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Prepared by:  
Locke Liddell & Sapp LLP  
Attn: Stanley B. Haas  
3400 Chase Tower  
600 Travis Street  
Houston, Texas 77002  
(713) 226-1247

10-200-0003 thru 0005, 0007 thru 0011  
10-196-0002  
10-196-0001, 0012

Lot 2A Layton Market Center, Amd.  
lots 3A 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

**DEED OF TRUST AND SECURITY AGREEMENT**  
**(With Assignment of Rents)**  
(Chili's Nos. 17, 21 and 38)

STATE OF UTAH

COUNTIES OF DAVIS and SALT LAKE

§ E 1664919 B 2819 P 137  
§ SHERYL L. WHITE, DAVIS CNTY RECORDER  
§ 2001 JUN 1 8:24 AM FEE 108.00 DEP MT  
§ REC'D FOR LOCKE LIDDELL & SAPP LLP

**INTRODUCTION**

This instrument ("Deed of Trust") is a deed of trust from:

SYDRAN FOOD SERVICES III, L.P., a California limited partnership (the "Grantor", "Debtor", "Assignor" and "trustor"), whose address is Bishop Ranch 8, 3000 Executive Parkway, Suite 515, San Ramon, California 94583-4254,

to:

DOUGLAS MATSUMORI, whose address is 400 Deseret Building, 79 South Main Street, Salt Lake City, Utah 84145-0385, as trustee (called the "Trustee")

for the use and benefit of:

THE CHASE MANHATTAN BANK, a New York banking corporation acting as agent for the financial institutions (collectively, the "Lenders") which are now or hereafter become parties to that certain Loan Agreement (as amended, modified, restated and supplemented from time to time, the "Loan Agreement") dated June 29, 2000 among Sydran Services, LLC, a Nevada limited liability company, Lenders and Beneficiary (the "Beneficiary", "Secured Party" and "Assignee"), whose address is 712 Main Street, Houston, Texas 77002, Attention: Manager, Franchise Systems Finance Division,

and is also a security agreement between Debtor and Secured Party and an assignment of rents from Assignor to Assignee.

## WITNESSETH:

**ARTICLE 1**  
**IDENTIFICATION OF THE AFFECTED PROPERTY**  
**AND ITS CONVEYANCE TO THE TRUSTEE**

Section 1.1 **Grantor's Conveyance of the Affected Property to the Trustee to Secure the Debt.** To secure payment of principal, lawful interest and other elements of the Debt described and defined in Article 2, in consideration of the uses and trusts (the "Trust") established and continued by this Deed of Trust and in consideration of \$10 and other valuable consideration paid before delivery of this Deed of Trust by each of Trustee and Beneficiary to Grantor, who hereby acknowledges its receipt and that it is reasonably equivalent value for this Deed of Trust and all other security and rights given by Grantor, Grantor hereby Grants, Bargains, Sells, Conveys, Transfers, Assigns, Sets Over, Confirms, Delivers and Warrants unto the Trustee and to his successors or substitutes in the Trust, the following property (collectively, the "Affected Property"):

(a) **Real Property.** All of Grantor's interest in the real estate, immovable property and premises described or referred to on Exhibit A, together with (i) all of Grantor's leasehold interest in said property, (ii) all of Grantor's estate, right, title and interest in and to all easements and rights-of-way for utilities, ingress or egress to or from said property and (iii) all interests of Grantor in and to all streets, rights-of-way, alleys or strips of land adjoining said property (collectively, the "Real Property").

(b) **Buildings and Improvements.** All of Grantor's interest in any existing and all future buildings on the Real Property and other improvements to it, including all water, sewage and drainage facilities, wells, treatment plants, supply, collection and distribution systems, paving, landscaping and other improvements (collectively, the "Improvements").

(c) **Fixtures, Equipment and Supplies.** All of Grantor's interest in any fixtures, equipment and supplies (the "Fixtures and Equipment") now or hereafter attached to, used, intended or acquired for use for, or in connection with, the construction, maintenance, operation or repair of the Real Property or Improvements, or for the present or future replacement or replenishment of used portions of it, and all related parts, filters and supplies, including, but not limited to, all pumps, storage tanks, hydraulic lifts and release detection devices, heating, lighting, cooling, ventilating, air conditioning, environment control, refrigeration, plumbing, incinerating, water-heating, cooking, pollution control, gas, electric, solar, nuclear, computing, monitoring, measuring, controlling, distributing and other equipment and fixtures, and all component parts of them, all renewals and replacements of them, all substitutions for them and all additions and accessions to them.

(d) **Leases.** All Leases (as such term is defined in Section 9.1 below).

(e) **Utilities.** All of Grantor's interest in any wastewater, fresh water and other utilities capacity and facilities (the "Utilities Capacity") available or allocable to the Real Property and Improvements or dedicated to or reserved for them pursuant to any system, program, contract or other arrangement with any public or private utility, and all related or incidental licenses, rights and interests, whether considered to be real, personal or mixed property, including the right and authority

to transfer or relinquish any or all such rights and the right to any credit, refund, reimbursement or rebate for utilities facilities construction or installation or for any reservation fee, standby fee or capital recovery charge promised, provided or paid for by Grantor or any of Grantor's predecessors or Affiliates (defined below), to the full extent now allocated or allocable to the Real Property or Improvements, plus all additional Utilities Capacity, if any, not dedicated or reserved to the Real Property or Improvements but which is now or hereafter owned or controlled by Grantor or by anyone (an "Affiliate", whether a natural person or an entity) who directly or through one or more intermediaries controls, is controlled by or is under common control with Grantor, to the full extent that such additional Utilities Capacity is necessary to allow development, marketing and use of the Real Property or Improvements for their highest and best use.

(f) **After-acquired Property.** All estate, right, title and interest acquired by Grantor in or to the Real Property, Improvements, Fixtures and Equipment, Leases and Utilities Capacity after execution of this Deed of Trust (including any leasehold interests in and to any of the foregoing which Grantor may hereafter acquire by reason of any assignment to Grantor of any and all lease agreements now or hereafter affecting any of the property described on Exhibit A).

(g) **Appurtenances.** All of Grantor's interest in any and all (present or future) rights and appurtenances (the "Appurtenances") belonging, incident or appertaining to the Real Property, Improvements, Fixtures and Equipment, Leases or Utilities Capacity or any part of them.

(h) **Oil and Gas.** All of Grantor's interest in any existing and future minerals, oil, gas and other hydrocarbon substances in, upon, under or through the Real Property.

(i) **Reversions and Remainders.** All of Grantor's interest in any and all (present or future) rights and estates in reversion or remainder to the Real Property, Improvements, Fixtures and Equipment, Leases, Utilities Capacity or Appurtenances or any part of them.

(j) **Contractual Rights.** All of Grantor's interest in any (present or future) contracts (including contracts for the sale or exchange of all or any portion of the Real Property or the Improvements), franchises, licenses and permits whether executed, granted or issued by a private person or entity or a governmental or quasi-governmental agency, which are directly or indirectly related to or connected with the development or sale of the Real Property or the Improvements, whether now or at any time hereafter existing, and all amendments and supplements thereto and renewals and extensions thereof at any time made, and all rebates, refunds, escrow accounts and funds, or deposits and all other sums due or to become due under and pursuant thereto and all powers, privileges, options and Grantor's other benefits thereunder.

(k) **Storage Tank Fund Rights.** All rights of Grantor in or to any (present or future) fund, program or trust monies and any reimbursement therefrom directly or indirectly established, maintained or administered by any governmental authority or any other person or entity which is designed to or has the effect of providing funds (whether directly or indirectly or as reimbursement) for the repair or replacement of storage tanks (whether above or below ground) or the remediation or cleanup of any spill, leakage or contamination from any such tank or resulting from the ownership, use or maintenance of any such tank or to compensate third parties for any personal injury or property damage.

(l) **Other Estates and Interests.** All other estates, easements, interests, licenses, rights, titles, powers or privileges of every kind and character which Grantor now has, or at any time hereafter acquires, in and to any of the foregoing, including the proceeds from condemnation, or threatened condemnation, and the proceeds of any and all insurance covering any part of the foregoing; and all related parts, accessions and accessories to any of the foregoing and all replacements or substitutions therefor, as well as all of Grantor's interest in any other Improvements, Fixtures and Equipment, Leases, Utilities Capacity and Appurtenances now or hereafter placed thereon or accruing thereto.

**Section 1.2 Habendum and Title Warranty.** TO HAVE AND TO HOLD the Affected Property, together with every right, privilege, hereditament and appurtenance belonging or appertaining to it, unto the Trustee, his successors or substitutes in the Trust and his or their assigns, for the benefit of Beneficiary, forever. Grantor represents that Grantor is the lawful owner of the Affected Property with good right and authority to grant a lien upon it and convey it, and that the Affected Property is free and clear of all liens, claims and encumbrances except only those expressly approved in writing by Beneficiary (or set forth in a mortgagee policy of title insurance accepted by Beneficiary) or permitted under the Loan Agreement. Grantor hereby binds Grantor and Grantor's successors and assigns to forever WARRANT and DEFEND the Affected Property and every part of it unto the Trustee, his successors or substitutes in the Trust, and his or their assigns, against the claims and demands of every person whomsoever lawfully claiming or to claim it or any part of it (such warranty to supersede any provision contained in this Deed of Trust limiting the liability of Grantor).

## ARTICLE 2 THE DEBT SECURED

**Section 2.1 Deed of Trust to Secure Designated Obligations.** This conveyance to the Trustee is in trust to secure all of the following present and future debt and obligations:

(a) All obligations of Grantor under the Guaranty dated June 29, 2000 executed by Grantor to Beneficiary (as it may be amended, supplemented, restated and/or replaced from time to time, "Guaranty").

(b) The Debt (as defined in the Guaranty); provided, however, to the extent that in a legal proceeding brought within the applicable limitations period it is determined by the final, non-applicable order of a court having jurisdiction over the issue and the applicable parties that Grantor received less than a reasonably equivalent value in exchange for Grantor's incurrence of its obligations under the Guaranty, the reference in this clause (b) to Debt (as defined in the Guaranty) shall be deemed to be to the Guaranteed Debt (as defined in the Guaranty).

(c) All other obligations, if any, undertaken by Grantor in any other place in this Deed of Trust.

(d) Any and all sums and the interest which accrues on them as provided in this Deed of Trust which Beneficiary or any Lender may advance or which Grantor may owe Beneficiary or any Lender pursuant to this Agreement on account of Grantor's failure to keep, observe or perform any of the covenants of Grantor under this Deed of Trust.

**Section 2.2 Debt Defined.** The term "Debt" means and includes every Note and all other debt and obligations described or referred to in Section 2.1. The Debt includes interest and other obligations accruing or arising after (a) commencement of any case under any bankruptcy or similar laws by or against Grantor or any other person or entity now or hereafter primarily or secondarily obligated to pay all or any part of the Debt (Grantor and each such other person or entity being herein called an "Obligor") or (b) the obligations of any Obligor shall cease to exist by operation of law or for any other reason. The Debt also includes all reasonable attorneys' fees and any other expenses incurred by Beneficiary or any Lender in enforcing any of the Loan Documents (as defined in the Loan Agreement). All liens, assignments and security interests created, represented or continued by this Deed of Trust, both present and future, shall be first, prior and superior to any lien, assignment, security interest, charge, reservation of title or other interest heretofore, concurrently or subsequently suffered or granted by Grantor or Grantor's successors or assigns, except only statutory super priority liens for nondelinquent taxes and those other liens (if any) expressly identified and stated in this Deed of Trust to be senior.

**Section 2.3 Revolving Loans.** The Debt is, in part, a revolving type of indebtedness. Advances against the Note are subject to the terms and provisions of the Note and the other Loan Documents. Revolving credit loans and advances may be made from time to time, and this Deed of Trust shall have effect, as of the date hereof, to secure all Debt, regardless of whether any amounts are advanced on the date hereof or on a later date or, having been advanced, are later repaid in whole or in part and later advances made at a later date, and this Deed of Trust shall remain in full force and effect, without loss of priority, until the indebtedness and obligations secured hereby are paid in full and all agreements between the Grantor and the Beneficiary for further advances or other financial accommodations have been terminated (and, to the full extent permitted by applicable law, the Grantor hereby waives the operation of any applicable law, statutory or otherwise, having a contrary effect).

## ARTICLE 3 SECURITY AGREEMENT

**Section 3.1 Grant of Security Interest.** Without limiting any of the provisions of this Deed of Trust, Grantor, as Debtor, and referred to in this Article as "Debtor" (whether one or more) hereby grants to Beneficiary, as Secured Party, and referred to in this Article as "Secured Party" (whether one or more), a security interest in all of Debtor's remedies, powers, privileges, rights, titles and interests (including all of Debtor's power, if any, to pass greater title than it has itself) of every kind and character now owned or hereafter acquired, created or arising in and to (i) the Affected Property (including both that now and that hereafter existing) to the full extent that the Affected Property may be subject to the Uniform Commercial Code of the state or states where the Affected Property is situated (the "UCC"), (ii) all equipment, accounts, general intangibles, fixtures, inventory, chattel paper, notes, documents and other personal property used, intended or acquired for use, on--or in connection with the use or operation of--the Affected Property, or otherwise related to the Affected Property, and all products and proceeds of it, including all security deposits under Leases now or at any time hereafter held by or for Debtor's benefit, all monetary deposits which Debtor has been required to give to any public or private utility with respect to utility services furnished to the Affected Property, all funds, accounts, instruments, accounts receivable, documents, trademarks, trade names and symbols used in connection therewith, and notes or chattel paper arising from or by virtue of any transactions related to the Affected Property, all permits, licenses, franchises, certi-

ificates, and other rights and privileges obtained in connection with the Affected Property (to the extent assignable), and all guaranties and warranties obtained with respect to all improvements, equipment, furniture, furnishings, personal property and components of any thereof located on or installed at the Affected Property (to the extent assignable) and (iii) the following described property:

(a) **Contracts.** All contracts now or hereafter entered into by and between Debtor and any other person or entity, as well as all right, title and interest of Debtor under any subcontracts, providing for the construction (original, restorative or otherwise) of any improvements to or on any of the Affected Property or the furnishing of any materials, supplies, equipment or labor in connection with any such construction.

(b) **Plans.** All of the plans, specifications and drawings (including plot plans, foundation plans, floor plans, elevations, framing plans, cross-sections of walls, mechanical plans, electrical plans and architectural and engineering plans and architectural and engineering studies and analyses) heretofore or hereafter prepared by any architect, engineer or other design professional, in respect of any of the Affected Property.

(c) **Design, etc. Agreements.** All agreements now or hereafter entered into with any person or entity in respect of architectural, engineering, design, management, development or consulting services rendered or to be rendered in respect of planning, design, inspection or supervision of the construction, management or development of any of the Affected Property.

(d) **Lender or Investor Commitments.** Any commitment issued by any lender or investor other than Beneficiary or any Lender to finance or invest in any of the Affected Property.

(e) **Bonds.** Any completion bond, performance bond and labor and material payment bond and any other bond relating to the Affected Property or to any contract providing for construction of improvements to any of the Affected Property.

together with all substitutions for and proceeds of any of the foregoing received upon the rental, sale, exchange, transfer, collection or other disposition or substitution of it and together with all general intangibles now owned by Debtor or existing or hereafter acquired, created or arising (whether or not related to any of the foregoing Property). All the property described or referred to in this Section is collectively referred to as the "Collateral". The Affected Property and the Collateral are collectively referred to as the "Property". In the event of any express inconsistency between the provisions of this Section and Article 9 regarding any Lease, the provisions of Article 9, to the extent valid, enforceable and in effect, shall govern and control.

**Section 3.2 Debtor's Covenants Concerning Personalty Subject to the UCC.** Debtor covenants and agrees with Secured Party that in addition to and cumulative of any other remedies granted in this Deed of Trust to Secured Party or the Trustee, upon or at any time after the occurrence of an Event of Default (defined in Article 6):

(a) Secured Party is authorized, in any legal manner and without breach of the peace, to take possession of the Collateral (Debtor hereby WAIVING all claims for damages arising from or connected with any such taking) and of all books, records and accounts relating thereto and to

exercise without interference from Debtor any and all rights which Debtor has with respect to the management, possession, operation, protection or preservation of the Collateral, including the right to sell or rent the same for the account of Debtor and to deduct from such sale proceeds or such rents all reasonable costs, expenses and liabilities of every character incurred by Secured Party in collecting such sale proceeds or such rents and in managing, operating, maintaining, protecting or preserving the Collateral and to apply the remainder of such sales proceeds or such rents to the Debt in such manner as Secured Party may elect. Before any sale, Secured Party may, at its option, complete the processing of any of the Collateral and/or repair or recondition the same to such extent as Secured Party may deem advisable and any reasonable sums expended therefor by Secured Party shall be reimbursed by Debtor. Secured Party may take possession of Debtor's premises to complete such processing, repairing and/or reconditioning, using the facilities and other property of Debtor to do so, to store any Collateral and to conduct any sale as provided for herein, all without compensation to Debtor. All reasonable costs, expenses, and liabilities incurred by Secured Party in collecting such sales proceeds or such rents, or in managing, operating, maintaining, protecting or preserving such properties, or in processing, repairing and/or reconditioning the Collateral if not paid out of such sales proceeds or such rents as hereinabove provided, shall constitute a demand obligation owing by Debtor and shall bear interest from the date of expenditure until paid at the Past Due Rate (as defined in the Loan Agreement), all of which shall constitute a portion of the Debt. If necessary to obtain the possession provided for above, Secured Party may invoke any and all legal remedies to dispossess Debtor, including specifically one or more actions for forcible entry and detainer. In connection with any action taken by Secured Party pursuant to this Section, Secured Party shall not be liable for any loss sustained by Debtor resulting from any failure to sell or let the Collateral, or any part thereof, or from other act or omission of Secured Party with respect to the Collateral unless such loss is caused by the willful misconduct or bad faith of Secured Party, nor shall Secured Party be obligated to perform or discharge any obligation, duty, or liability under any sale or lease agreement covering the Collateral or any part thereof or under or by reason of this instrument or the exercise of rights or remedies hereunder.

(b) Secured Party may, without notice except as hereinafter provided, sell the Collateral or any part thereof at public or private sale (with or without appraisal or having the Collateral at the place of sale) for cash, upon credit, or for future delivery, and at such price or prices as Secured Party may deem best. In any foreclosure proceeding concerning the Collateral, each Lender if bidding for its own account or for its own account and the accounts of the other Lenders is prohibited from including in the amount of its bid an amount to be applied as a credit against its Note or the Notes of the other Lenders; instead such Lender must bid in cash only. However, in any such foreclosure proceeding, Secured Party may (but shall not be obligated to) submit a bid for all of the Lenders in the form of a credit against the Debt, and Secured Party or its designee may (but shall not be obligated to) accept title to such Collateral for and on behalf of all of the Lenders. Upon any such sale Secured Party shall have the right to deliver, assign and transfer to the purchaser thereof the Collateral so sold. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right of whatsoever kind, including any equity or right of redemption, stay or appraisal which Debtor has or may have under any rule of law or statute now existing or hereafter adopted. To the extent notice is required by applicable law, Secured Party shall give Debtor written notice at the address set forth herein (which shall satisfy any requirement of notice or reasonable notice in any applicable statute) of Secured Party's intention to make any such public or private sale. Such notice (if any is required by applicable law) shall be personally delivered or mailed, postage prepaid, at least ten (10) calendar days before the date fixed for a public sale, or at least ten (10) calendar days

before the date after which the private sale or other disposition is to be made, unless the Collateral is of a type customarily sold on a recognized market, is perishable or threatens to decline speedily in value. Such notice (if any is required by applicable law), in case of public sale, shall state the time and place fixed for such sale or, in case of private sale or other disposition other than a public sale, the time after which the private sale or other such disposition is to be made. Any public sale shall be held at such time or times, within the ordinary business hours and at such place or places, as Secured Party may fix in the notice of such sale. At any sale the Collateral may be sold in one lot as an entirety or in separate parcels as Secured Party may determine. Secured Party shall not be obligated to make any sale pursuant to any such notice. Secured Party may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at any time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned. In case of any sale of all or any part of the Collateral on credit or for future delivery, the Collateral so sold may be retained by Secured Party until the selling price is paid by the purchaser thereof, but Secured Party shall incur no liability in case of the failure of such purchaser to take up and pay for the Collateral so sold, and in case of any such failure, such Collateral may again be sold upon like notice. Each and every method of disposition described in this Section shall constitute disposition in a commercially reasonable manner. Each Obligor, to the extent applicable, shall remain liable for any deficiency.

(c) Secured Party shall have all the rights of a secured party after default under the Uniform Commercial Code of each applicable jurisdiction and in conjunction with, in addition to or in substitution for those rights and remedies:

(i) Secured Party may require Debtor to assemble the Collateral and make it available at a place Secured Party designates which is mutually convenient to allow Secured Party to take possession or dispose of the Collateral; and

(ii) it shall not be necessary that Secured Party take possession of the Collateral or any part thereof before the time that any sale pursuant to the provisions of this Article is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; and

(iii) before application of proceeds of disposition of the Collateral to the Debt, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Secured Party, each Obligor, to the extent applicable, to remain liable for any deficiency; and

(iv) the sale by Secured Party of less than the whole of the Collateral shall not exhaust the rights of Secured Party hereunder, and Secured Party is specifically empowered to make successive sale or sales hereunder until the whole of the Collateral shall be sold; and, if the proceeds of such sale of less than the whole of the Collateral shall be less than the aggregate of the indebtedness secured hereby, this Deed of Trust and the security interest created hereby shall remain in full force and effect as to the unsold portion of the Collateral just as though no sale had been made; and



(v) in the event any sale hereunder is not completed or is defective in the opinion of Secured Party, such sale shall not exhaust the rights of Secured Party hereunder and Secured Party shall have the right to cause a subsequent sale or sales to be made hereunder; and

(vi) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of any indebtedness or as to the occurrence of any default, or as to any of such indebtedness having been declared to be due and payable, or as to notice of time, place and terms of sale and the Collateral to be sold having been duly given, as to any other act or thing having been duly done by Secured Party or any Lender, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(vii) Secured Party 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 Secured Party, including the sending of notices and the conduct of sale, but in the name and on behalf of Secured Party; and

(viii) demand of performance, advertisement and presence of property at sale are hereby WAIVED and Secured Party is hereby authorized to sell hereunder any evidence of debt it may hold as security for the secured indebtedness. All demands and presentments of any kind or nature are expressly WAIVED by Debtor. Debtor WAIVES the right to require Secured Party to pursue any other remedy for the benefit of Debtor and agrees that Secured Party may proceed against any Obligor for the amount of the Debt owed to Secured Party or any Lender without taking any action against any other Obligor or any other person or entity and without selling or otherwise proceeding against or applying any of the Collateral in Secured Party's possession.

**Section 3.3 UCC Rights are not Exclusive.** Should Secured Party elect to exercise its rights under the UCC as to part of the personal property or fixtures described in this Deed of Trust, such election shall not preclude Secured Party or the Trustee from exercising any or all of the rights and remedies granted by the other Articles of this Deed of Trust as to the remaining personal property or fixtures.

**Section 3.4 Deed of Trust is Also Financing Statement.** Secured Party may, at its election, at any time after delivery of this Deed of Trust, file an original of this Deed of Trust as a financing statement or sign one or more copies of this Deed of Trust to use as a UCC financing statement. Secured Party's signature may be placed between the last sentence of this Deed of Trust and Debtor's acknowledgment or may follow Debtor's acknowledgment. Secured Party's signature need not be acknowledged and is not necessary to the effectiveness of this Deed of Trust as a deed of trust, assignment, pledge, security agreement or (unless otherwise required by applicable law) as a financing statement.

**Section 3.5 No other Financing Statements on the Collateral.** So long as any amount remains unpaid on the Debt, Debtor will not execute and there will not be filed in any public office any financing statements affecting the Collateral other than financing statements in favor of Secured Party under this Deed of Trust, unless otherwise permitted under the Loan Agreement or unless prior written specific consent and approval of Secured Party shall have been first obtained.

**Section 3.6 Secured Party May File Financing and Continuation Statements.** Secured Party is authorized to file this Deed of Trust, a financing statement or statements and one or more

continuation statements in any jurisdiction where Secured Party deems it necessary, and at Secured Party's request, Debtor will join Secured Party in executing one or more financing statements, continuation statements or both pursuant to the UCC, in form satisfactory to Secured Party, and will pay the costs of filing or recording them, in all public offices at any time and from time to time whenever filing or recording of this Deed of Trust, any financing statement or any continuation statement is deemed by Secured Party or its counsel to be necessary or desirable.

**Section 3.7 Fixtures.** Certain of the Collateral is or will become "fixtures" (as that term is defined in the UCC) on the Real Property, and when this Deed of Trust is filed for record in the real estate records of the county where such fixtures are situated, it shall also automatically operate as a financing statement (fixtures filing) upon such of the Collateral which is or may become fixtures.

**Section 3.8 Assignment of Non-UCC Personal Property.** To the extent that any of the Collateral is not subject to the UCC of the state or states where it is situated, Debtor hereby assigns to Secured Party all of Debtor's right, title and interest in the Collateral to secure the Debt. Release of the lien of this Deed of Trust shall automatically terminate this assignment.

**Section 3.9 Debtor's Warranties Concerning Collateral.** Debtor warrants and represents to Secured Party that Debtor is the legal and equitable owner and holder of the Collateral free of any adverse claim and free of any security interest or encumbrance except only for the security interest granted hereby in the Collateral and those other security interests (if any) expressly referred to or described in this Deed of Trust (such warranty to supersede any provision contained in this Deed of Trust limiting the liability of Grantor). Debtor agrees to defend the Collateral and its proceeds against all claims and demands of any person at any time claiming the Collateral, its proceeds or any interest in either. Debtor also warrants and represents that Debtor has not heretofore signed any financing statement directly or indirectly affecting the Collateral or any part of it which has not been completely terminated of record, and no such financing statement signed by Debtor is now on file in any public office except only those statements (if any) true and correct copies of which Debtor has actually delivered to Secured Party.

**Section 3.10 Certain Powers of Secured Party.** Debtor hereby authorizes and directs each account debtor and each other person or entity obligated to make payment in respect of any of the Collateral (each a "Collateral Obligor") to pay over to Secured Party, its officers, agents or assigns, upon demand by Secured Party, all or any part of the Collateral without making any inquiries as to the status or balance of the secured indebtedness and without any notice to or further consent of Debtor. Debtor hereby agrees to indemnify each Collateral Obligor and hold each Collateral Obligor harmless from all expenses and losses which it may incur or suffer as a result of any payment it makes to Secured Party pursuant to this paragraph. To facilitate the rights of Secured Party hereunder, Debtor hereby authorizes Secured Party, its officers, employees, agents or assigns, upon the occurrence of an Event of Default and so long as it is continuing and not expressly waived in writing by Secured Party:

(a) to notify Collateral Obligors of Secured Party's security interest in the Collateral and to collect all or any part of the Collateral without further notice to or further consent by Debtor, and Debtor hereby constitutes and appoints Secured Party the true and lawful attorney of Debtor (such agency being coupled with an interest), irrevocably, with power of substitution, in the name of

Debtor or in its own name or otherwise, to take any of the actions described in the following clauses (b), (c), (d), (e), (f) and (g);

(b) to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all amounts which may be or become due or payable under the Collateral and to settle and/or adjust all disputes and/or claims directly with any Collateral Obligor and to compromise, extend the time for payment, arrange for payment in installments, otherwise modify the terms of, or release, any of the Collateral, on such terms and conditions as Secured Party may determine (without thereby incurring responsibility to or discharging or otherwise affecting the liability of Debtor to Secured Party or any Lender under this Deed of Trust or otherwise);

(c) to execute, sign, endorse, transfer and deliver (in the name of Debtor or in its own name or otherwise) any and all receipts or other orders for the payment of money drawn on the Collateral and all notes, acceptances, commercial paper, drafts, checks, money orders and other instruments given in payment or in part payment thereof and all invoices, freight and express bills and bills of lading, storage receipts, warehouse receipts and other instruments and documents in respect of any of the Collateral and any other documents necessary to evidence, perfect and realize upon the security interests and obligations of this Deed of Trust;

(d) in its discretion to file any claim or take any other action or proceeding which Secured Party may deem necessary or appropriate to protect and preserve the rights, titles and interests of Secured Party or any Lender hereunder;

(e) to sign the name of Debtor to financing statements, drafts against Collateral Obligors, assignments or verifications of any of the Collateral and notices to Collateral Obligors;

(f) to station one or more representatives of Secured Party on Debtor's premises for the purpose of exercising any rights, benefits or privileges available to Secured Party or any Lender hereunder or under any of the Loan Documents or at law or in equity, including receiving collections and taking possession of books and records relating to the Collateral; and

(g) to cause title to any or all of the Collateral to be transferred into the name of Secured Party or any nominee or nominees of Secured Party.

The powers conferred on Secured Party pursuant to this Section are conferred solely to protect the interests of Secured Party and the Lenders in the Collateral and shall not impose any duty or obligation on Secured Party or any Lender to perform any of the powers herein conferred. No exercise of any of the rights provided for in this Section shall constitute a retention of collateral in satisfaction of the indebtedness as provided for in the Uniform Commercial Code of any applicable jurisdiction.

**Section 3.11 Standard of Care.** Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral in its possession if it takes such action for that purpose as Debtor requests in writing, but failure of Secured Party to comply with such request shall not of itself be deemed a failure to exercise reasonable care, and no failure of Secured Party to take any action not so requested by Debtor shall be deemed a failure to exercise reasonable care in the custody or preservation of any such Collateral.

Section 3.12 **Change Terms, Release Collateral.** Secured Party may extend the time of payment, arrange for payment in installments, otherwise modify the terms of, or release, any of the Collateral, without thereby incurring responsibility to Debtor or discharging or otherwise affecting any liability of Debtor. Secured Party shall not be required to take steps necessary to preserve any rights against prior parties to any of the Collateral.

## ARTICLE 4 GRANTOR'S COVENANTS

Section 4.1 **Covenants for the Benefit of Beneficiary.** To better secure the Debt, Grantor covenants and agrees with the Trustee and his substitutes and successors in the Trust, for the use and benefit of Beneficiary and with the intent that the Trustee, Beneficiary or both may enforce these covenants, that:

(a) **Liens, etc. and Remedies Cumulative.** No lien, assignment, security interest, guaranty, right or remedy in favor of Beneficiary granted in, secured by or ancillary to this Deed of Trust shall be considered as exclusive, but each shall be cumulative of all others which Beneficiary or the Trustee may now or hereafter have.

(b) **Grantor Waives Marshalling of Assets and Sale in Inverse Order of Alienation Rights.** Grantor hereby irrevocably WAIVES all rights of marshalling of assets or sale in inverse order of alienation in the event of foreclosure of this or any other security.

(c) **Grantor Will Correct Title Defects.** If at any future time any defect should be found to exist in the title to any of the Property which is not permitted hereunder or under the Loan Agreement, Grantor agrees to promptly commence and thereafter diligently proceed to cure the defect and defend the title. If any lien or encumbrance junior, equal or superior in rank or priority to the lien of this Deed of Trust should be discovered or arise at any time in the future then, unless Beneficiary (on behalf of the Lenders) is the only holder of it, or Beneficiary has given specific prior written consent to it, Grantor agrees to promptly discharge and remove it from the Affected Property. Grantor will notify Beneficiary in writing within five (5) days of the time that Grantor becomes aware of the filing of any deed of trust, lien, security interest, financing statement or other security device whatsoever against the Property.

(d) **Insurance Requirements.** At all times before the final termination of this Deed of Trust, Grantor agrees to provide, maintain and keep in force title, casualty, liability and other insurance for the Property as reasonably required by Beneficiary and in any event Grantor will maintain the following specifically described insurance coverages:

(i) **Casualty Coverage.** An all-risk policy of permanent property insurance insuring the Property against all risks of any kind or character except those permitted by Beneficiary in writing to be excluded from coverage thereunder.

(ii) **Boiler Coverage.** A boiler and machinery insurance policy covering loss or damage to all portions of the Property comprised of air-conditioning and heating systems, other pressure vessels, machinery, boilers or high pressure piping.

(iii) **Loss of Earnings Coverage.** An all-risk policy of insurance covering loss of earnings and/or rents from the Property in the event that the Property is not available for use or occupancy due to casualty, damage or destruction required to be covered by the policies of insurance described in (1) and (2) above.

(iv) **Liability Insurance.** Commercial general liability, auto liability, umbrella or excess liability and worker's compensation insurance against claims for bodily injury, death or property damage occurring on, in or about the Affected Property in an amount and containing terms reasonably acceptable to Beneficiary.

(v) **Coverage During Construction.** If all or any portion of the Property consists of improvements under construction: (i) a builder's all-risk form insurance policy on a completed value, non-reporting form, insuring the Property against all risks of any kind or character except those permitted by Beneficiary in writing to be excluded from coverage thereunder, and an all-risk policy of insurance covering loss of future earnings and/or rents from the Property in the event the Property is not ready or available for use or occupancy due to casualty, damage or destruction required to be covered by such builder's all-risk insurance policy, (ii) policies of insurance to be carried by each contractor performing work in connection with the Property covering worker's compensation, employers' liability, commercial general liability and comprehensive automobile liability, including a broad form umbrella/excess liability insurance policy and (iii) policies of professional liability insurance to be carried by each design professional performing work in connection with the Property covering each such party against claims for actual or alleged errors, omissions or negligent acts in the performance of their respective services rendered in respect of the Property.

(vi) **Other Insurance Required.** Such other insurance against other insurable hazards, risks or casualties which at the time are commonly insured against in the case of owners and premises similarly situated, due regard being given to the financial condition of Grantor, the height and type of the Property, its construction, location, use and occupancy.

(e) **Insurance Companies, Policies, Endorsements and Premium Payments.** Grantor agrees that all required insurance will be written on forms acceptable to Beneficiary and by companies which are reasonably acceptable to Beneficiary, and that such insurance (other than third party liability insurance) shall be written or endorsed so that all losses are payable to Beneficiary. The original policies evidencing such insurance shall be delivered by Grantor to Beneficiary and held by Beneficiary, unless Beneficiary expressly consents to accept insurance certificates instead. Each such policy shall expressly prohibit cancellation or modification of insurance without thirty (30) days' written notice to Beneficiary. Grantor agrees to furnish due proof of payment of the premiums for all such insurance to Beneficiary promptly after each such payment is made and in any case at least fifteen (15) days before payment becomes delinquent.

(f) **Effects of Foreclosure on Insurance Policies and Post-foreclosure Event Claims.** Foreclosure of this Deed of Trust shall automatically constitute foreclosure upon all policies of insurance insuring any part of or risk to the Property and all claims thereunder arising from post-foreclosure events. The successful bidder or bidders for the Property at foreclosure, as their respective interests may appear, shall automatically accede to all of Grantor's rights in, under and to such policies and all post-foreclosure event claims, and such bidder(s) shall be named as

insured(s) on request, whether or not the trustee's deed or bill of sale to any such successful bidder mentions insurance.

(g) **Application of Insurance Proceeds Collected Before Foreclosure.** Unless an Event of Default has occurred and so long as Beneficiary is reasonably satisfied that the applicable proceeds (together with other funds deposited with Beneficiary by or on behalf of Grantor for the purpose of repair and restoration of the applicable damage or destruction) are sufficient to pay all costs of repair and restoration of the applicable damage or destruction, Beneficiary will hold all proceeds of insurance which was paid for by Grantor or by anyone other than Beneficiary or another holder of any of the Debt and which proceeds are actually received by Beneficiary before foreclosure (and such other funds deposited with Beneficiary) and will disburse the same as such repairs or restoration are made, upon such terms and conditions as Beneficiary may elect, and upon presentation of reasonably satisfactory evidence to Beneficiary that payment is being requested for permissible repair and restoration and without the imposition of any lien on the Property.

(h) **Application of Insurance Proceeds Collected After Foreclosure.** Unless Beneficiary or Beneficiary's representative reserves at the foreclosure sale the right to collect any uncollected insurance proceeds recoverable for events occurring before foreclosure (in which event the successful bidder at the sale, if not Beneficiary, shall have no interest in such proceeds and Beneficiary shall apply them, if and when collected, to the Debt in such order and manner as Beneficiary shall then elect and remit any remaining balance to Grantor or to such other person or entity as is legally entitled to them), all proceeds of all such insurance which are not so reserved by Beneficiary at the foreclosure sale and are not actually received by Beneficiary until after foreclosure shall be the property of the successful bidder or bidders at foreclosure, as their interests may appear, and Grantor shall have no interest in them and shall receive no credit for them.

(i) **Beneficiary Not Obligated to Require, Provide or Evaluate Insurance.** Beneficiary shall have no duty to Grantor or anyone else to either require or provide any insurance or to determine the adequacy or disclose any inadequacy of any insurance.

(j) **Beneficiary May Elect to Insure Only its Own Interests.** If Beneficiary elects at any time or for any reason to purchase insurance relating to the Property, it shall have no obligation to cause Grantor or anyone else to be named as an insured, to cause Grantor's or anyone else's interests to be insured or protected or to inform Grantor or anyone else that his or its interests are uninsured or underinsured.

(k) **Grantor Will Correct Defects, Provide Further Assurances and Papers.** Upon Beneficiary's request, Grantor will promptly correct any defect which hereafter may be discovered in the text, execution or acknowledgment of this Deed of Trust or any Loan Document or in the description of any of the Property, and will deliver such further assurances and execute such additional papers as in the reasonable opinion of Beneficiary or its legal counsel shall be necessary, proper or appropriate (1) to better convey and assign to the Trustee and Beneficiary all the Property intended or promised to be conveyed or assigned or (2) to properly evidence or give notice of the Debt or its intended or promised security.

(l) **Grantor Will Pay Taxes and Impositions and Furnish Receipts.** At Grantor's own cost and expense, Grantor agrees to pay and discharge all taxes, assessments, maintenance charges,

permit fees, impact fees, development fees, capital recovery charges, utility reservation and standby fees and all other similar and dissimilar impositions of every kind and character ("Impositions") charged, levied, assessed or imposed against any interest in any of the Property before they become delinquent. Grantor agrees to furnish due proof of such payment to Beneficiary upon request.

(m) **Grantor to Pay Monthly Tax and Insurance Deposits on Request.** If and after Beneficiary requests it, and to the extent not escrowed with Grantor's landlord or the holder of a lien with respect to the fee title, Grantor agrees to pay the monthly tax and insurance premium deposits required by Article 8 and to provide Beneficiary any additional sums needed to pay the taxes and insurance premiums for the Property when due.

(n) **Grantor Will Maintain Property and Won't Remove Improvements.** Grantor agrees to keep, preserve and maintain all elements of the Property in a good state of repair and condition and to keep all equipment and stores of supplies needed for its proper and full operation on the Property, well stocked and in good operating condition. Grantor will not tear down, damage or attempt to remove, demolish or materially alter or enlarge any elements of the Property, or construct any new Improvements, without Beneficiary's prior written consent (not to be unreasonably withheld or delayed). Grantor shall have the right, without such consent, to remove and dispose of, free from the lien, assignments and security interests of this Deed of Trust, such Fixtures and Equipment as from time to time become worn out or obsolete and to replace any equipment in the ordinary course of business. Grantor shall not grant, join in or consent to any lien, security interest, easement, license, use or other charge or interest covering or affecting all or any part of the Property or initiate, join in and consent to the change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Property or any part thereof without the prior written consent of Beneficiary.

(o) **Grantor Will Protect Property from Mechanic's Liens.** Except for matters contested in good faith and by appropriate proceedings and for which adequate reserves are maintained, Grantor agrees to promptly pay all bills for labor and materials incurred in connection with the Property and to prevent the fixing of any lien against any part of the Property, even if it is inferior to this Deed of Trust, for any such bill which may be legally due and payable. Grantor agrees to furnish due proof of such payment to Beneficiary after payment and before delinquency.

(p) **Beneficiary's Inspection and Discussion Rights.** Grantor agrees to permit Beneficiary, any Lender and their agents, representatives and employees at all reasonable times and after reasonable notice to go upon, examine, inspect and remain on the Affected Property, to assist and cooperate, and require Grantor's employees, agents and contractors to cooperate, with Beneficiary and each Lender and to furnish to Beneficiary or any applicable Lender on request all pertinent information concerning the physical and economic condition, development and operation of the Affected Property. Beneficiary or any Lender may discuss the Affected Property directly with any of Grantor's executive officers.

(q) **Beneficiary May Grant Releases without Impairing Other Collateral or Rights.** At all times, Beneficiary shall have the right to release any part of the Property or any other security from this Deed of Trust or any other security instrument or device without releasing any other part of the Property or any other security, without affecting Beneficiary's lien, assignment or security

interest as to any property or rights not released and without affecting or impairing the liability of any maker, guarantor or surety on the Notes or other obligation.

(r) **Vendor's Lien and Purchase Money Security Interest.** Grantor agrees that to the full extent that any of the proceeds of the Notes have been or are paid or applied towards the purchase of any real or personal property, it shall be conclusively presumed to have been done at Grantor's special instance and request, and Grantor hereby acknowledges and recognizes the existence of a vendor's lien and a purchase money security interest in favor of Beneficiary against such property, as security for the Notes in addition to and cumulative of the lien, assignments and security interest of this Deed of Trust, in the same manner in the case of real property as if an express vendor's lien and the superior title had been reserved in the deed from the seller of such property and expressly therein assigned by the seller to Beneficiary. Foreclosure under this Deed of Trust shall also constitute foreclosure of said vendor's lien or purchase money security interest.

(s) **Notice of Condemnation and Other Proceedings.** Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Property or any portion thereof, or any other proceedings arising out of injury or damage to the Property, or any portion thereof, Grantor will notify Beneficiary in writing of the pendency of such proceedings. Beneficiary may participate in any such proceedings, and Grantor shall from time to time deliver to Beneficiary all instruments requested by it to permit such participation. Grantor shall, at its expense, diligently prosecute any such proceedings, and shall consult with Beneficiary, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings.

## ARTICLE 5 GRANTOR'S REPRESENTATIONS AND WARRANTIES

To induce the Lenders to extend financial accommodations, including credit under the Notes, Grantor makes the warranties and representations set forth in this Article.

**Section 5.1 Title.** Grantor has good and marketable title to the Property, free and clear of any lien or security interest except only for liens and security interests which are either established or expressly permitted by this Deed of Trust or other Loan Documents. Except as otherwise expressly permitted by this Deed of Trust, the lien and security interest of this Deed of Trust will constitute valid and perfected first and prior liens and security interests on the Property, subject to no other liens, security interests or charges whatsoever.

**Section 5.2 Grantor Has All Necessary Rights.** Grantor possesses (in either temporary or final forms) all permits, licenses, patents, trademarks, trade names and copyrights required to conduct its business. All easements, rights-of-way, utilities and other rights necessary to maintenance and operation of the Property have been obtained and are in full force and effect.

**Section 5.3 Legal Requirements.** Grantor and the Property are in compliance with all applicable legal requirements and Grantor manages and operates (and will continue to manage and operate) the Property and its other businesses in accordance with good industry practices.

**Section 5.4 Consideration.** The value of the consideration received and to be received by Grantor is reasonably worth at least as much as the liability and obligation of Grantor incurred or arising



under this Deed of Trust and all related papers and arrangements. Grantor has determined that such liability and obligation may reasonably be expected to substantially benefit Grantor directly or indirectly. Grantor has had full and complete access to the underlying papers relating to the Debt and all other papers executed by Borrower (as defined in the Loan Agreement), any of its Subsidiaries (as defined in the Loan Agreement), Sydran Group (as defined in the Loan Agreement) or any other person or entity in connection with the Debt, has reviewed them and is fully aware of the meaning and effect of their contents. Grantor is fully informed of all circumstances which bear upon the risks of executing this Deed of Trust and which a diligent inquiry would reveal. Grantor has adequate means to obtain from the makers of the Notes on a continuing basis information concerning such makers' financial condition, and is not depending on Beneficiary or any Lender to provide such information, now or in the future. Grantor agrees that neither Beneficiary nor any Lender shall have any obligation to advise or notify Grantor or to provide Grantor with any data or information. The execution and delivery of this Deed of Trust is not a condition precedent (and Beneficiary has not in any way implied that the execution of this Deed of Trust is a condition precedent) to Beneficiary's or any Lender's making, extending or modifying any loan to Grantor or to any other financial accommodation to or for Grantor.

## ARTICLE 6 DEFAULTS AND REMEDIES

**Section 6.1 Release for Full Payment and Performance.** Subject to the automatic reinstatement provisions of Section 10.18 below, this Deed of Trust shall terminate and be of no further force or effect (and shall be released on Grantor's written request and at Grantor's cost and expense) upon full payment of the Debt, complete performance of all of the obligations of the Obligors under the Loan Documents and final termination of the Lenders' obligations--if any--to make any further advances under the Notes or to provide any other financial accommodations to any Obligor.

**Section 6.2 Events of Default.** The occurrence of a default, an event of default or a similar event (however denominated) shall occur under any Loan Document which is not cured within any applicable cure period agreed to in writing by Beneficiary shall constitute an Event of Default (herein so called) under this Deed of Trust.

**Section 6.3. Remedies.** Upon the occurrence of any Event of Default, and at any time thereafter:

(a) **Foreclosure.** The liens and security interests created or intended to be created hereby shall be subject to foreclosure, repossession and sale in any manner provided for herein or provided for by law, as Beneficiary may elect, and Beneficiary may exercise any and all of its rights under this Deed of Trust and any of the other Loan Documents and otherwise available at law or in equity.

(b) **Legal Proceedings.** Trustee and Beneficiary shall have the right and power to proceed by suit or suits in equity or at law, whether for the specific performance of any covenant or agreement of Grantor contained herein or in aid of the execution of the powers herein granted, or for foreclosure or the sale of the Property or any part thereof under the judgment or decree of any court of competent jurisdiction, or for the enforcement of any other appropriate legal or equitable remedy.

(c) **Trustee's Sale.** It shall be the duty of the Trustee and of his successors and substitutes in the Trust, on Beneficiary's request (which request is hereby presumed) to enforce the Trust by selling the Affected Property as is provided in this Deed of Trust.

**Section 6.4 Time and Place of Sale and Notices.** At any time after the lapse of such time as may then be required by law following the recordation of any required notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Grantor, may sell the Property on the date and at the time and place designated in such notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may request, at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any reason, postpone the sale from time to time to the extent permitted by law until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale and by any other written notice or publication required by law. Trustee shall execute and deliver to the purchaser its Trustee's deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in the Trustee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

**Section 6.5 Application of Foreclosure Sale Proceeds.** The proceeds of any sale of the Affected Property, and any rents and other amounts collected by Beneficiary from Beneficiary's holding, leasing, operating or making any other use of the Affected Property, shall be applied by Beneficiary (or by the receiver, if one is appointed) to the extent that funds are available therefrom in the following order of priority:

- (a) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees;
- (b) the costs of any appraisals, environmental audits, and evidences of title procured in connection with such sale and any expenses associated with the Trustee's deed;
- (c) all sums expended under the terms hereof, not then repaid, with accrued interest from the day of expenditure at the default rate set forth in the Loan Agreement;
- (d) all other sums then secured hereby; and
- (e) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit or interplead the balance of such proceeds with the county clerk or a court of the county in which the sale took place.

**Section 6.6 Beneficiary May Require Abandonment and Recommencement of Sale.** If Trustee or his substitute or successor should commence the sale, Beneficiary may at any time before the sale is completed direct the Trustee to abandon the sale, and may at any time or times thereafter direct the Trustee to again commence foreclosure; or, irrespective of whether foreclosure is commenced by the Trustee, Beneficiary or any Lender may at any time after an Event of Default institute suit for collection of the Debt or foreclosure of this Deed of Trust. If Beneficiary or any Lender should institute suit for collection of the Debt or foreclosure of this Deed of Trust, Beneficiary or such

Lender, as the case may be, may at any time before the entry of final judgment dismiss it and require the Trustee to sell the Affected Property in accordance with the provisions of this Deed of Trust. Trustee may at any time elect to foreclose this Deed of Trust as a mortgage under applicable law.

**Section 6.7 Multiple Sales; Deed of Trust Continues in Effect.** No single sale or series of sales by the Trustee or by any substitute or successor and no judicial foreclosure shall extinguish the lien or exhaust the power of sale under this Deed of Trust except with respect to the items of property sold, nor shall it extinguish, terminate or impair Grantor's contractual obligations under this Deed of Trust, but such lien and power shall exist for so long as, and may be exercised in any manner by law or in this Deed of Trust provided as often as the circumstances require to give Beneficiary full relief under this Deed of Trust, and such contractual obligations shall continue in full force and effect until final termination of this Deed of Trust.

**Section 6.8 Credit Bids.** In any foreclosure proceeding concerning the Property, each Lender if bidding for its own account or for its own account and the accounts of the other Lenders is prohibited from including in the amount of its bid an amount to be applied as a credit against its Note or the Notes of the other Lenders; instead such Lender must bid in cash only. However, in any such foreclosure proceeding, Beneficiary may (but shall not be obligated to) submit a bid for all of the Lenders in the form of a credit against the Debt, and Beneficiary or its designee may (but shall not be obligated to) accept title to such Property for and on behalf of all of the Lenders.

**Section 6.9 Successor or Substitute Trustee.** In case of absence, death, inability, refusal or failure of the Trustee in this Deed of Trust named to act, or in case he should resign (and he is hereby authorized to resign without notice to or consent of Grantor), or if Beneficiary shall desire, with or without cause, to replace the Trustee in this Deed of Trust named, or to replace any successor or substitute previously named, Beneficiary or any agent or attorney-in-fact for Beneficiary may name, constitute and appoint a successor and substitute trustee (or another one) without other formality than an appointment and designation in writing, which need not be acknowledged, filed or recorded to be effective, except only in those circumstances—if any—where acknowledgment, filing and/or recording is required by applicable law and such law also precludes Grantor from effectively waiving such requirement. Upon such appointment, this conveyance shall automatically vest in such substitute trustee, as Trustee, the estate in and title to all of the Affected Property, and such substitute Trustee so appointed and designated shall thereupon hold, possess and exercise all the title, rights, powers and duties in this Deed of Trust conferred on the Trustee named and any previous successor or substitute Trustee, and his conveyance to the purchaser at any such sale shall be equally valid and effective as if made by the Trustee named in this Deed of Trust. Such right to appoint a substitute Trustee shall exist and may be exercised as often and whenever from any of said causes, or without cause, as aforesaid, Beneficiary or Beneficiary's agent or attorney-in-fact elects to exercise it.

**Section 6.10 Right to Receiver.** Upon the occurrence of an Event of Default or at any time after commencement of a Trustee's foreclosure sale or any legal proceedings under this Deed of Trust, Beneficiary may, at Beneficiary's election and by and through the Trustee or otherwise, make application to a court of competent jurisdiction for appointment of a receiver of the Property, as a matter of strict right, without notice to Grantor and without regard to the adequacy of the value of the Property for the repayment of the Debt, and Grantor hereby irrevocably consents to such an appointment. Any receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to possess, rent, maintain, repair and operate the Property upon such terms

and conditions as may be approved by the court, and shall apply the rents realized in the same manner and order as foreclosure proceeds in accordance with Section 6.5.

**Section 6.11 Tenants at Will.** Grantor agrees for itself and its heirs, legal representatives, successors and assigns, that if any of them shall hold possession of the Property or any part thereof subsequent to foreclosure hereunder, Grantor, or the parties so holding possession, shall become and be considered as tenants at will of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchaser or purchasers for rental on said premises, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, all damages which may be sustained by any such tenant as a result thereof being hereby expressly waived.

## ARTICLE 7 BENEFICIARY'S RIGHT TO PERFORM GRANTOR'S OBLIGATIONS

**Section 7.1 Beneficiary May Elect to Perform Defaulted Obligations.** If Grantor should fail to comply with any of its agreements, covenants or obligations under this Deed of Trust or any other Loan Document, then Beneficiary (in Grantor's name or in Beneficiary's own name) may perform them or cause them to be performed for Grantor's account and at Grantor's expense, but shall have no obligation to perform any of them or cause them to be performed. Any and all reasonable expenses thus incurred or paid by Beneficiary shall be Grantor's obligations to Beneficiary due and payable on demand, or if no demand is sooner made, then they shall be due on or before four (4) years after the respective dates on which they were incurred, and each shall bear interest from the date Beneficiary pays it until the date Grantor repays it to Beneficiary, at the Past Due Rate (as defined in the Loan Agreement). Upon making any such payment or incurring any such expense, Beneficiary shall be fully and automatically subrogated to all of the rights of the person, corporation or body politic receiving such payment. Any amounts owing by Grantor to Beneficiary pursuant to this or any other provision of this Deed of Trust shall automatically and without notice be and become a part of the Debt and shall be secured by this and all other instruments securing the Debt. The amount and nature of any such expense and the time when it was paid shall be fully established by the affidavit of Beneficiary or any of Beneficiary's officers or agents or by the affidavit of any original, substitute or successor Trustee acting under this Deed of Trust.

**Section 7.2 Exercise of Rights is not Waiver or Cure of Default.** The exercise of the privileges granted to Beneficiary in this Article shall in no event be considered or constitute a cure of the default or a waiver of Beneficiary's right at any time after an Event of Default to declare the Debt to be at once due and payable, but is cumulative of such right and of all other rights given by this Deed of Trust and the Loan Documents and of all rights given Beneficiary by law.

## ARTICLE 8 TAX AND INSURANCE DEPOSITS

In addition to the Debt payments, promptly after Beneficiary requests it at any time after the occurrence and during the continuation of an Event of Default and only to the extent not escrowed with Grantor's landlord or the holder of a lien with respect to the fee title, Grantor agrees to deposit

with Beneficiary each month an amount equal to one-twelfth (1/12) of the aggregate of (i) the next succeeding premiums (or payments in respect of them, if premiums are financed) on all insurance policies which Grantor is required by or pursuant to this Deed of Trust to maintain on the Property, and (ii) the amount of the next succeeding annual tax payments, assessment installments, maintenance charges and other Impositions to become due and payable with respect to the Property, as estimated by Beneficiary, plus, with the first of such monthly deposits, an additional month's share (a twelfth) of such premiums and taxes for each month less than twelve remaining before the next payment thereof falls due. At least fifteen (15) days before the date on which any such insurance premium (or payment in respect of it, if premiums are financed) or any of the Impositions must be paid to avoid delinquency, promptly after Beneficiary's request, Grantor agrees to deliver to Beneficiary a statement or statements showing the amount of the premium (or payment in respect of it, if premiums are financed) or Impositions required to be paid and the name and mailing address of the concern or authority to which it is payable and, at the same time, Grantor agrees to deposit with Beneficiary such amounts as will, when added to the amount of such deposits previously made and then remaining available for the purpose, be sufficient to pay such insurance obligations or Impositions. Beneficiary shall have the right to and will, if, as and when requested by Grantor to do so, timely apply such deposits in payment of such insurance obligations and Impositions.

## ARTICLE 9 ASSIGNMENT OF RENTS

**Section 9.1 Assignment of Rents, Revenues, Income and Profits.** Grantor hereby assigns and transfers to Beneficiary all rents, revenues, income and profits ("Rental") payable under each Lease (hereinafter defined) now or at any time hereinafter existing, such assignment being upon the terms set forth in Section 9.2 below. The term "Lease" or "Leases" means any oral or written agreement between Grantor and another person or entity to allow such other person or entity to use or occupy all or any portion of the Property, together with any guaranties or security for the obligations of any tenant, lessee, sublessee or other person or entity having the right to occupy, use or manage any part of the Property under a Lease. Each time Grantor enters into a Lease, such Lease shall automatically become subject to this Article without further action.

**Section 9.2 Assignment is Absolute; Grant of Revocable License to Grantor to Collect Rental before an Event of Default.** The transfer of Rental to Beneficiary shall be upon the following terms: (a) until receipt from Beneficiary of notice of the occurrence of an Event of Default, Grantor shall have the right under a retained and reserved license (but limited as provided herein) to collect Rental and each tenant may pay Rental directly to Grantor; but after an Event of Default, Grantor's license shall automatically terminate and be revoked and to the extent Grantor collects any Rental thereafter accruing or paid, Grantor covenants to hold all such Rental in trust for the use and benefit of Beneficiary; (b) upon receipt from Beneficiary of notice that an Event of Default exists, each tenant is hereby authorized and directed to pay directly to Beneficiary all Rental thereafter accruing or payable and receipt of Rental by Beneficiary shall be a release of such tenant to the extent of all amounts so paid; (c) Rental so received by Beneficiary shall be applied by Beneficiary, first to the expenses, if any, of collection and then in accordance with Section 6.5 hereof; (d) without impairing its rights hereunder, Beneficiary may, at its option, at any time and from time to time, release to Grantor Rental so received by Beneficiary, or any part thereof; (e) Beneficiary shall not be liable for its failure to collect or its failure to exercise diligence in the collection of Rental, but shall be accountable only for Rental that it shall actually receive; and (f) the assignment contained in this

Article shall terminate upon the release of this Deed of Trust, but no tenant shall be required to take notice of termination until a copy of such release shall have been delivered to such tenant. The assignment contained in this Article is intended to be absolute, unconditional and presently effective. It shall never be necessary for Beneficiary to institute legal proceedings of any kind whatsoever to enforce the provisions of this Article. It is agreed that any Rental retained and reserved by Grantor pursuant to the aforementioned license will not constitute a payment by the Grantor to Beneficiary or any of the Lenders of any portion of the Debt (and hence will not be credited to the Debt) until the Rental is actually paid to the Beneficiary and retained by the Beneficiary and then, in such event, the Rental so received shall be applied in accordance with Section 9.2(c).

**Section 9.3 Remedies.** Should an Event of Default occur, Grantor agrees to deliver to Beneficiary possession and control of all Rental held by Grantor in trust for the benefit of Beneficiary. Grantor specifically agrees that Beneficiary may upon the occurrence of any Event of Default or at any time thereafter, personally or through an agent selected by Beneficiary, take (or have the Trustee take) possession and control of all or any part of the Property and may receive and collect all Rental theretofore accrued and all thereafter accruing therefrom until the final termination of this Deed of Trust or until the foreclosure of the lien of this Deed of Trust, applying so much thereof as may be collected before sale of the Property by the Trustee or judicial foreclosure of this Deed of Trust first to the reasonable expenses of Beneficiary incurred in obtaining the Rental and then applying the Rental so received in accordance with the provisions of Section 6.5 hereof. Any such action by Beneficiary shall not operate as a waiver of the Event of Default in question, or as an affirmation of any Lease or of the rights of any tenant in the event title to that part of the Property covered by the Lease or held by the tenant should be acquired by Beneficiary or other purchaser at foreclosure sale. Beneficiary or Beneficiary's agent or the Trustee may use against Grantor or any other person such lawful or peaceable means as the person acting may see fit to enforce the collection of any such Rental or to secure possession of the Property, or any part of it and may settle or compromise on any terms as Beneficiary or Beneficiary's agent or the Trustee sees fit, the liability of any person or persons for any such Rental. In particular, Beneficiary or Beneficiary's agent or the Trustee may institute and prosecute to final conclusion actions of forcible entry and detainer, or actions of trespass to try title, or actions for damages, or any other appropriate actions, in the name of Beneficiary or Grantor or the Trustee, and may settle, compromise or abandon any such actions as Beneficiary or Beneficiary's agent or the Trustee may see fit; and Grantor binds itself and its successors and assigns to take whatever lawful or peaceable steps Beneficiary or Beneficiary's agent or the Trustee may reasonably ask of it or any such person or concern so claiming to take for such purposes, including the institution and prosecution of actions of the character above stated. However, none of Beneficiary, any of the Lenders or Beneficiary's or any Lender's agent or the Trustee shall be obligated to collect any such Rental or be liable or chargeable for failure to do so. Upon any sale of the Property or any part thereof in foreclosure of the lien or security interest created by this Deed of Trust, such Rental so sold which thereafter accrues shall be deemed included in such sale and shall pass to the purchaser free and clear of the assignment made in this Article. Nothing in this Section is intended to require the Beneficiary or any Lender to institute any legal proceedings or engage in any self help remedies in order to make the absolute assignment of the Rental to Beneficiary operative.

**Section 9.4 Beneficiary in Possession; No Liability of Beneficiary.** Beneficiary's acceptance of this assignment shall not, before entry upon and taking possession of the Property by Beneficiary, be deemed to constitute Beneficiary a "lienholder in possession" or "mortgagee in possession," nor

obligate Beneficiary to appear in or defend any proceeding relating to any of the Leases or to the Property, take any action hereunder, expend any money, incur any expenses or perform any obligation or liability under the Leases, or assume any obligation under the Leases including the obligation to return any deposit delivered to Grantor by any tenant. Beneficiary shall not be liable for any injury or damage to person or property in or about the Property (except to the extent arising out of gross negligence or willful misconduct). Neither the collection of Rental due under the Leases herein described nor possession of the Property by Beneficiary shall render Beneficiary liable with respect to any obligations of Grantor under any of the Leases.

**Section 9.5 Additional Covenants, Warranties and Representations Concerning Leases and Rental.** Grantor covenants, warrants and represents that:

(a) Neither Grantor nor any previous owner has entered into any prior oral or written assignment, pledge or reservation of the Rental, entered into any prior assignment or pledge of Grantor's landlord interests in any Lease or performed any act or executed any other instruments which might prevent or limit Beneficiary from operating under the terms and conditions of this Article;

(b) Grantor has good title to the Leases and Rental hereby assigned and the authority to assign same, and no other person or entity has any right, title or interest in and to the landlord's interests therein;

(c) All existing Leases are valid, unmodified and in full force and effect, except as indicated herein, and no default exists thereunder;

(d) No Rental has been, nor does Grantor anticipate that any Rental will be, waived, released, discounted, set off or compromised, except as disclosed to Beneficiary in writing before the date hereof;

(e) Except as disclosed to Beneficiary in writing before the date hereof, Grantor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rental;

(f) Grantor shall (i) perform all of the terms and conditions of the Leases, (ii) upon Beneficiary's request, execute an additional assignment to Beneficiary of all Leases then affecting the Property and all Rental and other sums due thereunder by assignment(s) in form and substance reasonably satisfactory to Beneficiary and (iii) at the request of Beneficiary, record such Leases and the assignment(s) thereof to Beneficiary. Grantor will not, without the prior written consent of Beneficiary (not to be unreasonably withheld or delayed), amend, modify, extend, renew, terminate, cancel or surrender any Lease or suffer or permit any of the foregoing, orally or in writing;

(g) Grantor shall not execute any Lease unless the form of the Lease has been approved by Beneficiary and the tenant under such Lease and the terms of such Lease shall comply with leasing standards for the Property from time to time approved by Beneficiary in writing;

(h) Grantor shall give immediate notice to Beneficiary of any notice Grantor received from any tenant or subtenant under any Leases specifying any claimed material default by any party under such Leases;

(i) Grantor shall enforce the tenants' material obligations under the Leases;

(j) Grantor shall defend, at Grantor's expense, any proceeding pertaining to the Leases, including, if Beneficiary so requests, any such proceeding to which Beneficiary is a party;

(k) Grantor shall neither create nor permit any encumbrance upon its interest as landlord under the Leases, except for this Deed of Trust and any other encumbrances permitted by this Deed of Trust;

(l) Grantor shall not encumber or assign, or permit the encumbrance or assignment of, any Leases or Rental without the prior written consent of Beneficiary;

(m) Grantor shall not waive or release any material obligation of any tenant under the Leases without Beneficiary's prior written consent;

(n) Each Lease executed after the date hereof shall contain a statement signed by the Grantor that such Lease is subject to this Deed of Trust;

(o) Grantor shall from time to time furnish to Beneficiary, within thirty (30) days after demand therefor, true, correct and complete copies of all Leases or any portion of the Leases specified by Beneficiary; and

(p) Grantor shall not in any event collect any Rental more than one (1) month in advance of the time it will be earned (and if Grantor does so, in addition to any other rights or remedies available by reason of such Event of Default, all Rental so collected more than one (1) month in advance of the time it is earned shall be delivered to Beneficiary to be applied to the Debt).

**Section 9.6 Merger.** There shall be no merger of the leasehold estates created by the Leases with the fee or any other estate in the Property, and Grantor shall take no action that might result in the merger of the leasehold estates created under the Leases with the fee or any other estate in the Property, without the prior written consent of Beneficiary.

**Section 9.7 Reassignment.** By Beneficiary's acceptance of this Deed of Trust, it is understood and agreed that a full and complete release of this Deed of Trust shall operate as a full and complete reassignment to Grantor of the Beneficiary's rights and interests under this Article (subject to the automatic reinstatement provisions of Section 10.18 below).

**Section 9.8 Subordination of Deed of Trust to Leases.** It is agreed and understood that Beneficiary hereby reserves the right and shall have the right, at any time and from time to time, without the consent or joinder of any other party, to subordinate this Deed of Trust and the liens, assignments and security interests created by this Deed of Trust to all or any of the Leases regardless of the respective priority of any of such Leases and this Deed of Trust. Upon doing so and filing evidence of such subordination in the real property records in the county or counties where the Real



Property is located, a foreclosure of Beneficiary's liens, assignments and security interests under this Deed of Trust shall be subject to and shall not operate to extinguish any of said Leases as to which such subordination is operative.

## ARTICLE 10 GENERAL AND MISCELLANEOUS PROVISIONS

**Section 10.1 Senior Lien.** If and only if there is an existing lien or liens (the "Senior Liens") against any part of the Property which Beneficiary has agreed in writing may continue to burden it and remain unreleased, then, in that event only, only as to the portion of the Property covered by the Senior Liens, and for only so long as any balance remains unpaid on the debt (the "Senior Lien Debt") secured by the Senior Liens, the lien of this Deed of Trust is and shall be second, subordinate and inferior to the Senior Liens to the extent (but no further) that property covered by the Senior Liens is also covered by this Deed of Trust. Any default by Grantor in the timely payment of any sum due under the terms of the Senior Lien Debt, or any default under the provisions of any instrument evidencing, guaranteeing or securing or otherwise relating to the Senior Lien Debt, shall constitute an Event of Default authorizing Beneficiary, at its option (a) to accelerate maturity of the Debt and to cause the lien and security interests of this Deed of Trust to be foreclosed and (b) without waiving such rights of acceleration and foreclosure, to pay or perform the defaulted obligation, in whole or in part, for the account of Grantor and at Grantor's expense, and Beneficiary shall be deemed to have done so at Grantor's special instance and request and shall be fully subrogated to all the rights, liens, remedies, equities, superior title and benefits at any time held, owned, possessed and enjoyed by any holder of the Senior Lien Debt or any promissory note, bond or other papers evidencing it, to the greatest extent permitted by law, and all sums advanced and expenses incurred by Beneficiary in so doing shall constitute sums advanced pursuant to Section 7.1 of this Deed of Trust.

**Section 10.2 Debt May be Changed without Affecting this Deed of Trust.** Any of the Debt may be extended, rearranged, renewed, increased or otherwise changed in any way, and any part of the security described in this Deed of Trust or any other security for any part of the Debt may be waived or released without in anyway altering or diminishing the force, effect or lien of this Deed of Trust, and the lien, assignment and security interest granted by this Deed of Trust shall continue as a prior lien, assignment and security interest on all of the Property not expressly so released, until the final termination of this Deed of Trust.

**Section 10.3 Security is Cumulative.** No other security now existing or hereafter taken to secure any part of the Debt or the performance of any obligation or liability whatever shall in any manner affect or impair the security given by this Deed of Trust. All security for any part of the Debt and the performance of any obligation or liability shall be taken, considered and held as cumulative.

**Section 10.4 Grantor Waives All Stay, Extension, Appraisal and Redemption Rights.** Grantor will not at any time insist upon or plead or in any manner whatever claim or take the benefit or advantage of any stay or extension law now or at any time hereafter in force in any locality where the Property or any part thereof may or shall be situated, nor will Grantor claim, take or insist on any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisal of the Property or any part thereof before any sale or sales thereof to be made pursuant to any provision of this Deed of Trust, or to decree of any court of competent jurisdiction, nor after

any such sale or sales made pursuant to any provision of this Deed of Trust, or to decree of any court of competent jurisdiction, nor after any such sale or sales will Grantor claim or exercise any right conferred by any law now or at any time hereafter in force to redeem the property so sold or any part of it, and Grantor hereby WAIVES all benefit and advantage of any such law or laws and WAIVES the appraisement of the Property or any part of it and covenants that Grantor will not hinder, delay or impede the execution of any power in this Deed of Trust granted and delegated to the Trustee or Beneficiary or any Lender, but that Grantor will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

**Section 10.5 Subrogation to Liens Discharged.** Grantor hereby agrees that Beneficiary (on behalf of the Lenders) shall be subrogated to all rights, titles, interests, liens, benefits, remedies, equities, superior title and security interests (the "Subrogated Liens") owned, claimed or held as security for any debt or other obligation (the "Discharged Obligations") directly or indirectly satisfied, discharged or paid with money or other property advanced by Beneficiary or any Lender. Irrespective of any formal or informal acknowledgment of partial or complete satisfaction or release of the Discharged Obligations, the Subrogated Liens shall be continued, renewed, extended, brought forward and rearranged as security for the Debt in addition to and cumulative of the lien and security interest of this Deed of Trust. Foreclosure under this Deed of Trust shall constitute foreclosure of the Subrogated Liens.

**Section 10.6 Construction Lien.** If funds are to be advanced against the Notes as construction progresses on the Real Property, then this is a construction lien, and such funds are to be used to pay the costs of such construction, which may with the express prior written consent of Beneficiary include the acquisition costs of the Real Property.

**Section 10.7 Due on Sale.** Grantor agrees that if, without Beneficiary's prior written consent, (a) any part of the Property should be directly or indirectly transferred or conveyed, voluntarily or involuntarily, absolutely or as security, or (b) Grantor should enter into any contractual arrangement to transfer or convey any part of the Property or any interest in the Property, Beneficiary shall have the right and option (except only in those circumstances, if any, where the exercise of such right is expressly prohibited by applicable law and such law also precludes Grantor from effectively waiving such prohibition) to declare all or any part of the Debt to be due and payable. Beneficiary shall have such right and option absolutely and irrespective of whether or not the transfer or conveyance would or might (i) diminish the value of any security for the Debt, (ii) increase the risk of default under this Deed of Trust, (iii) increase the likelihood of Beneficiary's having to resort to any security for the Debt after default or (iv) add or remove the liability of any person or entity for payment of the Debt or performance of any covenant or obligation under this Deed of Trust. To exercise such right and option, Beneficiary shall give written notice to Grantor and to the person or entity to whom such property was transferred or conveyed that the Debt has been declared due and payable and that Beneficiary demands that the Debt be paid. If Beneficiary's consent to a proposed transfer or conveyance is requested, Beneficiary shall have the right (in addition to its absolute right to refuse to consent to any such transaction) to condition its consent upon satisfaction of any one or more of the following requirements: (1) that the interest rate(s) on all or any part of the Debt be increased to a rate which is then acceptable to Beneficiary; (2) that a reasonable transfer fee, in an amount determined by Beneficiary, be paid; (3) that a principal amount deemed appropriate by Beneficiary be paid against the Debt to reduce the ratio that the outstanding balance of the Debt bears to the value of the Property as determined by Beneficiary to a level which is then acceptable to Beneficiary;

each proposed transferee execute an assumption agreement and such other documents as the Beneficiary or its counsel shall reasonably require and in form and substance as may be required by the Beneficiary and its counsel; (5) that the proposed transferee's creditworthiness and financial condition and operating similar properties be demonstrable and proven to the Beneficiary's satisfaction to be at least as good as Grantor's and Grantor's managers' at the time the transfer is made; (6) that the liability to the Beneficiary and the Lenders of Grantor and all other parties to the Debt will be confirmed by them in writing to be assumed and guaranteed by such transfer or conveyance and (7) that any existing or proposed liens and security interests subordinate to all liens and security interests securing the Debt as to both priority and consent to the proposed transaction in a writing addressed to

**Condemnation.** If before final termination of this Deed of Trust, all or a portion of the Property is taken for public or quasi-public purposes, either through eminent domain or otherwise, by voluntary conveyance under threat of condemnation with the written consent and joinder or otherwise, Grantor hereby agrees that any and all damages, payments in lieu of condemnation awards or proceeds of sale on account of the owner of the Property or any portion of it on account of such taking shall be delivered to the Beneficiary, and they are hereby assigned to the Beneficiary, and the proceeds of such sale shall be delivered to the Beneficiary. All proceeds of condemnation awards or proceeds of sale in respect to the Property and all judgments, decrees and awards for injury to the Property shall be applied, first, to reimburse the Beneficiary or the Trustee for all costs and reasonable attorneys' fees, incurred in connection with collection of such proceeds, and the remainder of said proceeds shall be applied in the same manner as provided in (g) above. Grantor agrees to execute such further assignments of all such proceeds and awards as the Beneficiary may request. The Beneficiary is hereby authorized, on behalf of Grantor, to execute and deliver valid acquittances for, and to appeal from, any judgment, decree or award. The Beneficiary shall not be, in any event or circumstances, liable for the collection of, or exercise diligence in the collection of, any such proceeds, judgments, decrees or awards.

**Appraisals and Reports to be Provided.** The Beneficiary (by its officers, employees, agents or independent contractors, at any time and from time to time, and at Grantor's sole cost and expense (to the extent permitted by applicable law), may contract for the services of an appraiser approved by the Beneficiary in its discretion to perform a written appraisal of the Property (or such parts of it as may be requested by the Beneficiary's request). Any such appraisal may be performed at any time or from time to time, and with reasonable notice to Grantor, as long as it does not unreasonably interfere with Grantor's operations. Specifically, any such appraiser is authorized to enter upon, and Grantor shall provide access to, the Property as may be reasonably necessary in the opinion of such appraiser in the performance of its professional services. Grantor will also furnish such appraiser such information regarding the Property as may be reasonably requested by the appraiser to facilitate preparation of an appraisal and will make available for meetings with the appraiser and appropriate personnel having knowledge of such matters. Grantor will permit the appraiser, independent contractors, representatives, employees and officers at all times to enter upon, examine, inspect and remain on the Property for any lawful purpose. The Beneficiary on request all pertinent information in regard to the development,

operation, use and status of the Property. Promptly upon Beneficiary's request, Grantor agrees, at Grantor's sole cost and expense (to the extent not prohibited by applicable law):

(a) to cause an inspection and written appraisal of the Property (or such parts of it as are designated in Beneficiary's request) to be made by a qualified appraiser approved by Beneficiary; and

(b) to cause to be conducted or prepared any other written report, summary, opinion, inspection, review, survey, audit or other professional service relating to the Property or any operations in connection with it (all as designated in Beneficiary's request), including any accounting, architectural, consulting, engineering, design, legal, management, pest control, surveying, title abstracting or other technical, managerial or professional service relating to the Property or its operations, and, to the extent required under applicable laws (or if the Beneficiary shall be of the reasonable belief that the failure to do so can reasonably be expected to result in material damages to the Beneficiary or any Lender which is not covered by a third party indemnity), any toxic or hazardous materials survey, inspection, removal or cleanup work.

Beneficiary may elect to deliver any such request orally, by telegram, telex or telefax, by mail or by hand delivery addressed to Grantor as provided in the Introduction to this Deed of Trust or by any other legally effective method, and it may be given at any time and from time to time before the complete and final release and discharge of this Deed of Trust. Any amount to be paid under this Section by Grantor to Beneficiary shall be a demand obligation owing by Grantor to Beneficiary and shall bear interest from the date of expenditure at the Past Due Rate.

**Section 10.10 Notices.** Except where certified or registered mail notice is required by applicable law, service of any notice to Grantor required or permitted under this Deed of Trust shall be completed three (3) days after deposit of the notice, enclosed in a first class postage prepaid wrapper, properly addressed to Grantor at Grantor's address designated in the Introduction to this Deed of Trust (or if no address is so designated, or such address has changed, to Grantor's most recent address as shown by the records of Beneficiary) in a post office or official depository under the care and custody of the United States Postal Service, and the affidavit of any person having knowledge of the facts concerning such mailing shall be conclusive evidence of the fact of such service. Such method of giving notice shall not be exclusive, but instead any notice may be given to Grantor in any manner permitted or recognized by law.

**Section 10.11 Beneficiary and Grantor.** The term "Beneficiary" as used in this Deed of Trust shall mean and include all successors of Beneficiary as "Agent" under the Loan Agreement. The term "Grantor, its successors and assigns" shall also include the heirs and legal representatives of each Grantor who is a natural person and the receivers, conservators, custodians and trustees of each Grantor, provided that no Grantor may assign or delegate any of its or his rights, interests or obligations under this Deed of Trust, the Notes or any Loan Document without Beneficiary's express prior written consent, and any attempted assignment or delegation without it shall be void or voidable at Beneficiary's election.

**Section 10.12 Article, Section and Exhibit References, Numbers and Headings.** References in this Deed of Trust to Articles, Sections and Exhibits refer to Articles, Sections and Exhibits in and to this Deed of Trust unless otherwise specified. The Article and Section numbers, Exhibit

designations and headings used in this Deed of Trust are included for convenience of reference only and shall not be considered in interpreting, applying or enforcing this Deed of Trust.

**Section 10.13 Exhibits Incorporated.** All exhibits, annexes, appendices and schedules referred to any place in the text of this Deed of Trust are hereby incorporated into it at that place in the text, to the same effect as if set out there verbatim.

**Section 10.14 "Including" is not Limiting.** Wherever the term "including" or a similar term is used in this Deed of Trust, it shall be read as if it were written, "including by way of example only and without in any way limiting the generality of the clause or concept referred to."

**Section 10.15 Gender.** The masculine and neuter pronouns used in this Deed of Trust each includes the masculine, feminine and neuter genders.

**Section 10.16 Severability.** If any provision of this Deed of Trust is held to be illegal, invalid or unenforceable under present or future laws, the legality, validity and enforceability of the remaining provisions of this Deed of Trust shall not be affected thereby, and this Deed of Trust shall be liberally construed so as to carry out the intent of the parties to it. Each waiver in this Deed of Trust is subject to the overriding and controlling rule that it shall be effective only if and to the extent that (a) it is not prohibited by applicable law and (b) applicable law neither provides for nor allows any material sanctions to be imposed against Beneficiary for having bargained for and obtained it.

**Section 10.17 Any Unsecured Debt is Deemed Paid First.** If any part of the Debt cannot lawfully be secured by this Deed of Trust, or if the lien, assignments and security interest of this Deed of Trust cannot be lawfully enforced to pay any part of the Debt, then and in either such event, at the option of Beneficiary, all payments on the Debt shall be deemed to have been first applied against that part of the Debt.

**Section 10.18 Payments Returned.** Grantor agrees that, if at any time all or any part of any payment previously applied by Beneficiary or any Lender to the Debt is or must be returned by Beneficiary or such Lender--or recovered from Beneficiary or such Lender--for any reason (including the order of any bankruptcy court), this Deed of Trust shall automatically be reinstated to the same effect as if the prior application had not been made, and, in addition, Grantor hereby agrees to indemnify Beneficiary and each Lender against, and to save and hold Beneficiary and each Lender harmless from any required return by Beneficiary or any Lender--or recovery from Beneficiary or any Lender--of any such payment because of its being deemed preferential under applicable bankruptcy, receivership or insolvency laws, or for any other reason.

**Section 10.19 Amendments in Writing.** This Deed of Trust shall not be changed orally but shall be changed only by agreement in writing signed by Grantor and Beneficiary. Any waiver or consent with respect to this Deed of Trust shall be effective only in the specific instance and for the specific purpose for which given. No course of dealing between the parties, no usage of trade and no parole or extrinsic evidence of any nature shall be used to supplement or modify any of the terms or provisions of this Deed of Trust.

**Section 10.20 Governing Law. THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE APPLICABLE LAWS OF THE STATE OF**

TEXAS EXCEPT TO THE EXTENT (a) OF PROCEDURAL AND SUBSTANTIVE MATTERS RELATING ONLY TO THE CREATION, PERFECTION AND FORECLOSURE OF LIENS AND ENFORCEMENT OF RIGHTS AND REMEDIES AGAINST THE AFFECTED PROPERTY, THE LEASES AND THE RENTALS, AND, TO THE EXTENT REQUIRED BY UTAH LAW, ANY OTHER PROPERTY COVERED HEREBY, WHICH MATTERS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF UTAH AND (b) THAT THE LAWS OF THE UNITED STATES OF AMERICA AND ANY RULES, REGULATIONS, OR ORDERS ISSUED OR PROMULGATED THEREUNDER, APPLICABLE TO THE AFFAIRS AND TRANSACTIONS ENTERED INTO BY BENEFICIARY, OTHERWISE PRE-EMP UTAH OR TEXAS LAW, IN WHICH EVENT SUCH FEDERAL LAW SHALL CONTROL.

**Section 10.21 Entire Agreement.** This Deed of Trust embodies the entire agreement and understanding between Grantor and Beneficiary with respect to its subject matter and supersedes all prior conflicting or inconsistent agreements, consents and understandings relating to such subject matter. Grantor acknowledges and agrees that there is no oral agreement between Grantor and Beneficiary which has not been incorporated in this Deed of Trust.

**Section 10.22 Leasehold Estate.** This Deed of Trust is intended to cover and affect, among other property, all of Grantor's interest in the leasehold estates, options, rights to amend or modify and interests created by and contained in the lease agreements described on Exhibit A, as the same may be amended, supplemented, restated or replaced from time to time (collectively, the "Lease Agreements"). The following terms and provisions shall apply with regard to such leasehold estates, options, rights to amend or modify and interests and such lease agreement in addition to the other terms and provisions hereof:

(i) Grantor will pay, on or before the dates due, all rents and other amounts payable under the provisions of each of the Lease Agreements and will timely and fully observe and perform all of the terms, covenants, agreements and conditions of each of the Lease Agreements required therein to be observed and performed by Grantor as lessee, and upon Beneficiary's request will immediately furnish to Beneficiary (to the extent available using good faith efforts) receipts from the lessor under each of the Lease Agreements, or other satisfactory evidence of timely payment of all rentals and other sums due thereunder, and such receipts shall continue to be furnished to Beneficiary on a monthly basis until further notice from Beneficiary. Grantor covenants and agrees to immediately deliver to Beneficiary a copy of any notice of default or other notices it receives under or pursuant to any of the Lease Agreements. In addition, Grantor will not do, or permit anything to be done, or refrain from doing, anything which would or might terminate or impair the security of this Deed of Trust, or be grounds for terminating any of the Lease Agreements or declaring a forfeiture thereof.

(ii) Grantor agrees that it will not acquire the property covered by any of the Lease Agreements, or any part thereof or any additional leasehold or other interest therein unless the ownership interest acquired by Grantor and the leasehold estate created by and existing under such Lease Agreement do not merge, and such Lease Agreement shall remain in full force and effect as a separate and distinct interest in the real property described on Exhibit A, and in such event the interest acquired by Grantor shall automatically (and without need for notice to, or execution of any further instruments by, Grantor or any other person or entity) be subject to all of the terms and

provisions of this Deed of Trust, and this Deed of Trust shall continue in all respects encumbering Grantor's fee simple interest (or other estate) in the Real Property and such other Affected Property in accordance with the terms and provisions set forth herein.

(iii) Grantor agrees that in the event Beneficiary elects to make any payments or do any act or thing required to be paid or done by Grantor as lessee under any of the Lease Agreements, Beneficiary shall, in addition to all other remedies given Beneficiary herein, be fully subrogated to any and all rights of Grantor as lessee under each of the Lease Agreements arising from or relating to such payment or performance under any of the Lease Agreements.

(iv) Grantor will not surrender the leasehold estate created by any of the Lease Agreements or terminate or cancel any of the Lease Agreements, and will not modify, change, supplement, alter or amend any of the Lease Agreements (either orally or in writing), and as further security for the Debt, Grantor hereby assigns to Beneficiary all of its rights and privileges to terminate, cancel, modify, change, supplement, alter or amend each of the Lease Agreements, and any such termination, cancellation, modification, change, supplementation, alteration or amendment of any of the Lease Agreements without the prior written consent of Beneficiary shall be void and of no force and effect. On demand by Beneficiary, Grantor shall deposit with Beneficiary Grantor's original executed Lease Agreements (all originals in the possession of Grantor, if more than one), which may be retained by Beneficiary (without liability for the safekeeping thereof) until this Deed of Trust has terminated. Notwithstanding the foregoing, Beneficiary shall not unreasonably withhold or delay its consent to the termination of a Lease Agreement following any substantial condemnation or casualty with respect thereto.

(v) The lien of this Deed of Trust shall attach to any and all of Grantor's rights and remedies arising hereafter under or pursuant to Subsection 365(h) of the Bankruptcy Code, 11 U.S.C. §365(h), including all of Grantor's rights to remain in possession of the Property.

(vi) Grantor shall not, without first obtaining Beneficiary's prior written consent, elect to treat any of the Lease Agreements as terminated under Subsection 365(h)(1) of the Bankruptcy Code, 11 U.S.C. §365(h)(1). Any such election made without first obtaining Beneficiary's prior written consent shall be void.

(vii) Grantor hereby unconditionally assigns, transfers and sets over to Beneficiary all of Grantor's claims and rights to the payment of damages arising from any rejection by the lessor of any of the Lease Agreements under the Bankruptcy Code, 11 U.S.C. §101 *et seq.* ("Bankruptcy Code"). Beneficiary shall have the right to proceed in its own name or in the name of Grantor in respect of any claim, suit, action or proceeding relating to the rejection of any of the Lease Agreements, including the right to file and prosecute, with or without the joinder of Grantor, any proofs of claim, complaints, motions, applications, notices and other documents in any case with respect to the lessor under any of the Lease Agreements under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until this Deed of Trust shall have terminated. Any amounts received by Beneficiary as damages arising out of the rejection of any of the Lease Agreements as aforesaid shall be applied first to all reasonable costs and expenses of Beneficiary (including attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this Section and then

applied in accordance with the provisions of this Deed of Trust in the manner and order specified for condemnation proceeds.

(viii) If any action, suit, proceeding, motion or notice shall be commenced or filed with respect to the lessor under any of the Lease Agreements in connection with any case under the Bankruptcy Code, Grantor shall participate in any such litigation to an extent and in a manner reasonably acceptable to Beneficiary. Grantor shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of any of the Lease Agreements in any such case under the Bankruptcy Code without first obtaining the prior written consent of Beneficiary (such consent not to be unreasonably withheld or delayed).

(ix) Grantor shall promptly after obtaining knowledge thereof notify Beneficiary orally, by telephone, of any filing by or against the lessor under any of the Lease Agreements of a petition under the Bankruptcy Code. Grantor shall also promptly thereafter give written notice of such filing to Beneficiary, setting forth any information available to Grantor as to the date of such filing, the court in which such petition was filed, and the relief sought therein. Grantor shall also promptly, after Grantor's receipt, deliver to Beneficiary any and all notices, summonses, pleadings, applications and other documents received by Grantor in connection with any such petition and in connection with any proceedings relating thereto.

(x) If there shall be filed by or against the Grantor a petition under the Bankruptcy Code, and Grantor, as lessee under any of the Lease Agreements, shall determine to reject any of the Lease Agreements pursuant to Section 365(a) of the Bankruptcy Code, Grantor shall give Beneficiary prior written notice of the date on which Grantor shall apply to the Bankruptcy Court for authority to reject such Lease Agreement. Such date of application by Grantor shall not be less than ten (10) days from the date such written notice is received by Beneficiary. Beneficiary shall have the right, but not the obligation, to serve upon Grantor, prior to the date Grantor has indicated as the date on which Grantor shall apply to the Bankruptcy Court for authority to reject such Lease Agreement, a written notice stating: (a) that Beneficiary demands that Grantor assume and assign such Lease Agreement to Beneficiary pursuant to Section 365 of the Bankruptcy Code; and (b) that Beneficiary covenants to cure or provide adequate assurance of prompt cure of all defaults and provide adequate assurance of future performance under such Lease Agreement. If Beneficiary serves upon Grantor the written notice described in the preceding sentence, Grantor shall not seek to reject such Lease Agreement and shall comply with the demand provided for in clause (a) of the preceding sentence within thirty (30) days after such written notice shall have been given subject to the performance by Beneficiary of the covenant provided for in clause (b) of the preceding sentence.

(xi) Effective upon the entry of any order for relief with respect to Grantor under Chapter 7 of the Bankruptcy Code, Grantor hereby assigns and transfers to Beneficiary a non-exclusive right to apply to the Bankruptcy Court under Subsection 365(d)(1) of the Bankruptcy Code for an order extending the period during which any of the Lease Agreements may be rejected or assumed.

(xii) The occurrence of a default, an event of default or a similar event (however denominated) under any of the Lease Agreements which is not remedied within any applicable notice and cure period shall constitute an "Event of Default" under this Deed of Trust.



(xiii) The term "Real Property" as used herein shall include Grantor's rights, titles and interests in and to the property covered by the leasehold interest created under and pursuant to each of the Lease Agreements.

(xiv) The Lease Agreements are in full force and effect and there is no agreement amending, modifying or rearranging any of the Lease Agreements or diminishing or impairing the liability of any lessor or landlord thereunder to perform fully its obligations in strict accordance with the Lease Agreements or diminishing or impairing the obligation of any endorser, guarantor or surety for or of any of the Lease Agreements to perform fully its obligations in strict accordance with the writings creating or evidencing the obligation of such endorser, guarantor or surety.

(xv) Grantor has heretofore obtained the written consent of all necessary parties, if any, required to be obtained under each of the Lease Agreements or otherwise to authorize the assignment, transfer, pledge of and the grant of the lien and security interest in the Property evidenced by this Deed of Trust (promptly upon request by Beneficiary, Grantor agrees to furnish to Beneficiary all executed original written consents, if any, as shall be required by Beneficiary in connection with or arising out of the lien and security interest granted hereby).

(xvi) Each of the Lease Agreements is the valid and legally binding obligations of Grantor and, to the best of Grantor's knowledge, the other parties thereto, enforceable in accordance with its terms.

(xvii) True, correct and complete copies of each of the Lease Agreements have heretofore been delivered to Beneficiary.

(xviii) No default or event of default on the part of Grantor or on the part of any other party to any of the Lease Agreements has occurred which is continuing.

**Section 10.23 Release of Certain Rights Under Texas Foreclosure Laws.** To the maximum extent permitted by applicable law, Grantor hereby waives all rights, remedies, claims and defenses based upon or related to Sections 51.003, 51.004 and 51.005 of the Texas Property Code, to the extent the same pertain or may pertain to any enforcement of this Deed of Trust.

**Section 10.24 Subject to Intercreditor Agreement.** This Deed of Trust is subject to the terms and limitations set forth in the Intercreditor Agreement dated June 29, 2000 executed by and among Brinker International, Inc., a Delaware corporation, Grantor, Sydran Services, LLC, a Nevada limited liability company, and Beneficiary, as the same may from time to time be amended, modified, supplemented or restated.

**Section 10.25 Subrogation.** Grantor agrees that it shall never be entitled to be subrogated to any of Beneficiary's or any Lender's rights against any Obligor or any other Person or any Collateral or offset rights held by Beneficiary or any Lender for payment of the Debt until final termination of this Deed of Trust.

**Section 10.26 Waiver of Jury Trial. GRANTOR, BENEFICIARY AND LENDERS EACH WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF,**

CONNECTED WITH, RELATED TO OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS DEED OF TRUST. INSTEAD, ANY DISPUTES RESOLVED IN COURT WILL BE RESOLVED IN A BENCH TRIAL WITHOUT A JURY.

## ARTICLE 11 ENVIRONMENTAL MATTERS

Section 11.1 **Certain Definitions.** When used in this Article, the following capitalized terms shall have the meanings set forth below:

(a) "Aboveground Storage Tank" means a nonvehicular device constructed of nonearthen materials located above the ground surface or above the floor of a structure that is below the ground and is designed to contain liquids.

(b) "ACM" means asbestos or any material containing more than one percent (1%) asbestos (as determined under Environmental Laws) that is friable or which bears a risk of becoming friable if not abated.

(c) "CERCLA" means the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et. seq.*

(d) "Costs" means all liabilities, losses, costs, damages, punitive damages, expenses, claims, loss of lien priority, diminution in value, attorneys' fees, experts' fees, consultants' fees, penalties, fines, obligations, judgments and disbursements, as well as expenses of Remediation and any other remedial, removal, response, abatement, cleanup, legal, investigative, monitoring, or record keeping costs and all expenses related thereto.

(e) "Disposal" (or "disposed") shall have the meaning specified in RCRA.

(f) "Environmental Audit" means a comprehensive analysis prepared by consultants approved by Beneficiary, the form, scope, and substance of which shall be reasonably acceptable to Beneficiary of (i) Grantor's compliance with Environmental Laws, and (ii) Grantor's activities or any activities conducted at the Property for the purpose of determining whether there exists any condition that could give rise to any Environmental Claim against Grantor, the Property or any operator thereof.

(g) "Environmental Claim" means any claim; demand; action; cause of action; suit; loss; cost; damage; punitive damage; fine, penalty, expense, liability, criminal liability, judgment, governmental or private investigation relating to Remediation or compliance with Requirements of Environmental Laws; proceeding; lien; personal injury, or property damage, whether threatened, sought, brought or imposed, that is related to or that seeks to recover Costs related to, or seeks to impose liability regarding Grantor, the Property or operations conducted at the Property for (i) improper use or treatment of wetlands, pinelands or other protected land or wildlife; (ii) noise; (iii) radioactive materials (including naturally occurring radioactive materials); (iv) explosives; (v) pollution, contamination, preservation, protection, remediation or clean-up of the air, surface

water, ground water, soil or wetlands; (vi) solid, gaseous or liquid waste generation, handling, discharge, release, threatened release, treatment, storage, disposal or transportation; (vii) exposure of persons or property to Hazardous Substances and the effects thereof; (viii) the manufacture, processing, distribution in commerce, use, treatment, storage, disposal or Remediation of Hazardous Substances; (ix) injury to, death of or threat to the health or safety of any person or persons caused directly or indirectly by Hazardous Substances; (x) destruction caused directly or indirectly by Hazardous Substances or the release of any Hazardous Substance on any property (whether real or personal); (xi) the implementation of spill prevention and/or disaster plans relating to Hazardous Substances; (xii) community right-to-know and other disclosure laws or (xiii) maintaining, disclosing or reporting information to governmental authorities under any Environmental Law. The term "Environmental Claim" also includes any Costs incurred in responding to efforts to require Remediation and any claim based upon any asserted or actual breach or violation of any Requirements of Environmental Law, or upon any event, occurrence or condition as a consequence of which, pursuant to any Requirements of Environmental Law, (y) any owner, operator or person having any interest in the Property, including any holder of a lien upon the Property or the beneficiary of any lien upon the Property, shall be liable with respect to any Environmental Claim or otherwise suffer any loss or disability or (z) the Property shall be subject to any restriction on use, ownership or transferability. An "Environmental Claim" further includes a proceeding to issue, modify, revoke or terminate an Environmental Permit, or to adopt or amend a regulation to the extent that such a proceeding or occurrence attempts to redress violations of any applicable Environmental Permit or will materially impair the value of any security for the Debt, the prospects for timely repayment of the Debt, Grantor's current financial condition or Grantor's ability to conduct its business operations or to continue in business as a going concern.

(h) "Environmental Laws" means the laws described on Exhibit B attached hereto and incorporated herein for all purposes and any and all other laws, rules, regulations, ordinances, orders or guidance documents now or hereafter in effect of any federal, state or local executive, legislative, judicial, regulatory or administrative agency, board or authority or any judicial or administrative decision relating thereto that relate to (i) wetlands, pinelands or other protected land or wildlife species; (ii) noise; (iii) radioactive materials (including naturally occurring radioactive materials); (iv) explosives; (v) pollution, contamination, preservation, protection, or clean-up of the air, surface water, ground water, soil or wetlands; (vi) solid, gaseous or liquid waste generation, handling, discharge, release, threatened release, treatment, storage, disposal or transportation; (vii) exposure of persons or property to Hazardous Substances and the effects thereof; (viii) injury to, death of or threat to the safety or health of employees and any other persons; (ix) the manufacture, processing, distribution in commerce, use, treatment, storage, disposal or Remediation of Hazardous Substances; (x) destruction, contamination of, or the release onto any property (whether real or personal) directly or indirectly connected with Hazardous Substances; (xi) the implementation of spill prevention and/or disaster plans relating to Hazardous Substances; (xii) community right-to-know and other disclosure laws or (xiii) maintaining, disclosing or reporting information to governmental authorities under any Environmental Law.

(i) "Environmental Permits" means any permit, license, registration, waste identification number, approval or other authorization relating to Grantor, Grantor's business or operations, or the Property required by any Environmental Law.

(j) "Hazardous Substances" means (i) those substances included within the statutory and/or regulatory definitions of "hazardous substance," "hazardous waste," "extremely hazardous substance," "regulated substance," "contaminant," "hazardous materials" or "toxic substances," under any Environmental Law, (ii) those substances listed in 49 C.F.R. 172.101 and in 40 C.F.R. Part 302; (iii) any material, waste or substance which is (A) petroleum, oil or a fraction thereof, (B) ACM, (C) polychlorinated biphenyls, (D) formaldehyde, (E) designated as a "hazardous substance" pursuant to 33 U.S.C. § 1321 or listed pursuant to 33 U.S.C. § 1317; (F) explosives or (G) radioactive materials (including naturally occurring radioactive materials); (iv) Solid Wastes that pose imminent and substantial endangerment to health or the environment; (v) radon gas in an ambient air concentration exceeding four picocuries per liter (4 pCi/l); (vi) such other substances, materials, or wastes that are or become classified or regulated as hazardous or toxic under any federal, state or local law or regulation and (viii) any Underground Storage Tank. For the purposes of this definition, Hazardous Substances shall not include any substance of a nature, quantity or concentration that is customarily used, stored or disposed as part of or incidental to the operation and maintenance of the Property in the ordinary course of Grantor's business currently conducted (or currently contemplated to be conducted following completion of construction of improvements, if applicable) at the Property so long as (x) such use, storage or disposal complies fully with applicable Environmental Laws and good and safe business practice, (y) any disposal takes place in accordance with applicable Environmental Laws at disposal facilities and locations other than the Property and which are fully permitted in accordance with Environmental Laws and (z) such use, storage or disposal does not require Grantor, any agent or employee of Grantor or any operator of the Property to have a hazardous waste generator identification number or any other Environmental Permit based primarily on or related primarily to the Hazardous Substance in question.

(k) "Beneficiary Indemnitees" means Beneficiary, each of the Lenders and any subsequent holder, participant in or owner of any of the Notes or any interest in any of them, any affiliate, successor, assign or subsidiary of Beneficiary, any of the Lenders and each of their respective shareholders, directors, officers, employees, counsel, agents and contractors, as well as their respective heirs and personal and legal representatives.

(l) "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et. seq.

(m) "Release" (or "released") shall have the meaning specified in CERCLA.

(n) "Remediation" means any action necessary to ensure compliance with the Requirements of Environmental Law including (i) the removal and disposal or containment (if containment is practical under the circumstances and is permissible within Requirements of Environmental Law) or monitoring of any and all Hazardous Substances at the Property; (ii) the taking of reasonably necessary precautions to protect against the release or threatened release of Hazardous Substances at, on, in, about, under, within or near the air, soil, surface water, groundwater or soil vapor at the Property or any public domain affected by the Property or any surrounding areas thereof; (iii) any action necessary to mitigate the usurpation of wetlands, pinelands or other protected land or reclaim the same or to protect and preserve wildlife species; (iv) any action necessary to meet the requirements of an Environmental Permit or (v) any other action reasonably required to satisfy Requirements of Environmental Law imposed upon Grantor, the Property and/or any operation thereon.

(o) "Requirements of Environmental Law" means all requirements, conditions, restrictions or stipulations of Environmental Laws imposed upon or related to Grantor, the Property and/or any operation conducted on the Property.

(p) "Solid Waste" shall have the meaning ascribed to it in RCRA.

(q) "Underground Storage Tank" shall have the meaning ascribed to it in RCRA.

Notwithstanding the foregoing, if any Environmental Law is amended so as to broaden the meaning of any term defined in it, such broader meaning shall apply subsequent to the effective date of such amendment. Where a defined term in this Article derives its meaning from a statutory reference, for the purposes of this Article any regulatory definition promulgated pursuant to the applicable statute shall be deemed to be applicable to the extent its definition is broader than the statutory reference and any reference or citation to a statute or regulation shall be deemed to include any amendments to that statute or regulation and judicial and administrative interpretations of it. To the extent that the laws or regulations of the State in which the Affected Property is situated establish a meaning for a term defined in this Article through reference to federal Environmental Law that is broader than the meaning specified in such federal Environmental Law, such broader meaning set forth in the state Environmental Law shall apply. Any specific references to a law shall include any amendments to it promulgated from time to time.

**Section 11.2 Environmental Representation and Warranties.** Grantor represents and warrants that, to the best of Grantor's knowledge and belief, except as disclosed by an Environmental Audit:

(a) **Presence of Hazardous Substances.** There do not exist any Hazardous Substances on the Property or any property contiguous to the Property;

(b) **On-site Release of Hazardous Substances.** There has been no spill, release, threatened release, discharge or disposal of Hazardous Substances that have occurred or are presently occurring on or onto the Property or from any adjacent properties;

(c) **Off-site Release of Hazardous Substances.** There has been no spill, release, threatened release, discharge or disposal of Hazardous Substances that has occurred or is presently occurring (i) on any tract neighboring the Property or (ii) off the Property as a result of any construction on or operation or use of the Property;

(d) **Environmental Claims.** There are no presently existing or threatened Environmental Claims.

(e) **Compliance with Requirements of Environmental Law.** There has been no failure by Grantor or, to the best of Grantor's knowledge, any predecessor in interest to Grantor, to comply with all applicable Requirements of Environmental Laws relating to Grantor, Grantor's operations, the Property and Grantor's manufacture, processing, distribution, use, treatment, generation, recycling, reuse, sale, storage, handling, transportation or disposal of any Hazardous Substance and Grantor is not aware of any facts or circumstances which could materially impair such compliance with all applicable Environmental Laws.

(f) **Environmental Permits.** Grantor is not currently and, to the best of Grantor's knowledge, no predecessor in interest to Grantor was required to obtain any Environmental Permit to construct, demolish, renovate, occupy, operate or use any buildings, improvements, fixtures or equipment forming a part of the Property that have not been obtained and fully disclosed to Beneficiary.

(g) **Disclosure to Governmental Authority.** The present and past uses of the Property satisfy all Requirements of Environmental Laws and Grantor is aware of no fact or circumstance which upon disclosure to any governmental authority would render this representation to be false or misleading in any respect.

(h) **ACM, Underground Storage Tanks and Aboveground Storage Tanks.** There is no ACM, Aboveground Storage Tank or Underground Storage Tank located on, in (including, with respect to ACM, within building materials) or about the Property nor has any ACM, Aboveground Storage Tank or Underground Storage Tank at any time been removed from the Property. Each Aboveground Storage Tank and Underground Storage Tank located on, in or about the Property has been registered with the appropriate authorities of the State in which the Affected Property is situated, all registration/facility fees for each such Aboveground Storage Tank and Underground Storage Tank have been fully paid and any release or leak with respect to each such Aboveground Storage Tank and Underground Storage Tank has been reported to and confirmed by the appropriate authorities of such State.

(i) **Notice of Environmental Claim.** There are no liens affecting Grantor, the Property or, to the best of Grantor's knowledge, any real property contiguous to the Property arising out of or in connection with Environmental Claim and Grantor has not received any summons, directive, citation, notice, letter or other communication, whether written or oral, from any governmental authority or any other person concerning any intentional or unintentional action or omission by Grantor or any other person which may result in an Environmental Claim or a breach of any Requirement of Environmental Law with regard to Grantor or the Property.

**Section 11.3 Environmental Covenants.** Grantor agrees and covenants as follows:

(a) **Notice to Beneficiary.** Grantor shall notify Beneficiary in writing within three (3) business days upon receipt by Grantor from any person of any inquiry, notice, claim, charge, cause of action or demand relating to Requirements of Environmental Laws or an Environmental Claim, including any notice of inspection or assertion of noncompliance with Requirements of Environmental Laws, stating the basis of such inquiry or notification. Grantor shall promptly deliver to Beneficiary any and all documentation or records as Beneficiary may reasonably request in connection with such notice or inquiry, and shall keep Beneficiary advised of any subsequent developments at all times.

(b) **Compliance with Permits.** Grantor will obtain, comply with and properly maintain all Environmental Permits required for the Property and any operations conducted thereon.

(c) **Compliance with Requirements of Environmental Laws.** Grantor will not do or permit anything that will cause Grantor or the Property to be in violation of any Requirements of Environmental Laws, or do or permit anything to be done that might subject Grantor or the Property

to any Remediation obligations that would materially and adversely affect the financial condition of Grantor or the value or marketability of the Property or to any enforcement actions under any Environmental Laws or any other Environmental Claim.

(d) **Remediation.** If any release of Hazardous Substances should exist or occur at the Premises or if Grantor should be ordered or directed by any governmental authority or any other person to undertake Remediation of any Hazardous Substances at the Property or take any other action to satisfy Requirements of Environmental Law, Grantor, to the extent required under applicable laws (or if the Beneficiary shall be of the reasonable belief that the failure to do so can reasonably be expected to result in material damages to the Beneficiary or any Lender which is not covered by a third party indemnity), at no cost or expense to the Beneficiary Indemnitees, shall comply with all Environmental Laws, conduct and complete all required sampling, testing and monitoring and undertake such Remediation promptly upon discovery or notice thereof and thereafter diligently and continuously pursue such Remediation, completing each element, phase or stage of it within each applicable period established by any person, agency or bureau empowered to enforce any applicable Environmental Law (or if no such period or schedule is established, in accordance with a reasonable schedule consistent with prudent business practice taking into account potentially adverse effects to the environment and individuals' health and safety), but in any case before any lien is created on the Property. If Grantor undertakes any Remediation, or causes it to be undertaken, Grantor shall conduct and complete such Remediation (i) in compliance with Requirements of Environmental Laws, (ii) in accordance with the directives and orders of all appropriate federal, state and local governmental authorities and (iii) in accordance with sound business practice taking into account potentially adverse effects to the environment and individuals' health and safety.

(e) **Prospective Obligations.** If any Remediation fails to comply with Requirements of Environmental Laws because of changes to said Environmental Laws, Grantor shall promptly undertake such Remediation and other work as is necessary to comply with the then-current Environmental Laws in the manner set forth in this Section.

(f) **Environmental Audits.** To the extent required under applicable laws (or if the Beneficiary shall be of the reasonable belief that the failure to do so can reasonably be expected to result in material damages to the Beneficiary or any Lender which is not covered by a third party indemnity), Grantor will provide, at no cost or expense to the Beneficiary Indemnitees, an Environmental Audit; provided, that unless required by any governmental authority or during the continuation of an Event of Default, Beneficiary may not request more than one (1) Environmental Audit in any twelve (12) calendar month period. Any fundings remaining to be made of the Debt shall be expressly conditioned upon receipt and approval of the Environmental Audit and Beneficiary being satisfied that it has disclosed no fact or circumstance which causes Grantor to be in default under this Article. If Grantor fails to provide an Environmental Audit within thirty (30) days after Beneficiary's written request, Beneficiary may order one, and Grantor grants to Beneficiary and its agents, employees, contractors and consultants access to the Property and a license to perform such inspections and tests as are reasonable under the circumstances. At Beneficiary's option, the reasonable cost of such inspections and tests actually incurred by Beneficiary shall be payable by Grantor to Beneficiary upon demand.

(g) **Asbestos Containing Materials.** Grantor will not install any ACM or permit any ACM to be installed in or introduced onto the Property; and if any ACM exists in or on the Property, whether installed by Grantor or others, Grantor will, at no cost or expense to the Beneficiary Indemnitees, remove it (or if removal is prohibited by law or in Grantor's reasonable judgment is impractical, take whatever action is required by law or reasonably necessary to mitigate adverse impact to the environment and individuals' health and safety, including encapsulation of the ACM or implementation of an operation and maintenance program).

#### Section 11.4 Environmental Indemnity.

(a) **Scope of Indemnity.** Grantor hereby agrees, jointly and severally, unconditionally, absolutely and irrevocably, to indemnify, defend and hold harmless each Beneficiary Indemnitee from and against any Costs which at any time or from time to time may be claimed, suffered or incurred in connection with any Environmental Claim, the violation of any Requirements of Environmental Law, the breach of any representation or warranty of Grantor set forth herein or the failure of Grantor to perform any obligation herein required to be performed by Grantor. Such indemnification obligations are herein called the "Environmental Indemnifications."

(b) **Survival of Indemnity.** The provisions of and undertakings and indemnifications set out in this Article shall survive foreclosure of this Deed of Trust or acceptance of the Property by Beneficiary in lieu of foreclosure, the payment of the Debt and satisfaction and release of this Deed of Trust and shall thereafter continue to be the personal liability, obligation and indemnification of Grantor, binding upon Grantor.

(c) **Grantor's Liability.** Grantor's liability under the indemnification provisions contained in this Article shall accrue upon the earlier of an Environmental Claim being asserted against any Beneficiary Indemnitee or upon a Beneficiary Indemnitee's receipt of notice or acquiring knowledge of any of the events specified in Section 11.4(a). In no event shall any Beneficiary Indemnitee be required to make any expenditure or bring any cause of action to enforce Grantor's obligations and liability under and pursuant to the indemnifications set forth in this Article. In addition, actual threatened action by governmental authority is not a condition or prerequisite to Grantor's obligations under this Deed of Trust. Within five (5) days after notification from Beneficiary or any Lender supported by reasonable documentation setting forth the nature of the Environmental Claim, Grantor, at no cost or expense to Beneficiary Indemnitees, shall diligently commence resolution of the Environmental Claim in a manner reasonably acceptable to Beneficiary or such Lender, as the case may be, and shall diligently and timely prosecute such resolution to completion. Provided, however, with respect to those claims that may be satisfied by payment of a liquidated sum of money, Grantor shall promptly pay the amount so claimed (to the extent supported by reasonable documentation). If Remediation is required, the provisions of Section 11.3(d) shall control and if litigation or any administrative proceeding is commenced the provisions of Section 11.4(h) shall control.

(d) **EFFECT OF NEGLIGENCE.** GRANTOR SHALL INDEMNIFY THE BENEFICIARY INDEMNITEES REGARDLESS OF WHETHER THE ACT, OMISSION, FACTS, CIRCUMSTANCES OR CONDITIONS GIVING RISE TO SUCH INDEMNIFICATION WERE CAUSED IN WHOLE OR IN PART BY BENEFICIARY'S, ANY LENDER'S (OR ANY BENEFICIARY INDEMNITEE'S) SIMPLE (BUT NOT GROSS) NEGLIGENCE.



(e) **Burden of Proof.** Notwithstanding any provision contained to the contrary in this Deed of Trust or any of the other Loan Documents, Grantor shall bear the burden of proof by preponderance of the evidence that the indemnification contained in this Article is inapplicable to any claim or assertion made hereunder.

(f) **Inconsistent Provisions.** The provisions of this Article shall govern and control over any inconsistent provision of the Loan Documents, including any exculpatory or non-recourse provisions contained in any of them.

(g) **Payment of Attorneys' Fees.** If at any time any Beneficiary Indemnitee employs counsel for representation (i) to represent any such Beneficiary Indemnitee in any litigation, contest, dispute, suit or proceeding (whether instituted by a Beneficiary Indemnitee, Grantor or any other party) in any way or respect relating to this Article; (ii) to defend an Environmental Claim or (iii) to enforce Grantor's obligations hereunder, then and in any of such events, all of such Beneficiary Indemnitee's reasonable attorneys' fees and expenses arising from such services and all expenses, costs and charges in any way or respect arising in connection therewith or relating thereto shall be paid by Grantor to Beneficiary on demand.

(h) **Appointment of Counsel.** If any Environmental Claim shall be brought against any Beneficiary Indemnitee, then after notification to Grantor thereof as provided in Section 11.4(c), Grantor shall be entitled to participate in all related proceedings and negotiations and to assume the defense thereof at the expense of Grantor with counsel reasonably acceptable to the applicable Beneficiary Indemnitee and to settle and compromise any such claim or action; provided, that the applicable Beneficiary Indemnitee may elect to be represented by separate counsel, at Grantor's expense, and if the applicable Beneficiary Indemnitee so elects, any settlement or compromise shall be effected only with the consent of the applicable Beneficiary Indemnitee, which consent shall not be unreasonably withheld or delayed. Grantor's right to participate in the defense or response to any Environmental Claim should not be deemed to limit or otherwise modify its obligations under this Article.

(i) **Payment on Demand.** Grantor shall make any payment required to be made under this Article in cash and on demand.

(j) **Interest on Indemnified Sums.** Any Costs and other payments required to be paid by Grantor under this Article which are not paid within five (5) business days of receipt by Indemnitor of the applicable Beneficiary Indemnitee's demand therefor shall thereafter be deemed "Delinquent." In addition to all other rights and remedies of Beneficiary or any of the Lenders against Grantor provided herein, under the other Loan Documents or under any applicable law, Grantor shall pay to the applicable Beneficiary Indemnitee immediately upon demand interest at the Past Due Rate from the date such payment becomes Delinquent to the date of payment of such Delinquent sums.

(k) **Subrogation of Indemnity Rights.** Each applicable Beneficiary Indemnitee shall be subrogated to any rights Grantor may have under any indemnifications from any present, future or former owners, tenants or other occupants or users of the Property or any other person relating to the matters covered by this Article.

(l) **Merger, Consolidation or Sale of Assets.** Without limiting any other provision of this Deed of Trust, in the event of a dissolution of Grantor or the disposition of all or substantially all of Grantor's assets to one or more persons or entities, the surviving entity or transferee of assets as the case may be shall deliver to Beneficiary an acknowledged instrument in recordable form specifically assuming all obligations, covenants and responsibilities of Grantor under this Article.


(m) **Survival of Provisions.** The representations, warranties and covenants and indemnities of Grantor set forth in this Article shall continue in effect and, to the extent permitted by law, shall survive the transfer of the Property pursuant to foreclosure proceedings (whether judicial or nonjudicial), by deed in lieu of foreclosure or otherwise. Grantor acknowledges and agrees that its covenants and obligations under this Article are separate and distinct from its other obligations under the Loan Documents.

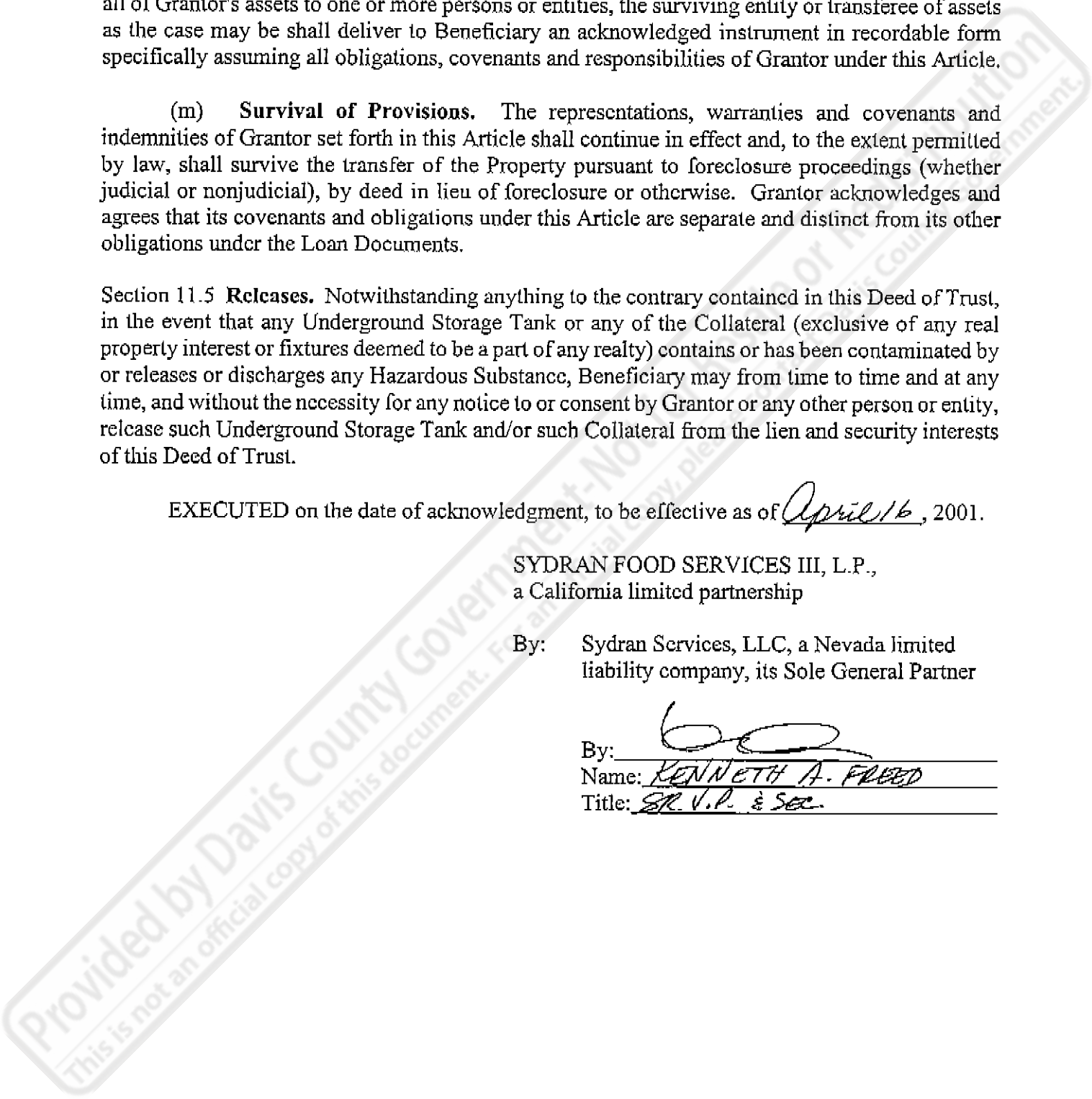
Section 11.5 **Releases.** Notwithstanding anything to the contrary contained in this Deed of Trust, in the event that any Underground Storage Tank or any of the Collateral (exclusive of any real property interest or fixtures deemed to be a part of any realty) contains or has been contaminated by or releases or discharges any Hazardous Substance, Beneficiary may from time to time and at any time, and without the necessity for any notice to or consent by Grantor or any other person or entity, release such Underground Storage Tank and/or such Collateral from the lien and security interests of this Deed of Trust.

EXECUTED on the date of acknowledgment, to be effective as of April 16, 2001.

SYDRAN FOOD SERVICES III, L.P.,  
a California limited partnership

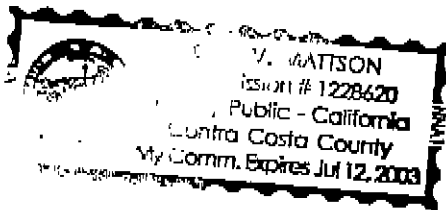
By: Sydran Services, LLC, a Nevada limited liability company, its Sole General Partner

By:   
Name: KENNETH A. FREED  
Title: SR. V.P. & SEC.



THE STATE OF CALIFORNIA §  
§  
COUNTY OF Contra Costa §

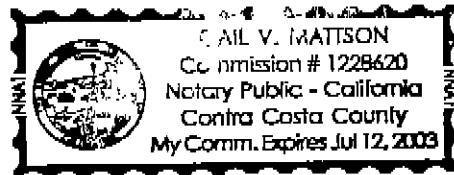
Personally appeared before me, the undersigned authority in and for the said County and State, on this 16<sup>th</sup> day of April, 2001, within my jurisdiction, the within named KENNETH A. FREED who acknowledged that he is SR. V.P. & SEC. of Sydran Services, LLC, a Nevada limited liability company and the general partner of Sydran Food Services III, L.P., a California limited partnership, and that for and on behalf of the said limited liability company, and as its act and deed as the general partner of said limited partnership, he executed the above and foregoing instrument after first having been duly authorized by said limited liability company and limited partnership so to do.



Ail V. Mattson  
Notary Public in and for  
the State of California  
Name printed: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Attached:

- Exhibit A--description of the Real Property (with Lease Agreements)
- Exhibit B--Environmental Laws



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**EXHIBIT A**

The leasehold estates and interests created under each lease agreement to which Debtor is now or hereafter a party, other than lease agreements covering or affecting (or comprising) the Excluded Assets (as defined in the Loan Agreement). Such lease agreements cover and affect, among other properties, the property described on the following pages of this Exhibit.



~~0117~~

E 1664919 B 2819 P 181

EXHIBIT A

Child's #

17

Legal Description of Target Tract

All of Lot 2A, LAYTON MARKET CENTER SUBDIVISION AMENDED, amending Lots 1, 2 and 12 of LAYTON MARKET CENTER SUBDIVISION, according to the official plat thereof, on file and of record in the office of the Davis County Recorder.

10-196-0002

*[Handwritten signature]*

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Gurt  
*[Handwritten initials]*

~~2117~~

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Chili's 17 (cont)

Legal Description of Woodbury Tract

All of Lots 1A and 12A, LAYTON MARKET CENTER SUBDIVISION AMENDED, amending Lots 1, 2 and 12 of LAYTON MARKET CENTER SUBDIVISION, according to the official plat thereof, on file and of record in the office of the Davis County Recorder.

All of Lots 3, 4, 5, 6, 7, 8 and 9, LAYTON MARKET CENTER SUBDIVISION, according to the official plat thereof, on file and of record in the office of the Davis County Recorder.

NKA lots 3A thru 9A Layton Market Center 2<sup>nd</sup> and  
10-200-0003 thru 0005, 0007 thru 0011  
J

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~~11/11~~  
Chili's # 21

E 1664919 B 2819 P 183

EXHIBIT A

LEGAL DESCRIPTION - Salt Lake County

BEGINNING at a point 669.85 ft. N.89°55'30" E. and 463.0 ft. North from the Southwest corner of Section 27, T.1 S., R. 1 W., Salt Lake Base and Meridian; thence North 227.00 ft.; thence S 89°55'30" W. 281.424 ft. the easterly right of way line of 2200 West Street (an 80.0-foot wide road) said point is 40.0 ft. radially distant easterly from the centerline of said street; thence Southerly along said easterly right of way line the following two (2) courses: 1) Southerly 35.001 ft. along the arc of an 840.00-foot radius curve to the right having a central angle of 2°23'15" (chord bears S.0°55'54" E. 34.999 ft.); 2) thence S.0°15'43" W. 192.008 ft.; thence N.89°55'30" E. 281.733 ft. to the point of BEGINNING.

~~CH 38~~

E 1664919 B 2819 P 184

Exhibit A

Chili's # 38

Legal Description Pad 5

Beginning at a point which is N 07°46'07" E 1023.35 feet and N 82°13'53" W 20.03 feet from the center of Section 29, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running thence N 07°46'07" E 121.04 feet; thence N 82°13'53" W 117.00 feet; thence S 07°46'07" W 105.04 feet; thence S 82°13'53" E 30.67 feet; thence S 07°46'07" W 16.00 feet; thence S 82°13'53" E 86.33 feet to the point of beginning. Containing 13,670.90 square feet.

Note: The bearings shown on this exhibit represent a rotation of 07°31'15" clockwise from the Salt Lake County Area Reference Plat. Information based on an airport grid system at Municipal Airport No. 2 in which the center line of the runway is grid north.

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BK 8363 PG 3948



~~3758~~

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Chili's #38 (cont)

LEGAL DESCRIPTION OF SHOPPING CENTER

JORDAN LANDING PLAZA

Beginning at the center of Section 29, Township 2 South, Range 1 West, Salt Lake Base and Meridian, which point is also the southeast corner of subject property; and running thence N 82° 25' 51" W 1460.42 feet to the east right-of-way of Jordan Landing Boulevard; thence along said east right-of-way:

1. N 24° 56' 01" E 13.44 feet to the beginning of a 1103 foot radius curve to the left,
2. thence along said curve 480.86 feet (chord bears N 12° 26' 40" E 477.06 feet);
3. thence N 00° 02' 41" W 538.91 feet to the point of beginning of a 1377.00 foot radius curve to the right;
4. thence along said curve 2348.38 feet (chord bears N 48° 48' 44" E 2073.95 feet);
5. thence S 82° 19' 51" E 128.99 feet;

thence S 07° 46' 07" W 2581.55 feet to the point of beginning.

Contains a gross acreage of 3,410,575.67 square feet (78.30 acres).

**-- MICROFILM MEMO --  
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Environmental Laws

Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986.

Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.

Clean Water Act, 33 U.S.C. § 1251 et seq., as amended by the Oil Pollution Act of 1990, Pub.L. No. 101-380, 104 Stat. 484 (1990).

Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j.

Clean Air Act, 42 U.S.C. § 7401 et seq.

Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq.

The Oil Pollution Act of 1990, Pub.L. No. 101-380, 104 Stat. 484 (1990).

Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.

Williams-Steiger Occupational Safety and Health Act

Environmental laws and regulations promulgated by the State of Utah.

The laws cited above shall be deemed to include any amendments to them and regulations promulgated under them from time to time.

**EXHIBIT B**