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Loan Operations Manager
Pacific Premier Bank
123 Tice Blvd., Suite 101
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02-123-0004

Deed of Trust, Assignment of Rents and Leases, Security
Agreement and Fixture Filing

Davis County, UT

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

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") is made as of April 13, 2015 by CJ EAST, LLC ("Borrower"), to METRO NATIONAL TITLE (hereinafter referred to as the "Trustee") for the benefit of PACIFIC PREMIER BANK ("Lender"), as beneficiary.

PRELIMINARY STATEMENT:

The capitalized terms used in this Deed of Trust; if not elsewhere defined herein, are defined as indicated in Article I. Borrower holds a subleasehold interest in the Land and holds the fee simple interest in the Improvements thereon, subject to the Permitted Exceptions. Borrower is executing this Deed of Trust for the purpose of granting the interest of Borrower in and to the Collateral (as defined in the Granting Clauses below) as security for the payment of the Obligations. The Collateral shall be and remain subject to the lien of this Deed of Trust and shall constitute security for the Obligations so long as the Obligations shall remain outstanding.

THIS DEED OF TRUST COVERS EQUIPMENT AND GOODS WHICH ARE OR ARE TO BECOME FIXTURES, IS EFFECTIVE AS A FINANCING STATEMENT, AS A FIXTURE FILING AND IS TO BE FILED IN THE REAL ESTATE RECORDS.

GRANTING CLAUSES:

Borrower, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by these presents does hereby irrevocably create a security interest in, mortgage, grant, bargain, sell, assign, pledge, give, transfer, set over and convey unto Trustee and to its successors and assigns IN TRUST WITH POWER OF SALE AND RIGHT OF ENTRY for the benefit and security of Lender and its successors and assigns, all of Borrower's estate, right, title and interest in, to and under any and all of the following property (the "Collateral"), whether now owned or hereafter acquired, subject only to the Permitted Exceptions:

Sublease

The leasehold estate created by the Sublease and all other tenancy, term, right, title and interest of Borrower, of whatever character (whether vested or contingent), in and to the Land together with any and all rights, privileges and benefits, of whatever character derived by Borrower, or to which Borrower may be entitled, under or by virtue of the Sublease, including, without limitation: (i) any and all rights to exercise options (including, without limitation, options to purchase, renew, extend, terminate, reject or assume), give consents and receive payments, reimbursements and refunds; (ii) any and all rights to modify, change, supplement, alter, amend, terminate, cancel, sever or surrender the Sublease and any and all rights to release or discharge the Sublessor of or from the obligations, covenants, conditions and agreements by the Sublessor to be kept, observed or performed thereunder; (iii) any and all claims and rights to the payment of damages that may presently exist or hereafter arise under or in connection with the Sublease or the rights of Borrower thereunder, including, without limitation, any such claim or

right that may arise as a result of the rejection or disaffirmance of the Sublease by the Sublessor, or by any trustee of the Sublessor, pursuant to the Code; and (iv) any and all rights, privileges and benefits, of whatever character, to which Borrower may hereafter be entitled pursuant to Section 365 of the Code, including, without limitation, all of Borrower's rights to remain in possession after rejection or disaffirmance of the Sublease by the Sublessor or by any trustee of the Sublessor.

Improvements, Rents and Derivative Interests

The Improvements, all rents, issues, profits, royalties, income and other benefits derived from the property comprising the Premises and the Personal Property (as defined below) or any portion thereof (collectively, the "Rents"); all leases or subleases covering the Premises and the Personal Property or any portion thereof now or hereafter existing or entered into (collectively, "Leases" and individually, a "Lease"), including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature and all guaranties relating to the Leases; all options to purchase or lease the Premises and the Personal Property or any portion thereof or interest therein, and any greater estate in the Premises; all interests, estate or other claims, both in law and in equity, with respect to the Premises and the Personal Property or any portion thereof; all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; all land lying within the right-of-way of any street, open or proposed, adjoining the Premises and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Premises;

Personal Property

All Borrower's assets used in connection with the Premises whether now owned or hereafter acquired, including without limitation all goods (including inventory, equipment, furniture, trade fixtures and any accessions thereto), fixtures, instruments, documents, accounts, chattel paper, deposit accounts, letter-of-credit rights, securities and all other investment property, supporting obligations, any other contract rights or rights to the payment of money, insurance claims, products and proceeds and all substitutions, replacements, attachments and replacements thereof (the "Personal Property");

Intangibles

All existing and future accounts, contract rights, including, without limitation, with respect to equipment leases, general intangibles, files, books of account, agreements, distributor agreements, Indemnity Agreements, permits, licenses and certificates necessary or desirable in connection with the acquisition, ownership, leasing, construction, operation, servicing or management of the property comprising the Premises and the Personal Property or any portion thereof, whether now existing or entered into or obtained after the date hereof including, without limitation, all construction contracts, architect agreements, plans, specifications, drawings, permits, licenses, agreements, approvals, consents and warranties now or hereafter relating to the construction of the Improvements and all amendments and modifications thereto, all existing and future names under or by which the property comprising the Premises and the Personal Property or any portion thereof may at any time be operated or known, all rights to carry on business under any such names or any variant thereof, and all existing and future telephone numbers and listings, advertising and marketing materials, trademarks and good will in any way relating to the property comprising the Premises and the Personal Property or any portion thereof; and

Claims and Awards

All the claims or demands with respect to the Premises and the Personal Property or any portion thereof, including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto, claims under any indemnity agreement, including, without limitation, any indemnity agreement executed for the benefit of the Premises and the Personal Property or any portion thereof with respect to Hazardous Materials or underground storage tanks, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises and the Personal Property, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages.

The Collateral shall include all products and proceeds of the foregoing property.

TO HAVE AND TO HOLD the Collateral hereby granted or mortgaged or intended to be granted or mortgaged, unto Lender, and its successors and assigns, upon the terms, provisions and conditions set forth herein.

THIS DEED OF TRUST SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS (the "Obligations"):

(i) Payment of indebtedness evidenced by the Note together with all extensions, renewals, amendments and modifications thereof;

(ii) Payment of all other indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations and covenants contained in, any Loan Document (other than the Environmental Indemnity Agreement), together with any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby or thereby; and

(iii) Payment of all indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations and covenants contained any Other Agreement, together with any other instrument given to evidence or further secure the payment and performance of any obligation secured thereby.

It is the intention of the parties hereto that the Collateral shall secure all of the Obligations presently or hereafter owed, and that the priority of the security interest created by this Deed of Trust for all such Obligations shall be controlled by the time of proper recording of this Deed of Trust. In addition, this Deed of Trust shall also secure unpaid balances of advances made with respect to the Collateral for the payment of taxes, assessments, insurance premiums, costs or any other advances incurred for the protection of the Collateral, together with interest thereon until paid at the Default Rate, all as contemplated in this Deed of Trust, all of which shall constitute a part of the Obligations. This paragraph shall serve as notice to all persons who may seek or obtain a lien on the Collateral subsequent to the date of recording of this Deed of Trust, that until this Deed of Trust is released, any debt owed Lender by Borrower, including advances made subsequent to the recording of this Deed of Trust, shall be secured with the priority afforded this Deed of Trust as recorded.

Notwithstanding the foregoing or any other provisions of this Deed of Trust to the contrary:

(x) in the event that the Loan becomes the subject of a Securitization, Participation or Transfer, this Deed of Trust shall only secure indebtedness and obligations relating to the Loan and any other loans between any of the Borrower Parties on the one hand and any of the Lender Entities on the other hand which are part of the same Loan Pool as the Loan; and

(y) in the event that any loans between any of the Borrower Parties on the one hand and any of the Lender Entities on the other hand (other than the Loan) become the subject of a Securitization, Participation or Transfer, this Deed of Trust shall not secure any indebtedness and obligations relating to such loans unless the Loan is part of the same Loan Pool as such loans.

IT IS HEREBY COVENANTED, DECLARED AND AGREED that the Note and other Loan Documents are to be executed, delivered and secured and that the Collateral is to be held and disposed of by Trustee, upon and subject to the provisions of this Deed of Trust.

ARTICLE I

DEFINED TERMS

Section 1.01. *Incorporation of Definitions.* Initially capitalized terms not otherwise defined in this Deed of Trust shall have the meanings set forth in that certain Equipment Loan and Security Agreement, dated as of the date of this Deed of Trust, between Borrower, CJ STAR, LLC and Lender, as the same may be amended from time to time (the "Loan Agreement").

Section 1.02. *Additional Definitions.* Unless the context otherwise specifies or requires, the following terms shall have the meanings specified (such definitions to be applicable equally to singular and plural nouns and verbs of any tense):

“*Improvements*” means all buildings, fixtures and other improvements now or hereafter located on the Land (whether or not affixed to the Land).

“*Land*” means the parcel or parcels of real estate legally described in Exhibit A attached hereto, and all rights, privileges and appurtenances therewith.

“*Loan*” means the loan made by Lender to Borrower which is evidenced by the Note and secured by this Deed of Trust.

“*Loan Agreement*” has the meaning set forth in Section 1.01.

“*Net Award*” has the meaning set forth in Section 4.01(b)(v).

“*Net Insurance Proceeds*” has the meaning set forth in Section 4.01(a)(iii).

“*Note*” means the equipment promissory note dated as of even date herewith in the amount of \$7,923,535 executed by Borrower and payable to Lender and any amendments, extensions or modifications thereof.

“*Other Agreements*” means, collectively, all agreements and instruments between, among or by (1) any of the Borrower Parties, and, or for the benefit of, (2) any of the Lender Entities, including, without limitation, promissory notes and guaranties; provided, however, the term “*Other Agreements*” shall not include the agreements and instruments defined in the Loan Agreement as the Loan Documents.

“*Premises*” means the Land and the Improvements.

“*Restoration*” means the restoration, replacement or rebuilding of the Premises, or any part thereof, as nearly as possible to its value, condition and character immediately prior to any damage, destruction or Taking.

“*State*” means the State in which the Premises is located.

“*Sublease*” means, collectively, that certain Sublease dated _____ between Sublessor, or a predecessor-in-interest to Sublessor, and Borrower, or a predecessor-in-interest to Borrower, and all modifications, amendments and supplements thereto.

“*Sublease Estoppel Certificate*” means that certain Lessor Estoppel Certificate And Consent delivered by Sublessor to Lender and Borrower in connection with the Premises.

“*Sublessor*” means the Sublessor under the Sublease.

ARTICLE II

INCORPORATION OF REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

The representations, warranties and covenants of Borrower set forth in the Loan Agreement are incorporated by reference into this Deed of Trust as if stated in full in this Deed of Trust. All representations and warranties as incorporated herein shall be deemed to have been made as of the date of this Deed of Trust and all representations, warranties and covenants incorporated herein shall survive the execution and delivery of this Deed of Trust. Borrower warrants that this Deed of Trust is delivered in connection with a business or commercial loan transaction. In addition Borrower hereby represents and warrants to Lender and such representations and warranties shall survive the execution and delivery of this Deed of Trust:

Section 2.01. **Utilities.** Adequate public utilities are available at the Premises to permit utilization of the Premises as a Permitted Concept and all utility connection fees and use charges will have been paid in full prior to delinquency.

Section 2.02. **Zoning; Compliance With Laws.** The Premises is in compliance with all applicable zoning requirements, and the use of the Premises as a Permitted Concept does not constitute a nonconforming use under applicable zoning requirements. The Premises is in compliance with all Applicable Regulations except for

such noncompliance, which has not had, and could not reasonably be expected to result in, a Material Adverse Effect.

Section 2.03. *Area Development; Wetlands.* To Borrower's actual knowledge, no condemnation or eminent domain proceedings affecting the Premises have been commenced or are contemplated, and neither the Premises nor, to the best of Borrower's knowledge, the real property bordering the Premises are designated by any Governmental Authority as a wetlands.

Section 2.04. *Licenses and Permits; Access.* All required licenses and permits, both governmental and private, to use and operate the Premises as a Permitted Concept are in full force and effect, except for such licenses and permits the failure of which to obtain has not had, and could not reasonably be expected to result in, a Material Adverse Effect. Adequate rights of access to public roads and ways are available to the Premises for unrestricted ingress and egress and otherwise permit utilization of the Premises for their intended purposes, and all such public roads and ways have been completed and dedicated to public use.

Section 2.05. *Condition of Premises.* The Premises, including the Personal Property, is in good condition and repair, well-maintained, ordinary wear and tear excepted, fully equipped and operational, free from structural defects, safe and properly lighted.

Section 2.06. *Environmental.* To Borrower's actual knowledge: (1) The Premises is not in violation of, or subject to, any pending or threatened investigation or inquiry by any Governmental Authority or to any remedial obligations under any Environmental Laws, and this representation and warranty would continue to be true and correct following disclosure to the applicable Governmental Authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Premises;

(2) All permits, licenses or similar authorizations required to construct, occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of the Premises by reason of any Environmental Laws have been obtained;

(3) No Hazardous Materials have been used, handled, manufactured, generated, produced, stored, treated, processed, transferred, disposed of or otherwise Released in, on, under, from or about the Premises, except in Permitted Amounts;

(4) The Premises does not contain Hazardous Materials, except in Permitted Amounts;

(5) There is no threat of any Release migrating to the Premises in excess of Permitted Amounts;

(6) There is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Premises;

(7) None of the Borrower Parties has received any written or oral notice or other communication from any person or entity (including but not limited to a Governmental Authority) relating to Hazardous Materials or Remediation thereof in excess of Permitted Amounts, of possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Premises, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing;

(8) All information known to any of the Borrower Parties or contained in the files of any of the Borrower Parties relating to any Environmental Condition or Releases of Hazardous Materials in, on, under or from the Premises, other than in Permitted Amounts, has been provided to Lender, including, without limitation, information relating to all prior Remediation; and

(9) The Premises has been kept free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law (the "Environmental Liens"); and none of the Borrower Parties has allowed any tenant or other user of the Premises to do any act that materially increased the dangers to human health or the environment, posed an unreasonable risk of harm to any person or entity (whether on or off the Premises), impaired the value of

the Premises in any material respect, is contrary to any requirement of any insurer, constituted a public or private nuisance, constituted waste, or violated any covenant, condition, agreement or easement applicable to the Premises.

Section 2.07. **Title to Personal Property; First Priority Lien.** Borrower is the owner of all Personal Property, free and clear of all liens, encumbrances, charges and security interests of any nature whatsoever, and no Affiliate of Borrower owns any of the Personal Property. Upon Closing, Lender shall have a first priority lien upon and security interest in the Personal Property pursuant to the Deed of Trust and the UCC-1 Financing Statements.

Section 2.08. **No Mechanics' Liens.** To Borrower's actual knowledge, there are no delinquent accounts payable or mechanics' liens in favor of any materialman, laborer, or any other person or entity in connection with labor or materials furnished to or performed on any portion of the Premises; and no work has been performed or is in progress nor have materials been supplied to the Premises or agreements entered into for work to be performed or materials to be supplied to the Premises prior to the date hereof, which will be delinquent on or before the Closing Date.

Section 2.09. **Franchisor Provisions.** Borrower has delivered to Lender a true, correct and complete copy of the Franchise Agreement. The Franchise Agreement, the Sublease and other documents related to Borrower's acquisition of the Utah properties are the only agreements in effect with Franchisor with respect to the Premises. The Franchise Agreement is in full force and effect and constitutes the legal, valid and binding obligations of the parties to the Franchise Agreement enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, liquidation, reorganization and other laws affecting the rights of creditors generally and general principles of equity. None of the Borrower Parties has assigned, transferred, mortgaged, hypothecated or otherwise encumbered the Franchise Agreement or any rights thereunder or any interest therein. No notice of default from Franchisor has been received under the Franchise Agreement which has not been cured and no notice of default to Franchisor has been given under the Franchise Agreement, which has not been cured. No event has occurred and no condition exists which, with the giving of notice or the lapse of time or both, would constitute a default under the Franchise Agreement.

ARTICLE III

COVENANTS OF BORROWER

In addition to any covenants of Borrower set forth in the Loan Agreement or any other Loan Document, Borrower hereby covenants to Lender and agrees as follows until the Obligations are satisfied in full:

Section 3.01. **Recording.** Borrower shall, upon the execution and delivery hereof and thereafter from time to time, take such actions as Lender may request to cause this Deed of Trust, each supplement and amendment to such instrument and financing statements with respect thereto and each instrument of further assurance (collectively, the "Recordable Documents") to be filed, registered and recorded as may be required by law to publish notice and maintain the first lien or security interest, as applicable, hereof upon the Collateral and to publish notice of and protect the validity of the Recordable Documents. Borrower shall, from time to time, perform or cause to be performed any other act and shall execute or cause to be executed any and all further instruments (including financing statements, continuation statements and similar statements with respect to any of said documents) requested by Trustee, in writing, for carrying out the intention of, or facilitating the performance of, this Deed of Trust. Lender shall be and is hereby irrevocably appointed the agent and attorney-in-fact of Borrower to comply therewith (including the execution, delivery and filing of such financing statements and other instruments), which appointment is coupled with an interest; provided, however, Lender shall not exercise such power of attorney unless Borrower has first failed to comply with this Section, and provided, further, that this sentence shall not prevent any default in the observance of this Section from constituting an Event of Default. To the extent permitted by law, Borrower shall pay or cause to be paid recording taxes and fees incident thereto and all expenses, taxes and other governmental charges incident to or in connection with the preparation, execution, delivery or acknowledgment of the Recordable Documents, any instruments of further assurance and the Note.

Section 3.02. **Use; Maintenance and Repair; Leases.** (a) The Collateral shall be used solely for the operation of a Permitted Concept in accordance with the Franchise Agreement relating to the Premises and for no other purpose. Except as set forth below, and except during periods when the Premises is untenable by reason of

fire or other casualty or condemnation (provided, however, during all such periods while the Premises is untenantable, Borrower shall strictly comply with the terms and conditions of Section 4.01 of this Deed of Trust), Borrower shall at all times while this Deed of Trust is in effect occupy the Collateral and diligently operate its business on the Collateral. Borrower may cease diligent operation of business at the Collateral for a period not to exceed 90 days and may do so only once within any five-year period while this Deed of Trust is in effect. If Borrower does discontinue operation as permitted by this Section, Borrower shall (i) give written notice to Lender within 10 days after Borrower elects to cease operation, (ii) provide adequate protection and maintenance of the Collateral during any period of vacancy and (iii) pay all costs necessary to restore the Collateral to its condition on the day operation of the business ceased at such time as the Collateral is reopened for Borrower's business operations or other substituted use.

Borrower shall not, and shall not permit any lessee to, by itself or through any lease or other type of transfer, convert the Premises to an alternative use while this Deed of Trust is in effect without Lender's consent, which consent shall not be unreasonably withheld. Lender may consider any or all of the following in determining whether to grant its consent, without being deemed to be unreasonable: (i) whether the converted use will be consistent with the highest and best use of the Collateral, and (ii) whether the converted use will increase Lender's risks or decrease the value of the Collateral.

(b) Borrower shall (i) maintain the Collateral in good condition and repair, subject to reasonable and ordinary wear and tear, free from actual or constructive waste, (ii) operate, remodel, update and modernize the Collateral in accordance with those standards adopted from time to time by Franchisor on a system-wide basis for Permitted Concepts, with such remodeling and modernizing being undertaken in accordance with Franchisor's system-wide timing schedules for such activities, and (iii) pay all operating costs of the Premises in the ordinary course of business.

(c) Borrower shall not (i) enter into any leases without Lender's prior written consent; (ii) modify or amend the terms of any Sublease without Lender's prior written consent; (iii) grant any consents under any Sublease, including, without limitation, any consent to an assignment of any Sublease, a mortgaging of the leasehold estate created by any Sublease or a subletting by the sublessee under any Sublease, without Lender's prior written consent; (iv) terminate, cancel, surrender, or accept the surrender of, any Sublease, or waive or release any person from the observance or performance of any obligation to be performed under the terms of any Sublease or liability on account of any warranty given thereunder, without Lender's prior written consent; or (v) assign, transfer, mortgage, pledge or hypothecate any Sublease or any interest therein to any party other than Lender, without Lender's prior written consent. Any lease, modification, amendment, grant, termination, cancellation, surrender, waiver or release in violation of the foregoing provision shall be null and void and of no force and effect. Unless Lender otherwise consents or elects, Borrower's title to the Collateral and the leasehold interest in the Collateral created by any other lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Borrower, Lender or any other person by purchase, operation of law, foreclosure of this Deed of Trust, sale of the Collateral pursuant to this Deed of Trust or otherwise.

(d) Borrower shall (i) fulfill, perform and observe in all respects each and every condition and covenant of Borrower contained in any Sublease; (ii) give prompt notice to Lender of any claim or event of default under any Sublease given to or by Borrower, together with a complete copy or statement of any information submitted or referenced in support of such claim or event of default; (iii) at the sole cost and expense of Borrower, enforce the performance and observance of each and every covenant and condition of any Sublease to be performed or observed by any other party thereto, unless such enforcement is waived in writing by Lender; (iv) appear in and defend any action challenging the validity, enforceability or priority of the lien created hereby or the validity or enforceability of any Sublease; and (v) hold that portion of the Rents which is sufficient to discharge all current sums due under the Guaranty for use in the payment of such sums.

(e) Borrower shall (i) fulfill, perform and observe in all respects each and every condition and covenant of Borrower contained in the Sublease; (ii) give prompt notice to Lender of any claim or event of default under the Sublease given to Borrower by Sublessor or given by Borrower to Sublessor, together with a complete copy or statement of any information submitted or referenced in support of such claim or event of default; (iii) at the sole cost and expense of Borrower, enforce the performance and observance of each and every covenant and condition of the Sublease to be performed or observed by any other party to the Sublease unless such enforcement is waived in writing by Lender; (iv) appear in and defend any action challenging the validity or enforceability of the

Sublease; and (v) timely exercise any renewal options under the Sublease. The Sublease shall not be modified, amended, terminated, cancelled or surrendered by Borrower without Lender's prior written consent. Without limiting the generality of the foregoing, Borrower shall not, without Lender's prior written consent, elect to treat the Sublease or the leasehold estate created thereunder as terminated under Section 365 of the Code, after rejection or disaffirmance of the Sublease by the Sublessor (whether as debtor in possession or otherwise) or by any trustee of the Sublessor, and any such election made without such consent shall be void and ineffective. Borrower shall not assign, transfer, mortgage, pledge or hypothecate the Sublease or any interest therein to any party other than Lender, without first obtaining Lender's prior written consent. Borrower shall not waive or release any person from the observance or performance of any obligation to be performed under the terms of the Sublease or liability on account of any warranty given thereunder. Any modification, amendment, termination, cancellation, surrender, assignment, transfer, mortgage, pledge, hypothecation, waiver or release in violation of the foregoing shall be null and void and of no force and effect. Borrower agrees that if Borrower, at any time while the Obligations are outstanding, acquires fee title or any greater estate than it holds as of the date of this Deed of Trust in and to the Land or the Collateral, the lien of this Deed of Trust shall automatically attach, extend to, cover and encumber such fee title or other greater estate, and that Borrower shall execute such further documents and take such further actions as Lender may reasonably request to confirm such lien. Without limiting the foregoing sentence, unless Lender otherwise consents or elects, fee title to the Collateral and the leasehold interest in the Land created by the Sublease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Borrower, Lender, or any other person by purchase, operation of law, foreclosure of this Deed of Trust, sale of the Collateral pursuant to this Deed of Trust or otherwise.

(f) The provisions contained in this Deed of Trust shall be deemed to be obligations of Borrower in addition to Borrower's obligations as tenant with respect to similar matters under which Borrower is obligated under the Sublease and shall not restrict or limit Borrower's duties and obligations to keep and perform promptly all of its covenants, agreements and obligations as tenant under such Sublease.

(g) If the Sublease is cancelled or terminated, and Lender or its nominee shall acquire an interest in any new Lease of the property demised thereby, Borrower shall have no right, title or interest in or to the new Lease or to the leasehold estate created by such new Lease.

(h) Borrower will use its best efforts to obtain and deliver to Lender within ten (10) days after written request by Lender, an estoppel certificate from Sublessor setting forth (i) the name of the tenant thereunder, (ii) that the Sublease has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification), (iii) the rent payable under the Sublease, (iv) the date to which all rental charges have been paid by tenant under the Sublease, (v) whether there are any alleged defaults by Borrower, as tenant under the Sublease and, if so, setting forth the nature thereof in reasonable detail, and (vi) such other matters as Lender may reasonably request.

(i) Notwithstanding anything to the contrary contained herein, this Deed of Trust shall not constitute an assumption by Lender of the Sublease and Lender shall have no liability or obligation thereunder by reason of its acceptance of this Deed of Trust.

(j) **IF THE SUBLEASE REQUIRES BORROWER TO DELIVER A NOTICE TO THE SUBLESSOR EXTENDING THE TERM OF THE SUBLEASE, AND BORROWER FAILS TO DELIVER SUCH NOTICE AT LEAST THIRTY DAYS BEFORE THE DATE BY WHICH THE EXTENSION NOTICE MUST BE DELIVERED, OR IF NO SUCH DATE IS SET FORTH IN THE SUBLEASE, IF BORROWER FAILS TO DELIVER SUCH NOTICE AT LEAST THIRTY DAYS BEFORE THE EXPIRATION OF THE THEN CURRENT TERM OF THE SUBLEASE, LENDER SHALL HAVE, AND IS HEREBY GRANTED, A POWER OF ATTORNEY ON BEHALF OF BORROWER TO EXECUTE AND DELIVER SUCH EXTENSION NOTICE, IT BEING STIPULATED THAT SUCH POWER OF ATTORNEY IS COUPLED WITH AN INTEREST AND IRREVOCABLE. UPON THE REQUEST OF LENDER, BORROWER SHALL EXECUTE ANY DOCUMENTS OR INSTRUMENTS REASONABLY REQUIRED BY LENDER OR SUBLESSOR IN ORDER TO CONFIRM THE EXISTENCE OF THE POWER OF ATTORNEY SET FORTH IN THIS SUBSECTION (H), INCLUDING, WITHOUT LIMITATION, A SEPARATE POWER OF ATTORNEY IN RECORDABLE FORM WITH RESPECT TO THE MATTERS COVERED BY THIS SUBSECTION (H). LENDER SHALL FURTHER HAVE A POWER OF ATTORNEY, IT BEING STIPULATED THAT SUCH POWER OF ATTORNEY IS**

COUPLED WITH AN INTEREST AND IS IRREVOCABLE, TO EXECUTE ANY AND ALL OTHER DOCUMENTS REQUIRED BY THIS SECTION 3.02, SECTION 6.10 AND SECTION 6.11 WITH RESPECT TO THE SUBLEASE AND TO PERFORM ANY AND ALL ACTS REQUIRED THEREBY, IF BORROWER SHALL FAIL TO DO SO WITHIN FIVE (5) DAYS AFTER DEMAND BY LENDER.

Section 3.03. *Alterations and Improvements.* Borrower shall not alter the exterior, structural, plumbing or electrical elements of the Collateral in any manner without the consent of Lender, which consent shall not be unreasonably withheld or conditioned; provided, however, Borrower may undertake nonstructural alterations to the Collateral costing less than \$25,000 without Lender's consent. For purposes of this Deed of Trust, alterations to the exterior, structural, plumbing or electrical elements of the Collateral shall mean:

- (i) alterations which affect the foundation or "footprint" of the Improvements;
- (ii) alterations which involve the structural elements of the Improvements, such as a load-bearing wall, structural beams, columns, supports or roof; or
- (iii) alterations which materially affect any of the building systems, including, without limitation, the electrical systems, plumbing, HVAC and fire and safety systems.

If Lender's consent is required hereunder and Lender consents to the making of any such alterations, the same shall be made by Borrower at Borrower's sole expense by a licensed contractor and according to plans and specifications approved by Lender and subject to such other conditions as Lender shall require. Any work at any time commenced on the Collateral shall be prosecuted diligently to completion, shall be of good workmanship and materials and shall comply fully with all the terms of this Deed of Trust. Upon completion of any alterations or any Restoration, Borrower shall promptly provide Lender with (i) evidence of full payment to all laborers and materialmen contributing to the alterations, (ii) an architect's certificate certifying the alterations to have been completed in conformity with the plans and specifications, (iii) a certificate of occupancy (if the alterations are of such a nature as would require the issuance of a certificate of occupancy), and (iv) any other documents or information reasonably requested by Lender.

Section 3.04. *After-Acquired Property.* All right, title and interest of Borrower in and to all improvements, alterations, substitutions, restorations and replacements of, and all additions and appurtenances to, the Collateral, hereafter acquired by or released to Borrower, immediately upon such acquisition or release and without any further granting by Borrower, shall become part of the Collateral and shall be subject to the lien hereof fully, completely and with the same effect as though now owned by Borrower and specifically described in the Granting Clauses hereof. Borrower shall execute and deliver to Trustee and/or any further assurances, mortgages, grants, conveyances or assignments thereof as the Trustee may reasonably require to subject the same to the lien hereof.

Section 3.05. *Taxes, Assessments, Charges and Other Impositions.* (a) Borrower shall do or cause to be done everything necessary to preserve the lien hereof without expense to Lender, including, without limitation, paying and discharging or causing to be paid and discharged, whether or not payable directly by Borrower or subject to withholding at the source, (i) all taxes, assessments, levies, fees, water and sewer rents and charges and all other governmental charges, general, special, ordinary or extraordinary, and all charges for utility or communications services, which may at any time be assessed, levied or imposed upon Borrower, the Collateral, this Deed of Trust, the Obligations or the Rents or which may arise in respect of the occupancy, use, possession or operation thereof, (ii) all income, excess profits, sales, gross receipts and other taxes, duties or imposts, whether similar or not in nature, assessed, levied or imposed by any Governmental Authority on Borrower, the Collateral or the Rents, and (iii) all lawful claims and demands of mechanics, laborers, materialmen and others which, if unpaid, might create a lien on the Collateral, or on the Rents, unless Borrower shall contest the amount or validity thereof in accordance with subsection (b).

(b) Borrower may, at its own expense, contest or cause to be contested, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any item specified in subsection (a) or lien therefor, provided that (i) Borrower shall provide written notice to Lender of any contest involving more than \$10,000.00, (ii) such proceeding shall suspend the collection thereof from the Collateral or any interest therein, (iii) neither the Collateral nor any interest therein would be in any danger

of being sold, forfeited or lost by reason of such proceedings, (iv) no Event of Default has occurred and is continuing, and (v) Borrower shall have deposited with Lender adequate reserves for the payment of the taxes, together with all interest and penalties thereon, unless paid in full under protest, or Borrower shall have furnished the security as may be required in the proceeding or as may be required by Lender to insure payment of any contested taxes.

Section 3.06. **Insurance.** (a) Borrower shall maintain with respect to the Collateral, at its sole expense, the following types and amounts of insurance (which may be included under a blanket insurance policy if all the other terms hereof are satisfied), in addition to such other insurance as Lender may reasonably require from time to time:

(i) Insurance against loss, damage or destruction by fire and other casualty, including theft, vandalism and malicious mischief, flood (if the Premises is in a location designated by the Federal Emergency Management Administration as a Special Flood Hazard Area), earthquake (if the Premises is in an area subject to destructive earthquakes within recorded history), boiler explosion (if there is any boiler upon the Premises), plate glass breakage, sprinkler damage (if the Premises have a sprinkler system), all matters covered by a standard extended coverage endorsement, special coverage endorsement commonly known as an "all risk" endorsement and such other risks as Lender may reasonably require, insuring the Collateral for not less than 100% of their full insurable replacement cost.

(ii) Commercial general liability and property damage insurance, including a products liability clause, covering Lender and Borrower against bodily injury liability, property damage liability and automobile bodily injury and property damage liability, including without limitation any liability arising out of the ownership, maintenance, repair, condition or operation of the Collateral or adjoining ways, streets or sidewalks and, if applicable, insurance covering Lender, against liability arising from the sale of liquor, beer or wine on the Premises. Such insurance policy or policies shall contain a broad form contractual liability endorsement under which the insurer agrees to insure Borrower's obligations under Section 7.09 hereof to the extent insurable, and a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of either Borrower or Lender because of the negligence or other acts of the other, shall be in amounts of not less than \$2,000,000.00 per injury and occurrence with respect to any insured liability, whether for personal injury or property damage, or such higher limits as Lender may reasonably require from time to time, and shall be of form and substance reasonably satisfactory to Lender.

(iii) Business income insurance equal to 100% of the principal and interest payable under the Note for a period of not less than six months.

(iv) State Worker's compensation insurance in the statutorily mandated limits, employer's liability insurance with limits not less than \$500,000 or such greater amount as Lender may from time to time require and such other insurance as may be necessary to comply with applicable laws.

(b) All insurance policies shall:

(i) Provide for a waiver of subrogation by the insurer as to claims against Lender, its employees and agents and provide that such insurance cannot be unreasonably cancelled, invalidated or suspended on account of the conduct of Borrower, its officers, directors, employees or agents;

(ii) Provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by Lender and that the insurance policy shall not be brought into contribution with insurance maintained by Lender;

(iii) Contain a standard without contribution mortgage clause endorsement in favor of Lender and its successors and assigns as their interests may appear and any other lender designated by Lender;

(iv) Provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least thirty (30) days' prior written notice to Lender and to any lender covered by any standard mortgage clause endorsement;

(v) Provide that the insurer shall not have the option to restore the Premises if Lender elects to terminate this Deed of Trust in accordance with the terms hereof;

(vi) Be issued by insurance companies licensed to do business in the state in which the Premises is located and which are rated A:VI or better by Best's Insurance Guide or otherwise approved by Lender; and

(vii) Provide that the insurer shall not deny a claim because of the negligence of Borrower, anyone acting for Borrower or any tenant or other occupant of the Collateral.

It is expressly understood and agreed that the foregoing minimum limits of insurance coverage shall not limit the liability of Borrower for its acts or omissions as provided in this Deed of Trust. All liability insurance policies (with the exception of worker's compensation insurance to the extent not available under statutory law) shall designate Lender and its successors and assigns as additional insureds as their interests may appear and shall be payable as set forth in Article IV hereof. All such policies shall be written as primary policies, with deductibles not to exceed 10% of the amount of coverage. Any other policies, including any policy now or hereafter carried by Lender, shall serve as excess coverage. Borrower shall procure policies for all insurance for periods of not less than one year and shall provide to Lender certificates of insurance or, upon Lender's request, duplicate originals of insurance policies evidencing that insurance satisfying the requirements of this Deed of Trust is in effect at all times. Borrower shall furnish to Lender, upon request of Lender, reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties insured; (5) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy. In addition, upon request of Lender (however not more often than annually), Borrower will, at its sole cost and expense, have an independent appraiser satisfactory to Lender determine, as applicable, the actual cash value or replacement cost of any Collateral.

Section 3.07. **Impound Account.** Upon the occurrence of an Event of Default under this Deed of Trust or any other Loan Document, Lender may require Borrower to pay to Lender sums which will provide an impound account (which shall not be deemed a trust fund) for paying up to the next one year of taxes, assessments and/or insurance premiums. Upon such requirement, Lender will estimate the amounts needed for such purposes and will notify Borrower to pay the same to Lender in equal monthly installments, as nearly as practicable, in addition to all other sums due under this Deed of Trust. Should additional funds be required at any time, Borrower shall pay the same to Lender on demand. Borrower shall advise Lender of all taxes and insurance bills which are due and shall cooperate fully with Lender in assuring that the same are paid. Lender may deposit all impounded funds in accounts insured by any federal or state agency and may commingle such funds with other funds and accounts of Lender. Interest or other gains from such funds, if any, shall be the sole property of Lender. If an Event of Default shall occur subsequent to Lender requiring the establishment of an impound account pursuant to this Section, Lender may apply all impounded funds against any sums due from Borrower to Lender. Lender shall give to Borrower an annual accounting showing all credits and debits to and from such impounded funds received from Borrower.

Section 3.08. **Advances by Lender.** Lender may make advances to perform any of the covenants contained in this Deed of Trust on Borrower's behalf and all sums so advanced (and all sums advanced pursuant to any other provision hereof) by Lender shall be secured hereby. Borrower shall repay on demand all sums so advanced with interest thereon at the Default Rate, such interest to be computed from and including the date of the making of such advance to and including the date of such repayment, and at Lender's election, Lender may add the amount of such advance to the amount of the Obligations.

Section 3.09. **Negative Covenants.** Borrower agrees that Borrower shall not, without the prior written consent of Lender (each, a "Prohibited Transaction"), sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Collateral or any part thereof or permit the Collateral or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred, other than sales from inventory in the ordinary course of business and the replacement of obsolete Personal Property. A sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer within the meaning of this Section shall be deemed to include, but not limited to, (a) an installment sales agreement wherein Borrower agrees to sell the Collateral or any part thereof for a price to be paid in installments; and (b) an agreement by Borrower

leasing all or any part of the Collateral or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Lease or any Rents.

Section 3.10. **Title.** Borrower shall maintain title to the Personal Property, free and clear of all liens, encumbrances, charges and other exceptions to title, except the Permitted Exceptions. Lender shall have a valid lien upon and security interest in the Collateral, pursuant to the Deed of Trust.

Section 3.11. **Licenses and Permits.** All required licenses and permits, both governmental and private, to use and operate the Premises as a Permitted Concept shall be maintained in full force and effect.

Section 3.12. **Compliance With Laws Generally.** The use and occupation of the Premises, and the condition thereof, including, without limitation, any Restoration, shall comply with all Applicable Regulations now or hereafter in effect. In addition, the Borrower Parties shall comply with all Applicable Regulations now or hereafter in effect, including, without limitation, the OFAC Laws and Regulations and Anti-Money Laundering Laws. Without limiting the generality of the other provisions of this Section, Borrower shall comply with the ADA, and all regulations promulgated thereunder, as it affects the Premises.

Section 3.13. **Compliance With Environmental Laws.** (1) The Premises, the Borrower Parties and any other operator or user of the Premises shall not be in violation of or subject to any investigation or inquiry by any Governmental Authority or subject to any Remediation obligations under any Environmental Laws.

(2) All uses and operations on or of the Premises, whether by Borrower or any other person or entity, shall be in compliance with all Environmental Laws and permits issued pursuant thereto.

(3) There shall be no Releases or Hazardous Materials in, on, under or from the Premises, except in Permitted Amounts.

(4) Borrower shall keep the Premises, or cause the Premises to be kept, free and clear of all Environmental Liens.

(5) Borrower shall not do or allow any tenant or other user of the Premises to do any act that (a) materially increases the dangers to human health or the environment, (b) poses an unreasonable risk of harm to any person or entity (whether on or off the Premises), (c) impairs or is reasonably likely to impair the value of the Premises, (d) is contrary to any requirement of any insurer, (e) constitutes a public or private nuisance or constitutes waste, or (f) violates any covenant, condition, agreement or easement applicable to the Premises.

(6) Borrower shall immediately notify Lender in writing upon Borrower obtaining actual knowledge of:

(a) any presence of Releases or Threatened Releases in, on, under, from or migrating towards the Premises, in excess of Permitted Amounts, including, without limitation, the presence on or under the Premises, or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials, apparent or real, in excess of Permitted Amounts;

(b) any non-compliance with any Environmental Laws related in any way to the Premises;

(c) any Environmental Lien or any act or omission which could reasonably be expected to result in the imposition of an Environmental Lien;

(d) any required or proposed Remediation of environmental conditions relating to the Premises, including, without limitation, any and all enforcement, clean-up, remedial, removal or other governmental or regulatory actions threatened, instituted or completed pursuant to any of the Environmental Laws affecting the Premises;

(e) any written or oral notice or other communication of which any of the Borrower Parties becomes aware from any source whatsoever (including but not limited to a Governmental Authority) relating in any way to Hazardous Materials or Remediation thereof, possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Premises, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Agreement; or

(f) any investigation or inquiry initiated by any Governmental Authority relating to the Environmental Condition of the Premises.

(7) Borrower shall, at its sole cost and expense:

(a) perform any environmental site assessment or other investigation of environmental conditions in connection with the Premises as may be reasonably requested by Lender (including but not limited to sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Lender the reports and other results thereof, and Lender and the other Indemnified Parties shall be entitled to rely on such reports and other results thereof; and

(b) have the Premises inspected as may be required by any Environmental Laws for seepage, spillage and other environmental concerns. Borrower shall provide Lender with written certified results of all inspections performed on the Premises. All costs and expenses associated with the inspection, preparation and certification of results, as well as those associated with any corrective action, shall be paid by Borrower. All inspections and tests performed on the Premises shall be conducted in compliance with all Environmental Laws.

(8) Borrower shall, at its sole cost and expense, and without limiting the rights of Lender under any other provision of this Agreement, including, without limitation, subsection (10), comply with all reasonable written requests of Lender to:

(a) reasonably effectuate Remediation of any condition (including but not limited to a Release) in, on, under or from the Premises;

(b) comply with any Environmental Law;

(c) comply with any directive from any Governmental Authority; and

(d) take any other reasonable action necessary or appropriate for protection of human health or the environment.

(9) Lender and any other person or entity designated by Lender, including but not limited to any receiver, any representative of a Governmental Authority, and any environmental consultant, shall have the right, but not the obligation, to enter upon the Premises during normal business hours or at any time in the event of an emergency (including without limitation in connection with any Securitization, Participation or Transfer contemplated by this Agreement or in connection with the exercise of any remedies set forth in the Deed of Trust or the other Loan Documents) to assess any and all aspects of the environmental condition of the Premises and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole and absolute discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Borrower shall cooperate with and provide access to Lender and any such person or entity designated by Lender. Any such assessment and investigation shall be at Borrower's sole cost and expense if, at the time Lender undertakes such assessment or investigation, Lender has a reasonable basis for believing that a Release has occurred at the Premises in excess of Permitted Amounts or if an Event of Default has occurred and is continuing. Otherwise, any such assessment and investigation shall be at Lender's sole cost and expense.

(10) Upon any Release, on, above or under the Premises, Borrower shall immediately remedy such situation in accordance with all Environmental Laws and any request of Lender. Should Borrower fail to remedy or cause the remedy of such situation in accordance with all Environmental Laws, Lender shall be permitted to take such actions in its sole discretion to remedy such situation and any costs and expenses incurred in connection therewith will be paid by Borrower.

Section 3.14. **Inspections.** Borrower shall, during normal business hours (or at any time in the event of an emergency), (1) provide Lender and Lender's officers, employees, agents, advisors, attorneys, accountants, architects, and engineers with access to the Premises, all drawings, plans, and specifications for the Premises in possession of the Borrower Parties, all engineering reports relating to the Premises in the possession of the Borrower Parties, the files, correspondence and documents relating to the Premises, and the financial books and records, including lists of delinquencies, relating to the ownership, operation, and maintenance of the Premises (including, without limitation, any of the foregoing information stored in any computer files) and (2) allow such persons to make such inspections, tests, copies, and verifications as Lender considers necessary.

ARTICLE IV

POSSESSION, USE AND RELEASE OF THE COLLATERAL

Section 4.01. **Casualty or Condemnation.** Borrower, immediately upon obtaining knowledge of any casualty to any portion of the Collateral or of any proceeding or negotiation for the taking of all or any portion of the Collateral in condemnation or other eminent domain proceedings, shall notify Lender of such casualty, proceeding or negotiation. Any award, compensation or other payment resulting from such casualty or condemnation or eminent domain proceeding, as applicable, shall be applied as set forth below (the "Proceeds"). Lender may participate in any condemnation or eminent domain proceeding, and Borrower will deliver or cause to be delivered to Lender all instruments reasonably requested by Lender to permit such participation.

(a) **Casualty.** (i) In the event of any material damage to or destruction of the Collateral or any part thereof, Borrower will promptly give written notice to Lender, generally describing the nature and extent of such damage or destruction. No damage to or destruction of the Collateral shall relieve Borrower of its obligation to pay any monetary sum due under the Loan Documents at the time and in the manner provided in the Loan Documents.

(ii) In the event of any damage to or destruction of the Collateral or any part thereof, Borrower, whether or not the Proceeds, if any, on account of such damage or destruction shall be sufficient for the purpose, at its expense, shall promptly cause the Restoration to be commenced and completed.

(iii) Proceeds received by Lender and Borrower on account of any occurrence of damage to or destruction of the Collateral or any part thereof, less the costs, fees and expenses incurred by Lender and Borrower in the collection thereof, including, without limitation, adjuster's fees and expenses and attorneys' fees and expenses (the "Net Insurance Proceeds"), shall be paid to (1) Borrower, if the amount of such Net Insurance Proceeds is less than \$25,000 and applied by Borrower toward the cost of the Restoration, and (2) Lender, if the amount of such Net Insurance Proceeds is \$25,000 or greater. Net Insurance Proceeds paid to Lender shall be held and disbursed by Lender, or as Lender may from time to time direct, as the Restoration progresses, to pay or reimburse Borrower for the cost of the Restoration, upon written request of Borrower accompanied by evidence, reasonably satisfactory to Lender, that (aa) the Restoration is in full compliance with all Applicable Regulations and all private restrictions and requirements, (bb) the amount requested has been paid or is then due and payable and is properly a part of such cost, (cc) there are no mechanics' or similar liens for labor or materials theretofore supplied in connection with the Restoration, (dd) if the estimated cost of the Restoration exceeds the Net Insurance Proceeds (exclusive of Proceeds received from Borrower's business income insurance), Borrower has deposited into an escrow satisfactory to Lender such excess amount, which sum will be disbursed pursuant to escrow instructions satisfactory to Lender, and (ee) the balance of such Net Insurance Proceeds, together with the funds deposited into escrow, if any, pursuant to the preceding subsection (dd), after making the payment requested will be sufficient to pay the balance of the cost of the Restoration. Upon receipt by Lender of evidence reasonably satisfactory to it that the Restoration has been completed and the cost thereof paid in full, and that there are no mechanics' or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such Net Insurance Proceeds shall be paid to Borrower. If at the time of the damage or destruction to the Collateral or at any time thereafter an Event of Default shall have

occurred and be continuing under the Loan Documents, all Net Insurance Proceeds shall be paid to Lender, and Lender may retain and apply the Net Insurance Proceeds toward the Obligations whether or not then due and payable, in such order, priority and proportions as Lender in its discretion shall deem proper, or to cure such Event of Default, or, in Lender's discretion, Lender may pay such Net Insurance Proceeds in whole or in part to Borrower to be applied toward the cost of the Restoration. If Lender shall receive and retain Net Insurance Proceeds, the lien of this Deed of Trust shall be reduced only by the amount received and retained by Lender and applied by Lender in reduction of the Obligations pursuant to the terms of the Loan Documents.

(b) *Condemnation.* (i) In case of a taking of all or any part of the Collateral or the commencement of any proceedings or negotiations which might result in a taking, for any public or quasi-public purpose by any lawful power or authority by exercise of the right of condemnation or eminent domain or by agreement between Lender, Borrower and those authorized to exercise such right ("Taking"), Borrower will promptly give written notice thereof to Lender, generally describing the nature and extent of such Taking. Lender shall file and prosecute on behalf of Lender and Borrower any and all claims for Proceeds, and all Proceeds on account of a Taking shall be paid to Lender.

(ii) In case of a Taking of the whole of the Collateral, other than for temporary use ("Total Taking"), or in case of a Taking of less than all of the Collateral ("Partial Taking"), the Loan Documents shall remain in full force and effect. In the case of a Partial Taking, Borrower, whether or not the Proceeds, if any, resulting from such Partial Taking are enough to complete the Restoration (but provided the Proceeds are made available by Lender for such purpose), at its own cost and expense, will promptly commence and complete the Restoration. In case of a Partial Taking, other than a temporary use, of such a substantial part of the Collateral as shall result in the Collateral remaining after such Partial Taking being unsuitable for use, such Taking shall be deemed a Total Taking.

(iii) In case of a temporary use of the whole or any part of the Collateral by a Taking, the Loan Documents shall remain in full force and effect without any reduction of any monetary sum payable under the Loan Documents. In any proceeding for such Taking, Lender shall have the right to intervene and participate; provided that, if such intervention shall not be permitted, Borrower shall consult with Lender, its attorneys and experts, and make all reasonable efforts to cooperate with Lender in the prosecution or defense of such proceeding. At the termination of any such use or occupation of the Collateral, Borrower will, at its own cost and expense, promptly commence and complete the Restoration.

(iv) Proceeds on account of a Taking, less the costs, fees and expenses incurred by Lender and Borrower in connection with the collection thereof, including, without limitation, attorneys' fees and expenses, shall be applied in the following order:

(x) Proceeds received on account of a Total Taking shall be allocated as follows:

(aa) There shall be paid to the Lender an amount up to the sum of the outstanding principal, including all sums advanced by Lender hereunder, and interest and prepayment premium or fee under the Note, all as of the date on which such payment is made, such amount shall be applied first against all sums advanced by Lender under this Deed of Trust, second against the accrued but unpaid interest on the Note, and third to the remaining unpaid principal amount of the Note. If the Proceeds received on account of a Total Taking are not sufficient to satisfy the outstanding principal balance of the Note, all accrued but unpaid interest on the Note, all other sums due under the Note, all sums advanced by Lender under this Deed of Trust and all other sums due and payable under this Deed of Trust and the other Loan Documents corresponding to the Premises (collectively, the "Outstanding Obligations"), Borrower shall pay to Lender simultaneously with the payment of such Proceeds to Lender the difference between the amount of such Proceeds and the amount of the Outstanding Obligations.

(bb) Any remaining balance shall be paid to Borrower.

(y) Proceeds received on account of a Partial Taking shall be held and allocated as follows:

(i) first, toward the cost of the Restoration, such application of net awards and other payments to be made substantially in the manner provided in Section 4.01(a)(iii) of this Deed of Trust; and

(ii) then, all or any portion of the balance of such proceeds shall, in Lender's sole discretion, either be paid to:

(1) Lender, as the holder of this Deed of Trust, and applied toward the Outstanding Obligations in such order, priority and proportion, and at such time on or prior to the Maturity Date (as defined in the Note), as Lender shall determine; or

(2) Borrower; provided, however, in Lender's sole discretion, such proceeds shall be pledged to Lender to secure the Outstanding Obligations pursuant to a security agreement reasonably satisfactory to Lender, or, with Lender's consent, Borrower shall provide Lender with alternative security satisfactory to Lender in its sole discretion.

Lender may deposit any funds held by it in accounts insured by any federal or state agency and may commingle such funds with other funds and accounts of Lender. Interest or gains from such funds, if any, shall be the sole property of Lender.

(z) Proceeds received on account of a Taking for temporary use shall be held by Lender and applied to the payment of the monthly installments of combined interest and principal becoming due under the Note, until such Taking for temporary use is terminated and the Restoration, if any, has been completed; provided, however, that, if any portion of any such award or payment is made by reason of any damage to or destruction of the Collateral, such portion shall be held and applied as provided in Section 4.01(a)(iii) hereof. The balance, if any, of such awards and payments shall be paid to Borrower.

(v) Notwithstanding the foregoing, if at the time of any Taking or at any time thereafter an Event of Default shall have occurred and be continuing under the Loan Documents, Lender is hereby authorized and empowered, in the name and on behalf of Borrower and otherwise, to file and prosecute Borrower's claim, if any, for an award on account of any Taking and to collect such award and apply the same, after deducting all costs, fees and expenses incident to the collection thereof (the "Net Award"), toward the Obligations whether or not then due and payable, in such order, priority and proportions as Lender in its discretion shall deem proper, or to cure such Event of Default, or, in Lender's discretion, Lender may pay the Net Award in whole or in part to Borrower to be applied toward the cost of the Restoration. If Lender shall receive and retain the Net Award, the lien of this Deed of Trust shall be reduced only by the amount received and retained by Lender and actually applied by Lender in reduction of the Obligations.

Section 4.02. *Conveyance in Anticipation of Condemnation, Granting of Easements, Etc.* If no Event of Default shall have occurred and be continuing, Borrower may, from time to time with respect to its interest in the Collateral, and with Lender's prior written consent, (i) sell, assign, convey or otherwise transfer any interest therein to any person legally empowered to take such interest under the power of eminent domain, (ii) grant easements and other rights in the nature of easements, (iii) release existing easements or other rights in the nature of easements which are for the benefit of the Collateral, (iv) dedicate or transfer unimproved portions of the Collateral for road, highway or other public purposes, (v) execute petitions to have the Collateral annexed to any municipal corporation or utility district, and (vi) execute and deliver to any person any instrument appropriate to confirm or effect such grants, releases, dedications and transfers.

Section 4.03. *Lender's Power.* At any time, or from time to time, without liability therefor, Lender, without affecting the personal liability of any person for payment of the Obligations or the effect of this Deed of Trust upon the remainder of said Collateral, may from time to time without notice (i) release any part of said Collateral, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof, (v) release any person so liable, (vi) extend the maturity or alter any of the terms of any Obligations, (vii) grant other indulgences, (viii) take or release any other or additional security for any Obligations, (ix) make compositions or other arrangements with debtors in relation thereto, or (x) advance additional funds to protect the security hereof or

to pay or discharge the Obligations in the event Borrower fails to do so, and all amounts so advanced shall be secured hereby and shall be due and payable upon demand by Lender.

ARTICLE V

SECURITY INTEREST

Section 5.01. *Security Agreement.* With respect to the Personal Property or any portion of the Collateral which constitutes fixtures or other property governed by the UCC, this Deed of Trust shall constitute a security agreement between Borrower, as the debtor, and Lender, as the secured party, and Borrower hereby grants to Lender a security interest in such portion of the Collateral. Cumulative of all other rights of Lender hereunder, Lender shall have all of the rights conferred upon secured parties by the UCC. Borrower authorizes Lender to file financing statements with respect to the security interest of Lender, continuation statements with respect thereto, and any amendments to such financing statements which may be necessitated by reason of any of the changes described in Section 6.C of the Loan Agreement. Furthermore, at any time, and from time to time, Borrower will execute and deliver to Lender all financing statements that may from time to time be required by Lender to establish and maintain the validity and priority of the security interest of Lender, or any modification thereof. Lender may exercise any or all of the remedies of a secured party available to it under the UCC with respect to such property. If, upon the occurrence and during the continuance of an Event of Default, Lender proceeds to dispose of such property in accordance with the provisions of the UCC, 10 days' notice by Lender to Borrower shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Lender may at its option dispose of such property in accordance with Lender's rights and remedies with respect to the real property pursuant to the provisions of this Deed of Trust, in lieu of proceeding under the UCC. Borrower represents that its exact legal name and state of formation or organization are as set forth in the first paragraph of this Deed of Trust. Borrower agrees that, notwithstanding any provision in the UCC to the contrary, Borrower shall not file a termination statement of any financing statement filed by Lender in connection with any security interest granted under this Deed of Trust if Lender reasonably objects to the filing of such termination statement.

Section 5.02. *Effective as a Financing Statement and Fixture Filing.* This Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Collateral and is to be filed for record in the real estate records of each county where any part of the Collateral (including said fixtures) is situated. This Deed of Trust shall also be effective as a financing statement covering any other portion of the Collateral and may be filed in any other appropriate filing or recording office. The mailing address of Borrower is the address of Borrower set forth in the introductory paragraph of this Deed of Trust, and the address of the Lender from which information concerning the security interests hereunder may be obtained is the address of Lender as set forth in the introductory paragraph of this Deed of Trust. A carbon, photographic or other reproduction of this Deed of Trust or of any financing statement relating to this Deed of Trust shall be sufficient as a financing statement for any of the purposes referred to in this Section.

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

Section 6.01. *Events of Default.* Each of the following shall be an event of default under this Deed of Trust (each an "Event of Default"):

- (i) If any principal, interest or other monetary sum due under the Note, this Deed of Trust or any other Loan Document is not paid within five days after the date when due.
- (ii) Subject to the provisions of Section 3.05(b) of this Deed of Trust, if Borrower fails to pay, prior to delinquency, any taxes, assessments or other charges the failure of which to pay will result in the imposition of a lien against the Collateral pursuant to Applicable Regulations.
- (iii) If Borrower shall fail to maintain insurance in accordance with the requirements of Section 3.06 of this Deed of Trust.

(iv) If Borrower fails to observe or perform any of the covenants, conditions, or obligations of this Deed of Trust, provided, however, if any such failure does not involve the payment of any principal, interest or other monetary sum due under the Note, is not willful or intentional, does not place any rights or interest in collateral of Lender in immediate jeopardy, and is within the reasonable power of Borrower to promptly cure after receipt of notice thereof, all as determined by Lender in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Lender shall have given Borrower notice thereof and a period of 30 days shall have elapsed, during which period Borrower may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure cannot reasonably be cured within such 30-day period, as determined by Lender in its reasonable discretion, and Borrower is diligently pursuing a cure of such failure, then Borrower shall have a reasonable period to cure such failure beyond such 30-day period, which shall in no event exceed 90 days after receiving notice of the failure from Lender. If Borrower shall fail to correct or cure such failure within such 90-day period, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required.

(v) If there is any other "Event of Default" under the Loan Agreement.

(vi) If there is a breach or default (beyond any applicable notice and cure period) of the Sublease.

Section 6.02. **Remedies.** Upon the occurrence and during the continuance of an Event of Default subject to the limitations set forth in Section 6.01, Lender may declare all or any part of the Obligations to be due and payable, and the same shall thereupon become due and payable without any presentment, demand, protest or notice (including notice of intent to accelerate and notice of acceleration) of any kind except as otherwise expressly provided herein. Furthermore, upon the occurrence and during the continuance of an Event of Default, Lender may:

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

(ii) Commence an action to foreclose this Deed of Trust in a single parcel or in several parcels, appoint a receiver or specifically enforce any of the covenants hereof;

(iii) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code as adopted in the State ("UCC"), including, without limitation:

(1) Either personally or by means of a court appointed receiver, commissioner or other officer, take possession of all or any of the Personal Property and exclude therefrom Borrower and all others claiming under Borrower, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Borrower in respect of the Personal Property or any part thereof. In the event Lender demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Documents, Borrower promises and agrees to promptly turn over and deliver complete possession thereof to Lender;

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

(3) Require Borrower to assemble the Personal Property or any portion thereof, at the Premises, and promptly to deliver such Personal Property to Lender, or an agent or representative designated by it. Lender, and its agents and representatives, shall have the right to enter upon any or all of Borrower's premises and property to exercise Lender's rights hereunder;

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

(5) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give Borrower at least 10 days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof. Such notice may be delivered to Borrower at the address set forth at the beginning of this Deed of Trust and shall be deemed to be given as provided herein; and

(6) Any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of all or a portion of the other Collateral under power of sale as provided herein upon giving the same notice with respect to the sale of the Personal Property hereunder as is required for such sale of the other Collateral under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under the UCC.

(iv) [Intentionally Left Blank]

(v) Apply any sums then deposited in the impound account described in Section 3.07 toward payment of the taxes, assessment and insurance premiums for the Collateral and/or as a credit on the Obligations in such priority and proportion as Lender may determine in its sole discretion;

(vi) If held by Lender, surrender the insurance policies maintained pursuant to Section 3.06, collect the unearned insurance premiums and apply such sums as a credit on the Obligations in such priority and proportion as Lender in its sole discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Lender to collect such insurance premiums; and

If Lender elects to sell Borrower's interest in the Collateral by exercise of the power of sale herein contained, Lender shall cause such sale to be performed in the manner then required by law.

(a) Upon receipt of such notice from Lender and at the direction of Lender, Trustee shall cause to be recorded, published and delivered such notices of default and notices of sale as may then be required by law and by this Deed of Trust. Trustee shall, only at the direction of Lender and without demand on Borrower, after such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell Borrower's interest in the Collateral at the time and place of sale fixed by it, either as a whole, or in separate lots or parcels or items as Lender shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale, or as otherwise may then be required by law. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustee, Borrower or Lender may purchase at such sale. Trustee or

Lender may sell not only the real property but also the Personal Property and other interests which are a part of the Collateral, or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Collateral separately from the remainder of the Collateral. Lender shall not be required to take possession of any part of the Collateral or to have any of the Personal Property present at any sale of the Collateral. Lender may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Trustee or Lender, including the posting of notices and the conduct of sale, but in the name and on behalf of Lender. In the event any sale hereunder is not completed or is defective in the opinion of Trustee or Lender, such sale shall not exhaust the power of sale hereunder, and Trustee or Lender shall have the right to cause a subsequent sale or sales to be made hereunder.

(b) As may be permitted by law, Lender shall apply the proceeds of sale (i) first, to payment of all costs, fees and expenses, including attorneys' fees and expenses incurred by Lender in exercising the power of sale or foreclosing this Deed of Trust, (ii) second, to the payment of the Obligations (including, without limitation, the principal, accrued interest and other sums due and owing under the Note and the amounts due and owing to Lender under this Deed of Trust) in such manner and order as Lender may elect, and (iii) third, the remainder, if any, shall be paid to Borrower, or to Borrower's heirs, devisees, representatives, successors or assigns, or such other persons as may be entitled thereto.

(c) Trustee may in the manner provided by law postpone sale of all or any portion of the Collateral.

Section 6.03. **Appointment of Receiver.** If an Event of Default shall have occurred and be continuing, Lender, as a matter of right and without notice to Borrower or anyone claiming under Borrower, and without regard to the then value of the Collateral or the interest of Borrower therein, or the insolvency of Borrower or the then-owner of the Collateral, may seek the appointment of a receiver for the Collateral upon *ex parte* application to any court of the competent jurisdiction. Borrower waives any right to any hearing or notice of hearing prior to the appointment of a receiver. Such receiver shall be empowered (a) to take possession of the Collateral and any businesses conducted by Borrower thereon and any business assets used in connection therewith, (b) to exclude Borrower and Borrower's agents, servants and employees from the Collateral, or, at the option of the receiver, in lieu of such exclusion, to collect a fair market rental from any such persons occupying any part of the Collateral, (c) to collect the Rents, (d) to complete any construction that may be in progress, (e) to continue the development, marketing and sale of the Collateral, (f) to do such maintenance and make such repairs and alterations as the receiver deems necessary, (g) to use all stores of materials, supplies and maintenance equipment on the Collateral and replace such items at the expense of the receivership estate, (h) to pay all taxes and assessments against the Collateral, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance, (i) to request that Lender advance such funds as may reasonably be necessary to the effective exercise of the receiver's powers, on such terms as may be agreed upon by the receiver and Lender, but not in excess of the Default Rate, and (j) generally to do anything that Borrower could legally do if Borrower were in possession of the Collateral. All expenses incurred by the receiver or his agents, including obligations to repay funds borrowed by the receiver, shall constitute a part of the Obligations. Any revenues collected by the receiver shall be applied first to the expenses of the receivership, including reasonable attorneys' fees incurred by the receiver and by Lender, together with interest thereon at the highest rate of interest applicable in the Note from the date incurred until repaid, and the balance shall be applied toward the Obligations or in such other manner as the court may direct.

Section 6.04. **Remedies Not Exclusive.** Lender shall be entitled to enforce payment and performance of any Obligations and to exercise all rights and powers under this Deed of Trust or under any Loan Documents or Other Agreement or any laws now or hereafter in force, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Lender in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender, or to which Lender may be otherwise entitled, may be exercised,

concurrently or independently, from time to time and as often as may be deemed expedient by Lender. Lender may pursue inconsistent remedies.

The acceptance by Lender of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a subsequent Event of Default as herein provided. The acceptance by Lender of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Borrower to pay the entire sum then due, and failure of Borrower to pay such entire sum then due shall be an Event of Default, notwithstanding such acceptance of such amount on account, as aforesaid. Lender shall be, at all times thereafter and until the entire sum then due as contemplated by the Loan Documents shall have been paid, and notwithstanding the acceptance by Lender thereafter of further sums on account, or otherwise, entitled to exercise all rights in this instrument conferred upon them or either of them, and the right to proceed with a sale under any notice of default, or an election to sell, or the right to exercise any other rights or remedies hereunder, shall in no way be impaired, whether any of such amounts are received prior or subsequent to such proceeding, election or exercise. Consent by Lender to any action or inaction of Borrower which is subject to consent or approval of Lender hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions or inactions.

Section 6.05. *Possession of Collateral.* In the event of a trustee's sale or foreclosure sale hereunder and after the time of such sale, Borrower occupies the portion of the Collateral so sold, or any part thereof, Borrower shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Collateral so occupied, such rental to be due and payable daily to the purchaser. An action of unlawful detainer shall lie if the tenant holds over after a demand in writing for possession of such Collateral; and this Deed of Trust and a trustee's or sheriff's deed shall constitute a lease and agreement under which the tenant's possession arose and continued. Nothing contained in this Deed of Trust shall be construed to constitute Lender as a "mortgagee in possession" in the absence of its taking actual possession of the Collateral pursuant to the powers granted herein.

Section 6.06. *Waiver of Rights.* Borrower waives the benefit of all laws now existing or that hereafter may be enacted (i) providing for any appraisal before sale of any portion of the Collateral, or (ii) in any way extending the time for the enforcement of the collection of the Obligations or creating or extending a period of redemption from any sale made in collecting the Obligations. Borrower agrees that Borrower will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension, redemption or homestead exemption, and Borrower, for Borrower, Borrower's representatives, successors and assigns, and for any and all persons ever claiming any interest in the Collateral, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, homestead exemption, notice of election to mature or declare due the whole of the Obligations and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Section and now in force, of which Borrower, Borrower's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Borrower expressly waives and relinquishes any and all rights, remedies and defenses that Borrower may have or be able to assert by reason of the laws of the State pertaining to the rights, remedies and defenses of sureties.

Section 6.07. *Relief From Stay.* In the event that Borrower commences a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code, subject to court approval, Lender shall thereupon be entitled and Borrower irrevocably consents to relief from any stay imposed by Section 362 of the Code on or against the exercise of the rights and remedies otherwise available to Lender as provided in the Loan Documents and Borrower hereby irrevocably waives its rights to object to such relief. In the event Borrower shall commence a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code, Borrower hereby agrees that no injunctive relief against Lender shall be sought under Section 105 or other provisions of the Code by Borrower or other person or entity claiming through Borrower, nor shall any extension be sought of the stay provided by Section 362 of the Code.

Section 6.08. *Cash Collateral.* Borrower hereby acknowledges and agrees that in the event that Borrower commences a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code: (i) that all of the Rents are, and shall for purposes be deemed to be, "proceeds, product, offspring, rents, or

profits” of the Premises covered by the lien of this Deed of Trust, as such quoted terms are used in Section 552(b) of the Code; (ii) that in no event shall Borrower assert, claim or contend that any portion of the Rents are, or should be deemed to be, “accounts” or “accounts receivable” within the meaning of the Code and/or applicable state law; (iii) that the Rents are and shall be deemed to be in any such bankruptcy proceeding “cash collateral” of Lender as that term is defined in Section 363 of the Code; and (iv) that Lender has valid, effective, perfected, enforceable and “choate” rights in and to the Rents without any further action required on the part of Lender to enforce or perfect its rights in and to such cash collateral, including, without limitation, providing notice to Borrower under Section 546(b) of the Code.

Section 6.09. *Assignment of Rents and Leases.* (a) Borrower hereby assigns, transfers, conveys and sets over to Lender all of Borrower’s estate, right, title and interest in, to and under the Leases, whether existing on the date hereof or hereafter entered into, together with any changes, extensions, revisions or modifications thereof and all rights, powers, privileges, options and other benefits of Borrower as the lessor under the Leases regarding the current tenants and any future tenants, and all the Rents from the Leases, including those now due, past due or to become due. Borrower irrevocably appoints Lender its true and lawful attorney-in-fact, at the option of Lender, at any time and from time to time upon the occurrence and during the continuance of an Event of Default, to take possession and control of the Premises, pursuant to Borrower’s rights under the Leases, to exercise any of Borrower’s rights under the Leases, and to demand, receive and enforce payment, to give receipts, releases and satisfaction and to sue, in the name of Borrower or Lender, for all of the Rents. The power of attorney granted hereby shall be irrevocable and coupled with an interest and shall terminate only upon the payment of all sums due Lender for all losses, costs, damages, fees and expenses whatsoever associated with the exercise of this power of attorney, and Borrower hereby releases Lender from all liability (other than as a result of the gross negligence or willful misconduct of Lender) whatsoever for the exercise of the foregoing power of attorney and all actions taken pursuant thereto. The consideration received by Borrower to execute and deliver this assignment and the liens and security interests created herein is legally sufficient and will provide a direct economic benefit to Borrower. It is intended by Borrower and Lender that the assignment set forth herein constitutes a collateral assignment and not merely an assignment for additional security. Notwithstanding the foregoing, this assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions of Borrower contained in the Leases or otherwise to impose any obligation upon Lender, and, so long as no Event of Default shall have occurred and be continuing, Borrower shall have a license, revocable upon an Event of Default, to possess and control the Premises and collect and receive all Rents. Upon an Event of Default, such license shall be automatically revoked.

(b) Upon the occurrence and during the continuance of an Event of Default, Lender may, at any time without notice (except if required by applicable law), either in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender’s security, and at its sole election (without any obligation to do so), enter upon and take possession and control of the Premises, or any part thereof, to perform all acts necessary and appropriate to operate and maintain the Premises, including, but not limited to, execute, cancel or modify the Leases, make repairs to the Premises, execute or terminate contracts providing for the management or maintenance of the Premises, all on such terms as are deemed best to protect the security of this assignment, and in Lender’s or Borrower’s name, sue for or otherwise collect such Rents as specified in this Deed of Trust as the same become due and payable, including, but not limited to, Rents then due and unpaid. Lender may so sue for or otherwise collect such Rents with or without taking possession of the Premises. Borrower agrees that upon the occurrence and during the continuance of an Event of Default, each tenant of the Premises shall make its rent payable to and pay such rent to Lender (or Lender’s agents) on Lender’s written demand therefor, delivered to such tenant personally, by mail, or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of an Event of Default by Borrower.

(c) Rents collected subsequent to any Event of Default shall be applied at the direction of, and in such order as determined by, Lender to the costs, if any, of taking possession and control of and managing the Premises and collecting such amounts, including, but not limited to, reasonable attorney’s fees, receiver’s fees, premiums on receiver’s bonds, costs of repairs to the Premises, premiums on insurance policies, taxes, assessments and other charges on the Premises, and the costs of discharging any obligation or liability of Borrower with respect to the Leases and to the sums secured by this Deed of Trust. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Premises and shall be liable to account only for those Rents actually received.

(d) Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Premises by reason of anything done or left undone by Lender hereunder, except to the extent of Lender's gross negligence or willful misconduct.

(e) Any entering upon and taking possession and control of the Premises by Lender or the receiver and any application of Rents as provided herein shall not cure or waive any Event of Default hereunder or invalidate any other right or remedy of Lender under applicable law or provided therein.

In the event of a breach or default by Borrower under the Ground Lease, Lender shall have the right to cure such breach or default on behalf of Borrower and all costs and expenses incurred by Lender in connection therewith shall constitute a part of the Obligations and shall be secured by this Deed of Trust.

Section 6.10. **Sublessor Bankruptcy.** (a) In the event that any action, proceeding, application, motion or notice shall be commenced or filed in respect of the Sublessor, or in respect of all or any part of the Collateral (including, without limitation, suits relating to the rejection or disaffirmance of the Sublease), in connection with any case under the Code or any other applicable federal or state law relating to relief for debtors, Lender shall have, and is hereby granted, the right, but not the obligation, to the exclusion of Borrower exercisable upon notice from Lender to Borrower, to conduct and control any such litigation (including, without limitation, the right to file and prosecute any proofs of claim, complaints, motions, applications, notices and other documents) with counsel of Lender's choice. Lender may proceed, in its own name or in the name of Borrower, in connection with any such litigation, and Borrower agrees to execute any and all powers, authorizations, consents and other documents required by Lender in connection therewith. Upon request by Lender, Borrower shall pay to Lender, or to any other person or persons that Lender may designate, all costs, expenses and liabilities (including, without limitation, attorneys' fees and court costs) paid or incurred by Lender in connection with the prosecution or conduct of any such proceedings, together with interest thereon at the Default Rate from the date paid or incurred by Lender until the date so paid to, or as directed by, Lender. Borrower shall not, without the prior written consent of Lender, commence any action, suit, proceeding or case, or file any application or motion, in respect of the Sublease in any such case under the Code or any other applicable federal or state law relating to relief for debtors.

(b) Borrower shall promptly after obtaining knowledge thereof, notify Lender of any filing by or against the Sublessor of a petition under the Code. Borrower shall thereafter forthwith give written notice of such filing to Lender, setting forth any information available to Borrower as to the date of such filing, the court in which such petition was filed, and the relief sought therein. Borrower shall promptly deliver to Lender, following receipt, any and all notices, summonses, pleadings, applications and other documents received by Borrower in connection with any such petition and proceeding related thereto.

Section 6.11. **Sublease Rejection.** (a) Borrower hereby unconditionally assigns, transfers and sets over unto Lender all of Borrower's claims and rights to the payment of damages that may hereafter arise as a result of any rejection or disaffirmance of the Sublease by the Sublessor (whether as debtor in possession or otherwise), or by any trustee of the Sublessor, pursuant to the Code. Lender shall have and is hereby granted the right to proceed, in its own name or in the name of Borrower, in respect of any claim, suit, action or proceeding relating to the rejection or disaffirmance of the Sublease (including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents) in any case in respect of the Sublessor under the Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until the Obligations shall have been satisfied and discharged in full. Any amounts received by Lender as damages arising out of any such rejection or disaffirmance of the Sublease shall be applied first to all costs and expenses of Lender (including, without limitation, attorneys' fees) in connection with the exercise of its rights under this paragraph and then, in such manner as Lender shall determine, to the reduction of the Obligations, whether or not then due, and the balance, if any, shall then be paid to Borrower.

(b) If Sublessor rejects the Sublease pursuant to the Code, Borrower agrees that it will not elect to treat the Sublease as terminated but will elect to remain in possession of the leasehold interest as provided in 11 U.S.C. § 365(h)(1)(A)(ii), make lease payments subject to allowable setoffs under 11 U.S.C. § 365(h) and retain its rights under the Sublease.

(c) No release or forbearance of any of Borrower's obligations under the Sublease, pursuant to the Sublease or otherwise, including, without limitation, Borrower's obligations with respect to the payment of rent as provided for in the Sublease and the performance of all the terms, provisions, covenants, conditions and agreements contained in the Sublease to be kept, performed or complied with by tenant therein, shall release Borrower from any of Borrower's obligations under this Deed of Trust. The lien of this Deed of Trust attaches to all of Borrower's rights and remedies at any time arising under or pursuant to Subsection 365(h) of the Bankruptcy Code, including, without limitation, all of Borrower's rights to remain in possession of the Collateral.

(d) In the event that a petition under the Code shall be filed by or against Borrower and Borrower (whether as debtor in possession or otherwise) or any trustee of Borrower shall decide to reject or disaffirm the Sublease pursuant to the Code, Borrower shall give Lender at least 10 days' prior written notice of the date on which application or motion shall be filed with the court for authority to reject or disaffirm the Sublease. In that event, or in the event that no affirmative action to assume, reject or disaffirm the Sublease pursuant to the Code shall have been taken within 30 days after the date of filing of such petition, then Lender shall have the right, but not the obligation, to serve upon Borrower or such trustee a notice stating that (i) Lender demands that Borrower (whether as debtor in possession or otherwise) or such trustee assume and assign the Sublease to Lender pursuant to Section 365 of the Code, and (ii) Lender covenants to cure, or provide adequate assurance of prompt cure of, all defaults and provide adequate assurance of future performance under the Sublease. In the event that Lender serves such notice upon Borrower or such trustee, neither Borrower (whether as debtor in possession or otherwise) nor such trustee shall seek to reject or disaffirm the Sublease and Borrower (whether as debtor in possession or otherwise) and such trustee shall comply with such demand within 20 days after such notice shall have been given, subject to Lender's performance of such covenant.

(e) Borrower hereby assigns, transfers and sets over to Lender a nonexclusive right to apply to the Bankruptcy Court under Section 365 of the Code for an order extending the period during which the Sublease may be rejected, disaffirmed or assumed after the entry of any order for relief in respect of Borrower under Chapter 7 of the Code.

ARTICLE VII

MISCELLANEOUS

Section 7.01. **Satisfaction.** If and when the Obligations shall have become due and payable (whether by lapse of time or by acceleration or by the exercise of the privilege of prepayment), and Borrower shall pay or cause to be paid (provided such payment is permitted or required by the Note) the full amount thereof and shall also pay or cause to be paid all other sums payable by the Borrower Parties to the Lender Entities with respect to the Obligations, then this Deed of Trust shall be void (otherwise it shall remain in full force and effect in law and equity forever) and Lender agrees to execute an instrument evidencing the satisfaction of all obligations under this Deed of Trust and releasing this Deed of Trust which shall be prepared and recorded at Borrower's sole expense.

Section 7.02. **Limitation of Rights of Others.** Nothing in this Deed of Trust is intended or shall be construed to give to any person, other than Borrower and the holder of the Note, any legal or equitable right, remedy or claim under or in respect of this Deed of Trust or any covenant, condition or provision herein contained.

Section 7.03. **Severability.** In case any one or more of the provisions contained herein or in the Guaranty shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Deed of Trust shall be construed as if such provision had never been contained herein or therein.

Section 7.04. **Notices; Amendments; Waiver.** All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Deed of Trust (collectively called "Notices") shall be in writing and given by (i) hand delivery, (ii) facsimile, (iii) express overnight delivery service or (iv) certified or registered mail, return receipt requested and shall be deemed to have been delivered upon (a) receipt, if hand delivered, (b) transmission, if delivered by facsimile, (c) the next Business Day, if delivered by express overnight delivery service, or (d) the third Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

If to Borrower: 13601 W McMillian Road, Suite 102
PMB 354
Boise, Idaho 83713

If to Lender: 100 Paragon Drive
Montvale, NJ 07645
Telephone: (201) 746-6940
Telecopy: (201) 746-6947

If to Trustee: Metro National Title
345 East Broadway
Salt Lake City, UT 84111

or to such other address or such other person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above. Whenever in this Deed of Trust the giving of Notice is required, the giving thereof may be waived in writing at any time by the person or persons entitled to receive such Notice. Except as in this Deed of Trust otherwise expressly provided, (i) this Deed of Trust may not be modified except by an instrument in writing executed by Borrower and Lender and (ii) no requirement hereof may be waived at any time except by a writing signed by the party against whom such waiver is sought to be enforced, nor shall any waiver be deemed a waiver of any subsequent breach or default.

Section 7.05. *Successors and Assigns.* All of the provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto, to the same extent as if each such successor and assign were in each case named as a party to this Deed of Trust. Wherever used, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders.

Section 7.06. *Headings.* The headings appearing in this Deed of Trust have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Deed of Trust.

Section 7.07. *Time of the Essence.* Time is of the essence in the performance of each and every obligation under this Deed of Trust.

Section 7.08. *Forum Selection; Jurisdiction; Venue; Choice of Law.* Borrower acknowledges that this Deed of Trust was substantially negotiated in the State of New York, this Deed of Trust was executed and delivered in the State of New York and there are substantial contacts between the parties and the transactions contemplated herein and the State of New York. For purposes of any action or proceeding arising out of this Deed of Trust, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State of New York. Borrower consents that it may be served with any process or paper by registered mail or by personal service within or without the State of New York in accordance with applicable law. Furthermore, Borrower waives and agrees not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. The creation of this Deed of Trust and the rights and remedies of Lender with respect to the Collateral, as provided herein and by the laws of the State, shall be governed by and construed in accordance with the internal laws of the State without regard to its principles of conflicts of law. With respect to other provisions of this Deed of Trust, this Deed of Trust shall be governed by the internal laws of the State of New York, without regard to its principles of conflicts of law. Nothing in this Section shall limit or restrict the right of Lender to commence any proceeding in the federal or state courts located in the State to the extent Lender deems such proceeding necessary or advisable to exercise remedies available under the Deed of Trust or the other Loan Documents.

Section 7.09. *Indemnification.* BORROWER SHALL INDEMNIFY AND HOLD HARMLESS EACH OF THE INDEMNIFIED PARTIES FOR, FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LIABILITIES (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITIES), ACTIONS, PROCEEDINGS, OBLIGATIONS, DEBTS, DAMAGES, LOSSES, COSTS, EXPENSES, DIMINUTIONS IN VALUE, FINES, PENALTIES, CHARGES, FEES, EXPENSES, JUDGMENTS, AWARDS, AMOUNTS PAID IN SETTLEMENT AND DAMAGES OF WHATEVER KIND OR NATURE (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND OTHER COSTS OF DEFENSE) (COLLECTIVELY, "LOSSES")

(EXCLUDING LOSSES SUFFERED BY AN INDEMNIFIED PARTY ARISING OUT OF SUCH INDEMNIFIED PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; PROVIDED, HOWEVER, THAT THE TERM "GROSS NEGLIGENCE" SHALL NOT INCLUDE GROSS NEGLIGENCE IMPUTED AS A MATTER OF LAW TO ANY OF THE INDEMNIFIED PARTIES SOLELY BY REASON OF BORROWER'S INTEREST IN THE COLLATERAL OR BORROWER'S FAILURE TO ACT IN RESPECT OF MATTERS WHICH ARE OR WERE THE OBLIGATION OF BORROWER UNDER THE LOAN DOCUMENTS) CAUSED BY, INCURRED OR RESULTING FROM BORROWER'S OPERATIONS OF, OR RELATING IN ANY MANNER TO, THE COLLATERAL, WHETHER RELATING TO ITS ORIGINAL DESIGN OR CONSTRUCTION, LATENT DEFECTS, ALTERATION, MAINTENANCE, USE BY BORROWER OR ANY PERSON THEREON, SUPERVISION OR OTHERWISE, OR FROM ANY BREACH OF, DEFAULT UNDER OR FAILURE TO PERFORM ANY TERM OR PROVISION OF THIS DEED OF TRUST BY BORROWER, ITS OFFICERS, EMPLOYEES, AGENTS OR OTHER PERSONS. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT BORROWER'S OBLIGATIONS UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS DEED OF TRUST FOR ANY REASON.

Section 7.10. *Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.* LENDER, BY ACCEPTING THIS DEED OF TRUST, AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR ITS SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS DEED OF TRUST, THE RELATIONSHIP OF LENDER AND BORROWER, BORROWER'S USE OR OCCUPANCY OF THE COLLATERAL, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. THIS WAIVER BY THE PARTIES HERETO OF ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. FURTHERMORE, BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM THE OTHER AND ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER OR ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS DEED OF TRUST OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THE WAIVER BY BORROWER AND LENDER OF ANY RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.

Section 7.10. *Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.* LENDER, BY ACCEPTING THIS DEED OF TRUST, AND GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR ITS SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS DEED OF TRUST, THE RELATIONSHIP OF LENDER AND GUARANTOR, GUARANTOR'S USE OR OCCUPANCY OF THE COLLATERAL, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. THIS WAIVER BY THE PARTIES HERETO OF ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. FURTHERMORE, GUARANTOR AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM THE OTHER AND ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER OR ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS DEED OF TRUST OR

ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THE WAIVER BY GUARANTOR AND LENDER OF ANY RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.

ARTICLE VIII

THE TRUSTEE

Section 8.01. *Rights and Obligations of Trustee.* Trustee accepts the trusts hereby created and agrees to perform its duties herein for the benefit of Lender.

Section 8.02. *Resignation of Trustee.* Trustee may resign and be discharged of the trusts by giving notice thereof to the holder of the Note and Borrower (or any subsequent owner of Borrower's interest in the Trust Estate) specifying the date (not less than ninety (90) days after such notice) when such resignation shall take effect. Such resignation shall take effect on the earlier of the date so specified or the appointment and acceptance of a successor trustee pursuant to Section 8.03.

Section 8.03. *Successor Trustee.* (a) Trustee may be removed at any time by notice from the holder of the Note, and Lender may appoint a successor trustee by recording a substitution trustee in the office of the register of deeds of the county in which the Premises are located. If Trustee shall have given notice of its intention to resign, shall resign, be removed or otherwise be incapable of acting, or if Trustee shall be taken under the control of any public officer or a receiver appointed by a court, or be adjudged a bankrupt or insolvent, then a successor may be appointed by the holder of the Note, provided that Borrower may appoint a successor trustee to act until such successor shall be so appointed. Borrower shall notify the holder of the Note of any such appointment by Borrower, but any successor trustee so appointed by Borrower shall immediately and without further act be superseded by a successor trustee appointed by the holder of the Note as above provided.

(b) Any successor to Trustee shall execute, acknowledge and deliver to its predecessor and Borrower (or any subsequent owner of Borrower's interest in the Trust Estate) an instrument accepting such appointment, and thereupon such successor, without any further act, deed or conveyance, shall become vested with all the estate, properties, rights, powers, duties and trusts of its predecessor in the trusts hereunder with like effect as if originally named as trustee herein; provided, however, that on the written request of Borrower, the holder of the Note or the successor trustee, such predecessor shall execute and deliver an instrument transferring to such successor, upon the trusts expressed in this Deed of Trust, such estate, properties, rights, powers and trusts and shall duly assign, transfer, deliver and pay over to such successor any property and moneys subject to the lien hereof and held by such predecessor.

Section 8.04. *Liability of Trustee.* No trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

Section 8.05. *Payment of Trustee's Compensation.* Borrower shall pay or cause to be paid the compensation to which Trustee is entitled hereunder and all proper disbursements and expenses incurred by Trustee hereunder.

ARTICLE IX

STATE-SPECIFIC PROVISIONS

Section 9.01 *Principles of Construction.* In the event of any inconsistencies between the terms and conditions of this Article VIII and the terms and conditions of this Deed of Trust or any other Loan Document, the terms and conditions of this Article VIII shall control and be binding.

For purposes of Utah Code Annotated Section 57-1-28, Borrower agrees that all default interest, late charges, any prepayment premiums, swap breakage fees, and similar amounts, if any, owing from time to time under the Note, this Deed of Trust and the other Loan Documents shall constitute a part of and be entitled to the benefits of

Lender's lien upon the Collateral and Lender may add all such amounts to the principal balance to the principal balance of the Note, in its sole discretion, and Lender may include such amounts in any credit which Lender may make against its bid at a foreclosure sale of the Collateral pursuant to this Deed of Trust.

If Lender or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Deed of Trust, Borrower covenants and agrees to cause the lien claimant that filed such preliminary notice to withdraw the preliminary notice pursuant to Utah Code Annotated Section 38-1-5(3)(b)(ii) and Borrower shall provide to Lender written evidence acceptable to Lender and its title insurer that the lien claimant has accepted payment in full for construction services that the claimant furnished before the recording of this Deed of Trust pursuant to Utah Code Annotated Section 38-1-5(3)(b)(i) and that such lien claimant has agreed to re-file its withdrawn preliminary notice within 20 days of the date of withdrawal such that the priority for any pre-construction services lien or a construction services lien dates immediately after the recording of this Deed of Trust.

Borrower shall pay and promptly discharge, at Borrower's cost and expense, all liens, encumbrances and charges upon the Collateral, or any part thereof or interest therein whether inferior or superior to this Deed of Trust and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected or that hereafter may be erected on the Collateral regardless of by whom such services, labor or materials may have been contracted, provided, however, that Borrower shall have the right to contest any such claim or lien so long as Borrower previously records a notice of release of lien and substitution of alternate security as contemplated by Utah Code Annotated Section 38-1-28 and otherwise complies with the requirements of Utah Code Annotated Section 38-1-28 to release the Collateral from such lien or claim. Notwithstanding the foregoing, Borrower may (A) with the prior written consent of Lender, contest the amount of any such lien or claim related to services, labor or materials in accordance with Utah Code Annotated Section 38-1-28(7) without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Lender) for any such lien or claim, as determined in Lender's reasonable discretion. If Borrower shall fail to remove and discharge any such lien, encumbrance or charge, or if Borrower shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Lender, Lender may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Collateral from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account Borrower of and recording a notice of release of lien and substitution of alternate security in the name of Borrower, each as contemplated by Utah Code Annotated Section 38-1-28 or other applicable law, or otherwise by giving security for such claim. Borrower shall, immediately upon demand therefor by Lender, pay to Lender an amount equal to all costs and expenses incurred by Lender in connection with the exercise by Lender of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Note.

As a condition precedent to any such sale following an Event of Default, Lender shall provide Trustee with all information and documents to enable the Trustee to give and record such notice as the law then requires, including Utah Code Annotated Section 57-1-24 and 26.

Upon sale of the Collateral at any judicial or non-judicial foreclosure, the Lender may credit bid, in accordance with applicable law, all or any portion of the Secured Obligations to the extent permitted by Utah Code Annotated Section 57-1-28.

Except as may be otherwise required by applicable law, after deducting all costs, fees and expenses of the Trustee, and of this trust, including, without limitation, cost of evidence of title and reasonable attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, the Trustee shall apply all proceeds of any foreclosure sale as provided in Utah Code Annotated, Section 57-1-29.

For purposes of Utah Code Annotated Section 57-1-25 and 78B-6-901.5, Borrower agrees that the stated purpose for which this Deed of Trust was given is not to finance residential rental property.

PURSUANT TO UTAH CODE ANNOTATED § 25-5-4, TRUSTOR IS NOTIFIED THAT THIS DEED OF TRUST, THE NOTE AND OTHER LOAN DOCUMENTS GOVERNING, EVIDENCING AND SECURING THE INDEBTEDNESS SECURED HEREBY REPRESENT THE FINAL AGREEMENT BETWEEN THE

PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

Borrower knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Borrower under Utah Code Annotated §§78B-6-901 and 57-1-32 and any successor or replacement statute or any similar laws or benefits.

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

BORROWER:

CJ EAST, LLC

By 
John Nelson, Member-Manager

STATE OF Id
COUNTY OF Ada

]] SS.
]

The foregoing instrument was acknowledged before me on April 7, 2015 by John Nelson, Member-Manager of CJ EAST, LLC, on behalf of the limited liability company.


Notary Public

My Commission Expires:
11/02/2018



ADDENDUM TO DEED OF TRUST

The undersigned is executing this Addendum to Deed of Trust merely to memorialize and acknowledge that it, CJ East, LLC, as borrower, and Pacific Premier Bank, as lender ("Lender"), have entered into that certain Tri-Party Agreement whereunder the undersigned has agreed to give certain notice and cure rights to Lender with respect to the Sublease and following the termination of the Sublease, at Lender's election, to enter into a new sublease with Lender, subject to the terms and conditions of and as more particularly described in such Tri-Party Agreement.

Dated as of April 14, 2015.

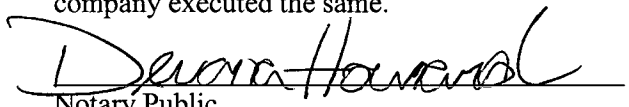
CARL'S JR. RESTAURANTS LLC,
a Delaware limited liability company

By: 
William R. Werner, Senior Vice President

STATE OF MISSOURI

CITY OF ST. LOUIS

On this 8TH, day of APRIL, 2015, personally appeared before me William R. Werner, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is the Senior Vice President of Carl's Jr. Restaurants, LLC, a Delaware limited liability company, and that said document was signed by him in behalf of said company by Authority of its member(s) and/or manager(s), and said William R. Werner acknowledged to me that said company executed the same.


Notary Public

(Seal or Stamp)

Print Name: DEVONA HOWARD

My appointment expires: Dec 3, 2017



DEVONA HOWARD
My Commission Expires
December 3, 2017
St. Louis County
Commission #13825398

ADDENDUM TO DEED OF TRUST, DAVIS COUNTY

[Affects the following units: #1100009, #1100312, #1100335, #1100380, #1100473, and #1100602]
2074191.1

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Street Address: 925 West Antelope Drive, Layton, Utah 84041

Legal Description:

LOT 3A, LAYTON MARKET CENTER SUBDIVISION 2ND AMENDMENT, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE DAVIS COUNTY RECORDER.

Parcel ID: 10-200-0003

Street Address: 582 North Main Street, Clearfield, Utah 84015

Legal Description:

PARCEL 1:

BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EAST LINE OF MAIN STREET, SAID POINT BEING NORTH 00°01'34" EAST, ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER 1431.97 FEET, AND NORTH 89°59'51" EAST 50.00 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 36, AND RUNNING THENCE NORTH 00°01'34" EAST ALONG THE EAST LINE OF MAIN STREET, 169.00 FEET; THENCE NORTH 89°59'51" EAST 210.00 FEET; THENCE SOUTH 00°01'34" WEST 169.00 FEET; THENCE SOUTH 89°59'51" WEST 210.00 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

A RIGHT-OF-WAY FOR INGRESS AND EGRESS PURPOSES BEING 15 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE:

BEGINNING AT A POINT ON THE EAST LINE OF MAIN STREET, CLEARFIELD CITY, SAID POINT BEING NORTH 00°01'34" EAST ALONG THE WEST MONUMENT LINE OF SAID QUARTER SECTION, 1323.97 FEET, NORTH 89°59'51" EAST 50 FEET AND NORTH 00°01'34" EAST ALONG THE EAST SIDE OF MAIN STREET, 95.00 FEET, FROM THE MONUMENT AT THE SOUTHWEST CORNER OF SAID QUARTER SECTION AND RUNNING THENCE NORTH 89°59'51" EAST 176.56 FEET; THENCE SOUTH 00°01'34" WEST 94.00 FEET.

PARCEL 3:

A RIGHT-OF-WAY FOR INGRESS AND EGRESS PURPOSES 15 FEET ON EAST SIDE OF THE FOLLOWING DESCRIBED CENTER LINE:

BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EAST LINE OF MAIN STREET, SAID POINT BEING NORTH 00°01'34" EAST, ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER 1600.97 FEET, AND NORTH 89°59'51" EAST, 50.00 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 36, THENCE NORTH 89°59'51" EAST 210.00 FEET.

PARCEL 4:

A RIGHT-OF-WAY FOR INGRESS AND EGRESS PURPOSES 15 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE:

BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EAST LINE OF MAIN STREET, SAID POINT BEING NORTH 00°01'34" EAST, ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER 1431.97 FEET, AND NORTH 89°59'51" EAST, 50.00 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 36, THENCE NORTH 89°59'51" EAST 210.00 FEET.

PARCEL 5:

A RIGHT-OF-WAY FOR INGRESS AND EGRESS TO THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT A POINT WHICH IS NORTH 00°01'34" EAST 1,323.97 FEET AND NORTH 89°59'51" EAST 208.56 FEET FROM THE SOUTHWEST CORNER OF SECTION 36 AND RUNNING THENCE NORTH 89°59'51" EAST 37.10 FEET, TO THE WEST LINE OF LOT 1 OF GOLDEN PARK NO. 1, THENCE SOUTH 00°01'34" WEST ALONG SAID WEST LINE OF LOT 1, 162.56 FEET TO THE NORTH LINE OF FERN DRIVE, THENCE SOUTH 89°58'26" WEST ALONG THE NORTH LINE OF FERN DRIVE 37.10 FEET, THENCE NORTH 00°01'34" EAST 162.57 FEET TO THE POINT OF BEGINNING.

PARCEL 6:

A RIGHT-OF-WAY FOR INGRESS AND EGRESS TO THE FOLLOWING DESCRIBED PROPERTY: BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EAST LINE OF MAIN STREET, SAID POINT BEING NORTH 00°01'34" EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER 1431.97 FEET, AND NORTH 89°59'51" EAST, 50.00 FEET, AND NORTH 00°01'34" EAST ALONG THE EAST LINE OF MAIN STREET 169.00 FEET, AND NORTH 89°59'51" EAST 210.00 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 36, AND RUNNING THENCE NORTH 89°59'51" EAST 25.00 FEET, THENCE SOUTH 00°01'34" WEST 277.00 FEET NORTH 89°59'51" WEST 58.44 FEET TO THE PROPERTY CONVEYED TO DELL S. NICHOLS BY WARRANTY DEED RECORDED AS ENTRY NO. 863939, IN BOOK 1303, PAGE 239, OFFICIAL RECORDS OF DAVIS COUNTY, STATE OF UTAH; THENCE NORTH 00°01'34" EAST 108.00 FEET THENCE NORTH 89°59'31" EAST 33.44 FEET; THENCE NORTH 00°01'34" EAST 169 FEET TO THE POINT OF BEGINNING.

Parcel ID: 14-094-0058

Street Address: 2118 West Antelope Drive, Syracuse, Utah 84075

Legal Description:

PARCEL 1:

LOT 2, SYRACUSE WAL-MART SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE DAVIS COUNTY RECORDER'S OFFICE.

PARCEL 1A:

TOGETHER WITH A NON-EXCLUSIVE EASEMENT OVER, THROUGH AND AROUND THE PROPERTY FOR ROADWAYS, WALKWAYS, INGRESS AND EGRESS, PARKING OF MOTOR VEHICLES AND LOADING AND UNLOADING OF COMMERCIAL AND OTHER VEHICLES AS DISCLOSED BY THAT CERTAIN EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND RECORDED AUGUST 9, 2005 AS ENTRY NO. 2095439 IN BOOK 3845 AT PAGE 1435

PARCEL 1B:

TOGETHER WITH A PERPETUAL, NON-EXCLUSIVE RIGHT, PRIVILEGE AND EASEMENTS (COLLECTIVELY THE "EASEMENT") FOR THE BENEFIT OF GRANTEE TO TIE INTO, USE MAINTAIN, REPLACE AND REPAIR THE EXISTING STORM WATER DRAINAGE AND UTILITY LINES AS DISCLOSED BY UTILITY EASEMENT AGREEMENT RECORDED JANUARY 10, 2008 AS ENTRY NO. 2333268 IN BOOK 446 AT PAGE 232

PARCEL 1C:

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS AS DISCLOSED BY THAT CERTAIN ACCESS EASEMENT RECORDED JANUARY 10, 2008 AS ENTRY NO. 2333269 IN BOOK 446 AT PAGE 238

Parcel ID: 12-606-0002

Street Address: 195 West 500 South, Bountiful, Utah 84010

Legal Description:

BEGINNING AT A POINT SOUTH 0°09'34" WEST 11.00 FEET FROM THE NORTHWEST CORNER OF BLOCK "L", NORTH MILL CREEK PLAT, BOUNTIFUL TOWNSITE SURVEY; RUNNING THENCE NORTH 89°44'04" EAST 167.04 FEET; THENCE SOUTH 0°15'56" EAST 174.50 FEET; THENCE SOUTH 89°44'04" WEST 168.33 FEET; THENCE NORTH 0°09'34" EAST 174.50 FEET TO THE POINT OF BEGINNING

Parcel ID: 03-036-0117

Street Address: 1868 West 1800 North, Clinton, Utah 84015

Legal Description:

Parcel 1:

All of Lot 8, PARK PLAZA SUBDIVISION-3RD AMENDMENT, according to the Official Plat thereof on file and recorded on September 10, 2012 as Entry No. 2686122 in Book 5602 at Page 1317 in the Office of the Davis County Recorder, State of Utah.

Said property being formerly described as follows:

A part of Lot 3. PARK PLAZA SUBDIVISION, in Clinton City, according to the Official Plat thereof as recorded in the Office of the Davis County Recorder, State of Utah: Beginning at a point 736.21 feet North 89°59'21" East along the Quarter Section line and 79.81 feet North 0°00'39" West from the Southwest corner of the Northwest Quarter of Section 27, Township 5 North, Range 2 West, Salt Lake Base and Meridian. U.S. Survey and running thence West 83.86 feet; thence South 0°00'39" East 13.83 feet, thence South 89°59'21" West 81.00 feet; thence North 253.18 feet; thence East 57.19 feet; thence South 40°00'00" East 111.27 feet; thence Southeasterly along the arc of a 154.50 foot radius curve to the right a distance of 107.85 feet (Long Chord Bears South 20°00'10" East 105.67 feet); thence South 0°00'20" East 54.81 feet to the point of beginning.

Parcel 1A:

Together with and subject to the non-exclusive right of ways and easements for purposes including without limitation to utility, access and access drives (ingress and egress), and passage of vehicles and pedestrians, according to the terms, covenants and conditions and as set forth in that certain Easements, Covenants, Conditions and Restrictions by and between Lowe.s HIW, Inc. and Clinton City Center, LLC, recorded November 20, 2007 as Entry No. 2322284 in Book 4413 at Page 1462 of Official Records.

Parcel 1B:

Together with and subject to non-exclusive right of way and easement for reasonable access, ingress and egress over all paved driveways, roadways and walkways as presently or hereafter constructed for the passage of motor vehicles and pedestrians as set forth over the Common Areas, according to the terms, covenants and conditions in that certain Reciprocal Easement Agreement with Covenants, Conditions and Restrictions, recorded March 14, 2008 as Entry No. 2348867 in Book 4490 at Page 134 of Official Records.

Parcel ID: 14-479-0008

Street Address: 385 North 800 West, Centerville, Utah 84014

Legal Description:

Parcel 1:

Lot 1, Frontage Road Subdivision, according to the official plat thereof, on file and recorded June 16, 1989 as Entry No. 861358 in Book 1298 at Page 573 in the Office of the Davis County Recorder, State of Utah.

LESS AND EXCEPTING THEREFROM that portion conveyed to Centerville City, a Utah municipal corporation, by Special Warranty Deed, recorded October 23, 1995 as Entry No. 1206745 in Book 1929 at Page 199 of Official Davis County Records, and more particularly described as follows:

A part of the Southwest Quarter of Section 7, Township 2 North, Range 1 East, Salt Lake Base and Meridian, County of Davis, State of Utah, described as follows:

Beginning at the Northeasterly corner of Lot 1, Frontage Road Subdivision, said point lying at the intersection of the South line of Parrish Lane and the West line of the Interstate 15 Frontage Road and being N 00°05'33" W, a distance of 2417.59 feet along the Section Line and N 89°54'27" E, a distance of 739.70 feet from the Southwest corner of said Section 7; thence S 00°02'20" E, along the said West line of the said frontage road, a distance of 13.95 feet; thence N 45°05'58" W, a distance of 16.83 feet to the South line of said Parrish Lane; thence N 80°08'05" E, along said South line a distance of 12.09 feet to the point of beginning.

PARCEL 1A:

Together with that certain non-exclusive right of way and easement as set forth by Declaration of Easements and Restrictions recorded July 20, 1987 as Entry No. 794760 in Book 1181 at Page 995 of Davis County Official Records, for the purpose of vehicular parking and vehicular and pedestrian ingress and egress between Parcel 1 and the frontage road, appurtenant to said Parcel 1 and across the Northerly 40 feet, and running contiguous with the North boundary line of the following described property:

Beginning at a point North, 2216.45 feet and East, 493.38 feet from the Southwest Corner of Section 7, Township 2 North, Range 1 East, Salt Lake Base and Meridian; thence South 86°03'23" East 229.71 feet to a point on the Westerly right of way line of an 80 foot frontage road, said point also being of the arc of a 778.511 foot radius curve to the right (radius point bears North 77°56'05" West); thence along said curve 302.30 feet through a central angle of 22°14'53"; thence leaving said right of way line South 89°45'41" West 176.07 feet; thence North 13°35'03" East 32.56 feet to a right of way monument; thence North 15°48'35" East, 176.49 feet to a right of way monument; thence North 5°55'01" East, 91.69 feet to the point of beginning.

Parcel ID: 02-123-0004