

**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 1999 among TRI-VALLEY DISTRIBUTING, INC., a Utah corporation ("Debtor"), whose address is 1690 South Highway 40, Heber City, Utah 84032, PROVO LAND TITLE COMPANY ("Trustee"), whose address is 255 E. 100 S., Provo, Ut 84606 or any successor or substitute appointed and designated as herein provided from time to time acting hereunder, and for the benefit of FFCA ACQUISITION CORPORATION, a Delaware corporation ("Beneficiary"), whose address is 17207 North Perimeter Drive, Scottsdale, Arizona 85255.

PRELIMINARY STATEMENT:

The capitalized terms used in this Deed of Trust, if not elsewhere defined herein, have the meanings set forth in Article I. Debtor holds fee simple interest in the Premises, subject to the Permitted Exceptions. Debtor is executing this Deed of Trust for the purpose of granting the interest of Debtor in and to the Trust Estate (as defined in the Granting Clauses below) as security for the payment of the Obligations. The Trust Estate 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.

ENT 25462 BK 4996 PG 713
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
1999 Mar 02 12:14 pm FEE 101.00 BY SS
RECORDED FOR PROVO LAND TITLE COMPANY

GRANTING CLAUSES:

Debtor, 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 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, for the benefit and security of Beneficiary and its successors and assigns, all of Debtor's estate, right, title and interest in, to and under any and all of the following property (the "Trust Estate"), whether now owned or hereafter acquired, subject only to the Permitted Exceptions:

Premises, Rents and Derivative Interests

The Premises, all rents, issues, profits, royalties, income and other benefits derived from the property comprising the Trust Estate (collectively the "Rents"); all leases or subleases covering the Premises 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; all options to purchase or lease the Premises 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; 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 tangible personal property now or at any time hereafter located on or at the Premises or used in connection therewith, including, without limitation, all goods, machinery, tools, equipment, lobby and all other indoor and outdoor furniture, books, records, manuals, computer systems, furnishings, rugs, and maintenance and other supplies (the "Personal Property");

Intangibles

All existing and future accounts, contract rights, general intangibles, files, books of account, agreements, franchise, license and/or area development 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 Trust Estate, whether now existing or entered into or obtained after the date hereof, all existing and future names under or by which the property comprising the Trust Estate 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 Trust Estate or any portion thereof; and

Claims and Awards

All the claims or demands with respect to the Trust Estate, including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto, 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 Trust Estate, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages.

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

TO HAVE AND TO HOLD the Trust Estate hereby granted or mortgaged or intended to be granted or mortgaged, unto Trustee, and its successors in trust 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 indebtedness evidenced by the Additional Notes together with all extensions, renewals, amendments and modifications of any thereof;

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

(iv) Payment of all indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations and covenants contained in, any Other Agreement.

It is the intention of the parties hereto that the Trust Estate 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 Trust Estate for the payment of taxes, assessments, insurance premiums, costs or any other advances incurred for the protection of the Trust Estate, together with interest thereon until paid at the rate provided for in Section 3.13 hereof, 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 Trust Estate subsequent to the date of recording of this Deed of Trust, that until this Deed of Trust is released, any debt owed Beneficiary by Debtor, 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, this Deed of Trust shall only secure indebtedness and obligations relating to the Loan and any other loans between any of the Debtor Entities on the one hand and any of the Beneficiary Entities on the other hand which are part of the same Securitized Loan Pool as the Loan; and

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

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

DEFINED TERMS

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):

“*Action*” has the meaning set forth in Section 5.01(iv).

“*ADA*” has the meaning set forth in Section 3.07(b).

“*Additional Notes*” means, collectively, all promissory notes dated as of even date herewith (other than the Note) executed by Debtor and payable to Beneficiary and issued pursuant to the Loan Agreement. The aggregate original principal balance of the Note and the Additional Notes is \$4,000,000.00.

“*Affiliate*” means any person or entity which directly or indirectly controls, is under common control with, or controlled by any other person or entity. For purposes of this definition “controls”, “under common control with” and “controlled by” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities or otherwise.

“*Applicable Regulations*” has the meaning set forth in Section 2.06(a).

“*Beneficiary Entities*” means collectively, Beneficiary, Franchise Finance and any Affiliate of Beneficiary or Franchise Finance.

“*Business Day*” means any day on which FFCA is open for business other than a Saturday, Sunday or a legal holiday, ending at 5:00 PM Phoenix time.

“*Code*” means the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, as amended.

“*Closing Date*” has the meaning set forth in the Loan Agreement.

“*Debtor Entities*” means, collectively, Debtor and any Affiliate of Debtor.

“*Default Rate*” means 18% per annum or the highest rate permitted by law, whichever is less.

“*De Minimis Amounts*” shall mean, with respect to any given level of Hazardous Materials, that level or quantity of Hazardous Materials in any form or combination of forms the use, storage or release of which does not constitute a violation of or require regulation under any Environmental Laws and is customarily employed in the ordinary course of, or associated with, similar businesses located in the state in which the Trust Estate is located.

“Environmental Indemnity Agreement” means that certain Environmental Indemnity Agreement dated as of the date of this Deed of Trust executed by Debtor for the benefit of Beneficiary and such other parties as are identified in such agreement with respect to the Premises, as the same may be amended from time to time.

“Environmental Insurer” means such environmental insurance company as Beneficiary shall select in its sole discretion.

“Environmental Laws” means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to Hazardous Materials, Regulated Substances and USTs and/or the protection of human health or the environment, by reason of a Release or Threatened Release of Hazardous Materials, or relating to liability for or costs of Remediation or prevention of Releases. “Environmental Laws” includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations, rulings, orders or decrees promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to USTs); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. “Environmental Laws” also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law: conditioning transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of the property; requiring notification or disclosure of Releases or other environmental condition of the Trust Estate to any Governmental Authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements relating to Hazardous Materials, Regulated Substances or USTs in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to Hazardous Materials, Regulated Substances or USTs; relating to the handling and disposal of solid or hazardous waste; and relating to wrongful death, personal injury, or property or other damage in connection with the physical condition or use of the Trust Estate by reason of the presence of Hazardous Materials, Regulated Substances or USTs in, on, under or above the Trust Estate.

“Environmental Liens” has the meaning set forth in Section 2.06(f).

“Environmental Policy” means the environmental insurance policy issued by Environmental Insurer to Beneficiary with respect to the Premises, if any, which Environmental Policy shall be in form and substance satisfactory to Beneficiary in its sole discretion.

“Event of Default” has the meaning set forth in Section 5.01.

"Franchise Finance" means Franchise Finance Corporation of America, a Delaware corporation, and its successors.

"Franchisor" means Chevron or its successors.

"Governmental Authority" means any governmental authority, agency, department, commission, bureau, board, instrumentality, court or quasi-governmental authority of the United States, the state in which the Premises are located or any political subdivision thereof.

"Hazardous Materials" means (i) any toxic substance or hazardous waste, substance, solid waste or related material, or any pollutant or contaminant; (ii) radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contains dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent, or any petroleum product; (iii) any substance, gas, material or chemical which is or may be defined as or included in the definition of "hazardous substances," "toxic substances," "hazardous materials," "hazardous wastes" or words of similar import under any Environmental Laws; and (iv) any other chemical, material, gas or substance the exposure to or release of which is or may be prohibited, limited or regulated by any Governmental Authority that asserts or may assert jurisdiction over the Trust Estate or the operations or activity at the Trust Estate, or any chemical, material, gas or substance that does or may pose a hazard to the health and/or safety of the occupants of the Trust Estate or the owners and/or occupants of property adjacent to or surrounding the Trust Estate.

"Indemnified Parties" means Beneficiary, Environmental Insurer (but only if an Environmental Policy is issued for the Premises), and Trustee and any person or entity who is or will have been involved in the origination of the Loan, any person or entity who is or will have been involved in the servicing of the Loan, any person or entity in whose name the encumbrance created by this Deed of Trust is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan (including, but not limited to, investors or prospective investors in any Securitization, Participation or Transfer, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefit of third parties), as well as the respective directors, officers, shareholders, partners, members, employees, lenders, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other person or entity who holds or acquires or will have held a participation or other full or partial interest in the Loan or the Trust Estate, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Beneficiary's assets and business).

"Loan" means the loan made by the Beneficiary to Debtor which is evidenced by the Note and secured by this Deed of Trust.

"Loan Agreement" means the Loan Agreement dated as of even date herewith between Debtor and Beneficiary, as the same may be amended from time to time.

"Loan Documents" means, collectively, this Deed of Trust, the Note, the Loan Agreement, the Environmental Indemnity Agreement, the UCC-1 Financing Statements and the Additional Notes, and such other notes, deeds of trust or mortgages, guaranties and other documents or instruments contemplated thereby, all as amended and supplemented.

"Losses" means 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).

"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 promissory note dated as of even date herewith in the amount of \$ _____ executed by Debtor and payable to Beneficiary which is secured by this Deed of Trust and any amendments, extensions or modifications thereof, including, without limitation, any amendment and restatement of the Note as a result of a prepayment contemplated by Section 10 of the Loan Agreement.

"Other Agreements" means, collectively, all agreements and instruments between, among or by (1) any of the Debtor Entities, and, or for the benefit of, (2) any of the Beneficiary Entities, including, without limitation, promissory notes and guaranties; provided, however, the term "Other Agreements" shall not include the agreements and instruments defined as the Loan Documents.

"Participation" has the meaning set forth in the Loan Agreement.

"Permitted Concept" means a Chevron gas and convenience store facility.

"Permitted Exceptions" means those recorded easements, restrictions, liens and encumbrances set forth as exceptions in the title insurance policy issued to Beneficiary and approved by Beneficiary in its sole discretion in connection with this Deed of Trust.

"Person or Persons" means any individual, corporation, partnership, limited liability company, trust, unincorporated organization, Governmental Authority or any other form of entity.

"Premises" means the parcel or parcels of real estate legally described in Exhibit A attached hereto, all rights, privileges and appurtenances associated therewith and all buildings,

fixtures and other improvements now or hereafter located on such real estate (whether or not affixed to the real estate).

"Questionnaire" means that certain environmental questionnaire completed by Debtor and submitted to Environmental Insurer in connection with the issuance of the Environmental Policy.

"Regulated Substances" means "petroleum" and "petroleum-based substances" or any similar terms described or defined in any of the Environmental Laws and any applicable federal, state, county or local laws applicable to or regulating USTs.

"Release" means any presence, release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials, Regulated Substances or USTs.

"Remediation" means any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Material, Regulated Substances or USTs, any actions to prevent, cure or mitigate any Release, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or any evaluation relating to any Hazardous Materials, Regulated Substances or USTs.

"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 (as defined in Section 4.01 hereof).

"Securitization" has the meaning set forth in the Loan Agreement.

"Securitized Loan Pool" has the meaning set forth in the Loan Agreement.

"State" means the state where the Premises is located.

"Taking" has the meaning set forth in Section 4.01(b).

"Threatened Release" means a substantial likelihood of a Release which requires action to prevent or mitigate damage to the soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, ambient air or any other environmental medium comprising or surrounding the Premises which may result from such Release.

"Total Taking" has the meaning set forth in Section 4.01(b)(ii).

"Transfer" has the meaning set forth in the Loan Agreement.

"UCC" has the meaning set forth in Section 5.02(iii).

"UCC-1 Financing Statements" means the UCC-1 Financing Statements executed by Debtor pursuant to the Loan Agreement.

"USTs" means any one or combination of tanks and associated product piping systems used in connection with the storage, dispensing and general use of Regulated Substances.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF DEBTOR

Debtor hereby represents and warrants to Beneficiary and, if an Environmental Policy has been issued for the Premises, Environmental Insurer with respect to Section 2.06, as follows (which representations and warranties shall survive the execution and delivery of this Deed of Trust):

Section 2.01. **Title.** Debtor has good and marketable fee simple title to the Trust Estate, free and clear of all liens, encumbrances, charges and other exceptions to title except the Permitted Exceptions. Debtor holds title to the Personal Property, free and clear of all liens, encumbrances, charges and other exceptions to title except this Deed of Trust and the UCC-1 Financing Statements. Debtor has full power and lawful authority to grant the Trust Estate to Trustee in the manner and form herein done or intended and forever warrant and defend Debtor's title in the Trust Estate against the claims of all persons, subject to the Permitted Exceptions. This Deed of Trust constitutes a valid first lien upon and security interest in the Trust Estate.

Section 2.02. **Organization and Status of Debtor; Enforceability.** (a) Debtor has been duly organized or formed, is validly existing and in good standing under the laws of its state of incorporation or formation and is qualified as a foreign corporation, partnership or limited liability company to do business in any jurisdiction where such qualification is required. Debtor is not a "foreign corporation", "foreign partnership", "foreign trust" or "foreign estate", as those terms are defined in the Internal Revenue Code and the regulations promulgated thereunder. Debtor's United States tax identification number is correctly set forth on the signature page of this Deed of Trust. The person(s) who have executed this Deed of Trust on behalf of Debtor are duly authorized to do so.

(b) This Deed of Trust constitutes the legal, valid and binding obligation of Debtor, enforceable against Debtor in accordance with its terms.

Section 2.03. **Litigation; Absence of Breaches or Defaults.** (a) There are no suits, actions, proceedings or investigations pending, or to the best of its knowledge, threatened against or involving Debtor or the Trust Estate before an arbitrator or Governmental Authority which might reasonably result in any material adverse change in the contemplated business, condition, worth or operations of Debtor or the Trust Estate.

(b) Debtor is not in default under any other document, instrument or agreement to which Debtor is a party or by which Debtor, the Premises or any of the property of Debtor is

subject or bound. The authorization, execution, delivery and performance of this Deed of Trust and the documents, instruments and agreements provided for herein will not result in any breach of or default under any other document, instrument or agreement to which Debtor is a party or by which Debtor, the Trust Estate or any of the property of Debtor is subject or bound.

Section 2.04. **Franchise Provisions; Licenses and Permits.** (a) Debtor has entered into a franchise, license and/or area development agreement with Franchisor for conduct of the business at the Trust Estate. Such franchise, license and/or area development agreement is valid, binding, in full force and effect and enforceable in accordance with its terms and permits Debtor to operate a Permitted Concept on the Trust Estate and has a term which will not expire prior to the scheduled maturity date of the Note.

(b) Debtor has obtained all required licenses and permits, both governmental and private, to use and operate the Trust Estate in the intended manner.

Section 2.05. **Financial Condition; Information Provided to Beneficiary.** The financial statements, all financial data and all other documents and information heretofore delivered to Beneficiary by or with respect to Debtor and/or the Trust Estate in connection with this Deed of Trust and/or relating to Debtor and/or the Trust Estate are true, correct and complete in all material respects, and there have been no amendments to such financial statements, financial data and other documents and information since the date such financial statements, financial data, documents and other information were prepared or delivered to Beneficiary, and no material adverse change has occurred with respect to the financial condition of Debtor and/or the Trust Estate as reflected in any such financial statements, financial data, documents and other information which has not been disclosed in writing to Beneficiary.

Section 2.06. **Compliance With Laws.** (a) The current use and occupation of the Trust Estate, and the condition thereof complies fully with all applicable statutes, regulations, rules, ordinances, codes, licenses, permits, orders and approvals of each Governmental Authority having jurisdiction over the Trust Estate, including, without limitation, USTs codes, ordinances, requirements and standards, all requirements relating to the handling and disposal of solid or hazardous waste, all health, building, fire, safety and other codes, ordinances and requirements and all applicable standards of the National Board of Fire Underwriters and all policies or rules of common law, in each case, as amended, and any judicial or administrative interpretation thereof, including any judicial order, consent, decree or judgment applicable to Debtor (collectively, "Applicable Regulations"). Debtor is in compliance with all Applicable Regulations.

(b) Without limiting the generality of the other provisions of this Section, the Trust Estate is in compliance in all respects with the Americans with Disabilities Act of 1990.

(c) The Trust Estate and Debtor are not in violation of, or subject to, any pending or, to Debtor's actual knowledge, threatened investigation or inquiry by any Governmental Authority or any remedial obligations under any Environmental Laws, and this representation and warranty would continue to be true and correct following disclosure to each Governmental

Authority of all relevant facts, conditions and circumstances, if any, pertaining to the Trust Estate.

(d) Debtor has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of the Trust Estate by reason of any Environmental Laws.

(e) Debtor has taken all reasonable steps to determine and has determined to its reasonable satisfaction that (i) 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 Trust Estate, except in De Minimis Amounts; (ii) the Trust Estate does not contain Hazardous Materials, except in De Minimis Amounts, and all USTs located on or about the Trust Estate, if any, are in full compliance with all Environmental Laws; (iii) there is no threat of any Release migrating to the Trust Estate; (iv) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Trust Estate; and (v) Debtor has not 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, Regulated Substances or USTs or Remediation thereof, of possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Trust Estate, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing. Debtor has truthfully and fully provided to Beneficiary, in writing, any and all information relating to environmental conditions in, on, under or from the Trust Estate that is known to Debtor and that is contained in Debtor's files and records, including but not limited to any reports relating to Hazardous Materials, Regulated Substances or USTs in, on, under or from the Trust Estate.

(f) All uses and operations on or of the Trust Estate, whether by Debtor or any other person or entity, have been in compliance with all Environmental Laws and permits issued pursuant thereto; there have been no Releases in, on, under or from the Trust Estate, except in De Minimis Amounts; there are no Hazardous Materials in, on, or under the Trust Estate, except in De Minimis Amounts; the Trust Estate has been kept free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law (the "Environmental Liens"); Debtor has not allowed any tenant or other user of the Trust Estate 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 Trust Estate), impaired the value of the Trust Estate, 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 Trust Estate.

Section 2.07. *Franchisor Requirements.* Debtor, in its ownership, use, occupancy and maintenance of the Trust Estate is in compliance with all requirements of its franchise, license and/or area development agreement with Franchisor relating to the Trust Estate. Debtor has not received any notice of default from Franchisor with respect to such franchise, license and/or area development agreement which has not been cured, and 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 by Debtor under such agreement.

Section 2.08. *Incorporation of Representations and Warranties.* The representations and warranties of Debtor 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 and such representations and warranties as incorporated herein shall be deemed to have been made as of the date of this Deed of Trust and shall survive the execution and delivery of this Deed of Trust.

ARTICLE III

COVENANTS OF DEBTOR

Debtor hereby covenants to Beneficiary and, if an Environmental Policy has been issued for the Premises, Environmental Insurer with respect to Sections 3.07(a) and 3.07(c) through (g), and agrees as follows until the Obligations are satisfied in full:

Section 3.01. *Payment of the Note.* Debtor shall punctually pay, or cause to be paid, the principal, interest and all other sums to become due in respect of the Note and the other Loan Documents in accordance with the Note and the other Loan Documents.

Section 3.02. *Title.* Debtor shall maintain good and marketable fee simple title to the Premises and title to the Personal Property and the remainder of the Trust Estate, free and clear of all liens, encumbrances, charges and other exceptions to title, except the Permitted Exceptions. Debtor shall maintain title to the Personal Property, free and clear of all liens, encumbrances, charges and other exceptions to title except this Deed of Trust and the UCC-1 Financing Statements. This Deed of Trust shall constitute a valid first lien upon and security interest in the Trust Estate.

Section 3.03. *Organization and Status of Debtor.* Debtor shall be validly existing and in good standing under the laws of its state of incorporation or formation and qualified as a foreign corporation, partnership or limited liability company to do business in any jurisdiction where such qualification is required.

Section 3.04. *Franchise Provisions; Licenses and Permits.* (a) The franchise, license and/or area development agreement with Franchisor for conduct of the business at the Trust Estate shall be valid, binding, in full force and effect and enforceable in accordance with its terms, and shall permit Debtor to operate a Permitted Concept on the Trust Estate.

(b) Debtor shall maintain all required licenses and permits, both governmental and private, to use and operate the Trust Estate as a Permitted Concept.

Section 3.05. *Recording.* Debtor shall, upon the execution and delivery hereof and thereafter from time to time, take such actions as Beneficiary 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 security interest hereof upon the Trust Estate and to publish notice of and protect the validity of the Recordable Documents. Debtor 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 for carrying out the intention of, or facilitating the performance of, this Deed of Trust. If Debtor shall fail to comply with this Section, Trustee shall be and is hereby irrevocably appointed the agent and attorney-in-fact of Debtor to comply therewith (including the execution, delivery and filing of such financing statements and other instruments), which appointment is coupled with an interest, but 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, Debtor 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 3.06. *Use; Maintenance and Repair; Leases.* (a) The Trust Estate shall be used solely for the operation of a Permitted Concept in accordance with a franchise, license and/or area development agreement with Franchisor 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 untenable, Debtor shall strictly comply with the terms and conditions of Section 4.01 of this Deed of Trust), Debtor shall at all times while this Deed of Trust is in effect occupy the Trust Estate and diligently operate its business on the Trust Estate. Debtor may cease diligent operation of business at the Trust Estate 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 Debtor does discontinue operation as permitted by this Section, Debtor shall (i) give written notice to Beneficiary within 10 days after Debtor elects to cease operation, (ii) provide adequate protection and maintenance of the Trust Estate during any period of vacancy and (iii) pay all costs necessary to restore the Trust Estate to its condition on the day operation of the business ceased at such time as the Trust Estate is reopened for Debtor's business operations or other substituted use. Notwithstanding anything herein to the contrary, Debtor shall pay monthly the principal and interest due under the Note during any period in which Debtor discontinues operation.

Debtor shall not, 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 Beneficiary's consent, which consent shall not be unreasonably withheld. Beneficiary 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 Trust Estate, and (ii) whether the converted use will increase Beneficiary's risks or decrease the value of the Trust Estate.

(b) Debtor shall (i) maintain the Trust Estate 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 Trust Estate 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) Debtor shall not (i) enter into any Leases without Beneficiary's prior written consent; (ii) modify or amend the terms of any Lease without Beneficiary's prior written consent; (iii) grant any consents under any Lease, including, without limitation, any consent to an assignment of any Lease, a mortgaging of the leasehold estate created by any Lease or a subletting by the lessee under any Lease, without Beneficiary's prior written consent; (iv) terminate, cancel, surrender, or accept the surrender of, any Lease, or waive or release any person from the observance or performance of any obligation to be performed under the terms of any Lease or liability on account of any warranty given thereunder, without Beneficiary's prior written consent; or (v) assign, transfer, mortgage, pledge or hypothecate any Lease or any interest therein to any party other than Beneficiary, without Beneficiary'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 Beneficiary otherwise consents or elects, Debtor's title to the Trust Estate and the leasehold interest in the Trust Estate created by any Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Debtor, Beneficiary or any other person by purchase, operation of law, foreclosure of this Deed of Trust, sale of the Trust Estate pursuant to this Deed of Trust or otherwise.

(d) Debtor shall (i) fulfill, perform and observe in all respects each and every condition and covenant of Debtor contained in any Lease; (ii) give prompt notice to Beneficiary of any claim or event of default under any Lease given to or by Debtor, 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 Debtor, enforce the performance and observance of each and every covenant and condition of any Lease to be performed or observed by any other party thereto, unless such enforcement is waived in writing by Beneficiary; (iv) appear in and defend any action challenging the validity or enforceability of any Lease; and (v) hold that portion of the Rents which is sufficient to discharge all current sums due under the Note for use in the payment of such sums.

Section 3.07. *Compliance With Laws.* (a) Debtor's use and occupation of the Trust Estate, and the condition thereof, including, without limitation, any Restoration, shall, at Debtor's sole cost and expense, comply fully with all Applicable Regulations now or hereafter in effect. In addition, Debtor shall, at all times while this Deed of Trust is in effect, comply with all Applicable Regulations now or hereafter in effect.

(b) Without limiting the generality of the other provisions of this Section, Debtor agrees that it shall be responsible for complying in all respects with the Americans with Disabilities Act of 1990, as such act may be amended from time to time, and all regulations promulgated thereunder (collectively, the "ADA"), as it affects the Trust Estate, including, without limitation, making required "readily achievable" changes to remove any architectural or communications barriers, and providing auxiliary aides and services within the Trust Estate. Debtor further agrees that any and all alterations made to the Trust Estate while this Deed of Trust is in effect will comply with the requirements of the ADA. All plans for alterations which must be submitted to Beneficiary under the provisions of Section 3.08 must include a statement from a licensed Architect or Engineer certifying that they have reviewed the plans, and that the plans comply with all applicable provisions of the ADA. Any subsequent approval or consent to the plans by the Beneficiary shall not be deemed to be a representation on Beneficiary's part that the plans comply with the ADA, which obligation shall remain with Debtor. Debtor agrees that it will defend, indemnify and hold harmless the Indemnified Parties for, from and against any and all Losses caused by, incurred or resulting from Debtor's failure to comply with its obligations under this Section.

(c) The Trust Estate and Debtor shall not violate any Environmental Laws. If any investigation or inquiry is initiated by any Governmental Authority under any Environmental Laws, Debtor shall promptly notify Beneficiary.

(d) Debtor covenants and agrees that: (i) all uses and operations on or of the Trust Estate, whether by Debtor or any other person or entity, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (ii) there shall be no Releases in, on, under or from the Trust Estate, except in De Minimis Amounts; (iii) there shall be no Hazardous Materials in, on, or under the Trust Estate, except in De Minimis Amounts; (iv) Debtor shall keep the Trust Estate free and clear of all Environmental Liens, whether due to any act or omission of Debtor or any other person or entity; (v) Debtor shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to subsection (e) below, including but not limited to providing all relevant information and making knowledgeable persons available for interviews; (vi) Debtor shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Trust Estate as may be reasonably requested by Beneficiary (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 Beneficiary and Environmental Insurer the reports and other results thereof, and Beneficiary and other Indemnified Parties shall be entitled to rely on such reports and other results thereof; (vii) Debtor shall, at its sole cost and expense, comply with all reasonable written requests of Beneficiary to (1) reasonably effectuate Remediation of any condition (including but not limited to a Release) in, on, under or from the Trust Estate; (2) comply with any Environmental Law; (3) comply with any directive from any Governmental Authority; and (4) take any other reasonable action necessary or appropriate for protection of human health or the environment; (viii) Debtor shall not do or allow any tenant or other user of the Trust Estate to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any person or entity (whether on or off the

Trust Estate), impairs or may impair the value of the Trust Estate, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Trust Estate; and (ix) Debtor shall immediately notify Beneficiary in writing of (A) any presence of Releases or Threatened Releases in, on, under, from or migrating towards the Trust Estate; (B) any non-compliance with any Environmental Laws related in any way to the Trust Estate; (C) any actual or potential Environmental Lien; (D) any required or proposed Remediation of environmental conditions relating to the Trust Estate; and (E) any written or oral notice or other communication of which Debtor becomes aware from any source whatsoever (including but not limited to a Governmental Authority) relating in any way to Hazardous Materials, Regulated Substances, USTs or Remediation thereof, possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Trust Estate, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Section.

(e) Beneficiary and any other person or entity designated by Beneficiary, including, but not limited to, Environmental Insurer, any receiver, any representative of a governmental entity, and any environmental consultant, shall have the right, but not the obligation, to enter upon the Trust Estate at all reasonable times (including, without limitation, in connection with any transaction contemplated by Section 7.18 hereof or Section 13P of the Loan Agreement or in connection with the exercise of any remedies set forth in this Deed of Trust or the other Loan Documents) to assess any and all aspects of the environmental condition of the Trust Estate and its use, including, but not limited to, conducting any environmental assessment or audit (the scope of which shall be determined in Beneficiary's sole and absolute discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Debtor shall cooperate with and provide access to Beneficiary and any such person or entity designated by Beneficiary. Any such assessment and investigation shall be at Debtor's sole cost and expense.

(f) Debtor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties for, from and against any and all Losses (excluding Losses suffered by an Indemnified Party directly arising out of such Indemnified Party's gross negligence or willful misconduct) and costs of Remediation (whether or not performed voluntarily), engineers' fees, environmental consultants' fees, and costs of investigation (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) imposed upon or incurred by or asserted against any Indemnified Parties, and directly or indirectly arising out of or in any way relating to any one or more of the following: (i) any presence of any Hazardous Materials, Regulated Substances or USTs in, on, above, or under the Trust Estate; (ii) any past, present or Threatened Release in, on, above, under or from the Trust Estate; (iii) any activity by Debtor, any person or entity affiliated with Debtor or any tenant or other user of the Trust Estate in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the

Trust Estate of any Hazardous Materials, Regulated Substances or USTs at any time located in, under, on or above the Trust Estate; (iv) any activity by Debtor, any person or entity affiliated with Debtor or any tenant or other user of the Trust Estate in connection with any actual or proposed Remediation of any Hazardous Materials, Regulated Substances or USTs at any time located in, under, on or above the Trust Estate, whether or not such Remediation is voluntary or pursuant to court or administrative order, including but not limited to any removal, remedial or corrective action; (v) any past, present or threatened non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Trust Estate or operations thereon, including but not limited to any failure by Debtor, any person or entity affiliated with Debtor or any tenant or other user of the Trust Estate to comply with any order of any Governmental Authority in connection with any Environmental Laws; (vi) the imposition, recording or filing or the threatened imposition, recording or filing of any Environmental Lien encumbering the Trust Estate; (vii) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in this Section; (viii) any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Trust Estate, including but not limited to costs to investigate and assess such injury, destruction or loss; (ix) any acts of Debtor or any tenant or user of the Trust Estate in arranging for disposal or treatment, or arranging with a transporter for transport for disposal or treatment, of Hazardous Materials, Regulated Substances or USTs owned or possessed by Debtor or such tenant or user, at any facility or incineration vessel owned or operated by another person or entity and containing such or similar Hazardous Materials, Regulated Substances or USTs; (x) any acts of Debtor or any tenant or user of the Trust Estate, in accepting any Hazardous Materials, Regulated Substances or USTs for transport to disposal or treatment facilities, incineration vessels or sites selected by Debtor or such tenant or user, from which there is a Release, or a Threatened Release of any Hazardous Material, Regulated Substance or UST which causes the incurrence of costs for Remediation; (xi) any personal injury, wrongful death, or property damage arising under any statutory or common law or tort law theory, including but not limited to damages assessed for the maintenance of a private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Trust Estate; and (xii) any misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations pursuant to this Section.

(g) The obligations of Debtor and the rights and remedies of Beneficiary set forth in this Section are independent from those of Debtor pursuant to the Environmental Indemnity Agreement. Furthermore, such obligations of Debtor and rights and remedies of Beneficiary shall survive the termination, expiration and/or release of the Loan Agreement, the Other Agreements, the Note, the Additional Notes, the other Loan Documents, the Environmental Indemnity Agreement and/or the judicial or nonjudicial foreclosure of this Deed of Trust by Beneficiary or the delivery of a deed-in-lieu of foreclosure for the Premises by Debtor to Beneficiary.

Section 3.08. *Alterations and Improvements.* Debtor shall not alter the exterior, structural, plumbing or electrical elements of the Trust Estate in any manner without the consent of Beneficiary, which consent shall not be unreasonably withheld or conditioned; provided,

however, Debtor may undertake nonstructural alterations to the Trust Estate costing less than \$50,000 without Beneficiary's consent. If Beneficiary's consent is required hereunder and Beneficiary consents to the making of any such alterations, the same shall be made by Debtor at Debtor's sole expense by a licensed contractor and according to plans and specifications approved by Beneficiary and subject to such other conditions as Beneficiary shall require. Any work at any time commenced by Debtor on the Trust Estate 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, Debtor shall promptly provide Beneficiary 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 Beneficiary.

Section 3.09. *After-Acquired Property.* All right, title and interest of Debtor in and to all improvements, alterations, substitutions, restorations and replacements of, and all additions and appurtenances to, the Trust Estate, hereafter acquired by or released to Debtor, immediately upon such acquisition or release and without any further granting by Debtor, shall become part of the Trust Estate and shall be subject to the lien hereof fully, completely and with the same effect as though now owned by Debtor and specifically described in the Granting Clauses hereof. Debtor shall execute and deliver to Trustee and/or Beneficiary any further assurances, mortgages, grants, conveyances or assignments thereof as the Trustee may reasonably require to subject the same to the lien hereof.

Section 3.10. *Taxes.* (a) Debtor shall do or cause to be done everything necessary to preserve the lien hereof without expense to Trustee and Beneficiary, including, without limitation, paying and discharging or causing to be paid and discharged, whether or not payable directly by Debtor 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 Debtor, the Trust Estate, 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 Debtor, the Trust Estate or the Rents, (iii) all lawful claims and demands of mechanics, laborers, materialmen and others which, if unpaid, might create a lien on the Trust Estate, or on the Rents, unless Debtor shall contest the amount or validity thereof in accordance with subsection (b).

(b) Debtor may, at its own expense, contest or cause to be contested (in the case of any item involving more than \$1000.00, after prior written notice to Beneficiary and Trustee), 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) such proceeding shall suspend the collection thereof from the Trust Estate or any interest therein, (ii) neither the Trust Estate nor any interest therein would be in any danger

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

Section 3.11. **Insurance.** (a) Debtor shall maintain with respect to the Trust Estate, 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 Beneficiary 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 are 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 Beneficiary may reasonably require, insuring the Trust Estate for not less than 100% of their full insurable replacement cost.

(ii) Comprehensive general liability and property damage insurance, including a products liability clause, covering Beneficiary, Franchise Finance, and Debtor 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 Trust Estate or adjoining ways, streets or sidewalks and, if applicable, insurance covering Beneficiary and Franchise Finance, 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 Debtor's obligations under Section 7.16 hereof to the extent insurable, and a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of either Debtor, Beneficiary or Franchise Finance because of the negligence or other acts of the other, shall be in amounts of not less than \$1,000,000.00 per injury and occurrence with respect to any insured liability, whether for personal injury or property damage, or such higher limits as Beneficiary may reasonably require from time to time, and shall be of form and substance satisfactory to Beneficiary.

(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 Beneficiary 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 Beneficiary or Franchise Finance, their employees and agents and provide that such insurance cannot be unreasonably cancelled, invalidated or suspended on account of the conduct of Debtor, 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 Beneficiary or Franchise Finance and that the insurance policy shall not be brought into contribution with insurance maintained by Beneficiary or Franchise Finance;

(iii) Contain a standard without contribution mortgage clause endorsement in favor of Beneficiary and Franchise Finance and any other lender designated by Beneficiary;

(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 Beneficiary, Franchise Finance 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 Beneficiary 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 Beneficiary; and

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

It is expressly understood and agreed that the foregoing minimum limits of insurance coverage shall not limit the liability of Debtor for its acts or omissions as provided in this Deed of Trust. All insurance policies (with the exception of worker's compensation insurance to the extent not available under statutory law) shall designate Beneficiary and Franchise Finance 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 Beneficiary or Franchise Finance, shall serve as excess coverage. Debtor shall procure policies for all insurance for periods of not less than one year and shall provide to Beneficiary certificates of insurance or, upon Beneficiary's request, duplicate originals of insurance policies evidencing that insurance satisfying the requirements of this Deed of Trust is in effect at all times.

Section 3.12. *Impound Account.* Upon the occurrence of an Event of Default under this Deed of Trust or any other Loan Document, Beneficiary may require Debtor to pay to Beneficiary 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, Beneficiary will estimate the amounts needed for such purposes and will notify Debtor to pay the same to Beneficiary 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, Debtor shall pay the same to Beneficiary on demand. Debtor shall advise Beneficiary of all taxes and insurance bills which are due and shall cooperate fully with Beneficiary in assuring that the same are paid. Beneficiary 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 Beneficiary. Interest or other gains from such funds, if any, shall be the sole property of Beneficiary. Upon the occurrence of an Event of Default, Beneficiary may apply all impounded funds against any sums due from Debtor to Beneficiary. Beneficiary shall give to Debtor an annual accounting showing all credits and debits to and from such impounded funds received from Debtor.

Section 3.13. *Advances by Trustee and Beneficiary.* Trustee and Beneficiary may make advances to perform any of the covenants contained in this Deed of Trust on Debtor's behalf, and all sums so advanced shall be secured hereby prior to the Note. Debtor 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.

Section 3.14. *Negative Covenants.* Debtor agrees that Debtor shall not, without the prior written consent of Beneficiary, sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Trust Estate or any part thereof or permit the Trust Estate or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred, other than 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 Debtor agrees to sell the Trust Estate or any part thereof for a price to be paid in installments; (b) an agreement by Debtor leasing all or any part of the Trust Estate or a sale, assignment or other transfer of, or the grant of a security interest in, Debtor's right, title and interest in and to any Lease or any Rents; (c) if Debtor, any Guarantor, or any general or limited partner or member of Debtor or any Guarantor is a corporation, any merger by or with such corporation, or the voluntary or involuntary sale, conveyance, transfer or pledge of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; (d) if Debtor, any Guarantor or any general or limited partner or any member of Debtor or any Guarantor is a limited or general partnership or joint venture, the change, removal or resignation of a general partner, limited partner or managing partner or the transfer or pledge of the partnership interest of any general partner, limited partner or managing partner or any profits or proceeds relating to such partnership interest; and (e) if Debtor, any Guarantor or any general or limited partner or member of Debtor or any Guarantor is a limited liability company, the change, removal or resignation of a managing member or the transfer of

the membership interest of any managing member or any profits or proceeds relating to such membership interest. Notwithstanding the foregoing, a transfer by devise or descent or by operation of law upon the death of a member, partner or stockholder of Debtor, any Guarantor or any general or limited partner or member thereof shall not be deemed to be a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer within the meaning of this Section.

Beneficiary reserves the right to condition the consent required hereunder upon a modification of the terms hereof and on assumption of the Note, this Deed of Trust and the other Loan Documents as so modified by the proposed transferee, payment of a transfer fee equal to one percent (1%) of the principal balance of the Note and all of Beneficiary's expenses incurred in connection with such transfer, the approval by a rating agency selected by Beneficiary of the proposed transferee, the proposed transferee's continued compliance with the covenants set forth in this Deed of Trust, or such other conditions as Beneficiary shall determine in its sole discretion to be in the interest of Beneficiary. Beneficiary shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Obligations immediately due and payable upon Debtor's sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Trust Estate without Beneficiary's consent, as required hereunder. The provisions of this Section shall apply to every sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Trust Estate regardless of whether voluntary or not, or whether or not Beneficiary has consented to any previous sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Trust Estate.

Section 3.15. **Financial Statements.** Within 45 days after the end of each fiscal quarter and within 120 days after the end of each fiscal year of Debtor, Debtor shall deliver to Beneficiary (i) complete financial statements of Debtor including a balance sheet, profit and loss statement, statement of cash flows and all other related schedules for the fiscal period then ended; (ii) income statements for the business at the Trust Estate, and (iii) such other financial information as Beneficiary may reasonably request in order to establish the compliance of Debtor with the financial covenants in the Loan Documents, including, without limitation, Section 7 of the Loan Agreement. All such financial statements shall be prepared in accordance with generally accepted accounting principles, consistently applied from period to period, and shall be certified to be accurate and complete by Debtor (or the Treasurer or other appropriate officer of Debtor). Debtor understands that Beneficiary is relying upon such financial statements and Debtor represents that such reliance is reasonable. In the event that Debtor's property and business at the Trust Estate is ordinarily consolidated with other business for financial statement purposes, such financial statements shall be prepared on a consolidated basis showing separately the sales, profits and losses, assets and liabilities pertaining to the Trust Estate with the basis for allocation of overhead of other charges being clearly set forth. The financial statements delivered to Beneficiary need not be audited, but Debtor shall deliver to Beneficiary copies of any audited financial statements of Debtor which may be prepared, as soon as they are available.

Section 3.16. *Franchisor Requirements.* In addition to the requirements set forth in this Deed of Trust, Debtor, in its ownership, use, occupancy and maintenance of the Trust Estate shall comply with all requirements of its franchise, license and/or area development agreement with Franchisor relating to the Trust Estate. Debtor hereby consents to Beneficiary providing information it obtains to Franchisor and to Beneficiary obtaining from Franchisor information which Franchisor receives relating to Debtor's operation of its business on the Premises.

Section 3.17. *Testing.* (a) At its sole cost and expense, Debtor shall have the Trust Estate inspected as may be required by any Environmental Law for seepage, spillage and other environmental concerns. Debtor shall maintain and monitor the USTs in accordance with all Environmental Laws. Debtor shall provide Beneficiary with written certified results of all inspections performed on the Trust Estate. 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 Debtor. All inspections and tests performed on the Premises shall be in compliance with all Environmental Laws.

(b) Debtor shall comply or cause the compliance with all applicable federal, state and local regulations and requirements regarding USTs including, without limitation, any of such regulations or requirements which impose (i) technical standards, including, without limitation, performance, leak prevention, leak detection, notification reporting and record keeping, (ii) corrective action with respect to confirmed and suspected Releases, and (iii) financial responsibility for the payment of costs and corrective action and compensation to third parties for injury and damage resulting from Releases. Debtor shall immediately notify Beneficiary, in writing, of (i) the presence on or under the Trust Estate or the escape, seepage, leakage, spillage, discharge, emission or release from any USTs on, above or under the Premises, of any Hazardous Materials or Regulated Substances, apparent or real and (ii) 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.

(c) Upon any such Release, escape, seepage, leakage, spillage, discharge, emission or release from any USTs on, above or under the Premises, of any Hazardous Materials or Regulated Substances, Debtor shall immediately remedy such situation in accordance with all Environmental Laws and any request of Beneficiary. Should Debtor fail to remedy or cause the remedy of such situation in accordance with all Environmental Laws, Beneficiary 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 Debtor.

ARTICLE IV

POSSESSION, USE AND RELEASE OF THE TRUST ESTATE

Section 4.01. *Casualty or Condemnation.* Debtor, immediately upon obtaining knowledge of any casualty to any portion of the Trust Estate or of any proceeding or negotiation for the taking of all or any portion of the Trust Estate in condemnation or other eminent domain proceedings, shall notify Beneficiary 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. Trustee and Beneficiary may participate in any condemnation or eminent domain proceeding, and Debtor will deliver or cause to be delivered to Trustee and Beneficiary all instruments requested by Trustee and Beneficiary to permit such participation.

(a) *Casualty.* (i) In the event of any material damage to or destruction of the Trust Estate or any part thereof, Debtor will promptly give written notice to Beneficiary, generally describing the nature and extent of such damage or destruction. No damage to or destruction of the Trust Estate shall relieve Debtor 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 Trust Estate or any part thereof, Debtor, whether or not the insurance 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) Insurance proceeds received by Beneficiary and Debtor on account of any occurrence of damage to or destruction of the Trust Estate or any part thereof, less the costs, fees and expenses incurred by Beneficiary and Debtor 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) Debtor, if the amount of such Net Insurance Proceeds is less than \$50,000 and applied by Debtor toward the cost of the Restoration, and (2) Beneficiary, if the amount of such Net Insurance Proceeds is \$50,000 or greater. Net Insurance Proceeds paid to Beneficiary shall be held and disbursed by Beneficiary, or as Beneficiary may from time to time direct, as the Restoration progresses, to pay or reimburse Debtor for the cost of the Restoration, upon written request of Debtor accompanied by evidence, satisfactory to Beneficiary, that (v) the Restoration is in full compliance with all applicable laws, regulations, restrictions and requirements, whether governmental or private, (w) the amount requested has been paid or is then due and payable and is properly a part of such cost, (x) there are no mechanics' or similar liens for labor or materials theretofore supplied in connection with the Restoration, (y) if the estimated cost of the Restoration exceeds the Net Insurance Proceeds, Debtor has deposited into an escrow satisfactory to Beneficiary such excess amount, which sum will be disbursed pursuant to escrow instructions satisfactory to Beneficiary, and (z) the balance of such Net Insurance Proceeds, together with the funds deposited into escrow, if any, pursuant to the preceding subsection (y), after making the payment requested will be sufficient to pay the balance of the cost of the Restoration. Upon receipt by Beneficiary of evidence 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 Debtor. If an Event of Default has occurred and is continuing at the time of the damage or destruction to the Trust Estate or at any time thereafter, all Net Insurance Proceeds shall be paid to Beneficiary, and

Beneficiary 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 Beneficiary in its discretion shall deem proper, or to cure such Event of Default, or, in Beneficiary's discretion, Beneficiary may pay such Net Insurance Proceeds in whole or in part to Debtor to be applied toward the cost of the Restoration. If Beneficiary 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 Beneficiary and actually applied by Beneficiary in reduction of the Obligations.

(b) *Eminent Domain.* (i) In case of a taking of all or any part of the Trust Estate 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 Beneficiary, Debtor and those authorized to exercise such right ("Taking"), Debtor will promptly give written notice thereof to Beneficiary, generally describing the nature and extent of such Taking. Beneficiary shall file and prosecute on behalf of Beneficiary and Debtor any and all claims for an award, and all awards and other payments on account of a Taking shall be paid to Beneficiary.

(ii) In case of a Taking of the whole of the Trust Estate, other than for temporary use ("Total Taking"), or in case of a Taking of less than all of the Trust Estate ("Partial Taking"), the Loan Documents shall remain in full force and effect. In the case of a Partial Taking, Debtor, whether or not the awards or payments, if any, on account of such Partial Taking shall be sufficient for the purpose (but provided they are made available by Beneficiary 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 Trust Estate as shall result in the Trust Estate 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 Trust Estate 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, Beneficiary shall have the right to intervene and participate; provided that, if such intervention shall not be permitted, Debtor shall consult with Beneficiary, its attorneys and experts, and make all reasonable efforts to cooperate with Beneficiary in the prosecution or defense of such proceeding. At the termination of any such use or occupation of the Trust Estate, Debtor will, at its own cost and expense, promptly commence and complete the Restoration.

(iv) Awards and other payments on account of a Taking, less the costs, fees and expenses incurred by Beneficiary and Debtor in connection with the collection thereof, including, without limitation, attorneys' fees and expenses, shall be applied as follows:

(x) Net awards and payments received on account of a Total Taking shall be allocated as follows:

(aa) There shall be paid to the Beneficiary an amount up to the sum of the outstanding principal, including all sums advanced by Beneficiary hereunder, and interest 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 Beneficiary 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.

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

(y) Net awards and payments received on account of a Partial Taking shall be held and allocated as follows: (i) 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; (ii) there shall be paid to Beneficiary, as the holder of this Deed of Trust, an amount equal to that portion of any unpaid principal amount of the Note, and any interest accrued thereon, bearing the same relationship to the total unpaid principal amount of the Note, and any interest accrued thereon, all as of the date on which such payment is made, as the square footage in the Trust Estate taken on account of such Partial Taking, bears to the total square footage in the Trust Estate prior to such Partial Taking, and such amount shall be applied against the unpaid principal amount of the Note; and (iii) any remaining balance shall be paid to Debtor.

(z) Net awards and payments received on account of a Taking for temporary use shall be held by Beneficiary 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 Trust Estate, 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 Debtor.

(v) Notwithstanding the foregoing, if at the time of any Taking or at any time thereafter an Event of Default shall have occurred under the Loan Documents, Beneficiary is hereby authorized and empowered, in the name and on behalf of Debtor and otherwise, to file and prosecute Debtor'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 Beneficiary in its discretion shall deem proper, or to cure such Event of Default, or, in Beneficiary's discretion, Beneficiary may pay the Net Award in whole or in part to Debtor to be applied toward the cost of the Restoration. If Beneficiary 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 Beneficiary and actually applied by Beneficiary 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, Debtor may, from time to time with respect to its interest in the Trust Estate, and with Beneficiary'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 Trust Estate, (iv) dedicate or transfer unimproved portions of the Trust Estate for road, highway or other public purposes, (v) execute petitions to have the Trust Estate 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. *Beneficiary's Power.* At any time, or from time to time, without liability therefor, Beneficiary, 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 Trust Estate, may from time to time without notice (i) release any part of said Trust Estate, (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 Debtor fails to do so, and all amounts so advanced shall be secured hereby and shall be due and payable upon demand by Beneficiary.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

Section 5.01. *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 representation or warranty of Debtor set forth in any of the Loan Documents is false in any material respect, or if Debtor renders any false statement or account.

(ii) If any principal, interest or other monetary sum due under the Note, this Deed of Trust, the Additional Notes or any other Loan Document is not paid within five days from the date when due; provided, however, notwithstanding the occurrence of such an Event of Default, Beneficiary shall not be entitled to exercise its remedies set forth in Section 5.02 below unless and until Beneficiary shall have given Debtor notice thereof and a

period of five days from the delivery of such notice shall have elapsed without such Event of Default being cured.

(iii) If Debtor 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 Trust Estate pursuant to Applicable Regulations.

(iv) If Debtor becomes insolvent within the meaning of the Code, files or notifies Beneficiary that it intends to file a petition under the Code, initiates a proceeding under any similar law or statute relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts (collectively, hereinafter, an "Action"), becomes the subject of either a petition under the Code or an Action, or is not generally paying its debts as the same become due.

(v) If Debtor 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 property of Beneficiary in immediate jeopardy, and is within the reasonable power of Debtor to promptly cure after receipt of notice thereof, all as determined by Beneficiary in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Beneficiary shall have given Debtor notice thereof and a period of 30 days shall have elapsed, during which period Debtor 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 Beneficiary in its reasonable discretion, and Debtor is diligently pursuing a cure of such failure, then Debtor 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 Beneficiary. If Debtor 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.

(vi) If there is an "Event of Default" under any other Loan Document or a breach or default, after the passage of all applicable notice and cure or grace periods, under any of the Other Agreements.

(vii) If there is a breach or default under any franchise, license and/or area development agreement with Franchisor with respect to the Premises or if such franchise, license and/or area development agreement terminates or expires prior to the payment in full of the Note in accordance with its terms and a substitute agreement for the terminated or expired agreement is not entered into prior to such expiration or termination, which substitute agreement shall be in form and substance reasonably satisfactory to Beneficiary.

(viii) If a final, nonappealable judgment is rendered by a court against Debtor which has a material adverse effect on the ability to conduct business at the Trust Estate for

its intended use, or which does not have a material adverse effect on the ability to conduct business at the Trust Estate for its intended use but which is in the amount of \$100,000 or more, and in either event is not discharged or provision made for such discharge within 60 days from the date of entry thereof.

Section 5.02. *Remedies.* Upon the occurrence of an Event of Default subject to the limitations set forth in Section 5.01, Beneficiary 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 of an Event of Default, Beneficiary 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 Trust Estate or any part thereof and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, 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 Beneficiary may determine. The entering upon and taking possession of the Trust Estate, 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 Trust Estate or the collection, receipt and application of Rents, Beneficiary 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, specifically enforce any of the covenants hereof or sell Debtor's interest in the Trust Estate pursuant to the power of sale herein conferred;

(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 Debtor and all others claiming under Debtor, 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 Debtor in respect of the Personal Property or any part thereof. In the event Beneficiary demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Documents, Debtor

promises and agrees to promptly turn over and deliver complete possession thereof to Beneficiary;

(2) Without notice to or demand upon Debtor, make such payments and do such acts as Beneficiary 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 Debtor to assemble the Personal Property or any portion thereof, at the Premises, and promptly to deliver such Personal Property to Beneficiary, or an agent or representative designated by it. Beneficiary, and its agents and representatives, shall have the right to enter upon any or all of Debtor's premises and property to exercise Beneficiary'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 Beneficiary may determine. Beneficiary 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, Beneficiary shall give Debtor 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 Debtor 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 Trust Estate 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 Trust Estate 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) Apply any sums then deposited in the impound account described in Section 3.12 toward payment of the taxes, assessment and insurance premiums for the Trust Estate and/or as a credit on the Obligations in such priority and proportion as Beneficiary may determine in its sole discretion; and

(v) If held by Beneficiary, surrender the insurance policies maintained pursuant to Section 3.11, collect the unearned insurance premiums and apply such sums as a credit on

the Obligations in such priority and proportion as Beneficiary in its sole discretion shall deem proper, and in connection therewith, Debtor hereby appoints Beneficiary as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Beneficiary to collect such insurance premiums.

If Beneficiary elects to sell Debtor's interest in the Trust Estate by exercise of the power of sale herein contained, Beneficiary shall notify Trustee in the manner then required by law.

(a) Upon receipt of such notice from Beneficiary and at the direction of Beneficiary, 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 Beneficiary and without demand on Debtor, 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 Debtor's interest in the Trust Estate at the time and place of sale fixed by it in such notice of sale, either as a whole, or in separate lots or parcels or items as Beneficiary 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, Debtor, Trustee or Beneficiary, may purchase at such sale. Trustee or Beneficiary may sell not only the real property but also the Personal Property and other interests which are a part of the Trust Estate, or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Trust Estate separately from the remainder of the Trust Estate. Trustee or Beneficiary shall not be required to take possession of any part of the Trust Estate or to have any of the Personal Property present at any sale of the Trust Estate. Beneficiary or Trustee 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 Beneficiary, including the posting of notices and the conduct of sale, but in the name and on behalf of Beneficiary. In the event any sale hereunder is not completed or is defective in the opinion of Trustee or Beneficiary, such sale shall not exhaust the power of sale hereunder, and Trustee or Beneficiary shall have the right to cause a subsequent sale or sales to be made hereunder.

(b) As may be permitted by law, after deducting all costs, fees and expenses of Trustee and of this Trust, including costs of evidence of title in connection with sale, Trustee or Beneficiary shall apply the proceeds of sale (i) first, to payment of all costs, fees and expenses, including attorneys' fees and expenses incurred by the Beneficiary 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, the Additional Notes and the amounts due and owing to Beneficiary under this Deed of Trust) in such manner and order as Beneficiary may elect,

and (iii) third, the remainder, if any, shall be paid to Debtor, or to Debtor'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 Trust Estate.

Section 5.03. *Appointment of Receiver.* If an Event of Default shall have occurred, Beneficiary, as a matter of right and without notice to Debtor or anyone claiming under Debtor, and without regard to the then value of the Trust Estate or the interest of Debtor therein, or the insolvency of Debtor or the then-owner of the Trust Estate, may seek the appointment of a receiver for the Trust Estate upon *ex parte* application to any court of the competent jurisdiction. Debtor 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 Trust Estate and any businesses conducted by Debtor thereon and any business assets used in connection therewith, (b) to exclude Debtor and Debtor's agents, servants and employees from the Trust Estate, 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 Trust Estate, (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 Trust Estate, (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 Trust Estate and replace such items at the expense of the receivership estate, (h) to pay all taxes and assessments against the Trust Estate, 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 Beneficiary 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 Beneficiary, but not in excess of the Default Rate (as defined in the Note), and (j) generally to do anything that Debtor could legally do if Debtor were in possession of the Trust Estate. 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 Beneficiary, 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 5.04. *Remedies Not Exclusive.* Beneficiary 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 Beneficiary's right to realize upon or enforce any other security now or hereafter held by Beneficiary, it being agreed that Beneficiary shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary in such order and manner as it may in its

absolute discretion determine. No remedy herein conferred upon or reserved to Beneficiary 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 Beneficiary, or to which Beneficiary may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Beneficiary. Beneficiary may pursue inconsistent remedies.

The acceptance by Beneficiary 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 Beneficiary 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 Debtor to pay the entire sum then due, and failure of Debtor to pay such entire sum then due as contemplated by Section 5.01(ii) shall be an Event of Default, notwithstanding such acceptance of such amount on account, as aforesaid. Beneficiary or Trustee shall be, at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Beneficiary 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 Beneficiary to any action or inaction of Debtor which is subject to consent or approval of Beneficiary hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions or inactions.

Section 5.05. Possession of Trust Estate. In the event of a trustee's sale or foreclosure sale hereunder and after the time of such sale, Debtor occupies the portion of the Trust Estate so sold, or any part thereof, Debtor 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 Trust Estate 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 Trust Estate; 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 Beneficiary or Trustee as a "mortgagee in possession" in the absence of its taking actual possession of the Trust Estate pursuant to the powers granted herein.

Section 5.06. Waiver of Rights. Debtor waives the benefit of all laws now existing or that hereafter may be enacted (i) providing for any appraisalment before sale of any portion of the Trust Estate, 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. Debtor agrees that Debtor 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 appraisalment, valuation, stay, extension, redemption or homestead exemption, and Debtor, for Debtor, Debtor's

representatives, successors and assigns, and for any and all persons ever claiming any interest in the Trust Estate, 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 Debtor, Debtor'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. Debtor expressly waives and relinquishes any and all rights, remedies and defenses that Debtor 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 5.07. *Relief From Stay.* In the event that Debtor 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, Beneficiary shall thereupon be entitled and Debtor 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 Beneficiary as provided in the Loan Documents and Debtor hereby irrevocably waives its rights to object to such relief. In the event Debtor 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, Debtor hereby agrees that no injunctive relief against Beneficiary shall be sought under Section 105 or other provisions of the Code by Debtor or other person or entity claiming through Debtor, nor shall any extension be sought of the stay provided by Section 362 of the Code.

Section 5.08. *Cash Collateral.* Debtor hereby acknowledges and agrees that in the event that Debtor 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 Debtor 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 Beneficiary as that term is defined in Section 363 of the Code; and (iv) that Beneficiary has valid, effective, perfected, enforceable and "choate" rights in and to the Rents without any further action required on the part of Beneficiary to enforce or perfect its rights in and to such cash collateral, including, without limitation, providing notice to Debtor under Section 546(b) of the Code.

Section 5.09. *Assignment of Rents and Leases.* (a) Debtor hereby assigns, transfers, conveys and sets over to Beneficiary all of Debtor'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 Debtor 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. Debtor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of

Beneficiary, at any time and from time to time upon an Event of Default, to take possession and control of the Premises, pursuant to Debtor's rights under the Leases, to exercise any of Debtor'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 Debtor or Beneficiary, 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 Beneficiary for all losses, costs, damages, fees and expenses whatsoever associated with the exercise of this power of attorney, and Debtor hereby releases Beneficiary from all liability (other than as a result of the gross negligence or willful misconduct of Beneficiary) whatsoever for the exercise of the foregoing power of attorney and all actions taken pursuant thereto. The consideration received by Debtor 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 Debtor. It is intended by Debtor and Beneficiary that the assignment set forth herein constitutes an absolute assignment and not merely an assignment for additional security. Notwithstanding the foregoing, this assignment shall not be construed to bind Beneficiary to the performance of any of the covenants, conditions or provisions of Debtor contained in the Leases or otherwise to impose any obligation upon Beneficiary, and, so long as there is no Event of Default, Debtor 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 any Event of Default, Beneficiary 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 Beneficiary'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 Beneficiary's or Debtor's name, sue 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. Beneficiary may so sue for or otherwise collect such Rents with or without taking possession of the Premises. Debtor agrees that upon an Event of Default, each tenant of the Premises shall make its rent payable to and pay such rent to Beneficiary (or Beneficiary's agents) on Beneficiary'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 Debtor.

(c) Rents collected subsequent to any Event of Default shall be applied at the direction of, and in such order as determined by, Beneficiary 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 Debtor with respect to the Leases and to the sums secured by this Deed of Trust. Beneficiary 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) Beneficiary shall not be liable to Debtor, anyone claiming under or through Debtor or anyone having an interest in the Premises by reason of anything done or left undone by Beneficiary hereunder, except to the extent of Beneficiary's gross negligence or willful misconduct.

(e) Any entering upon and taking possession and control of the Premises by Beneficiary 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 Beneficiary under applicable law or provided therein.

ARTICLE VI

THE TRUSTEE

Section 6.01. *Rights and Obligations of Trustee.* Trustee accepts the trusts hereby created and agrees to perform its duties herein for the benefit of Beneficiary.

Section 6.02. *Resignation of Trustee.* Trustee may resign and be discharged of the trusts by giving notice thereof to the holder of the Note and Debtor (or any subsequent owner of Debtor'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 6.03.

Section 6.03. *Successor Trustee.* (a) Trustee may be removed at any time by notice from the holder of the Note. 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 Debtor may appoint a successor trustee to act until such successor shall be so appointed. Debtor shall notify the holder of the Note of any such appointment by Debtor, but any successor trustee so appointed by Debtor 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 Debtor (or any subsequent owner of Debtor'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 Debtor, 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 6.04. *Separate and Co-Trustees.* (a) If it deems such to be necessary or prudent, Trustee shall have the power to appoint one or more persons to act as separate trustees or co-trustees, jointly with Trustee, of any of the property subject to the lien hereof, and any such person shall be such separate trustee or co-trustee, with such powers and duties as shall be specified in such instrument.

(b) Such separate trustee or co-trustee, upon acceptance of such trust, shall be vested with the estates or property specified in such instrument, either jointly with Trustee, or separately as may be provided therein, such to all the trusts, conditions and provisions of Deed of Trust; and every such instrument shall be filed with Trustee.

Section 6.05. *Liability of Trustee.* No trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

Section 6.06. *Payment of Trustee's Compensation.* Debtor 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 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 Debtor shall pay or cause to be paid (provided such payment is permitted or required by the Note and the Additional Notes) the full amount thereof and shall also pay or cause to be paid all other sums payable by the Debtor Entities to the Beneficiary 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 Beneficiary 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 Debtor'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 Debtor, Trustee, Environmental Insurer 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 Note 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 Debtor:

Mr. Noel R. Cook
President
Tri-Valley Distributing, Inc.
1690 South Highway 40
Heber City, UT 84032
Telephone:
Telecopy:

If to Beneficiary:

Dennis L. Ruben, Esq.
Executive Vice President and General Counsel
FFCA Acquisition Corporation
17207 North Perimeter Drive
Scottsdale, AZ 85255
Telephone: (602) 585-4500
Telecopy: (602) 585-2226

If to Trustee:

Telephone:

Telecopy:

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 Debtor, Beneficiary and Trustee 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. **Counterparts.** This Deed of Trust may be executed in any number of counterparts and each thereof shall be deemed to be an original; and all such counterparts shall constitute but one and the same instrument.

Section 7.06. **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 7.07. **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 7.08. **Security Agreement.** With respect to the Personal Property or any portion of the Trust Estate which constitutes fixtures or other property governed by the UCC, this Deed of Trust shall constitute a security agreement between Debtor, as the debtor and Beneficiary, as the secured party, and Debtor hereby grants to Beneficiary a security interest in such portion of the Trust Estate. Cumulative of all other rights of Beneficiary hereunder, Beneficiary shall have all of the rights conferred upon secured parties by the UCC. Debtor will execute and deliver to Beneficiary all financing statements that may from time to time be required by Beneficiary to establish and maintain the validity and priority of the security interest of Beneficiary, or any modification thereof, and all costs and expenses of any searches required by Beneficiary. Beneficiary may exercise any or all of the remedies of a secured party available to it under the UCC with respect to such property, and it is expressly agreed that if upon an Event of Default Beneficiary should proceed to dispose of such property in accordance with the provisions of the UCC, 10 days' notice by Beneficiary to Debtor shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Beneficiary may at its option dispose of such property in accordance with Beneficiary'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.

Debtor shall give advance notice in writing to Beneficiary of any proposed change in Debtor's name, identity, or business form or structure and will execute and deliver to Beneficiary, prior to or concurrently with the occurrence of any such change, all additional financing statements that Beneficiary may require to establish and maintain the validity and priority of Beneficiary's security interest with respect to any of the Trust Estate described or referred to herein.

Section 7.09. *Effective as a Financing Statement.* This Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Trust Estate and is to be filed for record in the real estate records of each county where any part of the Trust Estate (including said fixtures) is situated. This Deed of Trust shall also be effective as a financing statement covering any other Trust Estate and may be filed in any other appropriate filing or recording office. The mailing address of Debtor is the address of Debtor set forth in the introductory paragraph of this Deed of Trust, and the address of the Beneficiary from which information concerning the security interests hereunder may be obtained is the address of Beneficiary 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.

Section 7.10. *Characterization; Interpretation.* It is the intent of the parties hereto that the business relationship created by the Note, this Deed of Trust and the other Loan Documents is solely that of creditor and debtor and has been entered into by both parties in reliance upon the economic and legal bargains contained in the Loan Documents. None of the agreements contained in the Loan Documents is intended, nor shall the same be deemed or construed, to create a partnership between Beneficiary and Debtor, to make them joint venturers, to make Debtor an agent, legal representative, partner, subsidiary or employee of Beneficiary, nor to make Beneficiary in any way responsible for the debts, obligations or losses of Debtor. Debtor acknowledges that Beneficiary and Franchisor are not affiliates, agents, partners or joint venturers, nor do they have any other legal, representative or fiduciary relationship.

Beneficiary and Debtor acknowledge and warrant to each other that each has been represented by independent counsel and has executed this Deed of Trust after being fully advised by said counsel as to its effect and significance. This Deed of Trust shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party.

Section 7.11. *Time of the Essence.* Time is of the essence in the performance of each and every obligation under this Deed of Trust.

Section 7.12. **Document Review.** In the event Debtor makes any request upon Beneficiary requiring Beneficiary or its attorneys to review and/or prepare (or cause to be reviewed and/or prepared) any document or documents in connection with or arising out of or as a result of this Deed of Trust, then, except as expressly stated elsewhere herein, Debtor shall reimburse Beneficiary or its designee promptly upon Beneficiary's demand therefor a reasonable processing and reviewing fee in an amount not less than \$500.00 for each such request.

Section 7.13. **Estoppel Certificate.** (a) At any time, and from time to time, Debtor agrees, promptly and in no event later than 10 days after a request from Beneficiary, to execute, acknowledge and deliver to Beneficiary a certificate in the form supplied by Beneficiary, certifying: (1) the date to which principal and interest have been paid under the Note and the amount thereof then payable; (2) that no notice has been received by Debtor of any default under this Deed of Trust which has not been cured, except as to defaults specified in the certificate; (3) the capacity of the person executing such certificate, and that such person is duly authorized to execute the same on behalf of Debtor; and (4) any other information reasonably requested by Beneficiary in connection with the Loan Agreement.

(b) If Debtor shall fail or refuse to sign a certificate in accordance with the provisions of this Section within 10 days following a request by Beneficiary, Debtor irrevocably constitutes and appoints Beneficiary as its attorney-in-fact to execute and deliver the certificate to any such third party, it being stipulated that such power of attorney is coupled with an interest and is irrevocable and binding.

Section 7.14. **Limitation of Interest.** Notwithstanding anything to the contrary contained in any of the Loan Documents, the obligations of Debtor to Beneficiary under the Note, this Deed of Trust and any other Loan Documents are subject to the limitation that payments of interest and late charges to Beneficiary shall not be required to the extent that receipt of any such payment by Beneficiary would be contrary to provisions of applicable law limiting the maximum rate of interest that may be charged or collected by Beneficiary. The portion of any such payment received by Beneficiary that is in excess of the maximum interest permitted by such provisions of law shall be credited to the principal balance of the Note or if such excess portion exceeds the outstanding principal balance of the Note, then such excess portion shall be refunded to Debtor. All interest paid or agreed to be paid to Beneficiary shall, to the extent permitted by applicable law, be amortized, prorated, allocated and/or spread throughout the full term of the Note (including, without limitation, the period of any renewal or extension thereof) so that interest for such full term shall not exceed the maximum amount permitted by applicable law.

Section 7.15. **Forum Selection; Jurisdiction; Venue; Choice of Law.** Debtor acknowledges that this Deed of Trust was substantially negotiated in the State of Arizona, this Deed of Trust was delivered in the State of Arizona, all payments under the Loan Documents will be delivered in the State of Arizona and there are substantial contacts between the parties and the transactions contemplated herein and the State of Arizona. 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 Arizona. Debtor consents that it

may be served with any process or paper by registered mail or by personal service within or without the State of Arizona in accordance with applicable law. Furthermore, Debtor 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 Beneficiary with respect to the Trust Estate, 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 principles of conflict 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 Arizona, without regard to its principles of conflicts of law. Nothing in this Section shall limit or restrict the right of Beneficiary to commence any proceeding in the federal or state courts located in the State to the extent Beneficiary deems such proceeding necessary or advisable to exercise remedies available under the Deed of Trust or the other Loan Documents.

Section 7.16. **Indemnification.** Debtor shall indemnify and hold harmless each of the Indemnified Parties for, from and against any and all Losses (excluding Losses suffered by an Indemnified Party arising out of such Indemnified Party's gross negligence or willful misconduct) caused by, incurred or resulting from Debtor's operations of, or relating in any manner to, the Trust Estate, whether relating to its original design or construction, latent defects, alteration, maintenance, use by Debtor 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 Debtor, its officers, employees, agents or other persons. It is expressly understood and agreed that Debtor's obligations under this Section shall survive the expiration or earlier termination of this Deed of Trust for any reason.

Section 7.17. **Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.** BENEFICIARY, BY ACCEPTING THIS DEED OF TRUST, AND DEBTOR 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 BENEFICIARY AND DEBTOR, DEBTOR'S USE OR OCCUPANCY OF THE TRUST ESTATE, 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, DEBTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM BENEFICIARY AND ANY OF BENEFICIARY'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 DEBTOR AGAINST BENEFICIARY OR ANY OF BENEFICIARY'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 DEBTOR OF ANY RIGHT IT 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 7.18. *Transfer of Loan.* Beneficiary may, at any time, sell, transfer or assign the Note, this Deed of Trust and the other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement as contemplated by the Loan Agreement.

Section 7.19. *Reliance by Environmental Insurer.* Debtor acknowledges and agrees that Environmental Insurer may rely on the representations, warranties and covenants set forth in Sections 2.06 and 3.07 of this Deed of Trust, that Environmental Insurer is an intended third-party beneficiary of such representations, warranties and covenants and that Environmental Insurer shall have all rights and remedies available at law or in equity as a result of a breach of such representations, warranties and covenants, including, to the extent applicable, the right of subrogation.

IN WITNESS WHEREOF, Debtor has caused this Deed of Trust to be executed and delivered by its duly authorized officers as of the day and year first above written.

DEBTOR:

TRI-VALLEY DISTRIBUTING, INC., a Utah corporation

By *Noel R. Cook*
Printed Name NOEL R. COOK
Title Pres.

Taxpayer Identification Number:

529-46-6181

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me on February 26, 1999
by Noel R. Cook of Tri-Valley Distributing, Inc., a
Utah corporation, on behalf of the corporation.

Pamela T. Thompson
Notary Public

My Commission Expires:

12-2-2001

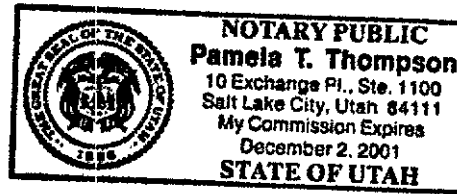


EXHIBIT A

LEGAL DESCRIPTION

The following described tract of land situated in Utah County, State of Utah:

PARCEL #1:

Commencing at a point located South 89 deg. 15' 22" East along the Section line 1808.97 feet and North 669.66 feet from the Southwest corner of Section 2, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence North 00 deg. 08' 10" East partially along a fence line 209.63 feet; thence South 88 deg. 44' 31" East along the Southerly boundary of Center Street 90.16 feet; thence along the arc of a 15.00 foot radius curve to the right 23.19 feet (chord bears South 44 deg. 27' 28" East 20.95 feet); thence South 00 deg. 10' 25" East along the Westerly boundary of 1600 West Street 193.72 feet; thence North 89 deg. 27' 05" West along a fence line, said line also being the Northerly physical boundary of Mount Aire Subdivision, Plat "A", 105.90 feet to the point of beginning.

PARCEL #2:

Commencing at a point located South 89 deg. 15' 22" East along the Section line 1808.97 feet and North 669.66 feet and North 0 deg. 08' 10" East 159.63 feet from the Southwest corner of Section 2, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence North 0 deg. 08' 10" East partially along a fence line 50.00 feet to the South line of Center Street, Provo, Utah; thence North 88 deg. 44' 31" West along the South line of said street 35.00 feet; thence South 34 deg. 29' 07" East 61.592 feet to the point of beginning.