at the Northeast corner of property conveyed in Book 479 at Page 67 at a point 35 feet South along Section line and 1087.5 feet East from the Northwest corner of the Southwest Quarter of Section 20, Township 4 North, Range 1 West, Salt Lake Meridian; thence East 80.513 feet; thence North 89°54'40" East 189.10 feet; thence South 0°05'20" East 518.07 feet, more or less, thence South 89°54'40" West 271.71 feet; thence North 0°11'20" East 518.08 feet, more or less, to the point of beginning.

10-069-0051

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M-N-4N-1W

Smith's Store 1309
Davis County, UT

LEGAL DESCRIPTION CONTINUED

PARCEL NO. 4:

E 1251285 B 2005 P 842

A part of the Southwest Quarter of Section 20, Township 4 North, Range 1 West, Salt Lake Meridian: Beginning at a point on the East line of 1100 West Street, which is 425.13 feet North 89°54'40" East along the Quarter Section line and 793.08 feet South 0°13'10" West from the Northwest corner of said Southwest Quarter of Section 20, running thence North 0°13'10" East 240 feet along said East line of 1100 West Street; thence North 89°54'40" East 934.71 feet; thence North 0°05'20" West 518.07 feet along the East line of an existing building wall and line extended; thence North 89°54'40" East 151.71 feet; thence South 75°58'40" East 113.52 feet; thence South 76°19'40" East 302.82 feet; thence South 49°35'45" East 95.77 feet; thence South 0°11'20" West 596.14 feet; thence South 89°54'40" West 1561.88 feet to the point of beginning.

10-069-0049

PARCEL NO. 5:

A part of the Southwest Quarter of Section 20, Township 4 North, Range 1 West, Salt Lake Meridian: Beginning at a point which is North 89°53'10" East 833.58 feet and North 0°11'20" East 1330.83 feet from the Southwest corner of the Southwest Quarter of said Section 20, running thence South 89°54'40" West 409.15 feet to the line of 1100 West Street; thence North 0°13'10" East 519.72 feet to the Southwest corner of property owned by Layton City Corp (10-069-0020), said point being North 89°43' East 424.5 feet and South 0°11'20" West 793.08 feet from the Northwest corner of the Southwest Quarter of said Section 20; thence North 89°54'40" East 1561.88 feet along the South line of the Layton City Corp property; thence South 0°11'20" West 512.89 feet; thence South 89°53'10" West 70.62 feet; thence South 89°33'05" West 1082.44 feet to the point of beginning.

10-069-0047

PARCEL NO. 6:

Beginning at a point which is North 89°53'10" East 833.58 feet and North 0°11'20" East 888.25 feet from the Southwest corner of Section 20, Township 4 North, Range 1 West, Salt Lake Meridian; and running thence North 0°11'20" East 442.58 feet; thence North 89°33'05" East 1082.44 feet; thence South 0°11'20" West 400.63 feet to the Northeast corner of Simmon's Subdivision thence North 89°46'50" West 297.0 feet along the North boundary line of said subdivision of the Northwest corner of said subdivision; thence South 0°13'10" West 50.00 feet; thence South 89°53'10" West 785.37 feet to the point of beginning.

10-069-0057

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Smith's Store 1309
Davis County, UT

LEGAL DESCRIPTION CONTINUED

E 1251285 B 2005 P 843

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PARCEL NO. 7:

Beginning at the Southwest corner of the Northwest Quarter of Section 20, Township 4 North, Range 1 West, Salt Lake Meridian: Running East 79.00 feet; thence North 0°05'20" West 105.50 feet; thence North 89°54'40" East 141.00 feet; thence South 0°05'20" West 105.50 feet; thence East 1,100.00 feet; thence North 0°09'49" East 366.47 feet to the West right-of-way line of the Union Pacific Railroad; thence North 49°31' West to the South line of Hill Field Road; thence South 40°29' West 80.99 feet; thence along the arc of a 607.639 foot radius curve to the right for a distance of 239.199 feet to a point of a 150.00 radius curve to the left; thence along the across of said curve for a distance of 164.479 feet; thence North 0°11'20" East to the North line of the Southwest Quarter of the Northwest Quarter; thence West 33.00 feet to the Section line; thence South 20 chains, more or less, to the point of beginning.

10-067-0071

EXCEPTING THEREFROM any portion lying within Davis County Road.

PARCEL NO. 8:

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Beginning at the Southwest corner of the Southeast Quarter of the Northwest Quarter of Section 20, Township 4 North, Range 1 West, Salt Lake Meridian, thence North 372.3 feet, more or less, to the West right-of-way line of the Oregon Short Line Railroad; thence Southeasterly along said West right-of-way 573.1 feet, more or less, to the Southerly line of the Northwest Quarter of Section 20, Township 4 North, Range 1 West, thence West along North right-of-way line of a Spur Track of said Railroad 437 feet, more or less, to point of beginning.

10-067-0022

PARCEL NO. 9:

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A part of the Northwest Quarter of Section 20, Township 4 North, Range 1 West, Salt Lake Meridian: Beginning at a point which is North 89°54'40" East 79.00 feet from the Northwest Quarter corner of said Section 20 and running thence North 0°05'20" West 105.50 feet; thence North 89°54'40" East 141.00 feet; thence South 0°05'20" West 105.50 feet; thence South 89°54'40" West 141.00 feet to the point of beginning. Together with a description for ingress and egress.

10-067-0062

EXHIBIT A
(Fee Land)

Smith's Store 1309
Davis County, UT

E 1251285 B 2005 P 344

LEGAL DESCRIPTION CONTINUED

Together with an Easement for Ingress and Egress described as follows:
Beginning at a point which is South 0°05'20" East 12.00 feet from the
Northwest corner of the above described parcel and running thence South
89°54'40" West 46 feet, more or less, to the East line of 1100 West
Street; thence South 0°11'20" West 93.50 feet along said East line to
the Quarter Section line; thence North 89°54'40" East 46 feet, more or
less; to the Southwest Corner of said Parcel; thence North 0°05'20" West
93.50 feet to the point of beginning.

10-067-0063

The above described property also known by the street address of:
282 West Golden Avenue and 500 North Sugar Street, Layton, Utah 84040.

EXHIBIT B

DESCRIPTION OF LEASES AND LEASED LAND

E 1251285 B 2005 P 845

NONE

Smith's Store 1309
Davis County, UT

E 1251285 B 2005 P 846

*All in the
SW 20-4N-1W*

LEGAL DESCRIPTION

PARCEL NO. 1:

A part of the Southwest Quarter of Section 20 and the Southeast Quarter of Section 19, Township 4 North, Range 12 West, Salt Lake Meridian: Beginning at a point which is 425.13 feet North 89°54'40" East along the Quarter section line and 35.00 feet South 0°13'10" West from the West Quarter corner of said Section 20; running thence South 0°13'10" West 494.27 feet; thence Westerly along the arc of 258.24 foot radius curve to the left 196.33 feet (Long chord bears North 21°33'38" West 191.64 feet) thence North 43°20'26" West 433.75 feet; thence North 89°54'40" East 370.02 feet to the point of beginning.

10-069-0053

PARCEL NO. 2:

Beginning on the East line of a 66 foot street at a point North 89°54'40" East 424.5 feet along the Quarter Section line and South 0°11'20" West 35 feet parallel to the West line from the Northwest corner of the said Southwest Quarter of Section 20, Township 4 North, Range 1 West; Salt Lake Meridian: Thence South 0°11'20" West 518.08 feet; thence North 89°54'40" East 663.0 feet; thence North 0°11'20" East 518.08 feet; thence South 89°54'40" West 663 feet to point of beginning.

10-069-0050

PARCEL NO. 3:

Beginning at the Northeast corner of property conveyed in Book 479 at Page 67 at a point 35 feet South along Section line and 1087.5 feet East from the Northwest corner of the Southwest Quarter of Section 20, Township 4 North, Range 1 West, Salt Lake Meridian; thence East 80.513 feet; thence North 89°54'40" East 189.10 feet; thence South 0°05'20" East 518.07 feet, more or less, thence South 89°54'40" West 271.71 feet; thence North 0°11'20" East 518.08 feet, more or less, to the point of beginning.

10-069-0051

All in the
SW 20 - 4N-1W

Smith's Store 1309
Davis County, UT

LEGAL DESCRIPTION CONTINUED

E 1251285 B 2005 P 847

PARCEL NO. 4:

A part of the Southwest Quarter of Section 20, Township 4 North, Range 1 West, Salt Lake Meridian: Beginning at a point on the East line of 1100 West Street, which is 425.13 feet North 89°54'40" East along the Quarter Section line and 793.08 feet South 0°13'10" West from the Northwest corner of said Southwest Quarter of Section 20, running thence North 0°13'10" East 240 feet along said East line of 1100 West Street; thence North 89°54'40" East 934.71 feet; thence North 0°05'20" West 518.07 feet along the East line of an existing building wall and line extended; thence North 89°54'40" East 151.71 feet; thence South 75°58'40" East 113.52 feet; thence South 76°19'40" East 302.82 feet; thence South 49°35'45" East 95.77 feet; thence South 0°11'20" West 596.14 feet; thence South 89°54'40" West 1561.88 feet to the point of beginning.

10-069-0049

PARCEL NO. 5:

A part of the Southwest Quarter of Section 20, Township 4 North, Range 1 West, Salt Lake Meridian: Beginning at a point which is North 89°53'10" East 833.58 feet and North 0°11'20" East 1330.83 feet from the Southwest corner of the Southwest Quarter of said Section 20, running thence South 89°54'40" West 409.15 feet to the line of 1100 West Street; thence North 0°13'10" East 519.72 feet to the Southwest corner of property owned by Layton City Corp (10-069-0020), said point being North 89°43' East 424.5 feet and South 0°11'20" West 793.08 feet from the Northwest corner of the Southwest Quarter of said Section 20; thence North 89°54'40" East 1561.88 feet along the South line of the Layton City Corp property; thence South 0°11'20" West 512.89 feet; thence South 89°53'10" West 70.62 feet; thence South 89°33'05" West 1082.44 feet to the point of beginning.

10-069-0047

PARCEL NO. 6:

Beginning at a point which is North 89°53'10" East 833.58 feet and North 0°11'20" East 888.25 feet from the Southwest corner of Section 20, Township 4 North, Range 1 West, Salt Lake Meridian; and running thence North 0°11'20" East 442.58 feet; thence North 89°33'05" East 1082.44 feet; thence South 0°11'20" West 400.63 feet to the Northeast corner of Simon's Subdivision thence North 89°46'50" West 297.0 feet along the North boundary line of said subdivision of the Northwest corner of said subdivision; thence South 0°13'10" West 50.00 feet; thence South 89°53'10" West 785.37 feet to the point of beginning.

C-2 10-069-0057

Smith's Store 1309
Davis County, UT

E 1251285 R 2005 P 848

LEGAL DESCRIPTION CONTINUED

PARCEL NO. 7:

Beginning at the Southwest corner of the Northwest Quarter of Section 20, Township 4 North, Range 1 West, Salt Lake Meridian: Running East 79.00 feet; thence North $0^{\circ}05'20''$ West 105.50 feet; thence North $89^{\circ}54'40''$ East 141.00 feet; thence South $0^{\circ}05'20''$ West 105.50 feet; thence East 1,100.00 feet; thence North $0^{\circ}09'49''$ East 366.47 feet to the West right-of-way line of the Union Pacific Railroad; thence North $49^{\circ}31'$ West to the South line of Hill Field Road; thence South $40^{\circ}29'$ West 80.99 feet; thence along the arc of a 607.639 foot radius curve to the right for a distance of 239.199 feet to a point of a 150.00 radius curve to the left; thence along the across of said curve for a distance of 164.479 feet; thence North $0^{\circ}11'20''$ East to the North line of the Southwest Quarter of the Northwest Quarter; thence West 33.00 feet to the Section line; thence South 20 chains, more or less, to the point of beginning.

10-067-0071

EXCEPTING THEREFROM any portion lying within Davis County Road.

PARCEL NO. 8:

Beginning at the Southwest corner of the Southeast Quarter of the Northwest Quarter of Section 20, Township 4 North, Range 1 West, Salt Lake Meridian, thence North 372.3 feet, more or less, to the West right-of-way line of the Oregon Short Line Railroad; thence Southeasterly along said West right-of-way 573.1 feet, more or less, to the Southerly line of the Northwest Quarter of Section 20, Township 4 North, Range 1 West, thence West along North right-of-way line of a Spur Track of said Railroad 437 feet, more or less, to point of beginning.

10-067-0072

PARCEL NO. 9:

A part of the Northwest Quarter of Section 20, Township 4 North, Range 1 West, Salt Lake Meridian: Beginning at a point which is North $89^{\circ}54'40''$ East 79.00 feet from the Northwest Quarter corner of said Section 20 and running thence North $0^{\circ}05'20''$ West 105.50 feet; thence North $89^{\circ}54'40''$ East 141.00 feet; thence South $0^{\circ}05'20''$ West 105.50 feet; thence South $89^{\circ}54'40''$ West 141.00 feet to the point of beginning. Together with a description for ingress and egress.

10-067-0062

Smith's Store 1309
Davis County, UT

E 1251285 B 2005 P 849

LEGAL DESCRIPTION CONTINUED

Together with an Easement for Ingress and Egress described as follows:
Beginning at a point which is South 0°05'20" East 12.00 feet from the
Northwest corner of the above described parcel and running thence South
89°54'40" West 46 feet, more or less, to the East line of 1100 West
Street; thence South 0°11'20" West 93.50 feet along said East line to
the Quarter Section line; thence North 89°54'40" East 46 feet, more or
less; to the Southwest Corner of said Parcel; thence North 0°05'20" West
93.50 feet to the point of beginning.

10-067-0062

The above described property also known by the street address of:
282 West Golden Avenue and 500 North Sugar Street, Layton, Utah 84040.