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REC'D FOR MERRILL TITLE COMPANY

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DEED OF TRUST

SW-22 } 47-1W  
NW-27 }  
11-003-0002  
0102

Dated as of October 1, 1988

FROM

SMITH'S FOOD KING PROPERTIES, INC.

(the "Company")

TO

MERRILL TITLE COMPANY  
as Trustee

(the "Mortgagee")

For the Benefit of

AMERICAN GENERAL LIFE AND ACCIDENT INSURANCE COMPANY

(the "Beneficiary")

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Retail Grocery and Drug Store  
(Layton, Utah)

This instrument was  
prepared by and upon  
recording return to:

Robert C. Nash  
Cheggan and Cutler  
111 West Monroe Street  
Chicago, Illinois 60603

WT14173

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**ATTACHMENTS TO DEED OF TRUST:**

Annex A - Legal Description of Real Property

THIS DEED OF TRUST dated as of October 1, 1988 (the "Deed of Trust") from SMITH'S FOOD KING PROPERTIES, INC., a Utah corporation (the "Company"), having its principal office at 1544 South Redwood Road, Salt Lake City, Utah 84104, to MERRILL TITLE COMPANY, a Utah corporation, having its office at 470 East 3900 South, Suite 103, Salt Lake City, Utah, 84107, Attention: Linda L. Berrett, as trustee (the "Mortgagee"), for the benefit of AMERICAN GENERAL LIFE AND ACCIDENT INSURANCE COMPANY, a Tennessee corporation, whose post office address is c/o American General Corporation, 2929 Allen Parkway, Houston, Texas 77019, Attention: Private Placements A37-01 (the "Beneficiary").

#### R E C I T A L S:

A. The Company and the Beneficiary have executed and delivered Note Purchase Agreement dated as of October 1, 1988 (the "Note Agreement") providing for the commitment of the Beneficiary to purchase the 10.00% Secured Notes, Series W, due November 1, 2003 (the "Notes") of the Company in an aggregate principal amount not to exceed \$12,100,000, to be dated in each case the date of issue, expressed to bear interest from the date of issue until maturity at the rate of 10.00% per annum and expressed to mature as follows:

- (a) an installment of interest only payable on November 1, 1988;
- (b) one hundred seventy-nine (179) equal installments, including both principal and interest, each in an amount equal to 1.074606% of the original principal amount of such Notes, payable monthly on October 1, 1988 and on the first day of each calendar month thereafter to and including October 1, 2003; and
- (c) a final installment on November 1, 2003 in an amount equal to the entire principal and interest remaining unpaid as of said date.

Interest on the Notes will be computed on the basis of a 360-day year of twelve 30-day months.

B. The Company has or will lease the Mortgaged Property (as hereinafter defined) to Smith's Management Corp., a Utah corporation (the "Tenant"), under and pursuant to the terms of that certain Lease Agreement dated the date hereof (the "Lease") and has or will assign all of its right, title and interest in and to the Lease to the Beneficiary pursuant to that certain Assignment of Lease dated the date hereof (the "Assignment").

C. The Notes and all principal thereof, premium, if any, and interest thereon and all additional amounts and other sums at any time due and owing from, and required to be paid by the Company under the terms of the Notes and the Note Agreement, the Assignment and this Deed of Trust are hereinafter sometimes referred to as the "Indebtedness Hereby Secured".

D. The Company is duly authorized under all applicable provisions of law and its articles of incorporation to issue the Notes, to execute and deliver this Deed of Trust and to mortgage, convey and assign the "Mortgaged Property" to the Mortgagee as security for the Notes and all corporate action and all consents, approvals and other authorizations and all other acts and things necessary to make this Deed of Trust the

valid, binding and legal instrument for the security of the Notes have been done and performed.

NOW, THEREFORE, THIS DEED OF TRUST WITNESSETH: That the Company, in consideration of the premises, the purchase and acceptance of the Notes by the Beneficiary and of the sum of Ten Dollars received by the Company from the Mortgagee and the Beneficiary and other good and valuable consideration, receipt whereof is hereby acknowledged, and in order to secure the payment of the principal of, premium, if any, and interest on the Notes according to their tenor and effect, and to secure the payment of all other Indebtedness Hereby Secured and the performance and observance of all the covenants, agreements and conditions contained in or incorporated by reference into the Notes, this Deed of Trust, the Note Agreement or the Assignment, the Company does hereby grant, warrant, mortgage, pledge, assign, sell, demise, bargain, hypothecate, convey, grant a security interest in, transfer and set over unto the Mortgagee and its successors in trust and assigns for the Beneficiary and its successors and assigns, in and to all and singular the following described properties, rights, interest and privileges and all of the Company's estate, right, title and interest therein, thereto and thereunder (all of which properties hereby mortgaged, assigned and pledged or intended so to be are hereinafter collectively referred to as the "Mortgaged Property"):

#### GRANTING CLAUSE FIRST

##### The Property

The parcel of land in Davis County, State of Utah, described in Annex A attached hereto and made a part hereof, together with the entire interest of the Company in and to all buildings, structures, improvements and appurtenances now standing, or at any time hereafter constructed or placed, upon such land, including all right, title and interest of the Company, if any, in and to all building material, building equipment and fixtures of every kind and nature whatsoever on said land or in any building, structure or improvement now or hereafter standing on said land which are classified as fixtures under applicable law and which are used in connection with the operation, maintenance or protection of said buildings, structures and improvements as such (including, without limitation, all boilers, air conditioning, ventilating, plumbing, heating, lighting and electrical systems and apparatus, all communications equipment and intercom systems and apparatus, all sprinkler equipment and apparatus and all elevators and escalators) and the reversion or reversions, remainder or remainders, in and to said land, and together with the entire interest of the Company in and to all and singular the tenements, hereditaments, easements, rights of way, rights, privileges and appurtenances to said land, belonging or in anywise appertaining thereto, including, without limitation, the entire right, title and interest of the Company in, to and under any streets, ways, alleys, gores or strips of land adjoining said land, and all claims or demands whatsoever of the Company either in law or in equity, in possession or expectancy, of, in and to said land, it being the intention of the parties hereto that, so far as may be permitted by law, all property of the character hereinabove described, which is now owned or is hereafter acquired by the Company and is affixed or attached or annexed to said land, shall be and remain or become and constitute a portion of said land and the security covered by and subject to the lien of this Deed of Trust, together with all accessions, parts and appurtenances appertaining or attached thereto and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all thereof, and together with all rents, income, revenues, awards, issues and profits thereof, and the present and continuing right to make

and the present and continuing right to make claim for, collect, receive and receipt for any and all of such rents, income, revenues, awards, issues and profits arising therefrom or in connection therewith.

## GRANTING CLAUSE SECOND

### The Lease

The Lease, and all of the Company's estate, right, title, interest, claim and demand as landlord in, to and under the Lease, including all extensions and renewals of the term thereof, and all existing or future amendments, supplements or modifications of the Lease (and to any short memorandum form of the Lease executed for recording purposes), together with all rights, powers, privileges, options and other benefits of the Company as landlord under the Lease, including, without limitation, (a) the immediate and continuing right (whether or not an Event of Default under the Note Agreement or this Deed of Trust shall have occurred and be continuing) to receive and collect all rents (whether as Basic Rent (as defined in the Lease) or otherwise), income, revenues, issues, profits, insurance proceeds, condemnation awards, bankruptcy claims, liquidated damages, purchase price proceeds and other payments, tenders and security payable to or receivable by the landlord under the Lease; (b) the right to require the Tenant to purchase Landlord's Estate, as defined in and pursuant to the provisions of the Lease, and to accept or reject any offer of the Tenant to purchase the Mortgaged Property or any portion thereof; (c) if the Tenant exercises any right, or shall be required to purchase the Mortgaged Property or the landlord's interest therein, or any portion thereof, the right and power (such power and right being coupled with an interest) to execute and deliver as agent and attorney-in-fact of the landlord under the Lease, an appropriate deed or other instruments of transfer necessary or appropriate for the conveyance and transfer to the purchaser of the Mortgaged Property or the portion thereof being so purchased, and all interest of the landlord therein and to perform in the name and for and on behalf of the landlord, as such agent and attorney-in-fact, any and all other necessary or appropriate acts with respect to any such purchase, conveyance and transfer; (d) the right to make all waivers, consents and agreements; (e) the right to give and receive copies of all notices and other instruments or communications; (f) the right to take such action upon the occurrence of an Event of Default under the Lease, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Lease or by law; and (g) the right to do any and all other things whatsoever which the Company or any landlord is or may be entitled to do under the Lease; all rights under this Granting Clause Second having also been granted to the Beneficiary in and by the Assignment, which Assignment is hereby incorporated into this Granting Clause Second, it being understood that the assignment made herein and in the Assignment are intended to be one and the same.

## GRANTING CLAUSE THIRD

### Other and After-Acquired Property

Any and all moneys and other property (including each amendment or supplement to any and all instruments included in the Mortgaged Property) which may from time to time, by delivery to the Mortgagee or by any instrument, including this Deed of Trust, be subjected to the lien hereof by the Company or by anyone on the behalf of the Company or with the consent of the Company, or which may come into the possession or

be subject to the control of the Mortgagee pursuant to this Deed of Trust, or pursuant to any instrument included in the Mortgaged Property, it being the intention of the Company and the Mortgagee and it being hereby agreed by them that all property hereafter acquired by the Company and required to be subjected to the lien of this Deed of Trust or intended so to be shall forthwith upon the acquisition thereof by the Company be as fully embraced within the lien of this Deed of Trust as if such property were now owned by the Company and were specifically described in this Deed of Trust and granted hereby or pursuant hereto.

#### GRANTING CLAUSE FOURTH

##### Proceeds

All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or other liquidated claims, including, without limitation, all proceeds of insurance and condemnation awards and payments.

SUBJECT, HOWEVER, as to all property or rights in property at any time subject to the lien hereof (whether now owned or hereafter acquired), to the following:

(a) The agreement of the parties hereto that any and all trade fixtures, signs, furniture, furnishings, equipment, machinery or other tangible personal property located on the Mortgaged Property and not classified as fixtures under applicable law are expressly excluded from the lien and security interest created by this Deed of Trust, and that the same shall in no instance be deemed to be encompassed within the term "Mortgaged Property"; and

(b) The Permitted Encumbrances, as defined in Section 1 hereof.

TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee and its successors and assigns, with the purpose of securing performance of each agreement, covenant and warranty of the Company contained herein and payment of the indebtedness evidenced by the Notes from time to time issued under and pursuant to the Note Agreement. It is understood and agreed that this Deed of Trust is to secure the obligation of the Company to repay, without preference or priority, all of the Notes executed and delivered pursuant to the Note Agreement including those heretofore executed, those of even date herewith and those to be executed in the future as specified in said Note Agreement.

IN TRUST, NEVERTHELESS, WITH POWER OF SALE, upon the terms and trusts herein set forth for the benefit and security of all present and future holders of the Notes in accordance with their terms and all other sums payable hereunder or under the Notes, and for the performance and observance of the Notes and this Deed of Trust, all as herein set forth.

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if the Company performs the covenants herein contained and pays to the Mortgagee, its successors or assigns, the full amount of all principal of, and premium, if any, and interest on the Notes and all other sums due or payable hereunder or under the Note Agreement, the estate, right and interest of the Mortgagee in the property hereby

conveyed shall cease and this Deed of Trust shall become null and void, but otherwise to remain in full force and effect.

It is agreed and understood by the parties hereto that:

1. The Notes are to be secured by other deeds of trust on, and assignments of leases in respect of, other real estate located in Salt Lake County, Utah and Washington County, Utah. Each and all of said deeds of trust and assignments of leases are intended to and shall constitute security for the entire indebtedness represented by said Notes without allocation.

2. Any part of the security herein described, and any security described in any other deed of trust, assignment of lease or other instrument now or hereafter given to secure the indebtedness which is secured by this Deed of Trust, may be released by the Mortgagee without affecting the lien hereof on the remainder.

3. The Company for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof, or to have the Mortgaged Property hereunder and the property covered by any other deed of trust or assignment of lease securing the Notes marshalled upon any foreclosure of any of said deeds of trust or assignments of leases, and agrees that any court having jurisdiction to foreclosure such lien may order the Mortgaged Property sold as an entirety.

4. Upon the occurrence of an Event of Default hereunder the Mortgagee has, among other things, the right to foreclose on the Mortgaged Property and dispose of the same. The Mortgagee's deed or other instrument of conveyance, transfer or release (which may be in the name of the Mortgagee or as attorney for the Company and the Mortgagee hereby irrevocably appointed) shall be effective to convey and transfer to the grantee an indefeasible title to the property covered thereby, discharged of all rights of redemption by the Company or any person claiming under it, and to bar forever all claims by the Company or the said Mortgagee to the property covered thereby and no grantee from the Mortgagee shall be under any duty to inquire as to the authority of the Mortgagee to execute the same, or to see to the application of the purchase money.

#### SECTION 1. DEFINITIONS.

The following terms shall have the following meanings for all purposes of this Deed of Trust:

"Affiliate" shall mean any Person, (a) which, directly or indirectly, through one or more intermediaries controls, or is controlled by, or is under common control with, the Company, (b) which beneficially owns or holds 5% or more of any class of the Voting Stock of the Company, or (c) 5% or more of the Voting Stock (or in the case of a Person which is not a corporation, 5% or more of the Securities of such Person which shall have any rights or interests similar to the Voting Stock of a corporation) of which is beneficially owned or held by the Company or a Subsidiary. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of Voting Stock, by contract or otherwise.



**"Aggregate Total Cost"** shall mean an amount equal to the sum of the Total Cost of all property of the Company which is or was subject to the lien of this Deed of Trust and each and every other deed of trust originally delivered to or for the benefit of the Beneficiary under and pursuant to the Note Agreement.

**"Assignment"** shall mean the Assignment of Lease dated the date hereof among the Company, the Tenant and the Beneficiary pertaining to the Mortgaged Property, as the same may from time to time be supplemented or amended.

**"Company"** shall mean not only Smith's Food King Properties, Inc., but also its successors and assigns.

**"Default"** shall mean any event which would constitute an Event of Default if any requirement in connection therewith for the giving of notice, or the lapse of time, or the happening of any further condition, event or action had been satisfied.

**"Determination of Obsolescence"** shall mean the determination by the Board of Directors of the Tenant (which determination shall have been concurred in by the Board of Directors of the Company) with respect to the Mortgaged Property provided for in Section 13(a) of the Lease.

**"Event of Default"** shall mean any events specified in Section 5 hereof.

**"Event of Loss"** with respect to the Mortgaged Property shall mean any occurrence described in clause (i) or (ii) of Section 11(a) of the Lease.

**"Lease"** shall mean the Lease Agreement dated the date hereof between the Company, as landlord, and the Tenant, as tenant, as the same may from time to time be supplemented or amended.

**"Loan Value"** of the Mortgaged Property shall be the aggregate unpaid principal amount of the Notes (including any Improvement Notes [as defined in the Note Agreement]) immediately prior to the date on which the Loan Value is to be paid by a fraction in which the numerator is the Total Cost of the Mortgaged Property and the denominator is the Aggregate Total Cost of all property of the Company which is or was subject to the lien of a deed of trust originally delivered to the Mortgagee under and pursuant to the Note Agreement.

**"Mortgagee"** shall mean the Mortgagee, and any successor thereto appointed pursuant to Section 6.7 of this Deed of Trust, to the extent required by law to permit the exercise of any remedies pursuant to Section 5.2 of this Deed of Trust and for any other purpose hereunder shall mean the Beneficiary.

**"Note"** shall mean any of, and **"Notes"** shall mean all of, the Notes then outstanding under the Note Agreement. The term "outstanding" when used with reference to Notes shall mean, as of any particular time all Notes delivered by the Company under the Note Agreement and secured hereby, except:

- (a) Notes for the payment or prepayment of which moneys in the necessary amount shall have been paid to the Beneficiary; and

(b) Notes in lieu of or in substitution for which other Notes shall have been authenticated and delivered pursuant to the terms of Section 9.2 or 9.3 of the Note Agreement.

"Note Agreement" shall mean the Note Agreement dated as of October 1, 1988 between the Company and the Beneficiary, providing for the commitment of the Beneficiary to purchase the Notes of the Company issued under and pursuant to the terms thereof, as the Note Agreement may from time to time be supplemented or amended.

"Permitted Encumbrances" shall mean the liens described in clauses (a) through (i) of Section 2.8 of this Deed of Trust.

"Person" shall mean an individual, partnership, corporation, trust or unincorporated organization.

"Purchase Price" of the Mortgaged Property shall mean the sum of the Loan Value thereof and an amount equal to the applicable premium payable by the Company pursuant to Section 2.2 of the Note Agreement.

"Security" shall have the same meaning as in Section 2(1) of the Securities Act of 1933, as amended.

"Subsidiary" shall mean any corporation of which more than 50% (by number of votes) of the Voting Stock is owned and controlled by the Company and/or one or more corporations which are Subsidiaries.

"Tenant" shall mean not only Smith's Management Corp. but also its successors and assigns.

"Total Cost" of the Mortgaged Property shall mean the sum of (a) the actual construction cost of the Mortgaged Property, including the cost of land and buildings and architectural and engineering fees and the cost of any improvements made thereto whether financed by Improvement Notes (as such term is used in the Note Agreement) or otherwise but excluding the cost of trade fixtures, signs, furniture and equipment, and (b) all fees and expenses in connection with the placement, issuance and sale of the Notes including fees and expenses referred to in Section 9.5 of the Note Agreement allocated by the Company to the Mortgaged Property, and the physical survey and title charges referred to in Section 4.5 and 4.6 of the Note Agreement allocated by the Company to the Mortgaged Property; provided that the aggregate amount of all fees, expenses, charges and costs described in clause (b) above and included in the Total Cost of the Mortgaged Property shall not exceed 2% of the aggregate amount thereof.

"Voting Stock" shall mean Securities of any class or classes of a corporation, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or Persons performing similar functions).

## SECTION 2. GENERAL COVENANTS AND WARRANTIES.

The Company covenants, warrants and agrees as follows:

**2.1. Note Agreement Covenants.** Each and all of the terms, provisions, restrictions, covenants and agreements set forth in the Note Agreement or incorporated therein by reference, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns, are incorporated herein by reference to the same extent as though each and all of said terms, provisions, restrictions, covenants and agreements were fully set out herein and as though any amendment or supplement to the Note Agreement was fully set out in an amendment or supplement to this Deed of Trust; and the Company does hereby covenant and agree well and truly to abide by, perform and be governed and restricted by each and all of the matters provided for by the Note Agreement and so incorporated herein to the same extent and with the same force and effect as if each and all of said terms, provisions, restrictions, covenants and agreements so incorporated herein by reference were set out and repeated herein at length. Without limiting the foregoing, the Company covenants and agrees to pay all taxes, assessments and governmental charges or levies imposed upon this Deed of Trust or the Notes or any other indebtedness secured hereby.

**2.2. Ownership of Mortgaged Property.** The Company covenants and warrants that it has good and marketable title to the Mortgaged Property hereinbefore conveyed to the Mortgagee free and clear of all liens, charges and encumbrances whatever except Permitted Encumbrances, and the Company has full right, power and authority to grant, warrant, mortgage, pledge, assign, sell, demise, bargain, hypothecate, convey, grant a security interest in, transfer and set over the same to the Mortgagee for the uses and purposes in this Deed of Trust set forth; and the Company will warrant and defend the title to the Mortgaged Property against all claims and demands whatsoever. Without limiting the foregoing, the Company represents and warrants that the restrictions, exceptions, reservations, limitations, interests and other matters, if any, set forth immediately following the specific descriptions of the parcels of land in Annex A attached hereto, together with all other restrictions, exceptions, reservations, limitations, interests and other matters, if any, existing on the date of execution and delivery of this Deed of Trust, do not in the aggregate impair the value of the Mortgaged Property or adversely affect the utility, structural integrity or beneficial enjoyment of the Mortgaged Property for the uses to which the Mortgaged Property is being put.

**2.3. Further Assurances.** The Company will, at its own expense, do, execute, acknowledge and deliver all and every further act, deed, conveyance, transfer and assurance necessary or proper for the better assuring, conveying, assigning and confirming unto the Mortgagee all of the Mortgaged Property, or property intended so to be, whether now owned or hereafter acquired.

**2.4. Payment of Principal and Interest.** The Company will duly and punctually pay the principal of, and premium of, if any, and interest on all Notes secured hereby according to the terms thereof.

**2.5. Maintenance of Mortgaged Property, Other Liens, Compliance with Laws, etc.** (a) Without limiting the provisions of Section 6.4 of the Note Agreement, the Company shall (i) subject to Sections 3 and 4 hereof, promptly repair, restore or rebuild any buildings or improvements now or hereafter located on the Mortgaged Property which may become damaged or be destroyed, (ii) keep the Mortgaged Property in good condition and repair, ordinary wear and tear excepted, without waste, and free from all claims, liens, charges and encumbrances other than Permitted Encumbrances, (iii) pay when due any indebtedness which may be secured by a lien or charge on the Mortgaged Property

which does not constitute a Permitted Encumbrance, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee, (iv) comply with all requirements of law or municipal ordinances with respect to the Mortgaged Property and the use thereof (including, without limitation, any law or municipal ordinance with respect to environmental protection or hazardous wastes), failure to comply with which would result in any material interference with the use or operation of the Mortgaged Property by the Company, (v) promptly procure, maintain and comply with, all permits, licenses and other authorizations required for the use of the Mortgaged Property or any erection, installation, operation and maintenance of the Mortgaged Property or any part thereof, and (vi) make no material alterations in said Mortgaged Property except as required by law or municipal ordinance; provided, however, that so long as the Mortgaged Property is subject to the Lease, the requirements with respect to the maintenance of the Mortgaged Property contained in this Section 2.5 shall be satisfied by the maintenance of the Mortgaged Property in accordance with and to the extent provided in the Lease.

(b) The Company may, or may permit the Tenant to, (i) construct upon the Mortgaged Property additional buildings, structures and other improvements ("Improvements") and (ii) install, assemble and place upon the Mortgaged Property any trade fixtures, signs, furniture, furnishings, equipment, machinery and other tangible personal property used or useful in the business of the Company or the Tenant, as the case may be, and not classified as fixtures under applicable law. All such buildings, structures and other improvements shall be and remain part of the realty and shall be subject to this Deed of Trust. Such trade fixtures, signs, furniture, furnishings, equipment, machinery and other tangible personal property shall be and remain the property of the Company or the Tenant as the case may be, shall not be deemed part of the Mortgaged Property for purposes of condemnation or casualty or a Determination of Obsolescence, and the Company or the Tenant, as the case may be, may remove the same from the Mortgaged Property at any time prior to the expiration or earlier termination of this Deed of Trust, provided that the Company, at its expense, shall repair or shall cause the Tenant to repair any damage to the Mortgaged Property resulting from such removal within a reasonable period of time.

(c) Any repair, restoration, rebuilding, substitution, replacement, modification, alteration of or addition to the Mortgaged Property pursuant to Section 2.5(b) must not impair the market value or usefulness of the Mortgaged Property for use in the ordinary course of business; shall be performed in a good and workmanlike manner and be expeditiously completed in compliance with all laws, ordinances, orders, rules, regulations and requirements applicable thereto, including to the extent necessary to maintain in full force and effect the policies of insurance required by Section 2.6 hereof. All costs and expenses of each such repair, restoration, rebuilding, substitution, replacement, the discharge of all liens filed against the Mortgaged Property arising out of the same, together with all costs and expenses necessary to obtain any permits or licenses required in connection therewith shall be promptly paid by the Company or the Tenant.

(d) The Company will only use and operate the Mortgaged Property, or permit the same to be used and operated, for any lawful purpose.

**2.6. Insurance. (a) Insurance Against Loss or Damage.** Without limiting the provisions of Section 6.5 of the Note Agreement, the Company will maintain or cause to be maintained with respect to the Mortgaged Property insurance, subject to an 80% co-insurance clause, against loss by fire, windstorm and explosion and with extended coverage and against such other risks of physical loss as are customarily insured against,

and in such amounts as are customarily carried, by companies owning property of a similar character and engaged in a business similar to that engaged in by the Company; provided, however, that the amount of such insurance with respect to the Mortgaged Property shall not at any time be less than 100% of the full replacement value of the Mortgaged Property, exclusive of foundations and excavations, as evidenced by "Replacement Cost" or "Restoration" endorsements thereto. The term "full replacement value" as used herein means actual replacement value without deduction for physical depreciation as determined upon request of the Beneficiary at intervals not more than may be required by the company issuing such insurance to provide the required "Replacement Cost" or "Restoration" endorsements and at the expense of the Company, by independent appraisals. The Company may self-insure with respect to the first portion of any loss claimed under such insurance by way of deductible provisions in insurance policies up to such amount as is customary for corporations of established reputation engaged in the same or a similar business as the Company and similarly situated and which maintain such insurance on property similar to the Mortgaged Property, provided that any such self-insurance level shall in no event exceed \$200,000.

(b) **Insurance Against Public Liability and Property Damage.** The Company will maintain or cause to be maintained in effect, with insurers satisfactory to the Beneficiary, insurance policies with respect to the Mortgaged Property, insuring against liability for loss or damage to the person or property of others from such risks and in such amounts as are customarily carried by companies owning property of a similar character and engaged in a business similar to that engaged in by the Company; provided, however, that in no event shall the insurance maintained in accordance with this paragraph be less than \$3,000,000 for bodily injury or death to any one person, \$5,000,000 for any one accident and \$1,000,000 for property damage, and provided further that any self-insurance maintained by the Company shall in no event exceed \$200,000. All such insurance shall protect the Beneficiary and the Company in respect of risks arising out of the condition, maintenance, use, ownership or operation of the Mortgaged Property and certificates thereof shall designate such parties as named insureds thereunder.

(c) **Form of Policies.** Any insurance policies carried in accordance with this Section 2.6 shall be written by companies of recognized national standing noted "A + XV" or better by A.M. Best Company, Inc. and authorized to do business in the state in which the Mortgaged Property is located and: (i) shall name the Beneficiary and each holder of the Notes as additional insureds, as their interests may appear, (ii) in the case of policies covering loss or damage to the Mortgaged Property, shall provide that losses, if any, shall be payable to the Beneficiary under a standard mortgage loss payable clause satisfactory to the Beneficiary, (iii) shall provide that the Beneficiary's interest shall be insured regardless of any breach or violation by the Company of any warranties, declarations or conditions contained in such policies, (iv) such insurance, as to the interest of the Beneficiary therein, shall not be invalidated by the use or operation of the Mortgaged Property for purposes which are not permitted by such policies, nor by any foreclosure or other proceedings relating to the Mortgaged Property, nor by change in title to or ownership of the Mortgaged Property, (v) the insurers shall waive any right of subrogation of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of the Company, (vi) if any premium or installment is not paid when due, or if such insurance would lapse or be cancelled, terminated or materially changed for any reason whatsoever, the insurers will promptly notify the Beneficiary and any such lapse, cancellation, termination or change shall not be effective as to the Beneficiary for thirty days after receipt of such notice, and (vii) appropriate certification shall be made to the Beneficiary by each insurer with respect thereto.

Provided no Default or Event of Default has occurred or is continuing, the loss, if any, under any policy pertaining to loss by reason of damage to or destruction of any portion of the Mortgaged Property shall be adjusted with the insurance companies by the Company, subject to the prior written approval of the Beneficiary if the loss exceeds \$10,000. The loss so adjusted shall be paid to the Beneficiary pursuant to said loss payable clause unless said loss is \$10,000 or less, in which case said loss shall be paid directly to the Company.

The Company shall furnish Beneficiary with certificates or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal policy or policies shall furnish certificates evidencing such renewal not less than 30 days prior to the expiration date of the original policy or renewal policies. All such policies shall provide that the same shall not be cancelled without at least 30 days' prior written notice to each insured named therein.

(d) So long as the Mortgaged Property is subject to the Lease, maintenance of insurance by the Tenant of the scope and in the form and substance of the insurance required in respect of the Mortgaged Property pursuant to the Lease shall satisfy the requirements of this Section 2.6.

**2.7. Payment of Taxes and Other Charges.** Without limiting the provisions of Section 6.6 of the Note Agreement, the Company will pay and discharge, before the same shall become delinquent, together with interest and penalties thereon, if any, (a) all taxes, assessments (including assessments for benefits from public works or improvements whenever begun or completed), levies, fees, water, sewer, electrical and other utility service rents and charges, and all other governmental charges, general and special, ordinary and extraordinary, and whether or not within the contemplation of the parties hereto, which are at any time levied upon or assessed against it or the Mortgaged Property or any part thereof or upon this Deed of Trust or the Notes secured thereby, or upon the revenues, rents, issues, income and profits in respect of the Mortgaged Property, or arising in respect of the occupancy, use or possession thereof, which failure to pay would result in the creation of a lien upon the Mortgaged Property or any part thereof, or upon the revenues, rents, issues, income and profits of the Mortgaged Property or in the diminution thereof or would result in any material interference with the use or operation of the Mortgaged Property by the Company, (b) all corporate franchise, excise and other taxes, fees and charges assessed, levied or imposed in respect of its corporate existence or its right to do business in any state, (c) all income, excess profits, excise, sales, franchise, gross receipts and other taxes, duties or imposts, whether of a like or different nature, assessed, levied or imposed by any governmental authority on it or the Mortgaged Property, or any portion thereof, or upon the revenues, rents, issues, income and profits of the Mortgaged Property whether or not the failure to pay any such tax, duty or impost might result in the creation of a lien upon any asset of the Company or the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property or in the diminution thereof, and whether or not any such tax, duty or impost is payable directly by the Company or is subject to withholding at the source and (d) all lawful claims and demands of mechanics, laborers, materialmen and others which, if unpaid, might result in the creation of a lien on the Mortgaged Property or upon the revenues, rents, issues, income and profits of the Mortgaged Property and, in general, will do or cause to be done everything necessary so that the lien hereof shall be fully preserved, at the cost of the Company, without expense to the Mortgagee or Beneficiary.

Nothing in this Section 2.7 shall require the payment of any sum which is required to be paid by the Company pursuant to this Section 2.7 so long as the Company

shall in good faith contest its obligation so to do by appropriate proceedings which will prevent the forfeiture or sale of any property of the Company or any material interference with the use or operation thereof by the Company, and shall set up a reserve, reasonably adequate, in the opinion of the President or any Vice President and the Secretary or an Assistant Secretary of the Company against any such payment.

**2.8. Limitation on Liens.** The Company will not create or incur or suffer to be incurred or to exist, any mortgage, pledge, security interest, encumbrance, lien or charge of any kind upon the Mortgaged Property, whether now owned or hereafter acquired, or upon any income or proceeds therefrom, except the following:

(a) liens for property taxes and assessments or governmental charges or levies and liens securing claims or demands of mechanics and materialmen, provided that payment thereof is not overdue or, if overdue, is being contested in good faith by appropriate actions or proceedings;

(b) liens of or resulting from any judgment or award, the time for the appeal or petition for rehearing of which shall not have expired, or in respect of which the Company or a Subsidiary shall at any time in good faith be prosecuting an appeal or proceeding for a review and in respect of which a stay of execution pending such appeal or proceeding for review shall have been secured;

(c) liens, charges, encumbrances and priority claims incidental to the conduct of business or the ownership of properties and assets (including warehousemen's and attorneys' liens and statutory landlords' liens) and deposits, pledges or liens to secure payment of premiums on insurance purchased in the usual course of business or in connection with self-insurance or in connection with workmen's compensation, unemployment insurance or social security legislation, or to secure the performance of bids, tenders or trade contracts, or to secure statutory obligations, surety or appeal bonds or other liens of like general nature incurred in the ordinary course of business and not in connection with the borrowing of money, provided in each case, the obligation secured is not overdue or, if overdue, is being contested in good faith by appropriate actions or proceedings;

(d) minor survey exceptions or minor encumbrances, easements or reservations of, or rights of others for rights-of-way, utilities and other similar purposes, or zoning or other restrictions as to the use of real properties, which encumbrances, easements, reservations, rights and restrictions do not in the aggregate materially detract from the value of said properties or materially impair their use in the operation of the business of the Company or its Subsidiaries;

(e) the lien of this Deed of Trust; provided that the lien hereof shall be and is subject and subordinate to the terms of the Lease;

(f) the lien of the Lease;

(g) the lien of the Assignment; provided that the lien thereof shall be and is subject and subordinate to the terms of the Lease;

(h) the lien of any mortgage or deed of trust to any Person other than the Mortgagee, and covering Improvements to the Mortgaged Property permitted by the terms of the Note Agreement and Section 2.5(b) of this Deed of Trust; provided that the lien thereof shall be subject and subordinate to the terms of this Deed of Trust; and

(i) the lien of any sublease from the Tenant, as sublessor, to any Person, as sublessee; provided that the lien thereof shall be subject and subordinate to the terms of the Lease and the Deed of Trust.

**2.9. The Lease.** At all times the Mortgaged Property shall be leased to the Tenant under the Lease, provided that, to the extent permitted thereby, the Lease may be assigned or the Mortgaged Property sublet by the Tenant upon the terms and conditions set forth in the Lease. The Company will punctually perform all obligations covenants and agreements by it to be performed under the Lease or the Assignment strictly in accordance with the terms thereof, and will at all times do all things necessary to compel performance by the Tenant of all covenants and agreements by it to be performed under the Lease or the Assignment. The Company will take no action and permit no action to be taken by other Persons which will release the Tenant from its obligations and liabilities under the Lease or the Assignment or result in the termination, amendment or modification of, or impair the validity of, the Lease or the Assignment. The Company will give to the Beneficiary notice of all defaults by the Tenant under the Lease or the Assignment promptly after they have become known to the Company. Neither this Deed of Trust nor the Assignment nor any action or inaction on the part of the Beneficiary or the holders of the Notes shall constitute an assumption on the part of the Beneficiary or the holders of the Notes of any obligation to the Tenant or any other person under the Lease. No action or inaction on the part of the Company shall adversely affect or limit in any way the rights of the Beneficiary or the holders of the Notes under this Deed of Trust or the Assignment, or, through this Deed of Trust or the Assignment, under the Lease.

The Company will not, except with the prior written consent of the Beneficiary, take or suffer to be taken any action or consent to or permit any prepayment or discount of rent or payment of advance rent under the Lease or any permitted sublease.

**2.10. Advances.** If the Company shall fail to comply with the covenants contained herein or in the Note Agreement or the Assignment and incorporated herein by reference, the Mortgagee, after five days' prior written notice to the Company and without waiving or releasing any obligation or Default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the Company, and may enter upon the Mortgaged Property or any part thereof for such purpose and take all such action thereon as, in the opinion of the Mortgagee, may be necessary or appropriate therefor. All sums so paid by the Mortgagee and all costs and expenses (including without limitation, reasonable attorneys' fees and expenses) so incurred, together with interest thereon at the rate of 11.00% per annum from the date of payment or incurrence, shall be secured hereby in priority to the indebtedness evidenced by the Notes and shall be paid by the Company to the Mortgagee on demand. The Mortgagee in making any payment authorized under this Section relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim thereof. The Mortgagee, in performing any act hereunder, shall be the



sole judge of whether the Company is required to perform the same under the terms of this Deed of Trust.

**2.11. Recordation.** The Company will, at its own expense, cause this Deed of Trust, the Lease, the Assignment, all supplements hereto and thereto, and any financing statements and continuation statements required by law, including the Uniform Commercial Code, in respect hereof and thereof at all times to be kept recorded and filed at its own expense in such manner and in such places as may be required by law in order to fully preserve and protect the rights of the Mortgagee hereunder and thereunder, and will furnish to the Mortgagee promptly after the execution and delivery of this Deed of Trust, the Lease, the Assignment and each supplement hereto and thereto an opinion of counsel stating that, in the opinion of such counsel, this Deed of Trust, the Lease, the Assignment or such supplement, as the case may be, has been properly recorded or filed for record so as to make effective of record the lien intended to be created hereby and/or thereby.

**2.12. After-Acquired Property.** Any and all property hereafter acquired which is of the kind or nature described in the Granting Clauses hereof and is or intended to become a part thereof, shall ipso facto, and without any further conveyance, assignment or act on the part of the Company or the Mortgagee become and be, subject to the lien of this Deed of Trust as fully and completely as though specifically described herein; but nevertheless the Company shall from time to time, if requested by the Mortgagee, execute and deliver any and all such further assurances, conveyances and assignments thereof as the Mortgagee may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Deed of Trust any and all such property.

### **SECTION 3. POSSESSION, USE AND RELEASE OF PROPERTY.**

**3.1. Company's Right of Possession.** Provided no Default or Event of Default has occurred and is continuing, the Company shall be suffered and permitted to remain in full possession, enjoyment and control of the Mortgaged Property subject always to the observance and performance of the terms of this Deed of Trust and of the Note Agreement and the Assignment. It is expressly understood that the use and possession of the Mortgaged Property by the Tenant or any of its permitted subtenants under and subject to the Lease shall not constitute a violation of this Section 3.1.

**3.2. Release of Mortgaged Property - Event of Loss and Payment of Loan Value.** Upon the occurrence of any Event of Loss in respect of the Mortgaged Property, the Company shall give the Mortgagee, within 30 days after the occurrence thereof, written notice of such Event of Loss, which notice shall specify whether (a) the Tenant will rebuild the Mortgaged Property, or (b) in the case of an Event of Loss in respect of which the proceeds payable as a result thereof exceed \$2,000,000, the Tenant will purchase the Mortgaged Property pursuant to Section 11(b) of the Lease and in consequence of which the Company will make a prepayment of the Notes in accordance with the provisions of Section 4.1 hereof. In the event such notice specifies that the Company will make such prepayment, then, unless a Default or Event of Default has occurred and is continuing, the Mortgagee shall execute a release in respect of the Mortgaged Property upon receipt of such prepayment.

**3.3. Release of Mortgaged Property - Purchase by Tenant.** Upon any determination by the Tenant to purchase the Mortgaged Property pursuant to Section 14 of the Lease, the Company shall give the Mortgagee, within 30 days of such determination,

written notice thereof. Unless a Default or Event of Default has occurred and is continuing, the Mortgagee shall execute a release in respect of the Mortgaged Property upon receipt of the Purchase Price of the Mortgaged Property, together with interest and the premium, if any, and all other sums required by Section 2.2 of the Note Agreement.

**3.4. Release of Mortgaged Property - Determination of Obsolescence.**

Upon the occurrence of a Determination of Obsolescence in respect of the Mortgaged Property, the Company shall give the Mortgagee, within 30 days thereafter, written notice of such Determination of Obsolescence. Unless a Default or Event of Default has occurred and is continuing, the Mortgagee shall execute a release in respect of the Mortgaged Property upon receipt of (a) satisfactory evidence that the Tenant and all Affiliates of the Tenant have discontinued use and occupancy of the Mortgaged Property in the business operations of the Tenant and its Affiliates and sold or otherwise disposed of the same and will not resume such use and occupancy for a period of at least five years, and (b) either (i) the Loan Value of the Mortgaged Property, plus any prepayment premium and interest due on the Notes pursuant to the terms of Section 2.3 of the Note Agreement has been paid in full to the Beneficiary, or (ii) a substitution or replacement (the "Substitute Property") for the Mortgaged Property upon the terms and conditions and in the manner contemplated by Section 13(c) of the Lease. Prior to any release of the Mortgaged Property pursuant to clause (b)(ii) of this Section 3.4, the Mortgagee shall have received the following:

(A) A mortgage or deed of trust substantially in the form of this Deed of Trust with respect to the Substitute Property (except that the Loan Value of the Substitute Property shall be the Loan Value of the Mortgaged Property) duly executed, acknowledged and delivered by the Company, in full force and effect and recorded or filed for record, together with all necessary financing statements and similar notices if and to the extent permitted or required by applicable law, in each public office wherein such recording or filing is deemed necessary or appropriate by the Mortgagee and its counsel to perfect the lien thereof as against creditors of or purchasers from the Company;

(B) All of the terms and conditions of Section 13(c) of the Lease shall have been fulfilled, including, without limitation, the delivery of a survey, a mortgage title insurance policy and an assignment of lease with respect to the Substitute Property, in each such case in form and substance satisfactory to the Mortgagee;

(C) An opinion of counsel for the Company and the Tenant in form and substance satisfactory to the Mortgagee and its counsel to the effect that all requirements of the Lease in respect of the Determination of Obsolescence regarding the Mortgaged Property and the substitution therefor of the Substitute Property which must be satisfied by the Company and the Tenant have been satisfied, the mortgage or deed of trust, the assignment and the lease with respect to the Substitute Property have been duly authorized, executed and delivered by the parties thereto and constitute legal, valid and binding instruments enforceable against the parties thereto in accordance with their respective terms, such mortgage or deed of trust, assignment and lease (together with all necessary financing statements and similar notices if and to the extent permitted or required by applicable law) have been filed for record and/or recorded in the manner and place required by law in order to

establish, preserve and protect the lien of such mortgage or deed of trust and such assignment and such instruments constitute a valid first mortgage lien upon the Substitute Property, the Company has good and valid title to the Substitute Property, no approval, consent or withholding of objection on the part of, or filing, registration or qualification with any governmental body, Federal, state or local, is necessary in connection with the execution and delivery of such mortgage or deed of trust, assignment or lease and compliance by the parties thereto with all of the provisions of such mortgage or deed of trust, assignment and lease will not conflict with or result in any breach of any of the provisions of or constitute a default under or result in the creation or imposition of any lien or encumbrances on any property of any such party pursuant to the provisions of the articles of incorporation or by-laws of any such party or any other agreement or instrument known to such counsel to which any such party is a party or by which any such party may be bound.

**3.5. Eminent Domain.** The Company, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Mortgaged Property or any portion thereof, shall notify the Mortgagee of the pendency of such proceedings. The Mortgagee may participate in any such proceedings, and the Company from time to time will deliver or cause to be delivered to the Mortgagee all instruments requested by it to permit such participation. In the event of such condemnation proceedings, the award or compensation payable to the Company or assigned to the Company by the Tenant under the Lease shall be paid to the Mortgagee, and such award or compensation shall be retained by the Mortgagee as part of the Mortgaged Property and applied in accordance with Section 4.1(a)(i) hereof. The Mortgagee shall be under no obligation to question the amount of the award or compensation and the Mortgagee may accept any such award or compensation. In any such condemnation proceedings the Mortgagee may be represented by counsel, whose reasonable costs and disbursements shall be paid by the Company.

#### **SECTION 4. APPLICATION OF INSURANCE AND CERTAIN OTHER MONEYS RECEIVED BY THE BENEFICIARY.**

**4.1. Insurance Proceeds and Condemnation Awards.** (a) The amounts received by or payable to the Beneficiary from time to time which constitute insurance proceeds in respect of any damage to or destruction of the Mortgaged Property or any part thereof, condemnation awards or compensation covering the Mortgaged Property (less the actual costs, fees and expenses incurred in the collection thereof) shall be held by the Beneficiary as part of the Mortgaged Property and shall be applied by the Beneficiary as follows:

(i) if the total amount of any such loss shall equal or exceed \$2,000,000 (as evidenced by a certificate of the President or any Vice President of the Company and of the Tenant detailing the same), the Tenant shall have elected to terminate the Lease pursuant to Section 11(b) thereof and the Company shall prepay the Notes pursuant to Section 2.1 of the Note Agreement, such proceeds, award or compensation, as the case may be, shall be applied in payment and satisfaction of the Loan Value of the Mortgaged Property upon the terms and in the manner provided in Section 2.1 of the Note Agreement, together with interest due and payable thereon to the date of

payment, and the balance, if any, of any such proceeds shall be released to or upon the order of the Company. If for any reason such proceeds, award or compensation are less than the Loan Value of the Mortgaged Property, together with interest accrued on the Notes to the date of prepayment, the Company will or will cause the Tenant to promptly pay the difference between such proceeds and the Loan Value plus any such accrued interest to the Beneficiary for application in accordance herewith; and

(ii) if the total amount in the case of any such loss shall be less than \$2,000,000 or if such loss shall equal or exceed \$2,000,000 and the Tenant shall not have elected to terminate the Lease pursuant to Section 11(b) thereof, such proceeds shall be paid over to the Tenant or as it may direct from time to time upon a written application signed by the President or any Vice President of the Tenant and accompanied by such evidence in reasonable detail as may be satisfactory to the Beneficiary supporting such application for the purpose of paying, or reimbursing the Tenant for the payment of, the reasonable cost, as shown by such certificate, of repairing or replacing part or all of the Mortgaged Property damaged or destroyed ("Restoration"), but only if written application is made therefor within 12 months (or such longer period of time as may be agreed upon by the Tenant and the Beneficiary) of the receipt of such proceeds, award or compensation by the Beneficiary, and then only for and to the extent that the Tenant shows by such evidence of costs that the portion of such proceeds, award or compensation remaining on deposit with the Beneficiary, together with any additional funds irrevocably allocated or otherwise provided for in a manner satisfactory to the Beneficiary for such purpose, shall be sufficient to complete such Restoration and restore the Mortgaged Property at least to the market value and condition which existed immediately prior to the damage, destruction, condemnation or taking, as the case may be, free from liens or encumbrances except Permitted Encumbrances. Every such application for the payment of such proceeds, award or compensation shall state that no Event of Default has occurred and is continuing. Upon the written request of the Company and the Tenant, accompanied by evidence satisfactory to the Beneficiary that the Restoration has been completed and the costs thereof paid in full, the balance, if any, of such proceeds in excess of \$200,000 shall be applied to the prepayment of the Notes in accordance with Section 2.1 of the Note Agreement. The Beneficiary shall receive a supplement hereto sufficient, as shown by an opinion of counsel (which may be counsel for the Tenant or the Company), to grant a valid first lien in any additions to or substitutions for the Mortgaged Property to the Mortgagee, which opinion shall also cover the filing and/or recording of such supplement (or a financing statement or similar notice thereof if and to the extent permitted or required by applicable law) so as to perfect the lien and security interest in such additions or substitutions, or in the alternative an opinion that no such supplement is required for such purpose.

(b) Subject to Section 2.6(c) hereof with respect to adjustments of losses, any appraisal or adjustment of such loss or any settlement or payment of indemnity therefor which shall be agreed upon between the Company and the relevant insurance company shall be accepted by the Beneficiary.

(c) In the event the insurance proceeds, condemnation award or compensation, as the case may be, shall not have been applied to one or more of the purposes specified in Section 4.1(a) hereof within the 12-month period (or extended period) provided for thereby, then the Beneficiary shall apply such insurance proceeds, awards or compensation to the prepayment, without premium, of the Notes of the Company in an amount sufficient to exhaust such cash as nearly as may be possible upon giving the Company ten days' advance notice of its intent so to do, such prepayment to be made in units of \$1,000 but otherwise to be made ratably on all outstanding Notes of the Company in accordance with the principal amounts unpaid thereon together with interest due and payable thereon and a premium payable with respect thereto upon the terms and in the manner provided in Section 2.2 of the Note Agreement and the balance, if any, remaining after such prepayment shall be released to or upon the order of the Company. If for any reason such proceeds are less than the Loan Value of the Mortgaged Property together with interest due and payable thereon in connection with the prepayment pursuant to said Section 2.1, the Company shall, or shall cause the Tenant to, promptly pay the difference between such proceeds, award or compensation and the Loan Value plus such interest to the Beneficiary for application in accordance herewith.

**4.2. Loan Value.** Any amount received by the Beneficiary which constitutes the Loan Value of the Mortgaged Property paid by the Tenant pursuant to Section 13(b) of the Lease, together with accrued interest thereon and an amount equal to the applicable premium payable pursuant to Section 2.3 of the Note Agreement, shall be paid and applied in the manner contemplated by said Section 2.3.

**4.3. Purchase Price.** Any amount received by the Beneficiary which constitutes the Purchase Price of the Mortgaged Property paid by the Tenant pursuant to Section 14(a) of the Lease, together with accrued interest thereon and an amount equal to the applicable premium payable pursuant to Section 2.2 of the Note Agreement, shall be paid and applied in the manner contemplated by Section 2.2 of the Note Agreement.

**4.4. Mortgage Title Insurance.** Any moneys received by the Beneficiary as payment for any loss under any policy of mortgage title insurance which was delivered by the Company shall become part of the Mortgaged Property and shall be paid and applied in the same manner contemplated by Section 5.3 hereof.

**4.5. Other Proceeds.** Any other moneys received by the Beneficiary in connection with the release of the Mortgaged Property shall be held by the Beneficiary as part of the Mortgaged Property and shall be applied by the Beneficiary upon the terms and in the manner provided in Section 2.1 of the Note Agreement.

**4.6. Application if Event of Default Exists.** If an Event of Default has occurred and is continuing to the knowledge of the Beneficiary, all amounts received by the Beneficiary under this Deed of Trust shall be applied in the manner provided for in Section 5 hereof in respect of proceeds and avails of the Mortgaged Property.

## SECTION 5. DEFAULTS AND REMEDIES THEREFOR.

**5.1. Events of Default.** The Company acknowledges and agrees that each and all of the terms and provisions of Sections 7.1 through 7.3, both inclusive, of the Note Agreement have been and are incorporated into this Deed of Trust by reference to the same extent as though fully set out herein and that the term Event of Default wherever used in this Deed of Trust shall mean either: (a) an Event of Default as defined in Section 7.1 of the Note Agreement; or (b) the failure of the Company to comply with any covenant, agreement or warranty contained in this Deed of Trust within 30 days after the Mortgagee or the holder of any of the Notes shall have given notice thereof to the Company.

**5.2. Remedies.** When any Event of Default has occurred and is continuing, the Mortgagee may exercise any one or more or all, and in any order, of the remedies hereinafter set forth, it being expressly understood that no remedy herein or in the Note Agreement conferred is intended to be exclusive of any other remedy or remedies; but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

(a) The Mortgagee may, by notice in writing to the Company declare the entire unpaid balance of the Notes to be immediately due and payable; and thereupon all such unpaid balance, together with all accrued interest thereon and premium, if any, shall be and become immediately due and payable.

(b) Subject always to the then existing rights, if any, of the Tenant under the Lease, the Mortgagee personally or by agents or attorneys may (i) enter into and take possession of all or any part of the Mortgaged Property, and may forthwith use, operate, manage, insure, repair and improve the Mortgaged Property and take any other action which, in the Mortgagee's judgment, is necessary or proper to conserve the value of the Mortgaged Property, (ii) collect and receive all earnings, revenues, rents, issues, profits and income from the Mortgaged Property or any part thereof (and for such purpose the Company does hereby irrevocably constitute and appoint the Mortgagee its true and lawful attorney-in-fact for it and in its name, place and stead to receive, collect and receipt for all of the forgoing, the Company irrevocably acknowledging that any payment made to the Mortgagee hereunder shall be a good receipt and acquittance against the Company to the extent so made), (iii) pay all principal charges including taxes and assessments levied thereon and operating and maintenance expenses and all disbursements and liabilities of the Company hereunder and (iv) apply the net proceeds arising from any such operation of the Mortgaged Property as provided in Section 5.3 hereof in respect of the proceeds of a sale of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any personal property therein, to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of the Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any reasonable receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which the Company promises to pay upon demand together

with interest at the rate of 11.00% per annum. The Mortgagee shall not be liable to account to the Company for any action taken pursuant hereto other than to account for any rents actually received by the Mortgagee. Without taking possession of the Mortgaged Property, the Mortgagee may, in the event the Mortgaged Property becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon at the rate of 11.00% per annum.

(c) Subject always to the then existing rights, if any, of the Tenant under the Lease, the Mortgagee at the request of the holder of the Indebtedness Hereby Secured or any part thereof may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession and either before or after taking possession and without instituting any legal proceedings whatsoever and having first given notice of such sale by certified mail to the Company once at least 10 days prior to the date of such sale (which notice shall give the details of such proposed sale, including, without limitation, the time, place and manner of sale), and any other notice which may be required by law, sell and dispose of said Mortgaged Property or any part thereof at public auction or private sale to the highest bidder, which may be the Company, in one lot as an entirety or in separate lots (the Company for itself and for all who may claim by, through or under it hereby expressly waiving and releasing all rights to have the property covered by the lien of this Deed of Trust and the Assignment marshalled), and either for cash or on credit and on such terms as the Mortgagee may determine and at any place (whether or not it be the location of the Mortgaged Property or any part thereof) designated in the notice above referred to. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales or for any such adjourned sale or sales, without further published notice.

(d) Subject always to the then existing rights, if any, of the Tenant under the Lease, the Mortgagee may proceed to protect and enforce its rights by a suit or suits in equity or at law, or for the specific performance of any covenant or agreement contained herein or in the Notes, or in aid of the execution of any power herein or therein granted, or for the foreclosure of this Deed of Trust, or for the enforcement of any other appropriate legal or equitable remedy. Upon the bringing of any suit to foreclose this Deed of Trust or to enforce any other remedy available hereunder, the plaintiff shall be entitled as a matter of right, without notice and without giving bond to the Company or anyone claiming under, by or through it, and without regard to the solvency or insolvency of the Company or the then value of the premises, to have a receiver appointed of all the Mortgaged Property and of the earnings, income, rents, issues, profits and proceeds thereof, with such power as the court making such appointment shall confer, and the Company does hereby irrevocably consent to such appointment.

(e) In case of any sale of the Mortgaged Property, or of any part thereof, pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Deed of Trust,

the principal of the Notes, if not previously due, and the interest accrued thereon, shall at once become and be immediately due and payable; also in the case of any such sale, the Mortgagee may bid and become the purchaser, and the purchaser or purchasers, for the purpose of making settlement for or payment of the purchase price, shall be entitled to turn in and use the Notes and any claims for interest and premium matured and unpaid thereon, in order that there may be credited as paid on the purchase price the sum apportionable and applicable to the Notes, including principal and interest and premium thereof, out of the net proceeds of such sale after allowing for the proportion of the total purchase price required to be paid in actual cash. If at any foreclosure proceeding the Mortgaged Property shall be sold for a sum less than the total amount of indebtedness for which judgment is therein given, the judgment creditor shall be entitled to the entry of a deficiency decree against the Company and against the property of the Company for the amount of such deficiency, which deficiency decree shall include interest on the amount of the deficiency from the date of sale of the Mortgaged Property at the rate of 11.00% per annum.

(f) The Mortgagee shall have any and all rights and remedies (including, without limitation, extra-judicial power of sale) provided to a secured party by the Uniform Commercial Code with respect to any and all parts of the Mortgaged Property which are and which are deemed to be governed by the Uniform Commercial Code. Without limiting the generality of the foregoing, the Mortgagee shall, with respect to any part of the Mortgaged Property constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Uniform Commercial Code, have all the rights, options and remedies of a secured party under the Uniform Commercial Code, including, without limitation, the right to the possession of any such property, or any part thereof, and the right to enter without legal process any premises where any such property may be found. Any requirement of said Code for reasonable notification shall be met by mailing written notice to the Company at its addresses forth in Section 6.3 at least 10 days prior to the sale or other event for which such notice is required. The proceeds of any sale or realization upon any such property shall be applied to the payment of the Indebtedness Hereby Secured, after first deducting therefrom any expenses for retaking, selling and otherwise disposing of said property, including reasonable attorneys' fees and legal expenses incurred by the Mortgagee in connection therewith.

Notwithstanding the foregoing, the rights and remedies referred to in this Section 5.2 shall be only exercised subject to the Lease and the Tenant's estate thereunder.

**5.3. Application of Proceeds.** The purchase money proceeds and/or avails of any sale of the Mortgaged Property, or any part thereof, and the proceeds and the avails of any remedy hereunder shall be paid to and applied as follows:

(a) first, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and to the extent permitted by applicable law, the reasonable compensation of the Mortgagee, its agents, attorneys and counsel, and of all proper expenses, liability and advances incurred or made



hereunder by the Mortgagee, and of all taxes, assessments or liens superior to the lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made; and

(b) second, to the amount then owing or unpaid on the Notes for principal, premium, if any, and interest; and in case such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon the Notes, then ratably to each holder of the Notes according to the aggregate of such principal and the accrued and unpaid interest and premium, if any, with application on each Note to be made, **first**, to unpaid premium, if any, **second**, to the unpaid interest thereon, and **third**, to unpaid principal thereof; and

(c) third, to the payment of any other sums required to be paid by the Company pursuant to any provision of this Deed of Trust, the Assignment, the Notes or any other instrument given to secure the Notes; and

(d) fourth, to the payment of the surplus, if any, to the Company, its successors and assigns, or to whosoever may be lawfully entitled to receive the same.

**5.4. Waiver of Extension, Appraisal and Stay Laws.** The Company covenants that, upon the occurrence of an Event of Default and the acceleration of the Notes pursuant to Section 5.2(a) and to the extent that such rights may then be lawfully waived, it will not at any time thereafter insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension or moratorium law now or at any time hereafter in force, or claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property or any part thereof prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction or, after confirmation of any such sale or sales claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and hereby expressly waives for itself and on behalf of each and every person, all benefit and advantage of any such law or laws which would otherwise be available to any such person in connection with the enforcement of any of the Mortgagee's remedies hereunder; and covenants that it will not in connection with any such enforcement proceedings invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Mortgagee but will suffer and permit the execution of every such power as though no such law or laws had been made or enacted. The Company hereby waives any and all rights of redemption from sale under any order or decree of foreclosure pursuant to rights herein granted, on behalf of the Company, and each and every person acquiring any interest in, or title to the Mortgaged Property described herein subsequent to the date of this Deed of Trust, and on behalf of all other persons to the extent permitted by applicable law.

Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Company in and to the property sold and shall be a perpetual bar, both at law and in equity, against the Company, its successors and assigns, and against any and all persons claiming the property sold or any part thereof under, by or through the Company, its successors or assigns.

**5.5. Costs and Expenses of Foreclosure.** In any suit to foreclose the lien hereon there shall be allowed and included as additional Indebtedness Hereby Secured in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as the items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, and similar data and assurances with respect to title as the Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Property, all of which expenditures shall become so much additional Indebtedness Hereby Secured which the Company agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the rate of 11.00% per annum.

**5.6. Delay or Omission Not a Waiver.** No delay, failure or omission of the Mortgagee to exercise any right, power or remedy arising from any default on the part of the Company shall exhaust or impair any such right or power or prevent its exercise during the continuance of such default. No waiver by the Mortgagee of any such default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom, except as may be otherwise provided herein. No right, power or remedy hereunder is intended to be exclusive of any other right, power or remedy but each and every right, power and remedy shall be cumulative and in addition to any and every other right, power and remedy given hereunder or otherwise existing. Nor shall the giving, taking or enforcement of any other or additional security, collateral or guaranty for the payment of the indebtedness secured under this Deed of Trust operate to prejudice, waive or affect the security of this Deed of Trust or any rights, powers or remedies hereunder; nor shall the Mortgagee be required to first look to, enforce or exhaust such other or additional security, collateral or guaranties.

**5.7. Restoration of Positions.** If the Mortgagee or any holder of the Notes has instituted any proceeding to enforce any right or remedy under this Deed of Trust by foreclosure, entry or otherwise and such proceeding has been discontinued or abandoned for any reason or has been determined adversely to the Mortgagee or to such holder of the Notes, then and in every such case the Company, the Mortgagee and the holders of the Notes shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and thereafter all rights and remedies of the Mortgagee and the holders of the Notes shall continue as though no such proceedings had been instituted.

**5.8. Note to Become Due Upon Sale by Trustee.** Upon any sale under or by virtue of this Deed of Trust, whether pursuant to foreclosure, power of sale or otherwise, the entire unpaid principal amount of the Notes shall, if not previously declared due and payable, immediately become due and payable, together with interest accrued thereon and premium, if any, and all other indebtedness which this Deed of Trust by its terms secures, anything contrary in this Deed of Trust, the Notes or any other instrument serving the Notes to the contrary notwithstanding.

**SECTION 6. MISCELLANEOUS.**

**6.1. Successors and Assigns.** Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, premises and agreements in this Deed of Trust contained by or on behalf of the Company, or by or on behalf of the Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

**6.2. Severability.** The unenforceability or invalidity of any provision or provisions of this Deed of Trust shall not render any other provision or provisions herein contained unenforceable or invalid.

**6.3. Addresses for Notices and Demands.** All communications provided for herein shall be in writing and shall be deemed to have been given (unless otherwise required by the specific provisions hereof in respect of any matter) when delivered personally or when deposited in the United States mail, registered or certified, postage prepaid, addressed as follows:

If to the Company:	Smith's Food King Properties, Inc. 1544 South Redwood Road Salt Lake City, Utah 84104
	Attention: Robert Bolinder Vice President and Chief Financial Officer

With a copy to:

Thomas Welch  
Executive Vice President and General  
Counsel

If to the Mortgagee:	Merrill Title Company 470 East 3900 South, Suite 103 Salt Lake City, Utah 84107
	Attention: Linda L. Berrett

If to the Beneficiary:	American General Life and Accident Insurance Company c/o American General Corporation 2929 Allen Parkway Houston, Texas 77019
	Attention: Private Placements, A37-01

or as to either party at such other address as such party may designate by notice duly given in accordance with this section to the other party.

**6.4. Headings and Table of Contents.** The headings of the sections of this Deed of Trust and the table of contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

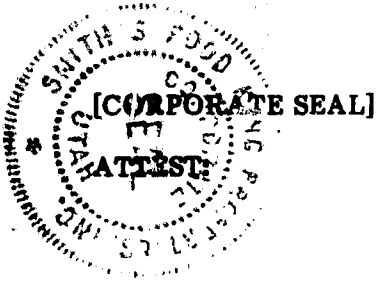
**6.5. Release of Deed of Trust.** The Mortgagee shall release this Deed of Trust and the lien hereof by proper instrument or instruments upon presentation of satisfactory evidence that all indebtedness secured hereby has been fully paid or discharged.

**6.6. Counterparts.** This Deed of Trust may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Deed of Trust.

**6.7. Successor Trustee.** The Beneficiary may, at any time, by instrument in writing, appoint a successor or successors to, or discharge and appoint a new Trustee in the place of, any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by the Beneficiary, and recorded in the office of the County Recorder of the county wherein said Mortgaged Property is situated, shall be conclusive proof of the proper substitution of such successor or successors or new Trustee, who shall have all the estate powers, duties, rights and privileges of the predecessor Trustee.

IN WITNESS WHEREOF, the Company has caused this Deed of Trust to be executed in its behalf by its President and its corporate seal to be hereunto affixed and attested by its Secretary, all as of the day and year first above written.

SMITH'S FOOD KING PROPERTIES, INC.



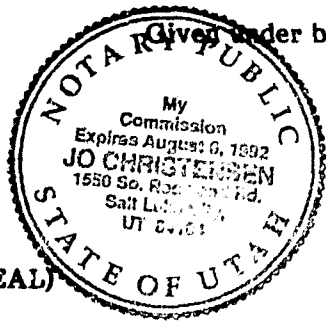
By *Richard D. Smith*  
Printed Name: RICHARD D. SMITH  
Its President

*Thomas Welch*  
Printed Name: THOMAS WELCH  
Its Secretary

STATE OF UTAH )  
 ) SS  
COUNTY OF SALT LAKE )

I, Jo Christensen, a Notary Public in and for the County and State aforesaid, do hereby certify that Richard D. Smith and Thomas Welch, personally known to me to be the same persons whose names are respectively, as President and Secretary of **SMITH'S FOOD KING PROPERTIES, INC.**, a Utah corporation, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they, being thereunto duly authorized, signed, sealed with the seal of said corporation, and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary act, for the uses and purposes therein set forth.

Gives under by hand and notarial seal this 24th day of October, 1988.



(SEAL)

Jo Christensen  
Notary Public  
(Printed Name: Jo Christensen)

Commission expires:  
8/6/92

## LEGAL DESCRIPTION OF REAL PROPERTY

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:

BEGINNING at the Intersection of the South line of Gentile Street and the East line of Fairfield Road, said point being South  $89^{\circ}30'20''$  East 1460.13 feet along the Section line and North  $21^{\circ}47'40''$  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  $15^{\circ}49'52''$  East and long chord bears North  $80^{\circ}50'34''$  East 214.39 feet) along the South line of Gentile Street; thence North  $87^{\circ}31'00''$  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  $2^{\circ}29'00''$  West and long chord bears North  $84^{\circ}18'42''$  East 110.47 feet) along said South line of Gentile Street to the West line of Adamswood Road; thence South  $46^{\circ}02'00''$  East 401.97 feet along said West line of Adamswood Road; thence South  $55^{\circ}03'00''$  East 67.77 feet along said West line of Adamswood Road; thence South  $6^{\circ}51'00''$  East 240.64 feet; thence South  $68^{\circ}17'04''$  West 512.40 feet to the East line of Fairfield Road; thence North  $21^{\circ}47'40''$  West 752.85 feet along said East line of Fairfield Road to the point of BEGINNING.

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:

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  $17^{\circ}55'50''$  West 29.52 feet to a point 1 foot perpendicularly distant East of the East line of said Fairfield Road; thence South  $21^{\circ}47'40''$  East 215.00 feet parallel to the East line of Fairfield Road; thence South  $68^{\circ}21'20''$  West 1.00 feet to the East line of Fairfield Road; thence North  $21^{\circ}47'40''$  West 240.00 feet along said East line of the point of BEGINNING.

Address of Real Property:

1170 East Gentile  
Layton, Utah 84040

ANNEX A  
(to Deed of Trust)

SW-22 11-003-0002  
NW-27 74N-1W 11-003-0102