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Thompson Hine LLP
335 Madison Avenue
New York, NY 10017

Tax Parcel No. 126060002
12155504

SECOND LIEN DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

RECORDING ORDER

1 (2) 3 4 5

BY
CARL KARCHER ENTERPRISES, INC.,
as Trustor,

TO

LANDMARK TITLE COMPANY,
as Trustee, for the benefit of

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Indenture Trustee and Collateral Agent, as Beneficiary

AFTER RECORDING, PLEASE RETURN TO:
Fidelity National Title Group
7130 Glen Forest Dr., Ste. 300
Richmond, VA 23226
Attn: CAUDY HANSEN

Dated as of December 9, 2010
Effective as of July 12, 2010

Relating to Premises in:
Davis County, Utah

Unit # 1100335

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THE LIEN CREATED BY THIS DEED OF TRUST ON THE PROPERTY DESCRIBED HEREIN IS JUNIOR AND SUBORDINATE TO THE LIEN ON SUCH PROPERTY CREATED BY THE FIRST DEED OF TRUST (AS DEFINED HEREIN), IN ACCORDANCE WITH THE PROVISIONS OF THE INTERCREDITOR AGREEMENT (AS DEFINED HEREIN).

SECOND LIEN DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

SECOND LIEN DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Deed of Trust"), dated as of December 9, 2010, and made effective as of July 12, 2010 (the "Effective Date"), made by **CARL KARCHER ENTERPRISES, INC.**, a California corporation, as trustor, assignor and debtor (in such capacities and together with any successors in such capacities, the "Trustor"), in favor of **LANDMARK TITLE COMPANY**, a Utah corporation, as trustee (in such capacities and together with any successors in such capacities, the "Trustee"), for the benefit of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, having an office at 45 Broadway, 14th Floor, New York, New York 10006, in its capacity as trustee and collateral agent for the Secured Parties (as hereinafter defined), as beneficiary, assignee and secured party (in such capacities and together with any successors in such capacities, the "Beneficiary").

RECITALS:

A. Pursuant to (i) that certain Indenture (the "Initial Indenture"), dated as of the Effective Date among Columbia Lake Acquisition Corp., a Delaware corporation (and predecessor in interest by merger to CKE Restaurants, Inc., a Delaware corporation, the "Company"), the subsidiaries of the Company party thereto and Wells Fargo Bank, National Association, in its capacity as trustee (the "Indenture Trustee") as supplemented by that certain First Supplemental Indenture dated as of the Effective Date (the "Supplemental Indenture"; the Initial Indenture, as supplemented by the Supplemental Indenture and as the same may be further amended, restated, supplemented, or otherwise modified or refinanced from time to time, the "Indenture") and (ii) that certain Purchase Agreement dated July 6, 2010 (as amended, restated, supplemented or otherwise modified from time to time, the "Purchase Agreement") among the Company, Morgan Stanley & Co. Incorporated, Citigroup Global Markets Inc., and RBC Capital Markets Corporation, the Company has issued or will issue \$600,000,000.00 aggregate principal amount of its 11.375% Senior Secured Second Lien Notes due 2018 upon the terms and subject to the conditions set forth therein.

B. Pursuant to that certain Credit Agreement, dated as of the Effective Date (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"; which term shall also include and refer to any increase in the amount of indebtedness under the Credit Agreement and any refinancing or replacement of the Credit Agreement (whether under a bank facility, securities offering or otherwise) or one or more successor or replacement facilities whether or not with a different group of agents or lenders (whether under a bank facility, securities offering or otherwise) and whether or not with different obligors upon the Credit Agreement Agent's acknowledgment of the termination of the prede-

cessor Credit Agreement), among Columbia Lake Acquisition Holdings, Inc., a Delaware corporation, the Company, the Lenders (as defined therein) from time to time party thereto, and the Credit Agreement Agent (as defined herein), the Lenders have agreed to extend credit to the Company, subject to the terms and conditions set forth in the Credit Agreement.

C. The Company, the Credit Agreement Agent, each Other First-Priority Lien Obligations Agent (as defined herein) from time to time party thereto, each in its capacity as First Lien Agent (as defined therein), the Indenture Trustee, the Beneficiary and each collateral agent for any Future Second Lien Indebtedness (as defined therein) from time to time party thereto, each in its capacity as Second Priority Agent (as defined therein), have entered into that certain Intercreditor Agreement (the "Intercreditor Agreement") dated as of the Effective Date, pursuant to which the parties thereto have agreed upon the relative rights and priorities of the Secured Parties and the Second Priority Secured Parties (as defined in the Intercreditor Agreement) in respect of the Trust Property.

D. The Trustor is a subsidiary of the Company and will derive substantial benefit from the proceeds of the Securities (as defined herein) received by the Company pursuant to the Indenture and is willing to execute and deliver this Deed of Trust pursuant to the requirements of the Indenture.

E. It is a condition to (i) the obligations of the Initial Purchasers to purchase the Securities, and (ii) the performance of the obligations of the Secured Parties under the Securities Documents that the Trustor execute and deliver the applicable Securities Documents, including this Deed of Trust.

F. This Deed of Trust is given by the Trustor in favor of the Beneficiary for its benefit and the benefit of the Secured Parties to secure the payment and performance of all of the Securities Obligations (as defined herein).

A G R E E M E N T :

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trustor hereby covenants and agrees with the Beneficiary for the benefit of the Beneficiary and the other Secured Parties as follows:

ARTICLE I.

DEFINITIONS AND INTERPRETATION

SECTION 1.1. Definitions. (a) Capitalized terms used but not otherwise defined herein that are defined in the Indenture shall have the meanings given to them in the Indenture, including the following:

"Affiliate"; "Business Day"; "Collateral Agent"; "Event of Default"; "First-Priority Lien Obligations"; "Initial Purchasers"; "Lien"; "Net Insurance Proceeds"; "Net Proceeds"; "Person"; "Sale/Leaseback Transaction"; "Securities"; "Subsidiary".

(b) The following terms shall have the meaning assigned to such terms in the Collateral Agreement (as defined herein):

“Guarantor”; “Pledgor”; “Securities Documents”; “Securities Obligations”; “Secured Party”; “Securities Party”; “Termination Date”.

(c) The following terms in this Deed of Trust shall have the following meanings:

“Allocated Indebtedness” shall have the meaning assigned to such term in Section 11.14(i) hereof.

“Allocation Notice” shall have the meaning assigned to such term in Section 11.14(i) hereof.

“Bankruptcy Code” shall have the meaning assigned to such term in Section 5.1(ii) hereof.

“Beneficiary” shall have the meaning assigned to such term in the Preamble hereof.

“Casualty Event” shall mean any loss of title or any loss of or damage to or destruction of, or any condemnation or other taking of the Trust Property (including but not limited to any taking of all or any part of the Trust Property in or by condemnation or other eminent domain proceedings pursuant to any law, or by reason of the temporary requisition of the use or occupancy of all or any part of the Trust Property by any Governmental Authority, civil or military, or any settlement in lieu thereof).

“Charges” shall mean any and all present and future Taxes, assessments and special assessments, levies, fees, all water and sewer rents and charges and all other governmental charges imposed upon or assessed against, and all claims (including, without limitation, claims for landlords’, carriers’, mechanics’, workmen’s, repairmen’s, laborer’s, materialmen’s, suppliers’ and warehousemen’s Liens and other claims arising by operation of law) judgments or demands against, all or any portion of the Trust Property or other amounts of any nature which, if unpaid, might result in or permit the creation of, a Lien on the Trust Property or which might result in foreclosure of all or any portion of the Trust Property.

“Collateral” shall have the meaning assigned to such term in Section 11.14(i) hereof.

“Collateral Agreement” shall mean that certain Collateral Agreement dated as of July 12, 2010 among the Company, each Guarantor from time to time party thereto, and Wells Fargo Bank, National Association, as Trustee and Collateral Agent, as amended, supplemented, restated, renewed, refunded, replaced, restructured, repaid, refinanced or otherwise modified from time to time.

“Company” shall have the meaning assigned to such term in Recital A hereof.

“Contracts” shall mean, collectively, any and all right, title and interest of the Trustor in and to any and all contracts and other general intangibles relating to the Trust Property and all reserves, deferred payments, deposits, refunds and claims of every kind, nature or character relating thereto.

“Credit Agreement” shall have the meaning assigned to such term in Recital B hereof.

“Credit Agreement Agent” shall have the meaning ascribed to such term in the Intercreditor Agreement.

“Deed of Trust” shall have the meaning assigned to such term in the Preamble hereof.

“Discharge of Senior Lender Claims” shall have the meaning ascribed to such term in the Intercreditor Agreement.

“Effective Date” shall have the meaning assigned to such term in the Preamble hereof.

“First Lien Agent” shall have the meaning ascribed to such term in the Intercreditor Agreement.

“First Deed of Trust” shall have the meaning hereof ascribed to such term in Section 2.1 hereof.

“Flood Insurance Laws” shall mean, collectively, (w) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (x) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (y) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (z) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto.

“Fixtures” shall mean all machinery, apparatus, equipment, fittings, fixtures, improvements and articles of personal property of every kind, description and nature whatsoever now or hereafter attached or affixed to the Land or any other Improvement used in connection with the use and enjoyment of the Land or any other Improvement or the maintenance or preservation thereof, which by the nature of their location thereon or attachment thereto are real property or fixtures under the UCC or any other applicable law including, without limitation, all HVAC equipment, boilers, electronic data processing, telecommunications or computer equipment, refrigeration, electronic monitoring, power, waste removal, elevators, maintenance or other systems or equipment, utility systems, fire sprinkler and security systems, drainage facilities, lighting facilities, all water, sanitary and storm sewer, drainage, electricity, steam, gas, telephone and other utility equipment and facilities, pipes, fittings and other items of every kind and description now or hereafter attached to or located on the Land.

“Foreclosure Event” shall have the meaning assigned to such term in Section 11.16 hereof.

“Foreclosure Sale” shall have the meaning assigned to such term in Section 13.2(iii) hereof.

“Governmental Authority” shall mean any federal, state, provincial, local or foreign court or governmental agency, authority, instrumentality or regulatory or legislative body.

“Improvements” shall mean all buildings, structures and other improvements of every kind or description and any and all alterations now or hereafter located, attached or erected on the Land, including, without limitation, (i) all Fixtures, (ii) all attachments, railroad tracks, foundations, sidewalks, drives, roads, curbs, streets, ways, alleys, passages, passageways, sewer rights, parking areas, driveways, fences and walls and (iii) all materials now or hereafter located on the Land intended for the construction, reconstruction, repair, replacement, alteration, addition or improvement of or to such buildings, Fixtures, structures and improvements, all of which materials shall be deemed to be part of the Improvements immediately upon delivery thereof on the Land and to be part of the Improvements immediately upon their incorporation therein.

“Indenture Trustee” shall have the meaning ascribed to such term in Recital A hereof.

“Indenture” shall have the meaning ascribed to such term in Recital A hereof.

“Insurance Policies” means the insurance policies and coverages required to be maintained by the Trustor with respect to the Trust Property pursuant to the Indenture.

“Intercreditor Agreement” shall have the meaning assigned to such term in Recital C hereof.

“Land” shall mean the land described in Schedule A annexed to this Deed of Trust, together with all of the Trustor’s reversionary rights in and to any and all easements, rights-of-way, strips and gores of land, waters, water courses, water rights, mineral, gas and oil rights and all power, air, light and other rights, estates, titles, interests, privileges, liberties, servitudes, licenses, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining thereto, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto and together with any greater or additional estate therein as may be acquired by the Trustor.

“Landlord” shall mean any landlord, lessor, sublandlord, sublessor, franchisor, licensor or grantor, as applicable.

“Landlord’s Interest” shall have the meaning assigned to such term in Section 2.2 hereof.

“Leases” shall mean, collectively, any and all interests of the Trustor, as Landlord, in all leases and subleases of space, tenancies, franchise agreements, licenses, occupancy or concession agreements now existing or hereafter entered into, whether or not of record, relating in any manner to the Premises and any and all amendments, modifications, supplements, replacements, extensions and renewals of any thereof, whether now in effect or hereafter coming into effect.

"Material Adverse Effect" shall mean a material adverse effect on the business, property, operations or condition of the Company and its Subsidiaries, taken as a whole, or the validity and enforceability of any of the material Securities Documents or the rights and remedies of the Trustee, the Collateral Agent or the Secured Parties thereunder.

"NYUCC" shall mean the Uniform Commercial Code as in effect in the State of New York, and any amendment, restatement, replacement, or supplement thereto.

"Other First-Priority Lien Obligations Agent" shall have the meaning ascribed to such term in the Intercreditor Agreement.

"Other First-Priority Lien Obligations Security Document" shall have the meaning ascribed to such term in the Intercreditor Agreement.

"Permit" shall mean any and all permits, certificates, approvals, authorizations, consents, licenses, variances, franchises or other instruments, however characterized, of any Governmental Authority (or any Person acting on behalf of a Governmental Authority) now or hereafter acquired or held, together with all amendments, modifications, extensions, renewals and replacements of any thereof issued or in any way furnished in connection with the Trust Property including, without limitation, building permits, certificates of occupancy, environmental certificates, industrial permits or licenses and certificates of operation.

"Permitted Collateral Liens" shall mean the Liens described in clauses (2), (6), (7), (10), (12), (13), (14), (18), (27) (but solely to the extent related to Liens of the type described in clause (2) of the definition of Permitted Liens in the Indenture) and (28) of the definition of the term Permitted Liens in the Indenture and any Lien securing any First-Priority Lien Obligation (including, without limitation, the Lien of the First Deed of Trust).

"Premises" shall mean, collectively, the Land and the Improvements.

"Proceeds" shall mean, collectively, any and all cash proceeds and noncash proceeds and shall include all (i) proceeds of the conversion, voluntary or involuntary, of any of the Trust Property or any portion thereof into cash or liquidated claims, (ii) proceeds of any insurance (including, title insurance), indemnity, warranty, guaranty or claim payable to the Beneficiary or to the Trustor from time to time with respect to any of the Trust Property, (iii) payments (in any form whatsoever) made or due and payable to the Trustor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any portion of the Trust Property by any Governmental Authority (or any Person acting on behalf of a Governmental Authority), (iv) products of the Trust Property and (v) other amounts from time to time paid or payable under or in connection with any of the Trust Property including, without limitation, refunds of real estate taxes and assessments, including interest thereon.

"Records" shall mean, collectively, any and all right, title and interest of the Trustor in and to any and all drawings, plans, specifications, file materials, operating and maintenance records, catalogues, tenant lists, correspondence, advertising materials, operating manuals, warranties, guarantees, appraisals, studies and data relating to the Trust Property or the construction of any alteration relating to the Premises or the maintenance of any Permit.

“Rents” shall mean, collectively, any and all rents, additional rents, royalties, cash, guaranties, letters of credit, bonds, sureties or securities deposited under any Lease to secure performance of the Tenant’s obligations thereunder, revenues, earnings, profits and income, advance rental payments, payments incident to assignment, sublease or surrender of a Lease, claims for forfeited deposits and claims for damages, now due or hereafter to become due, with respect to any Lease, any indemnification against, or reimbursement for, sums paid and costs and expenses incurred by the Trustor under any Lease or otherwise, and any award in the event of the bankruptcy of any Tenant under or guarantor of a Lease.

“Requirements of Law” shall mean, collectively, any and all requirements of any Governmental Authority including, without limitation, any and all orders, decrees, determinations, laws, treaties, ordinances, rules, regulations or similar statutes or case law.

“Second Priority Agent” shall have the meaning ascribed to such term in the Intercreditor Agreement.

“Senior Lenders” shall have the meaning ascribed to such term in the Intercreditor Agreement.

“Senior Lender Documents” shall have the meaning ascribed to such term in the Intercreditor Agreement.

“Supplemental Indenture” shall have the meaning ascribed to such term in Recital B hereof.

“Taxes” shall mean shall mean any and all present or future taxes, levies, imposts, duties (including stamp duties), deductions, charges (including ad valorem charges) or withholdings imposed by any Governmental Authority and any and all interest, additions to tax and penalties related thereto.

“Tenant” shall mean any tenant, lessee, sublessee, franchisee, licensee, grantee or obligee, as applicable.

“Trust Property” shall have the meaning assigned to such term in Section 2.1 hereof.

“Trustor” shall have the meaning assigned to such term in the Preamble hereof.

“UCC” shall mean the Uniform Commercial Code as in effect on the date hereof in the state in which the Premises are located; provided, however, that if the creation, perfection or enforcement of any security interest herein granted is governed by the laws of any other state as to the matter in question, “UCC” shall mean the Uniform Commercial Code in effect in such state.

“UCC Collateral” shall mean that portion of the Trust Property that constitutes personal property in which a security interest may be created under Article 9 of the UCC.

SECTION 1.2. Interpretation. The rules of construction set forth in Section 1.04 of the Indenture shall be applicable to this Deed of Trust *mutatis mutandis*.

ARTICLE II.

GRANTS AND SECURITIES OBLIGATIONS

SECTION 2.1. Grant of Trust Property. In order to secure the due and punctual payment and performance of all of the Securities Obligations for the benefit of the Secured Parties, the Trustor hereby grants, bargains, sells, assigns, transfers and conveys to the Trustee, its successors and assigns, in trust, with power of sale and right of entry and possession, for the use and benefit of the Beneficiary, and hereby grants to the Beneficiary (for its benefit and the benefit of the Secured Parties) a security interest in and lien upon, all of the Trustor's estate, right, title and interest in, to and under all of the following described property, whether now owned or held or hereafter acquired from time to time (collectively, the "Trust Property"):

- (i) Land;
- (ii) Improvements;
- (iii) Leases;
- (iv) Rents;
- (v) Permits;
- (vi) Contracts;
- (vii) Records; and
- (viii) Proceeds.

TO HAVE AND TO HOLD the Trust Property, IN TRUST FOREVER, with the power of sale, together with all estate, right, title and interest of the Trustor and anyone claiming by, through or under the Trustor in and to the Trust Property and all rights and appurtenances relating thereto, unto the Beneficiary, its successors and assigns, for the benefit of the Secured Parties for the purpose of securing the payment and performance in full of all the Securities Obligations.

Notwithstanding the foregoing provisions of this Section 2.1, Trust Property shall not include a grant of any of the Trustor's right, title or interest in any Contract or Permit (x) that validly prohibits the creation by the Trustor of a security interest therein and (y) to the extent, but only to the extent that, any Requirement of Law applicable thereto prohibits the creation of a security interest therein; provided, however, that the right to receive any payment of money or any other right referred to in Sections 9-406(d), 9-407(a) or 9-408(a) of the NYUCC to the extent that such Sections are effective to limit the prohibitions described in clauses (x) and (y) of this Section 2.1 shall constitute Trust Property hereunder; and provided, further, that at such time as any Contract or Permit described in clauses (x) and (y) of this Section 2.1 is no longer subject to such prohibi-

tion, such applicable Contract or Permit shall (without any act or delivery by any Person) constitute Trust Property hereunder.

Notwithstanding anything to the contrary contained in this granting clause or elsewhere in this Deed of Trust, the Trustor and the Beneficiary acknowledge and agree that:

(i) the Lien and security interest in the Trust Property granted pursuant to this Deed of Trust are expressly subject and subordinate to the Lien and security interests granted to the Credit Agreement Agent pursuant to that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "First Deed of Trust") executed by the Trustor for the benefit of the Credit Agreement Agent (and its permitted successors), for the benefit of the Senior Lenders and to the Liens and security interests granted to any Other First-Priority Lien Obligations Agent pursuant to any Other First-Priority Lien Obligations Security Document (as amended, supplemented or otherwise modified from time to time), the exercise of any right or remedy by the Beneficiary is subject to the limitations and provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and the terms of this Deed of Trust, the terms of the Intercreditor Agreement shall govern; and

(ii) the Secured Parties' Liens and security interest in the Trust Property constitute Liens and security interest separate and apart (and of a different class and claim) from the Senior Lenders' Liens and security interest in the Trust Property.

SECTION 2.2. Assignment of Leases and Rents. As additional security for the payment and performance in full of the Securities Obligations and subject to the provisions of Article V hereof, the Trustor absolutely, presently, unconditionally and irrevocably assigns, transfers and sets over to the Beneficiary, and grants to the Beneficiary, all of the Trustor's estate, right, title, interest, claim and demand, as Landlord, under any and all of the Leases including, without limitation, the following (such assigned rights, the "Landlord's Interest"):

(i) the immediate and continuing right to receive and collect Rents payable by the Tenants pursuant to the Leases;

(ii) all claims, rights, powers, privileges and remedies of the Trustor, whether provided for in the Leases or arising by statute or at law or in equity or otherwise, consequent on any failure on the part of the Tenants to perform or comply with any term of the Leases;

(iii) all rights to take all actions upon the happening of a default under the Leases as shall be permitted by the Leases or by law including, without limitation, the commencement, conduct and consummation of proceedings at law or in equity; and

(iv) the full power and authority, in the name of the Trustor or otherwise, to enforce, collect, receive and receipt for any and all of the foregoing and to take all other actions whatsoever which the Trustor, as Landlord, is or may be entitled to take under the Leases.

This Section 2.2 and Article V hereof are subject to the Utah Uniform Assignment of Rents Act, *Utah Code Annotated*, Section 57-26-101 et seq. (the "Act"), and in the event of any conflict or inconsistency between the provisions of this Section 2.2 and Article V hereof and the provisions of the Act, the provisions of the Act shall control and the Beneficiary shall have all rights and remedies available under the Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

SECTION 2.3. Securities Obligations. This Deed of Trust secures, and the Trust Property is collateral security for, the payment and performance in full when due of the Securities Obligations.

SECTION 2.4. Future Advances. This Deed of Trust shall secure all of the Securities Obligations including, without limitation, future advances whenever hereafter made with respect to or under the Indenture or the other Securities Documents and shall secure not only Securities Obligations with respect to presently existing indebtedness under the Indenture and the other Securities Documents, but also any and all other indebtedness which may hereafter be owing by the Trustor to the Secured Parties under the Indenture and the other Securities Documents, however incurred, whether interest, discount or otherwise, and whether the same shall be deferred, accrued or capitalized, including future advances and re-advances, pursuant to the Indenture or the other Securities Documents, whether such advances are obligatory or to be made at the option of the Secured Parties, or otherwise, and any extensions, refinancings, modifications or renewals of all such Securities Obligations whether or not the Trustor executes any extension agreement or renewal instrument and, in each case, to the same extent as if such future advances were made on the date of the execution of this Deed of Trust.

SECTION 2.5. [Reserved].

SECTION 2.6. [Reserved].

SECTION 2.7. No Release. Nothing set forth in this Deed of Trust shall relieve the Trustor from the performance of any term, covenant, condition or agreement on the Trustor's part to be performed or observed under or in respect of any of the Trust Property or from any liability to any Person under or in respect of any of the Trust Property or shall impose any obligation on the Trustee, the Beneficiary or any other Secured Party to perform or observe any such term, covenant, condition or agreement on the Trustor's part to be so performed or observed or shall impose any liability on the Trustee, the Beneficiary or any other Secured Party for any act or omission on the part of the Trustor relating thereto or for any breach of any representation or warranty on the part of the Trustor contained in this Deed of Trust or any other Securities Document, or under or in respect of the Trust Property or made in connection herewith or therewith. The obligations of the Trustor contained in this Section 2.7 shall survive the termination hereof and the discharge of the Trustor's other obligations under this Deed of Trust and the other Securities Documents.

ARTICLE III.

REPRESENTATIONS AND WARRANTIES OF TRUSTOR

SECTION 3.1. Incorporation of Indenture. The Trustor represents, warrants, covenants and agrees that each of the representations, warranties, covenants and other agreements of the Trustor (as a Securities Party) under and as contained in the Indenture are hereby incorporated herein in their entirety by this reference.

SECTION 3.2. Warranty of Title. The Trustor represents and warrants that:

(i) it has good and marketable fee simple title to the Premises; good title or valid rights and interests in and to the balance of the Trust Property and the Landlord's Interest under or in respect of the Leases, in each case subject to no Liens, except for Permitted Collateral Liens and the Liens in favor of the Beneficiary pursuant to the Securities Documents; and

(ii) upon recordation in the official real estate records in the county (or other applicable jurisdiction) in which the Premises are located this Deed of Trust will create and constitute a valid and enforceable second priority mortgage Lien on the Trust Property in favor of the Beneficiary for the benefit of the Secured Parties, and, to the extent any of the Trust Property shall consist of Fixtures or other personal property, a second priority security interest therein, which second priority Lien and second priority security interest are, as of the date hereof, subject only to Permitted Collateral Liens.

SECTION 3.3. Condition of Trust Property. The Trustor represents and warrants that:

(i) the Premises and the present and contemplated use and occupancy thereof comply with all applicable zoning ordinances, building codes, land use and subdivision laws, setback or other development and use requirements of Governmental Authorities and with all private restrictions and agreements affecting the Trust Property whether or not recorded, except where the failure so to comply could not result in a Material Adverse Effect;

(ii) as of the date hereof, the Trustor has not received any written notice of any disputes regarding boundary lines, location, encroachments or possession of any portions of the Trust Property;

(iii) prior to the date hereof, the Trustor has delivered to the Beneficiary a completed "Life-of Loan" Federal Emergency Management Agency Standard Flood Hazard Determination (together with notices about special flood hazard area status and flood disaster assistance relating thereto, duly executed by the Company and the Trustor) with respect to each portion of the Trust Property;

(iv) to the knowledge of the Trustor, the Premises are assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a portion of such lot or lots, and no other land

or improvement is assessed and taxed together with the Premises or any portion thereof; and

(v) there are no options or rights of first refusal to purchase or acquire all or any portion of the Trust Property other than those previously disclosed to the Beneficiary.

SECTION 3.4. Charges. The Trustor represents and warrants that all Charges imposed upon or assessed against the Trust Property have been paid and discharged except to the extent such Charges are permitted under paragraphs (6) or (7) of the definition of the term "Permitted Liens" as set forth in the Indenture.

SECTION 3.5. Leases. The Trustor represents and warrants that as of the date hereof, there are no Leases in existence relating to the Premises.

ARTICLE IV.

CERTAIN COVENANTS OF TRUSTOR

SECTION 4.1. Payment and Performance. The Trustor shall pay and perform the Securities Obligations in full as and when the same shall become due under the Securities Documents and when they are required to be performed thereunder.

SECTION 4.2. Title. The Trustor shall

(i) protect, preserve and defend all its right, title and interest in the Trust Property and title thereto;

(ii) (A) comply with each of the terms, conditions and provisions of any obligation of the Trustor which is secured by the Trust Property or the noncompliance with which may result in the imposition of a Lien on the Trust Property subject to Permitted Collateral Liens, (B) forever warrant and defend to the Trustee and the Beneficiary the Lien and security interests evidenced hereby and the validity and second priority position hereof (subject to Permitted Collateral Liens) in any action or proceeding against the claims of any and all Persons whomsoever affecting or purporting to affect the Trust Property or any of the rights of the Trustee and the Beneficiary hereunder and (C) maintain this Deed of Trust as a valid and enforceable second priority mortgage Lien on the Trust Property and, to the extent any of the Trust Property shall consist of Fixtures, or other personal property, a second priority security interest in such Fixtures and personal property which second priority Lien and security interest shall be subject only to Permitted Collateral Liens; and

(iii) if any proceedings for the eviction of the Trustor from the Trust Property or any part thereof by paramount title or otherwise questioning the Trustor's right, title and interest in, to and under the Trust Property as warranted in this Deed of Trust shall be commenced, the Trustee and/or the Beneficiary may participate in such proceedings and the Trustor will deliver or cause to be delivered to the Trustee and the Beneficiary all instruments requested by the Trustee and the Beneficiary to permit such participation. In any such proceedings, the Trustee and the Beneficiary may be represented by counsel sat-

isfactory to the Beneficiary at the reasonable expense of the Trustor. If, upon the resolution of such proceedings, the Trustor shall suffer a loss of the Trust Property or any part thereof or interest therein and title insurance proceeds shall be payable in connection therewith, such proceeds are hereby assigned to and shall be paid to the Beneficiary to be applied as Net Proceeds to the payment of the Securities Obligations or otherwise in accordance with the provisions of Section 8.3(ii) hereof.

SECTION 4.3. Inspection. After the occurrence of an Event of Default, the Beneficiary, and its agents, representative and employees, upon reasonable prior notice to the Trustor, shall have the same rights to inspect the Trust Property and all books and records located thereon as those granted to the Indenture Trustee by Section 7.02(f) of the Indenture.

SECTION 4.4. Limitation on Liens; Transfer Restrictions.

(i) Except for the Permitted Collateral Liens and the Lien of this Deed of Trust, the Trustor may not permit to exist or grant any Lien on all or any part of the Trust Property or suffer or allow any of the foregoing to occur by operation of law or otherwise.

(ii) Except to the extent permitted by the Indenture, the Trustor may not, without the prior written consent of the Beneficiary, sell, convey, assign or otherwise transfer all or any part of the Trust Property.

SECTION 4.5. Insurance. The Trustor shall obtain and keep in full force and effect the Insurance Policies (including, without limitation, all flood insurance) required by Section 4.17(b) of the Indenture pursuant to the terms thereof. Without limiting the generality of the preceding sentence, if any portion of any Trust Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a Special Flood Hazard Area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then the Trustor shall (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in amounts and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to the Beneficiary evidence of such compliance in form and substance reasonably acceptable to the Beneficiary.

ARTICLE V.

CONCERNING ASSIGNMENT OF LEASES AND RENTS

SECTION 5.1. Present Assignment; License to the Trustor.

(i) Section 2.2 of this Deed of Trust constitutes a present, absolute, effective, irrevocable and complete assignment by the Trustor to the Beneficiary of the Leases and Rents and the right, subject to applicable law, to collect all sums payable to the Trustor thereunder and apply the same as the Beneficiary may, in its reasonable discretion, determine to be appropriate to protect the security afforded by this Deed of Trust (including the payment of reasonable costs and expenses in connection with the maintenance, operation, improvement, insurance, taxes and upkeep of the Trust Property), which is not conditioned upon the Beneficiary being in possession

of the Premises. This assignment is an absolute assignment and not an assignment for additional security only. The Beneficiary hereby grants to the Trustor, however, a license to collect and apply the Rents and to enforce the obligations of Tenants under the Leases. Immediately upon the occurrence of and during the continuance of any Event of Default, whether or not legal proceedings have commenced and without regard to waste, adequacy of security for the Securities Obligations or solvency of the Trustor, the license granted in the immediately preceding sentence shall automatically cease and terminate without any notice by the Beneficiary (such notice being hereby expressly waived by the Trustor to the extent permitted by applicable law), or any action or proceeding or the intervention of a receiver appointed by a court.

(ii) The Trustor acknowledges that the Beneficiary has taken all reasonable actions necessary to obtain, and that upon recordation of this Deed of Trust, the Beneficiary shall have, to the extent permitted under applicable law, a valid and fully perfected, second priority, present assignment of the Rents arising out of the Leases and all security for such Leases subject to the Permitted Collateral Liens and in the case of security deposits, rights of depositors and Requirements of Law. The Trustor acknowledges and agrees that upon recordation of this Deed of Trust, the Beneficiary's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to the Trustor and all third parties, including, without limitation, any subsequently appointed trustee in any case under Title 11 of the United States Code (the "Bankruptcy Code"), without the necessity of commencing a foreclosure action with respect to this Deed of Trust, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

(iii) Without limitation of the absolute nature of the assignment of the Rents hereunder, the Trustor and the Beneficiary agree that (a) this Deed of Trust shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Deed of Trust extends to property of the Trustor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents, and (c) such security interest shall extend to all rents acquired by the estate after the commencement of any case in bankruptcy.

SECTION 5.2. Collection of Rents by the Beneficiary.

(i) Any Rents receivable by the Beneficiary hereunder, after payment of all proper costs and expenses as the Beneficiary may, in its reasonable discretion, determine to be appropriate (including the payment of reasonable costs and expenses in connection with the maintenance, operation, improvement, insurance, taxes and upkeep of the Trust Property), shall be applied in accordance with the provisions of Section 8.3(ii) of this Deed of Trust. The Beneficiary shall be accountable to the Trustor only for Rents actually received by the Beneficiary. The collection of such Rents and the application thereof shall not cure or waive any Event of Default or waive, modify or affect notice of Event of Default or invalidate any act done pursuant to such notice.

(ii) The Trustor hereby irrevocably authorizes and directs the Tenant under each Lease to rely upon and comply with any and all notices or demands from the Beneficiary for payment of Rents to the Beneficiary, and the Trustor shall have no claim against any Tenant for Rents paid by such Tenant to the Beneficiary pursuant to such notice or demand.

SECTION 5.3. Irrevocable Interest. All rights, powers and privileges of the Beneficiary herein set forth are coupled with an interest and are irrevocable, subject to the terms and conditions hereof, and the Trustor shall not take any action under the Leases or otherwise which is inconsistent with this Deed of Trust or any of the terms hereof and any such action inconsistent herewith or therewith shall be void.

ARTICLE VI.

TAXES AND CERTAIN STATUTORY LIENS

SECTION 6.1. Payment of Charges. Subject to Trustor's right to contest the same in accordance with paragraph (6) of the definition of "Permitted Liens" as set forth in the Indenture, the Trustor shall pay and discharge, or cause to be paid and discharged, from time to time prior to same becoming delinquent, all Charges. The Trustor shall, upon the Beneficiary's request, deliver to the Beneficiary receipts evidencing the payment of all such Charges.

SECTION 6.2. Stamp and Other Taxes. The Trustor shall pay any United States documentary stamp taxes, with interest and fines and penalties, and any mortgage recording taxes, with interest and fines and penalties, that may hereafter be levied, imposed or assessed under or upon or by reason hereof or the Securities Obligations or any instrument or transaction affecting or relating to either thereof and in default thereof the Beneficiary may advance the same and the amount so advanced shall be payable by the Trustor to the Beneficiary in accordance with the provisions of Section 7.07 of the Indenture.

SECTION 6.3. Certain Tax Law Changes. Subject to the terms of Section 7.07 of the Indenture, in the event of the passage after the date hereof of any law deducting from the value of real property, for the purpose of taxation, amounts in respect of any Lien thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes or the manner of the collection of any taxes, and imposing any taxes, either directly or indirectly, on this Deed of Trust or any other Securities Document, the Trustor shall promptly pay to the Beneficiary such amount or amounts as may be necessary from time to time to pay any such taxes, assessments or other charges resulting therefrom; provided, that if any such payment or reimbursement shall be unlawful or taxable to the Beneficiary, or would constitute usury or render the indebtedness wholly or partially usurious under applicable law, the Trustor shall pay or reimburse the Beneficiary for payment of the lawful and non-usurious portion thereof.

SECTION 6.4. Proceeds of Tax Claim. In the event that the proceeds of any tax claim are paid after the Beneficiary has exercised its right to foreclose the Lien hereof, such proceeds shall (subject to the terms of the Indenture) be paid to the Beneficiary to satisfy any deficiency remaining after such foreclosure. The Beneficiary shall retain its interest in the proceeds of any tax claim during any redemption period. The amount of any such proceeds in excess of any deficiency claim of the Beneficiary shall in a reasonably prompt manner be released to the Trustor.

SECTION 6.5. Mechanic's and Materialmen's Liens.

(i) The Trustor shall timely comply with all requirements of Title 38 Part 1 of *Utah Code Annotated* with regard to filings and notices and further agrees that the Beneficiary may file a Notice of Commencement, Notice of Intent to File Notice of Completion, and Notice of Completion as contemplated by *Utah Code Annotated* Section 38-1-31, *Utah Code Annotated* Section 38-1-33, and *Utah Code Annotated* Section 38-1-40, in each case in the State Construction Registry of the State of Utah. The Trustor shall cause the Beneficiary to be named as a Person interested in receiving electronic notices of all filings with respect to the Premises in the State Construction Registry in accordance with *Utah Code Annotated* § 38-1-27(3). The Trustor shall also provide to the Beneficiary copies of all preliminary notices or other notices filed by any contactor, subcontractor or supplier with respect to the Premises that are included in the State Construction Registry and/or received by the Trustor. The Trustor shall, upon completion of the Improvements, promptly file a Notice of Intent to File Notice of Completion, and Notice of Completion in the State Construction Registry as permitted by *Utah Code Annotated* Section 38-1-33 and *Utah Code Annotated* Section 38-1-40.

(ii) The Trustor shall keep and maintain the Premises free from the claim of all Persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected or that hereafter may be erected on the Premises regardless of by whom such services, labor or materials may have been contracted, provided, however, that the Trustor shall have the right to contest any such claim or lien so long as the Trustor previously records a notice of release of lien and substitution of alternate security as contemplated by *Utah Code Annotated* § 38-1-28 and otherwise complies with the requirements of *Utah Code Annotated* § 38-1-28 to release the Premises from such lien or claim. Notwithstanding the foregoing, the Trustor may (A) with the prior written consent of the Beneficiary, contest the amount of any such lien or claim related to services, labor or materials in accordance with *Utah Code Annotated* § 38-1-28(7) without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with the Beneficiary) for any such lien or claim, as determined in the Beneficiary's reasonable discretion.

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

ARTICLE VII.

CASUALTY EVENTS AND RESTORATION

SECTION 7.1. Casualty Event. Subject to the terms of the Intercreditor Agreement, the Net Insurance Proceeds of each Casualty Event shall be applied, allocated and distributed in accordance with the provisions of Section 11.09 of the Indenture.

SECTION 7.2. Condemnation. In the case of any taking, condemnation or other proceeding in the nature thereof, the Beneficiary may, at its option, participate in any proceedings or negotiations which might result in any taking or condemnation and the Trustor shall deliver or cause to be delivered to the Beneficiary all instruments reasonably requested by it to permit such participation. The Beneficiary may be represented by counsel satisfactory to it at the reasonable expense of the Trustor in connection with any such participation. The Trustor shall pay all reasonable fees, costs and expenses incurred by the Beneficiary in connection therewith and in seeking and obtaining any award or payment on account thereof. The Trustor shall take all steps reasonably necessary to notify the condemning authority of such participation.

SECTION 7.3. [Reserved].

ARTICLE VIII.

EVENTS OF DEFAULT AND REMEDIES

SECTION 8.1. Event of Default. The term "Event of Default" as used in this Deed of Trust, shall have the meaning assigned to such term in the Indenture and the occurrence of an Event of Default under the Indenture shall constitute an Event of Default hereunder, subject to the terms of Section 6.01 of the Indenture.

SECTION 8.2. Remedies in Case of an Event of Default. If any Event of Default shall have occurred and be continuing, the Beneficiary may at its option, in addition to any other action permitted under this Deed of Trust or the Indenture or any other Securities Document or by law, statute or in equity, take one or more of the following actions to the greatest extent permitted by local law:

(i) personally, or by its agents or attorneys, and where applicable law so requires, with the Trustee, (A) enter into and upon and take possession of all or any part of the Premises together with the books, records and accounts of the Trustor relating thereto and, exclude the Trustor, its agents and servants wholly therefrom, (B) use, operate, manage and control the Premises and conduct the business thereof, (C) maintain and restore the Premises, (D) make all necessary or proper repairs, renewals and replacements and such useful alterations thereto and thereon as the Beneficiary may deem advisable, (E) manage, lease and operate the Premises and carry on the business thereof and exercise all rights and powers of the Trustor with respect thereto either in the name of the Trustor or otherwise or (F) collect and receive all Rents. The Beneficiary shall be under no liability for or by reason of any such taking of possession, entry, removal or holding, operation or

management except that any amounts so received by the Beneficiary shall be applied in accordance with the provisions of Section 8.3(ii) hereof.

(ii) with or without entry, personally or by its agents or attorneys, or by the Trustee at the direction of the Beneficiary (as so required by applicable law) (A) sell the Trust Property and all estate, right, title and interest, claim and demand therein at one or more sales in one or more parcels, in accordance with the provisions of Section 8.3 or (B) institute and prosecute proceedings for the complete or partial foreclosure of the Lien and security interests created and evidenced hereby; or

(iii) take such steps to protect and enforce its rights whether by action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement in the Indenture and the other Securities Documents, or in aid of the execution of any power granted in this Deed of Trust, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Beneficiary shall elect.

SECTION 8.3. Sale of Trust Property if Event of Default Occurs; Proceeds of Sale.

(i) If any Event of Default shall have occurred and be continuing, the Beneficiary and/or the Trustee at the direction of the Beneficiary (as so required by applicable law) may institute an action to foreclose this Deed of Trust or take such other action as may be permitted and available to the Beneficiary at law or in equity for the enforcement of the Indenture and realization on the Trust Property and proceeds thereon through power of sale (if then available under applicable law) or to final judgment and execution thereof for the Securities Obligations, and in furtherance thereof the Beneficiary and/or the Trustee at the direction of the Beneficiary (as so required by applicable law) may sell the Trust Property at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law or statute or in equity. The Beneficiary and/or the Trustee at the direction of the Beneficiary (as so required by applicable law) may execute and deliver to the purchaser at such sale a conveyance of the Trust Property in fee simple or otherwise, as appropriate, and an assignment or conveyance of all the Landlord's Interest in the Leases and the Trust Property, each of which conveyances and assignments shall contain recitals as to the Event of Default upon which the execution of the power of sale herein granted depends, and the Trustor hereby constitutes and appoints the Beneficiary and/or the Trustee at the direction of the Beneficiary (as so required by applicable law) the true and lawful attorney(s) in fact of the Trustor to make any such recitals, sale, assignment and conveyance, and all of the acts of the Beneficiary and/or the Trustee at the direction of the Beneficiary as such attorney(s) in fact are hereby ratified and confirmed. The Trustor agrees that such recitals shall be binding and conclusive upon the Trustor and that any assignment or conveyance to be made by the Beneficiary and/or the Trustee at the direction of the Beneficiary shall divest the Trustor of all right, title, interest, equity and right of redemption, including any statutory redemption, in and to the Trust Property. The power and agency hereby granted are coupled with an interest and are irrevocable by death or dissolution, or otherwise, and are in addition to any and all other remedies which the Beneficiary and/or the Trustee at the direction of the Beneficiary may have hereunder, at law or in equity. So long as the Securities Obligations, or any part thereof, remain unpaid, the Trustor agrees that possession

of the Trust Property by the Trustor, or any Person claiming under the Trustor, shall be as tenant, and, in case of a sale under power or upon foreclosure as provided in this Deed of Trust, the Trustor and any Person in possession under the Trustor, as to whose interest such sale was not made subject, shall, at the option of the purchaser at such sale, then become and be tenants holding over, and shall forthwith deliver possession to such purchaser, or be summarily dispossessed in accordance with the laws applicable to tenants holding over. In case of any sale under this Deed of Trust by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceeding or otherwise, the Trust Property may be sold as an entirety or in separate parcels in such manner or order as the Beneficiary in its reasonable discretion may elect and as provided, as may be required or permitted by applicable law or in equity. One or more exercises of powers herein granted shall not extinguish or exhaust such powers, until the entire Trust Property is sold or all amounts secured hereby are paid in full.

(ii) The proceeds of any sale made under or by virtue of this Article VIII, together with any other sums which then may be held by the Beneficiary under this Deed of Trust, whether under the provisions of this Article VIII or otherwise, shall, subject to the Intercreditor Agreement, be applied in accordance with the provisions of Section 5.02 of the Collateral Agreement, as permitted by applicable law.

(iii) The Beneficiary (on behalf of any Secured Party or on its own behalf) or any Secured Party may bid for and acquire the Trust Property or any part thereof at any sale made under or by virtue of this Article VIII and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the purchase price the unpaid amounts (whether or not then due) owing to the Beneficiary, or such Secured Party in respect of the Securities Obligations, after deducting from the sales price the expense of the sale and the reasonable costs of the action or proceedings and any other sums that the Beneficiary, Trustee or such Secured Party is authorized to deduct under this Deed of Trust and under applicable law.

(iv) Any Secured Party, including the Beneficiary, or the Trustee shall have the right to credit bid and purchase at any auction or foreclosure sale, UCC sale, or proceeding, including any bankruptcy sale, regardless of the jurisdiction, venue, or the court having jurisdiction..

(v) The Beneficiary and/or the Trustee at the direction of the Beneficiary (as so required by applicable law) may adjourn from time to time any sale by it to be made under or by virtue hereof by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and, the Beneficiary and/or the Trustee at the direction of the Beneficiary (as so required by applicable law), without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned; *provided*, that if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Code Annotated* § 57-1-27.

(vi) If the Premises are comprised of more than one parcel of land, the Beneficiary and/or the Trustee at the direction of the Beneficiary (as so required by applicable law) may take any of the actions authorized by this Section 8.3 in respect of any number of individual parcels.

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

SECTION 8.4. Additional Remedies in Case of an Event of Default.

(i) The Beneficiary shall be entitled to recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of the provisions hereof and, to the extent permitted by applicable law, the right of the Beneficiary to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions hereof, or the foreclosure of, or absolute conveyance pursuant to, this Deed of Trust. In case of proceedings against the Trustor in insolvency or bankruptcy or any proceedings for its reorganization or involving the liquidation of its assets, the Beneficiary shall be entitled to prove the whole amount of principal and interest and other payments, charges and costs due in respect of the Securities Obligations to the full amount thereof without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Trust Property; provided, however, that in no case shall the Beneficiary receive a greater amount than the aggregate of such principal, interest and such other payments, charges and costs (with interest at the rate provided for in the Indenture) from the proceeds of the sale of the Trust Property and the distribution from the estate of the Trustor.

(ii) Any recovery of any judgment by the Beneficiary and any levy of any execution under any judgment upon the Trust Property shall not affect in any manner or to any extent the Lien and security interests created and evidenced hereby upon the Trust Property or any part thereof, or any conveyances, powers, rights and remedies of the Beneficiary hereunder, but such conveyances, powers, rights and remedies shall continue unimpaired as before.

(iii) Any monies collected by the Beneficiary under this Section 8.4 shall be applied in accordance with the provisions of Section 8.3(ii) hereof.

SECTION 8.5. Legal Proceedings After an Event of Default.

(i) After the occurrence and during the continuance of any Event of Default and immediately upon the commencement of any action, suit or legal proceedings to obtain judgment for the Securities Obligations or any part thereof, or of any proceedings to foreclose the Lien and security interest created and evidenced hereby or otherwise enforce the provisions hereof or of any other proceedings in aid of the enforcement hereof, the Trustor shall enter its voluntary appearance in such action, suit or proceeding.

(ii) Upon the occurrence and during the continuance of an Event of Default, the Beneficiary and/or the Trustee at the direction of the Beneficiary shall be entitled forthwith as a matter of right, concurrently or independently of any other right or remedy hereunder either before or after declaring the Securities Obligations or any part thereof to be due and payable, to the appointment of a receiver without giving notice to any party and without regard to the adequacy or inadequacy of any security for the Securities Obligations or the solvency or insolvency of any Person or entity then legally or equitably liable for the Securities Obligations or any por-

tion thereof. The Trustor hereby consents to the appointment of such receiver. Notwithstanding the appointment of any receiver, the Beneficiary shall be entitled as pledgee to the possession and control of any cash, deposits or instruments at the time held by or payable or deliverable under the terms of the Indenture to the Beneficiary.

(iii) The Trustor shall not (A) at any time insist upon, or plead, or in any manner whatsoever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Trust Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance hereof, (B) claim, take or insist on any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Trust Property, or any part thereof, prior to any sale or sales of the Trust Property which may be made pursuant to this Deed of Trust, or pursuant to any decree, judgment or order of any court of competent jurisdiction or (C) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof. To the extent permitted by applicable law, the Trustor hereby expressly (A) waives all benefit or advantage of any such law or laws, including, without limitation, any statute of limitations applicable to this Deed of Trust, (B) waives any and all rights to trial by jury in any action or proceeding related to the enforcement hereof, (C) waives any objection which it may now or hereafter have to the laying of venue of any action, suit or proceeding brought in connection with this Deed of Trust and further waives and agrees not to plead that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum and (D) covenants not to hinder, delay or impede the execution of any power granted or delegated to the Beneficiary and the Trustee by this Deed of Trust but to suffer and permit the execution of every such power as though no such law or laws had been made or enacted. The Beneficiary shall not be liable for any incorrect or improper payment made pursuant to this Article VIII in the absence of gross negligence or willful misconduct.

SECTION 8.6. Remedies Not Exclusive. No remedy conferred upon or reserved to the Beneficiary and/or Trustee by this Deed of Trust is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Deed of Trust or now or hereafter existing at law or in equity. Any delay or omission of the Beneficiary to exercise any right or power accruing on any Event of Default shall not impair any such right or power and shall not be construed to be a waiver of or acquiescence in any such Event of Default. Every power and remedy given by this Deed of Trust may be exercised from time to time concurrently or independently, when and as often as may be deemed expedient by the Beneficiary in such order and manner as the Beneficiary, in its reasonable discretion, may elect. If the Beneficiary accepts any monies required to be paid by the Trustor under this Deed of Trust after the same become due, such acceptance shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums secured by this Deed of Trust or to declare an Event of Default with regard to subsequent defaults. If the Beneficiary accepts any monies required to be paid by the Trustor under this Deed of Trust in an amount less than the sum then due, such acceptance shall be deemed an acceptance on account only and on the condition that it shall not constitute a waiver of the obligation of the Trustor to pay the entire sum then due, and the Trustor's failure to pay the entire sum then due shall be and continue to be a default hereunder notwithstanding acceptance of such amount on account.

ARTICLE IX.

SECURITY AGREEMENT AND FIXTURE FILING

SECTION 9.1. Security Agreement. To the extent the Trust Property consists of UCC Collateral or items of personal property which are or are to become Fixtures under applicable law, this Deed of Trust shall also be construed as a security agreement under the UCC. The Trustor, in order to secure the due and punctual payment and performance of the Securities Obligations, hereby grants to the Beneficiary for its benefit and for the benefit of the Secured Parties, a security interest in and to such UCC Collateral and Fixtures. Upon and during the continuance of an Event of Default, the Beneficiary shall be entitled with respect to the UCC Collateral and Fixtures to exercise all remedies hereunder or any other Securities Document or available under the UCC with respect thereto and all other remedies available under applicable law. Without limiting the foregoing, the UCC Collateral and Fixtures may, at the Beneficiary's option, (i) be sold hereunder together with any sale of any portion of the Trust Property or otherwise, (ii) be sold separately pursuant to the UCC, or (iii) be dealt with by the Beneficiary in any other manner permitted under applicable law. The Trustor acknowledges and agrees that a disposition of such collateral in accordance with the Beneficiary's rights and remedies in respect to the Trust Property as heretofore provided is a commercially reasonable disposition thereof; provided, however, that the Beneficiary shall give the Trustor not less than ten (10) Business Days' prior notice of the time and place of any intended disposition.

SECTION 9.2. Fixture Filing. To the extent that the Trust Property includes items of personal property which are or are to become fixtures under applicable law, and to the extent permitted under applicable law, the filing hereof in the real estate records of the county in which such Trust Property is located shall also operate from the date of such recording as a fixture filing with respect to such Trust Property, and the following information is applicable for the purpose of such filing, to wit:

<p>Name and Address of the debtor: The Trustor having the address described in the Preamble hereof. The Trustor is a corporation organized under the laws of the State of California whose Organization Number is C0504209.</p>	<p>Name and Address of the secured party: The Beneficiary having the address described in the Preamble hereof, from which address information concerning the security interest may be obtained.</p>
<p>This Financing Statement covers the following types or items of property: The Trust Property. This instrument covers goods or items of personal property which are or are to become fixtures upon the Trust Property. The Trustor is the record owner of the Land.</p>	

In addition, the Trustor hereby authorizes the Beneficiary to file appropriate financing and continuation statements under the UCC in effect in the jurisdiction in which the Trust Property is

located or where the Trustor is located/organized or any other applicable jurisdiction as may be required by law in order to create, establish, preserve and protect the Liens and security interests intended to be granted to the Beneficiary pursuant to this Deed of Trust in the Trust Property.

ARTICLE X.

FURTHER ASSURANCES

SECTION 10.1. Recording Documentation To Assure Security. The Trustor shall, forthwith after the execution and delivery hereof and thereafter, from time to time, cause this Deed of Trust and any financing statement, continuation statement or similar instrument relating to any of the Trust Property or to any property intended to be subject to the Lien hereof or the security interests created hereby to be filed, registered and recorded in such manner and in such places as may be required by any present or future law and shall take such actions as the Beneficiary shall reasonably deem necessary in order to publish notice of and fully to protect the validity and priority of the Liens, assignment, and security interests purported to be created upon the Trust Property and the interest and rights of the Beneficiary therein. The Trustor shall pay or cause to be paid all taxes and fees incident to such filing, registration and recording, and all reasonable expenses incident to the preparation, execution and acknowledgment thereof, and of any instrument of further assurance, and all Taxes, duties and charges arising out of or in connection with the execution and delivery of such instruments.

SECTION 10.2. Further Acts. The Trustor shall, at the sole cost and reasonable expense of the Trustor, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers, financing statements, continuation statements, instruments and assurances as the Beneficiary or the Trustee at the direction of the Beneficiary shall from time to time reasonably request, which may be necessary in the judgment of the Beneficiary from time to time to assure, perfect, convey, assign, pledge, transfer and confirm unto the Beneficiary and the Trustee, the property and rights hereby conveyed or assigned or which the Trustor may be or may hereafter become bound to convey or assign to the Beneficiary or the Trustee or for carrying out the intention or facilitating the performance of the terms hereof or the filing, registering or recording hereof. Without limiting the generality of the foregoing, in the event that the Beneficiary or the Trustee at the direction of the Beneficiary desires to exercise any remedies, consensual rights or attorney-in-fact powers set forth in this Deed of Trust and determines it necessary to obtain any approvals or consents of any Governmental Authority or any other Person therefor, then, upon the reasonable request of the Beneficiary or the Trustee at the direction of the Beneficiary, the Trustor agrees to use its best efforts to assist and aid the Beneficiary or the Trustee to obtain as soon as practicable any necessary approvals or consents for the exercise of any such remedies, rights and powers. In the event the Trustor shall fail after written demand to execute any instrument or take any action required to be executed or taken by the Trustor under this Section 10.2, the Beneficiary and/or the Trustee at the direction of the Beneficiary may execute or take the same as the attorney-in-fact for the Trustor, such power of attorney being coupled with an interest and is irrevocable.

SECTION 10.3. Additions to Trust Property. All right, title and interest of the Trustor in and to all extensions, amendments, relocations, restakings, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the

Trust Property hereafter acquired by or released to the Trustor or constructed, assembled or placed by the Trustor upon the Premises, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case without any further deed of trust, mortgage, conveyance, assignment or other act by the Trustor, shall become subject to the Lien and security interest of this Deed of Trust as fully and completely and with the same effect as though now owned by the Trustor and specifically described in the grant of the Trust Property above, but at any and all times the Trustor will execute and deliver to the Beneficiary any and all such further assurances, mortgages, deeds of trust, conveyances or assignments thereof as the Beneficiary may reasonably require for the purpose of expressly and specifically subjecting the same to the Lien and security interest of this Deed of Trust.

SECTION 10.4. Additional Security. Without notice to or consent of the Trustor and without impairment of the Lien and rights created by this Deed of Trust, the Beneficiary may accept (but the Trustor shall not be obligated to furnish) from the Trustor or from any other Person, additional security for the Securities Obligations. Neither the giving hereof nor the acceptance of any such additional security shall prevent the Beneficiary from resorting, first, to such additional security, and, second, to the security created by this Deed of Trust without affecting the Beneficiary's Lien and rights under this Deed of Trust.

ARTICLE XI.

MISCELLANEOUS

SECTION 11.1. Covenants To Run with the Land; Joint and Several. All of the grants, covenants, terms, provisions and conditions in this Deed of Trust shall run with the Land and the Trustor's interest therein and shall apply to, and bind the successors and assigns of, the Trustor. If there shall be more than one mortgagor with respect to the Trust Property, all such mortgagors' covenants, warranties and undertakings hereunder shall be joint and several.

SECTION 11.2. No Merger. The rights and estate created by this Deed of Trust shall not, under any circumstances, be held to have merged into any other estate or interest now owned or hereafter acquired by the Beneficiary unless the Beneficiary shall have consented to such merger in writing.

SECTION 11.3. Concerning Beneficiary.

(i) The Beneficiary has been appointed as Collateral Agent pursuant to the Indenture. The actions of the Beneficiary hereunder are subject to the provisions of the Indenture. The Beneficiary shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking action (including, without limitation, the release or substitution of the Trust Property), in accordance with this Deed of Trust and the Indenture. The Beneficiary may employ agents and attorneys-in-fact in connection herewith and shall not be liable for the negligence or misconduct of any such agents or attorneys-in-fact selected by it in good faith. The Beneficiary may resign and a successor Beneficiary may be appointed in the manner provided in the Indenture. Upon the acceptance of any appointment as the Beneficiary by a successor Beneficiary, that successor Beneficiary shall

thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Beneficiary under this Deed of Trust, and the retiring Beneficiary shall thereupon be discharged from its duties and obligations under this Deed of Trust. After any retiring Beneficiary's resignation, the provisions hereof shall inure to its benefit as to any actions taken or omitted to be taken by it under this Deed of Trust while it was the Beneficiary.

(ii) The Beneficiary shall be deemed to have exercised reasonable care in the custody and preservation of the Trust Property in its possession if such Trust Property is accorded treatment substantially equivalent to that which the Beneficiary, in its individual capacity, accords its own property consisting of similar property, instruments or interests, it being understood that neither the Beneficiary nor any of the Secured Parties shall have responsibility for taking any necessary steps to preserve rights against any Person with respect to any Trust Property.

(iii) The Beneficiary shall be entitled to rely upon any written notice, statement, certificate, order or other document or any telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper Person, and, with respect to all matters pertaining to this Deed of Trust and its duties hereunder, upon advice of counsel selected by it.

(iv) With respect to any of its rights and obligations as a Secured Party, the Beneficiary shall have and may exercise the same rights and powers hereunder. The term "Secured Parties," "Secured Party" or any similar terms shall, unless the context clearly otherwise indicates, include the Beneficiary in its individual capacity as a Secured Party. The Beneficiary may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with the Trustor or any Affiliate of the Trustor to the same extent as if the Beneficiary were not acting as Collateral Agent.

(v) If any portion of the Trust Property also constitutes collateral granted by any Securities Party to the Beneficiary to secure the Securities Obligations under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any conflict between the provisions hereof and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of any type in respect of such collateral, the Beneficiary, in its reasonable discretion, shall select which provision or provisions shall control, unless the Trust Property to which such conflict relates constitutes personal property, in which case the provisions of the Collateral Agreement shall control.

SECTION 11.4. Beneficiary May Perform; Beneficiary Appointed Attorney-in-Fact. If the Trustor shall fail to perform any covenants contained in this Deed of Trust (including, without limitation, the Trustor's covenants to (i) pay the premiums in respect of all required insurance policies hereunder or under the Indenture, (ii) pay Charges, (iii) make repairs, (iv) discharge Liens or (v) pay or perform any obligations of the Trustor under any Trust Property) or if any representation or warranty on the part of the Trustor contained herein shall be breached, the Beneficiary may (but shall not be obligated to), do the same or cause it to be done or remedy any such breach, and may expend funds for such purpose; provided, however, that the Beneficiary shall in no event be bound to inquire into the validity of any tax, Lien, imposition or other obligation which the Trustor fails to pay or perform as and when required hereby and which the Trustor does not contest in accordance with the provisions of the Indenture. Any and

all amounts so expended by the Beneficiary shall be paid by the Trustor in accordance with the provisions of Section 7.07 of the Indenture and repayment shall be secured by this Deed of Trust. Neither the provisions of this Section 11.4 nor any action taken by the Beneficiary pursuant to the provisions of this Section 11.4 shall prevent any such failure to observe any covenant contained in this Deed of Trust nor any breach of warranty from constituting an Event of Default. The Trustor hereby appoints the Beneficiary its attorney-in-fact, with full power and authority, upon the occurrence and during the continuance of an Event of Default, in the place and stead of the Trustor and in the name of the Trustor, or otherwise, from time to time in the Beneficiary's discretion to take any action and to execute any instrument consistent with the terms hereof and the other Securities Documents which the Beneficiary may deem necessary or advisable to accomplish the purposes hereof (but the Beneficiary shall not be obligated to and shall have no liability to the Trustor or any third party for failure to so do or take action). The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term hereof. The Trustor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

SECTION 11.5. Continuing Security Interest; Assignment. This Deed of Trust shall create a continuing Lien on and security interest in the Trust Property and shall (i) be binding upon the Trustor, its successors and assigns and (ii) inure, together with the rights and remedies of the Beneficiary and Trustee hereunder, to the benefit of the Beneficiary for the benefit of the Secured Parties and each of their respective successors, transferees and assigns. No other Persons (including, without limitation, any other creditor of any Securities Party) shall have any interest herein or any right or benefit with respect hereto. Without limiting the generality of the foregoing clause (ii), any Secured Party may assign or otherwise transfer any indebtedness held by it secured by this Deed of Trust to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Lender, herein or otherwise, subject, however, to the provisions of the Indenture. The Trustor agrees that its obligations hereunder and the security interest created hereunder shall continue to be effective or be reinstated, as applicable, if at any time payment, or any part thereof, of all or any part of the Securities Obligations is rescinded or must otherwise be restored by the Secured Party upon the bankruptcy or reorganization of any Pledgor or otherwise.

SECTION 11.6. Termination; Release. Upon (i) any sale or other transfer by Trustor of the Trust Property, as permitted by the Indenture (including without limitation, in connection with a Sale/Leaseback Transaction permitted thereby), (ii) the consummation of any transaction permitted by Indenture, the result of which the Trustor ceases to be a Subsidiary or otherwise ceases to be a Pledgor, (iii) the effectiveness of any written consent to the release of the Lien and security interest granted hereby to the Trust Property pursuant to Sections 9.02 and 11.08 of the Indenture or (iv) the Termination Date, this Deed of Trust shall terminate. Upon termination hereof or any release of the Trust Property or any portion thereof in accordance with the provisions of the Indenture, the Beneficiary and/or the Trustee at the direction of the Beneficiary (as so required by applicable law) shall, upon the request and at the sole cost and expense of the Trustor, forthwith assign, transfer and deliver to the Trustor, against receipt and without recourse to or warranty by the Beneficiary or the Trustee, such of the Trust Property to be released (in the case of a release) as may be in possession of the Beneficiary or Trustee and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Trust Property, proper documents and instruments (including UCC-3 termination state-

ments or releases) acknowledging the termination hereof or the release of such Trust Property, as the case may be.

SECTION 11.7. Modification in Writing. No amendment, modification, supplement, termination or waiver of or to any provision hereof, nor consent to any departure by the Trustor therefrom, shall be effective unless the same shall be done in accordance with the terms of the Indenture and unless in writing and signed by the Beneficiary and, if required by applicable law, the Trustee at the direction of the Beneficiary. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by the Trustor from the terms of any provision hereof shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Deed of Trust or any other Securities Document, no notice to or demand on the Trustor in any case shall entitle the Trustor to any other or further notice or demand in similar or other circumstances.

SECTION 11.8. Notices. Unless otherwise provided herein or in the Indenture, any notice or other communication herein required or permitted to be given shall be given in the manner and become effective as set forth in Section 13.02 of the Indenture (whether or not then in effect), if to the Trustor or the Beneficiary, addressed to it at the address set forth in the Indenture, or in each case at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 11.8.

SECTION 11.9. GOVERNING LAW; SERVICE OF PROCESS; WAIVER OF JURY TRIAL. THIS DEED OF TRUST SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS, EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR ITEM OR TYPE OF TRUST PROPERTY ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN SUCH STATE. THE TRUSTOR AGREES THAT SERVICE OF PROCESS IN ANY PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO THE COMPANY AT ITS ADDRESS SET FORTH IN THE INDENTURE OR AT SUCH OTHER ADDRESS OF WHICH THE BENEFICIARY SHALL HAVE BEEN NOTIFIED PURSUANT THERETO. IF ANY AGENT APPOINTED BY THE TRUSTOR REFUSES TO ACCEPT SERVICE, THE TRUSTOR HEREBY AGREES THAT SERVICE UPON IT BY MAIL SHALL CONSTITUTE SUFFICIENT NOTICE. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF THE BENEFICIARY TO BRING PROCEEDINGS AGAINST THE TRUSTOR IN THE COURTS OF ANY OTHER JURISDICTION. THE TRUSTOR HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS DEED OF TRUST OR THE TRANSACTIONS CONTEMPLATED HEREBY.

SECTION 11.10. Severability of Provisions. Any provision hereof which is invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without invalidating the remaining provisions hereof or affecting the validity, legality or enforceability of such provision in any other jurisdiction.

SECTION 11.11. Relationship. The relationship of the Beneficiary to the Trustor hereunder is strictly and solely that of lender and borrower and trustor and beneficiary and nothing contained in the Indenture, this Deed of Trust or any other document or instrument now existing and delivered in connection therewith or otherwise in connection with the Securities Obligations is intended to create, or shall in any event or under any circumstance be construed as creating a partnership, joint venture, tenancy-in-common, joint tenancy or other relationship of any nature whatsoever between the Beneficiary and the Trustor other than as lender and borrower and trustor and beneficiary.

SECTION 11.12. No Credit for Payment of Taxes or Impositions. The Trustor shall not be entitled to any credit against the principal, premium, if any, or interest payable under the Indenture, and the Trustor shall not be entitled to any credit against any other sums which may become payable under the terms thereof or hereof, by reason of the payment of any Charge on the Trust Property or any part thereof.

SECTION 11.13. No Claims Against the Beneficiary. Nothing contained in this Deed of Trust shall constitute any consent or request by the Beneficiary, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof, nor as giving the Trustor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Beneficiary in respect thereof or any claim that any Lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the Lien hereof.

SECTION 11.14. Beneficiary's Right To Sever Indebtedness.

(i) The Trustor acknowledges that (A) the Trust Property does not constitute the sole source of security for the payment and performance of the Securities Obligations and that the Securities Obligations are also secured by property of the Trustor and its Affiliates in other jurisdictions (all such property, collectively, the "Collateral"), (B) the number of such jurisdictions and the nature of the transaction of which this instrument is a part are such that it would have been impracticable for the parties to allocate to each item of Collateral a specific loan amount and to execute in respect of such item a separate credit agreement and (C) the Trustor intends that the Beneficiary have the same rights with respect to the Trust Property, in foreclosure or otherwise, that the Beneficiary would have had if each item of Collateral had been secured, mortgaged or pledged pursuant to a separate credit agreement, deed of trust, mortgage or security instrument. In furtherance of such intent, the Trustor agrees that the Beneficiary may at any time by notice (an "Allocation Notice") to the Trustor allocate a portion (the "Allocated Indebtedness") of the Securities Obligations to the Trust Property and sever from the remaining Securities Obligations the Allocated Indebtedness. From and after the giving of an Allocation Notice with respect to the Trust Property, the Securities Obligations hereunder shall be limited to

the extent set forth in the Allocation Notice and (as so limited) shall, for all purposes, be construed as a separate loan obligation of the Trustor unrelated to the other transactions contemplated by the Indenture, any other Securities Document or any document related to any thereof. To the extent that the proceeds on any foreclosure of the Trust Property shall exceed the Allocated Indebtedness, such proceeds shall belong to the Trustor and shall not be available hereunder to satisfy any Securities Obligations of the Trustor other than the Allocated Indebtedness. In any action or proceeding to foreclose the Lien hereof or in connection with any power of sale, foreclosure or other remedy exercised under this Deed of Trust commenced after the giving by the Beneficiary of an Allocation Notice, the Allocation Notice shall be conclusive proof of the limits of the Securities Obligations hereby secured, and the Trustor may introduce, by way of defense or counterclaim, evidence thereof in any such action or proceeding. Notwithstanding any provision of this Section 11.14, the proceeds received by the Beneficiary pursuant to this Deed of Trust shall be applied by the Beneficiary in accordance with the provisions of Section 8.3(ii) hereof.

(ii) The Trustor hereby waives to the greatest extent permitted under law the right to a discharge of any of the Securities Obligations under any statute or rule of law now or hereafter in effect which provides that foreclosure of the Lien hereof or other remedy exercised under this Deed of Trust constitutes the exclusive means for satisfaction of the Securities Obligations or which makes unavailable a deficiency judgment or any subsequent remedy because the Beneficiary elected to proceed with a power of sale, foreclosure or such other remedy or because of any failure by the Beneficiary to comply with laws that prescribe conditions to the entitlement to a deficiency judgment. In the event that, notwithstanding the foregoing waiver, any court shall for any reason hold that the Beneficiary is not entitled to a deficiency judgment, the Trustor shall not (A) introduce in any other jurisdiction such judgment as a defense to enforcement against the Trustor of any remedy in the Indenture or any other Securities Document or (B) seek to have such judgment recognized or entered in any other jurisdiction, and any such judgment shall in all events be limited in application only to the state or jurisdiction where rendered.

(iii) In the event any instrument in addition to the Allocation Notice is necessary to effectuate the provisions of this Section 11.14, including, without limitation, any amendment to this Deed of Trust, any substitute promissory note or affidavit or certificate of any kind, the Trustor agrees to execute all such amendments, notes, affidavits or certificates reasonably requested by the Beneficiary and the Trustor hereby appoints the Trustee and/or the Beneficiary as its true and lawful attorneys-in-fact to, following and during the continuance of an Event of Default, execute, deliver or record such amendments, notes, affidavits or certificates in the name and on behalf of the Trustor. Such power of attorney is coupled with an interest and is irrevocable.

(iv) Notwithstanding anything set forth herein to the contrary, the provisions of this Section 11.14 shall be effective only to the maximum extent permitted by law.

SECTION 11.15. Intercreditor Agreement. Notwithstanding anything herein to the contrary, the lien and security interest granted to the Beneficiary pursuant to this Deed of Trust shall be a second priority lien on and security interest in the Trust Property (in accordance with the Intercreditor Agreement) and the exercise of any right or remedy by the Beneficiary hereunder is subject to the provisions of the Intercreditor Agreement. In the event of any conflict

between the terms of the Intercreditor Agreement and this Deed of Trust, the terms of the Intercreditor Agreement shall govern and control and (a) the Trustor shall not be in breach or Default of its obligations under this Deed of Trust if its acts conform to the requirements of the Intercreditor Agreement or the Senior Lender Documents and (b) no direction shall be given by the Beneficiary in contravention of the Intercreditor Agreement. Notwithstanding anything herein to the contrary, prior to the Discharge of Senior Lender Claims, the requirements of this Deed of Trust to endorse, assign or deliver the Trust Property to the Beneficiary shall be deemed satisfied by endorsement, assignment or delivery of such Trust Property to the First Lien Agent.

SECTION 11.16. Recognition and Nondisturbance Agreement. In the event that the Trustor enters into a Lease with a third-party franchisee on commercially reasonable terms, the Beneficiary agrees to use commercially reasonable efforts to provide the franchisee with a recognition and nondisturbance agreement, in form and substance reasonably acceptable to Beneficiary, within thirty (30) days from written request from the Trustor which provides (i) that upon any exercise of the remedies available to the Beneficiary upon an Event of Default, which results in a transfer of title to or control or possession of the Trust Property or a transfer of the Trustor's interest in the Trust Property to the Beneficiary or any other Person or entity to whom would be entitled (a "Foreclosure Event"), such Lease (a) shall continue in full force and effect as a direct agreement between the Beneficiary and the franchisee, provided such Lease shall be terminated if the franchisee is in default thereunder, and the Beneficiary shall recognize all of the franchisee's rights under such Lease, and (b) the franchisee shall grant the Beneficiary access to the Trust Property in such manner as necessary to effectuate the remedies available to it under this Deed of Trust and perform such duties as is otherwise required of the Beneficiary, as landlord, under such Lease (ii) if the franchisee shall assert a material default of the Trustor under such Lease, the franchisee shall provide the Beneficiary with timely notice and permit the Beneficiary, without any obligation to do so, to cure of any such default of the Trustor, and (iii) the franchisee shall agree not to materially amend, modify or terminate such Lease without the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of the Beneficiary; provided, however, in no event shall the Beneficiary be required to subordinate the Lien of this Deed of Trust to the interests of the franchisee or any other party.

ARTICLE XII.

REGARDING TRUSTEE

SECTION 12.1. Trustee's Powers and Liabilities.

(i) The Trustee, by acceptance hereof, covenants faithfully to perform and fulfill the trusts herein created, being liable, however, only for gross negligence, bad faith or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by it in accordance with the terms thereof. All authorities, powers and discretions given in this Deed of Trust to the Trustee and/or the Beneficiary may be exercised by either, without the other, with the same effect as if exercised jointly; and the Beneficiary shall have no liability or responsibility for the action or inaction of the Trustee;

(ii) The Trustee may resign at any time upon giving thirty (30) days' notice in writing to the Trustor and to the Beneficiary;

(iii) The Beneficiary may remove the Trustee at any time or from time to time and select a successor trustee in the event of the death, removal, resignation, refusal to act, inability to act or absence of the Trustee from the state in which the Premises are located, or in its sole discretion for any reason whatsoever. The Beneficiary may, upon notice to the Trustor and without specifying the reason therefore and without applying to any court, select and appoint a successor trustee, and all powers, rights, duties and authority of the former trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of his duties unless required by the Beneficiary. Such substitute trustee shall be appointed by written instrument duly recorded in the county where the Land is located. The Trustor hereby ratifies and confirms any and all acts that the herein named Trustee, or his successor or successors in this trust, shall do lawfully by virtue hereof. The Trustor hereby agrees, on behalf of itself and its heirs, executors, administrators and assigns, that the recitals contained in any deed or deeds executed in due form by any Trustee or substitute trustee, acting under the provisions of this instrument, shall be prima facie evidence of the facts recited, and that it shall not be necessary to prove in any court, otherwise than by such recitals, the existence of the facts essential to authorize the execution and delivery of such deed or deeds and the passing of title thereby;

(iv) The Trustee shall not be required to see that this Deed of Trust is recorded nor liable for its validity or its priority as a first deed of trust, or otherwise, nor shall the Trustee be answerable or responsible for performance or observance of the covenants and agreements imposed upon the Trustor or the Beneficiary by this Deed of Trust or any other agreement. The Trustee, as well as the Beneficiary, shall have authority in their respective discretion to employ agents and attorneys in the execution of this trust and to protect the interest of the Beneficiary hereunder, and to the fullest extent permitted by law they shall be compensated and all expenses relating to the employment of such agents and/or attorneys, including expenses of litigation, shall be paid out of the proceeds of the sale of the Trust Property conveyed hereby should a sale be had, but if no such sale be had, all sums so paid out shall be recoverable to the fullest extent permitted by law by all remedies at law or in equity; and

(v) At any time, or from time to time, without liability therefore and with ten (10) day's prior written notice to the Trustor, upon written request of the Beneficiary and without affecting the effect of this Deed of Trust upon the remainder of the Trust Property, the Trustee may (A) reconvey any part of the Trust Property, (B) consent in writing to the making of any map or plat thereof, so long as the Trustor has consented thereto, (C) join in granting any easement thereon, so long as the Trustor has consented thereto, or (D) join in any extension agreement or any agreement subordinating the lien or charge hereof.

ARTICLE XIII.

LOCAL LAW PROVISIONS

SECTION 13.1. Conflicts. To the extent that any provisions of this Article XIII are in conflict with any other provisions of this Deed of Trust, the provisions in this Article XIII shall govern and control.

SECTION 13.2. Additional Remedies. At any time after an Event of Default, the Beneficiary shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to the Beneficiary at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(i) The Beneficiary and the Trustee, if and as directed by the Beneficiary, may commence an action to foreclose the lien of this Deed of Trust as a mortgage in accordance with Beneficiary's rights under *Utah Code Annotated* § 57-1-23, or other applicable law, appoint a receiver as more particularly described in Subsection 8.5(ii) hereof, or specifically enforce any of the covenants hereof.

(ii) The Beneficiary may exercise the power of sale herein contained and deliver to the Trustee a written statement of default or breach and cause the Trustee to execute and record a notice of default and election to cause the Trustor's interest in the Trust Property to be sold in accordance with *Utah Code Annotated* § 57-1-24 or other applicable law. After the lapse of such time as may then be required by *Utah Code Annotated* § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Code Annotated* § 57-1-25 and § 57-1-26 or other applicable law, the Trustee, without demand on the Trustor, shall sell the Trust Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as the Beneficiary may determine (but subject to the Trustor's statutory right under *Utah Code Annotated* § 57-1-27 to direct the order in which the Trust Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The Person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such Person at the time and place last appointed for the sale; *provided, however*, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Code Annotated* § 57-1-27. The Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with *Utah Code Annotated* § 57-1-28, conveying the Trust Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any Person, including Beneficiary, may bid at the sale. The Trustee shall apply the proceeds of the sale as set forth in Section 8.3(ii) hereof.

(iii) If the Trust Property consists of more than one lot, parcel or item of property, the Beneficiary and/or the Trustee, as required by applicable law, may: (A) designate the

order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition (subject to the Trustor's right under *Utah Code Annotated* § 57-1-27 to direct the order in which such property shall be sold); and, (B) elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner the Beneficiary may deem to be in its best interests, including by exercising the power of sale herein contained (any such sale or disposition, a "Foreclosure Sale;" and any two or more, "Foreclosure Sales"), and (C) if the Beneficiary chooses to have more than one Foreclosure Sale, the Beneficiary, at its option, may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as the Beneficiary may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Deed of Trust on any part of the Trust Property which has not been sold, until all of the Securities Obligations have been paid in full.

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

(v) If the Trustor, the Trustor's successor in interest or any other Person having a subordinate lien or encumbrance of record on the Premises, reinstates this Deed of Trust and the Securities Obligations within three (3) months of the recordation of a notice of default in accordance with *Utah Code Annotated* § 57-1-31(1), such party shall pay to the Beneficiary the reasonable cancellation fee contemplated by *Utah Code Annotated* § 57-1-31(2), as delivered by the Beneficiary, in accordance with its then current policies and procedures, whereupon the Trustee shall record a notice of cancellation of the pending sale.

SECTION 13.3. Credit Bids. At any Foreclosure Sale, any Person, including the Trustor or the Beneficiary, may bid for and acquire the Premises or any part of it to the extent permitted by then applicable law. The Beneficiary may bid for and acquire the Premises, whether by payment of cash or by credit bid in accordance with *Utah Code Annotated* § 57-1-28(1)(b). In the event of a successful credit bid, the Beneficiary shall make settlement for the purchase price by crediting upon the Securities Obligations of the Trustor secured by this Deed of Trust such credit bid amount. The Beneficiary, upon so acquiring the Premises or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.

SECTION 13.4. Application of Foreclosure Sale Proceeds. The Trustee shall apply the proceeds of any Foreclosure Sale in the following manner: (A) First, to the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and the Beneficiary's attorneys' fees actually incurred not to exceed the amount which may be provided for in this Deed of Trust; (B) Second, to payment of the obligations secured by this Deed of Trust in accordance with Section 8.3(ii) hereof; and, (c) Third, the balance, if any, to the Person or Persons legally entitled to the proceeds, or the Trustee, in the Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with *Utah Code Annotated* § 57-1-29.

SECTION 13.5. Expenses of Trustee. The Trustor shall pay all reasonable costs, fees and expenses incurred by the Trustee and the Trustee's agents and counsel, including fees for accountings and reinstatement quotes as may be required by *Utah Code Annotated* § 57-1-31.5, in connection with the performance by the Trustee of the Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Deed of Trust.

SECTION 13.6. Non-Residential Nature of Trust Property. For purposes of *Utah Code Annotated* § 57-1-25 and *Utah Code Annotated* § 78B-6-901.5, the Trustor agrees that the stated purpose for which this Deed of Trust was given is not to finance residential rental property.

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IN WITNESS WHEREOF, the Trustor has caused this Deed of Trust to be duly executed and delivered under seal the day and year first above written.

TRUSTOR:

CARL KARCHER ENTERPRISES, INC.,
a California corporation


By: 

Name: William R. Werner

Title: Senior Vice President

State of Missouri)
) ss.:
City of St. Louis)

The foregoing instrument was acknowledged before me this 18 day of November, 2010, by William R. Werner, the Senior Vice President of Carl Karcher Enterprises, Inc., a California corporation, on behalf of such corporation.


Notary Public

My commission expires: 10-28-2011
[SEAL]



Unit # 1100335

Schedule A — Legal Description

Legal Description of premises commonly known as Unit # 1100335:

Property located in Davis County, UT

Lot 2, Syracuse Wal-Mart Subdivision, according to the official plat thereof, recorded in the office of the Davis County Recorder.

AND BEING the same property conveyed to Carl Karcher Enterprises, Inc., a California corporation from Wal-Mart Realty Company, an Arkansas corporation by Special Warranty Deed dated December 21, 2007 and recorded January 10, 2008 in Deed Book 4446, Page 227.

Tax Parcel No. 126060002