

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Franchise Mortgage Acceptance Company
5 Greenwich Office Park, 4th Floor
Greenwich, Connecticut 06831
Attention: Chief Operating Officer

ENT 680471 Bk 802 Pg 79
DATE 1-APR-1998 10:09AM FEE 53.00
MICHAEL L GLEED, RECORDER - FILED BY KM
CACHE COUNTY, UTAH
FOR PINNACLE TITLE

(Space Above For Recorder's Use)

THOMAS RESTAURANT ENTERPRISES, LLC,
a California limited liability company,
as Trustor

to

FIDELITY NATIONAL TITLE INSURANCE COMPANY,
a California corporation,
as Trustee

for the use and benefit of

FRANCHISE MORTGAGE ACCEPTANCE COMPANY,
a Delaware corporation,
as Beneficiary

Restaurant No. 7153

This Instrument Prepared By

Allen, Matkins, Leck, Gamble & Mallory LLP
1999 Avenue of the Stars
Suite 1800
Los Angeles, California 90067-6050

**DEED OF TRUST AND ASSIGNMENT OF
RENTS AND FIXTURE FILING**

Dated: March 31, 1998
Property Address: 1390 North Main Street, Logan, Utah 84321
Restaurant No.: 7153

This DEED OF TRUST AND ASSIGNMENT OF RENTS AND FIXTURE FILING is made as of the date written on the cover page hereof by the person(s) identified as Trustor on the cover page hereof, having an address at 355 S. Grand Avenue, Suite 4500, Los Angeles, California 90071, Attention: James A. Thomas (hereinafter referred to as Trustor), in favor of Fidelity National Title Insurance Company, a California corporation, having an office at 2510 N. Redhill Drive, Suite 100, Santa Ana, California 92705 (hereinafter referred to as Trustee) for the use and benefit of Franchise Mortgage Acceptance Company, a Delaware corporation, having an office at 5 Greenwich Office Park, 4th Floor, Greenwich, Connecticut 06831 (hereinafter referred to as Beneficiary).

W I T N E S S E T H:

Whereas Trustor is the owner of the subleasehold estate in the premises described in Exhibit A attached hereto (hereinafter referred to as the Premises) under and pursuant to the provisions of the sublease described in Exhibit A-1 attached hereto (hereinafter referred to as the Lease);

NOW THEREFORE, to secure the payment of certain obligations in the aggregate sum of \$984,000, lawful money of the United States of America, to be paid with interest and periodic charges (said obligations, interest, periodic charges and all other sums which may or shall become due hereunder being hereinafter collectively referred to as the Obligations) according to a certain Secured Promissory Note dated the date hereof given by Trustor to Beneficiary (hereinafter referred to as the Note), and a certain Pledge and Security Agreement entered into between Trustor and Beneficiary (hereinafter referred to as the Security Agreement), Trustor has given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed and assigned, and by these presents does give, grant, bargain, sell, alien, enfeoff, convey, confirm and assign unto Trustee in trust forever all right, title and interest of Trustor now owned, or hereafter acquired, in and to the following property, rights and interests (such property, rights and interests being hereinafter collectively referred to as the Trust Property):

(a) the Lease, and the leasehold estate created thereunder, and all modifications, extensions and renewals thereof and all credits, deposits, options, purchase options, privileges and rights of Trustor under the Lease including but not limited to the right, if any, to renew or extend the Lease for a succeeding term or terms or to acquire fee title to or other interest in all or any portion of the Premises or the Improvements;

(b) all buildings and improvements now or hereafter located on the Premises (hereinafter referred to as the Improvements);

(c) all of the estate, right, title, claim or demand of any nature whatsoever of Trustor, either in law or in equity, in possession or expectancy, in and to the Trust Property or any part thereof;

(d) all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Trust Property (including, without limitation, any and all development rights, air rights or similar or comparable rights of any nature whatsoever now or hereafter appurtenant to the Premises or now or hereafter transferred to the Premises) and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises to the center line thereof;

(e) all machinery, apparatus, equipment, fittings, fixtures and other property of every kind and nature whatsoever owned by Trustor, or in which Trustor has or shall have an interest, now or hereafter located upon the Trust Property, or appurtenances thereto, or usable in connection with the present or future operation and occupancy of the Trust Property and all building equipment, materials and supplies of any nature whatsoever owned by Trustor, or in which Trustor has or shall have an interest, now or hereafter located upon the Trust Property (hereinafter collectively referred to as the Equipment), and the right, title and interest of Trustor in and to any of the Equipment which may be subject to any security agreements (as defined in the Uniform Commercial Code of the State in which the Premises are located), superior in lien to the lien of this Deed of Trust;

(f) all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Trust Property, whether from the exercise of the right of eminent domain (including any transfer made in lieu of the exercise of said right), or for any other injury to or decrease in the value of the Trust Property;

(g) all leases and other agreements affecting the use or occupancy of the Trust Property now or hereafter entered into (hereinafter referred to as the Leases) and the right to receive and apply the rents, issues and profits of the Trust Property (hereinafter referred to as the Rents) to the payment of the Obligations;

(h) all proceeds of and any unearned premiums on any insurance policies (collectively, hereinafter referred to as the Policies) covering the Trust Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Trust Property;

(i) the right, in the name and on behalf of Trustor, to appear in and defend any action or proceeding brought with respect to the Trust Property and to commence any action or proceeding to protect the interest of Beneficiary in the Trust Property; and

- (j) all proceeds of each of the foregoing.

TO HAVE AND TO HOLD the above granted and described Trust Property unto and to the proper use and benefit of Trustee, and the successors and assigns of Trustee, forever;

IN TRUST, to secure the payment to Beneficiary of the Obligations at the time and in the manner provided for its payment in the Note and in this Deed of Trust;

AND Trustor covenants and agrees with and represents and warrants to Trustee and Beneficiary as follows:

1. Payment of Obligations. Trustor will pay the Obligations at the time and in the manner provided for its payment in the Note, the Security Agreement and in this Deed of Trust.
2. Warranty of Title. Subject only to those exceptions to title, if any, specifically set forth in the title policy, if any, issued or to be issued to Beneficiary and insuring the lien of this Deed of Trust, Trustor warrants the title to the Lease, the Improvements, the Equipment and the balance of the Trust Property. In addition, Trustor represents and warrants that (i) the Lease is in full force and effect and has not been modified in any manner whatsoever, (ii) there are no defaults under the Lease and no event has occurred, which but for the passage of time, or notice, or both, would constitute a default under the Lease, (iii) all rents, additional rents and other sums due and payable under the Lease have been paid in full, and (iv) no action has commenced and no notice has been given or received for the purpose of terminating the Lease. Upon the recording of this Deed of Trust, the lien of this Deed of Trust shall be a perfected lien and fixture filing on all Equipment and other personal property mortgaged hereunder.
3. Insurance. Trustor shall keep the Trust Property insured in accordance with the provisions of the Security Agreement. Sums paid to Beneficiary by any insurer may be retained and applied by Beneficiary toward payment of the Obligations whether or not then due and payable in such order, priority and proportions as Beneficiary in its discretion shall deem proper or, at the discretion of Beneficiary, the same may be paid, either in whole or in part, to Trustor for such purposes as Beneficiary shall designate. If Beneficiary shall receive and retain such insurance proceeds, the lien of this Deed of Trust shall be reduced only by the amount thereof received and retained by Beneficiary and actually applied by Beneficiary in reduction of the Obligations.
4. Payment of Taxes, etc. Trustor shall pay all taxes, assessments, water rates, sewer rents, utility charges and other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed against the Trust Property (hereinafter referred to as the Taxes) prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by law for the nonpayment thereof. Trustor shall deliver to Beneficiary, upon request, receipted bills, cancelled checks and other evidence satisfactory to Beneficiary evidencing the payment of the Taxes prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by law for the nonpayment thereof.

5. Condemnation. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise, Trustor shall continue to pay the Obligations at the time and in the manner provided for its payment in the Note, the Security Agreement and this Deed of Trust and the Obligations shall not be reduced until any award or payment therefor shall have been actually received and applied by Beneficiary to the discharge of the Obligations. Beneficiary may apply the entire amount of any such award or payment to the discharge of the Obligations whether or not then due and payable in such order, priority and proportions as Beneficiary in its discretion shall deem proper. If the Trust Property is sold, through foreclosure or otherwise, prior to the receipt by Beneficiary of such award or payment, Beneficiary shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive such award or payment, or a portion thereof sufficient to pay the Obligations, whichever is less. Trustor shall file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to Beneficiary. Trustor hereby irrevocably authorizes and empowers Beneficiary and Trustee, in the name of Trustor or otherwise, to collect and receive for any such award or payment and to file and prosecute such claim or claims. Although it is hereby expressly agreed that the same shall not be necessary in any event, Trustor shall, upon demand of Beneficiary, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to Beneficiary and Trustee, free and clear of any encumbrances of any kind or nature whatsoever.

6. Leases and Rents. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary the Leases and Rents of the Trust Property. Beneficiary shall have the right to apply the Rents (after payment of all necessary expenses) to the Obligations. THIS IS AN ABSOLUTE ASSIGNMENT, NOT AN ASSIGNMENT FOR SECURITY ONLY. Subject to the terms of this paragraph, Beneficiary and Trustee waive the right to enter the Trust Property for the purpose of collecting the Rents, and grant Trustor the right to collect the Rents. Trustor shall hold the Rents, or an amount sufficient to cover the payment of all operating expenses of the Trust Property and to discharge all current sums due on the Obligations, in trust for use in payment of such current operating expenses and current sums due on the Obligations. The right of Trustor to collect the Rents may be revoked by Beneficiary upon any default by Trustor under the terms of the Note or this Deed of Trust by giving notice of such revocation to Trustor. Following such notice Beneficiary or Trustee may retain and apply the Rents toward payment of the Obligations in such order, priority and proportions as Beneficiary, in its discretion, shall deem proper, or to the operation, maintenance and repair of the Trust Property, and irrespective of whether Beneficiary or Trustee shall have commenced a foreclosure of this Deed of Trust or a sale of the Trust Property pursuant to the provisions of this Deed of Trust or shall have applied or arranged for the appointment of a receiver. Trustor shall not, without the consent of Beneficiary, make, or suffer to be made, any Leases or modify or cancel any Leases or accept prepayments of installments of the Rents for a period of more than one (1) month in advance or further assign the whole or any part of the Rents. Trustor shall (a) fulfill or perform each and every provision of the Leases on the part of Trustor to be fulfilled or performed, (b) promptly send copies of all notices of default which Trustor shall send or receive under the Leases to Beneficiary, and (c) enforce, short of termination of the Leases, the performance or observance of the provisions thereof by the tenants thereunder. In addition to the

rights which Beneficiary may have herein, in the event of any default under this Deed of Trust, Beneficiary, at its option, may require Trustor to pay monthly in advance to Beneficiary, Trustee or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Trust Property as may be in possession of Trustor. Upon default in any such payment, Trustor will vacate and surrender possession of the Trust Property to Beneficiary, Trustee or to such receiver and, in default thereof, Trustor may be evicted by summary proceedings or otherwise. Nothing contained in this paragraph shall be construed as imposing on Beneficiary or Trustee any of the obligations of the lessor under the Leases.

7. Maintenance of the Trust Property. Trustor shall cause the Trust Property to be maintained in good condition and repair and will not commit or suffer to be committed any waste of the Trust Property. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment), without the consent of Beneficiary. Trustor shall promptly comply with all existing and future governmental laws, orders, ordinances, rules and regulations affecting the Trust Property, or any portion thereof or the use thereof. Trustor shall promptly repair, replace or rebuild all or any part of the Trust Property which may be damaged or destroyed by fire or other property hazard or casualty (including any fire or other property hazard or casualty for which insurance was not obtained or obtainable) or which may be affected by any taking by any public or quasi-public authority through eminent domain or otherwise, and shall complete and pay for, within a reasonable time, any structure at any time in the process of construction or repair on the Premises. If such fire or other property hazard or casualty shall be covered by the Policies, Trustor's obligation to repair, replace or rebuild such portion of the Trust Property shall be contingent upon Beneficiary paying Trustor the proceeds of the Policies, or such portion thereof as shall be sufficient to complete such repair, replacement or rebuilding, whichever is less. Trustor will not, without obtaining the prior consent of Beneficiary, initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or affecting the uses which may be made of the Trust Property or any part thereof.

8. Environmental Provisions. For the purposes of this paragraph the following terms shall have the following meanings: (i) the term "Hazardous Material" shall mean any material or substance that, whether by its nature or use, is now or hereafter defined as a hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Requirement, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is now or hereafter regulated under any Environmental Requirement, or which is or contains petroleum, gasoline, diesel fuel or another petroleum hydrocarbon product, (ii) the term "Environmental Requirements" shall collectively mean all present and future laws, statutes, ordinances, rules, regulations, orders, codes, licenses, permits, decrees, judgments, directives or the equivalent of or by any Governmental Authority and relating to or addressing the protection of the environment or human health, and (iii) the term "Governmental Authority" shall mean the Federal government, or any state or other political subdivision thereof, or any agency, court or body of the Federal government, any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions. Trustor hereby represents and warrants to Beneficiary that to the best of Trustor's knowledge after diligent inquiry (i) no Hazardous Material is currently located at, on, in, under or about the Trust Property, (ii) no Hazardous

Material is currently located at, in, on, under or about the Trust Property in a manner which violates any Environmental Requirement, or which requires cleanup or corrective action of any kind under any Environmental Requirement, (iii) no releasing, emitting, discharging, leaching, dumping or disposing of any Hazardous Material from the Trust Property onto or into any other property or from any other property onto or into the Trust Property has occurred or is occurring in violation of any Environmental Requirement, (iv) no notice of violation, lien, complaint, suit, order or other notice with respect to the Trust Property is presently outstanding under any Environmental Requirement, and (v) the Trust Property and the operation thereof are in full compliance with all Environmental Requirements. Trustor shall comply, and shall cause all tenants or other occupants of the Trust Property to comply, in all respects with all Environmental Requirements, and will not generate, store, handle, process, dispose of or otherwise use, and will not permit any tenant or other occupant of the Trust Property to generate, store, handle, process, dispose of or otherwise use, Hazardous Materials at, in, on, under or about the Trust Property in a manner that could lead or potentially lead to the imposition on Trustor, Beneficiary or the Trust Property of any liability or lien of any nature whatsoever under any Environmental Requirement. Trustor shall notify Beneficiary promptly in the event of any spill or other release of any Hazardous Material at, in, on, under or about the Trust Property which is required to be reported to a Governmental Authority under any Environmental Requirement, will promptly forward to Beneficiary copies of any notices received by Trustor relating to alleged violations of any Environmental Requirement and will promptly pay when due any fine or assessment against Beneficiary, Trustor or the Trust Property relating to any Environmental Requirement. If at any time it is determined that the operation or use of the Trust Property violates any applicable Environmental Requirement or that there are Hazardous Materials located at, in, on, under or about the Trust Property which, under any Environmental Requirement, require special handling in collection, storage, treatment or disposal, or any other form of cleanup or corrective action, Trustor shall, within thirty (30) days after receipt of notice thereof from any Governmental Authority or from Beneficiary, take, at its sole cost and expense, such actions as may be necessary to fully comply in all respects with all Environmental Requirements, provided, however, that if such compliance cannot reasonably be completed within such thirty (30) day period, Trustor shall commence such necessary action within such thirty (30) day period and shall thereafter diligently and expeditiously proceed to fully comply in all respects and in a timely fashion with all Environmental Requirements. If Trustor fails to timely take, or to diligently and expeditiously proceed to complete in a timely fashion, any such action, Beneficiary may, in its sole and absolute discretion, make advances or payments towards the performance or satisfaction of the same, but shall in no event be under any obligation to do so. All sums so advanced or paid by Beneficiary (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, and fines or other penalty payments) and all sums advanced or paid in connection with any judicial or administrative investigation or proceeding relating thereto, will immediately, upon demand, become due and payable from Trustor and shall bear interest at the Default Rate (as defined in the Security Agreement) from the date any such sums are so advanced or paid by Beneficiary until the date any such sums are repaid by Trustor to Beneficiary. Trustor will execute and deliver, promptly upon request, such instruments as Beneficiary may deem useful or necessary to permit Beneficiary to take any such action, and such additional notes and mortgages, as Beneficiary may require to secure all sums so advanced or paid by Beneficiary. If a lien is filed against the Trust Property by any Governmental Authority resulting from the need to

expend or the actual expending of monies arising from an action or omission, whether intentional or unintentional, of Trustor or for which Trustor is responsible, resulting in the releasing, spilling, leaking, leaching, pumping, emitting, pouring, emptying or dumping of any Hazardous Material into the waters or onto land located within or without the State where the Trust Property is located, then Trustor will, within thirty (30) days from the date that Trustor is first given notice that such lien has been placed against the Trust Property (or within such shorter period of time as may be specified by Beneficiary if such Governmental Authority has commenced steps to cause the Trust Property to be sold pursuant to such lien) either (a) pay the claim and remove the lien, or (b) furnish a cash deposit, bond, or such other security with respect thereto as is satisfactory in all respects to Beneficiary and is sufficient to effect a complete discharge of such lien on the Trust Property. Beneficiary may, at its option, at intervals of not less than one year, or more frequently if Beneficiary reasonably believes that a Hazardous Material or other environmental condition violates or threatens to violate any Environmental Requirement, cause an environmental audit of the Trust Property or portions thereof to be conducted to confirm Trustor's compliance with the provisions of this paragraph, and Trustor shall cooperate in all reasonable ways with Beneficiary in connection with any such audit. If such audit discloses that a violation of an Environmental Requirement exists, Trustor shall pay all costs and expenses incurred in connection with such audit, otherwise, the costs and expenses of such audit shall, notwithstanding anything to the contrary set forth in this paragraph, be paid by Beneficiary. If this Deed of Trust is foreclosed, or if the Trust Property is sold pursuant to the provisions of this Deed of Trust, or if Trustor tenders a deed or assignment in lieu of foreclosure or sale, Trustor shall deliver the Trust Property to the purchaser at foreclosure or sale or to Beneficiary, its nominee, or wholly owned subsidiary, as the case may be, in a condition that complies in all respects with all Environmental Requirements. Trustor will defend, indemnify, and hold harmless Beneficiary, its employees, agents, officers, and directors, from and against any and all claims, demands, penalties, causes of action, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses) arising out of, or in any way related to, (i) any breach by Trustor of any of the provisions of this paragraph, (ii) the presence, disposal, spillage, discharge, emission, leakage, release, or threatened release of any Hazardous Material which is at, in, on, under, about, from or affecting the Trust Property, including, without limitation, any damage or injury resulting from any such Hazardous Material to or affecting the Trust Property or the soil, water, air, vegetation, buildings, personal property, persons or animals located on the Trust Property or on any other property or otherwise, (iii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to any such Hazardous Material, (iv) any lawsuit brought or threatened, settlement reached, or order or directive of or by any Governmental Authority relating to such Hazardous Material, or (v) any violation of any Environmental Requirement. The aforesaid indemnification shall, notwithstanding any exculpatory or other provision of any nature whatsoever to the contrary set forth in the Note, this Deed of Trust or any other document or instrument now or hereafter executed and delivered in connection with the loan evidenced by the Note and secured by this Deed of Trust, constitute the personal recourse undertakings, obligations and liabilities of Trustor. The aforesaid indemnification shall not be applicable to any claim, demand, penalty, cause of action, fine, liability, settlement, damage, cost or other expense of any type whatsoever (i) occasioned, arising and caused solely and directly as

the result of the gross negligence or willful misconduct of Beneficiary, its nominee or wholly owned subsidiary or their respective employees or agents and irrespective of whether occurring prior or subsequent to the date upon which Beneficiary, its nominee or wholly owned subsidiary acquires possession of the Trust Property by foreclosure of this Deed of Trust, a sale of the Trust Property pursuant to the provisions of this Deed of Trust, acceptance of a deed or assignment in lieu of foreclosure or sale or otherwise, or (ii) occasioned, arising and caused solely and directly as the result of any act of any person or party (other than an act of Trustor, its employees or agents or persons or parties under the control of Trustor, or an act of Beneficiary, its nominee or wholly owned subsidiary or their respective employees or agents which does not constitute negligence or willful misconduct, or an act of any Governmental Authority, including, without limitation, any change in any Environmental Requirement) and occurring subsequent to the earlier to occur of (x) the date of payment to Beneficiary in cash of the entire Obligations, and (y) the date upon which Beneficiary, its nominee or wholly owned subsidiary acquires possession of the Trust Property by foreclosure of this Deed of Trust, a sale of the Trust Property pursuant to the provisions of this Deed of Trust, acceptance of a deed or assignment in lieu of foreclosure or sale or otherwise. Except as hereinabove specifically provided to the contrary in this paragraph, the obligations and liabilities of Trustor under this paragraph shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the Obligations have been paid in full and irrespective of any foreclosure of this Deed of Trust, sale of the Trust Property pursuant to the provisions of this Deed of Trust or acceptance by Beneficiary, its nominee or wholly owned subsidiary of a deed or assignment in lieu of foreclosure or sale and irrespective of any other fact or circumstance of any nature whatsoever.

Trustor hereby agrees that Beneficiary may (i) in accordance with California Code of Civil Procedure Section 736, as such Section may be amended from time to time, recover any costs, expenses or liabilities, including attorneys' fees, incurred by Beneficiary and arising from any breach of any covenant, warranty or agreement pertaining to any Environmental Requirements, or any order, consent decree or settlement relating to the cleanup of toxic or hazardous waste or waste products, or any other "environmental provision" (as defined in such Section 736) relating to the Trust Property or any portion thereof; and (ii) in accordance with California Code of Civil Procedure Section 726.5, as such Section may be amended from time to time, to waive the security of the Deed of Trust as to any parcel of the Trust Property that is "environmentally impaired" or is an "affected parcel" (as such terms are defined in such Section), and as to any Collateral (as defined in the Security Agreement) attached to such parcel, and thereafter to exercise against Trustor, to the extent permitted by such Section 726.5, the rights and remedies of an unsecured creditor, including reduction of Beneficiary's claim against Trustor to judgment, and any other rights and remedies permitted by law. Trustor and Beneficiary acknowledge that pursuant to California Code of Civil Procedure Section 726.5, Beneficiary's rights under clause (ii) above are limited to instances in which Trustor or any affiliate, agent, cotenant, partner or joint venturer of Trustor either (a) caused, contributed to, permitted or acquiesced in the release (as defined in such Section 726.5) or threatened release of toxic or hazardous waste or waste products, or (b) had actual knowledge or notice of such release or threatened release prior to the execution and delivery of the Note and failed to disclose such release or threatened release to Beneficiary in writing after Trustor's written request for information concerning the environmental condition of the Trust Property, unless Trustor

otherwise obtained actual knowledge of such release or threatened release prior to the execution and delivery of the Note.

9. Estoppel Certificates. Trustor, within ten (10) days after request by Beneficiary and at its expense, will furnish Beneficiary with a statement, duly acknowledged and certified, setting forth the amount of the Obligations and the offsets or defenses thereto, if any.

10. Transfer or Encumbrance of the Trust Property. No part of the Trust Property nor any interest of any nature whatsoever therein nor any interest of any nature whatsoever in Trustor (whether partnership, stock, equity, beneficial, profit, loss or otherwise) shall in any manner be further encumbered, sold, transferred, assigned or conveyed, or permitted to be further encumbered, sold, transferred, assigned or conveyed without the prior consent of Beneficiary, which consent in any and all circumstances may be withheld in the sole and absolute discretion of Beneficiary. The provisions of the foregoing sentence of this paragraph shall apply to each and every such further encumbrance, sale, transfer, assignment or conveyance, regardless of whether or not Beneficiary has consented to, or waived by its action or inaction its rights hereunder with respect to, any such previous further encumbrance, sale, transfer, assignment or conveyance, and irrespective of whether such further encumbrance, sale, transfer, assignment or conveyance is voluntary, by reason of operation of law or is otherwise made.

11. Notice. Any notice, request, demand, statement, authorization, approval or consent made hereunder shall be in writing and shall be sent in the manner specified in the Security Agreement.

12. Sale of Trust Property. If this Deed of Trust is foreclosed, the Trust Property, or any interest therein, may, at the discretion of Beneficiary, be sold in one or more parcels or in several interests or portions and in any order or manner.

13. Changes in Laws Regarding Taxation. In the event of the passage after the date of this Deed of Trust of any law of the State in which the Premises are located deducting from the value of real property for the purpose of taxation any lien or encumbrance thereon or changing in any way the laws for the taxation of deeds of trusts or debts secured by deeds of trust for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on this Deed of Trust, the Note or the Obligations, Trustor shall, if permitted by law, pay any tax imposed as a result of any such law within the statutory period or within fifteen (15) days after demand by Beneficiary, whichever is less, provided, however, that if, in the opinion of the attorneys for Beneficiary, Trustor is not permitted by law to pay such taxes, Beneficiary shall have the right, at its option, to declare the Obligations due and payable on a date specified in a prior notice to Trustor of not less than thirty (30) days.

14. No Credits on Account of the Obligations. Trustor will not claim or demand or be entitled to any credit or credits on account of the Obligations for any part of the Taxes assessed against the Trust Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Trust Property, or any part thereof, by reason of this Deed of Trust or the Obligations.

15. Documentary Stamps. If at any time the United States of America, any state thereof, or any governmental subdivision of any such state, shall require revenue or other stamps to be affixed to the Note or this Deed of Trust, Trustor will pay for the same, with interest and penalties thereon, if any.

15A. The Lease. Trustor shall (i) pay all rents, additional rents and other sums required to be paid by Trustor as lessee under and pursuant to the provisions of the Lease, (ii) diligently perform and observe all of the terms, covenants and conditions of the Lease on the part of Trustor, as lessee thereunder, to be performed and observed, unless such performance or observance shall be waived or not required in writing by the lessor under the Lease, to the end that all things shall be done which are necessary to keep unimpaired the rights of Trustor, as lessee, under the Lease, and (iii) promptly notify Beneficiary of the giving of any notice by the lessor under the Lease to Trustor of any default by Trustor in the performance or observance of any of the terms, covenants or conditions of the Lease on the part of Trustor, as lessee thereunder, to be performed or observed and deliver to Beneficiary a true copy of each such notice. Trustor shall not, without the prior consent of Beneficiary, surrender the leasehold estate created by the Lease or terminate or cancel the Lease or modify, change, supplement, alter or amend the Lease, in any respect, either orally or in writing, and Trustor hereby assigns to Beneficiary, as further security for the payment of the Obligations and for the performance and observance of the terms, covenants and conditions of this Deed of Trust, all of the rights, privileges and prerogatives of Trustor, as lessee under the Lease, to surrender the leasehold estate created by the Lease or to terminate, cancel, modify, change, supplement, alter or amend the Lease, and any such surrender of the leasehold estate created by the Lease or termination, cancellation, modification, change, supplement, alteration or amendment of the Lease without the prior consent of Beneficiary shall be void and of no force and effect. If Trustor shall default in the performance or observance of any term, covenant or condition of the Lease on the part of Trustor, as lessee thereunder, to be performed or observed, then, without limiting the generality of the other provisions of this Deed of Trust, and without waiving or releasing Trustor from any of its obligations hereunder, Beneficiary shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Lease on the part of Trustor, as lessee thereunder, to be performed or observed to be promptly performed or observed on behalf of Trustor, to the end that the rights of Trustor in, to and under the Lease shall be kept unimpaired and free from default. If Beneficiary shall make any payment or perform any act or take action in accordance with the preceding sentence, Beneficiary will notify Trustor of the making of any such payment, the performance of any such act, or the taking of any such action. In any such event, subject to the rights of lessees and other occupants under the Leases, Beneficiary and any person designated by Beneficiary shall have, and are hereby granted, the right to enter upon the Trust Property at any time and from time to time for the purpose of taking any such action. If the lessor under the Lease shall deliver to Beneficiary a copy of any notice of default sent by said lessor to Trustor, as lessee under the Lease, such notice shall constitute full protection to Beneficiary for any action taken or omitted to be taken by Beneficiary, in good faith, in reliance thereon. Trustor shall, from time to time, obtain from the lessor under the Lease such certificates of estoppel with respect to compliance by Trustor with the terms of the Lease as may be requested by Beneficiary. Trustor shall exercise each individual option, if any, to extend or renew the term of the Lease upon

demand by Beneficiary made at any time one (1) year prior to the last day upon which any such option may be exercised, and Trustor hereby expressly authorizes and appoints Beneficiary its attorney-in-fact to exercise, either jointly or individually, any such option in the name of and upon behalf of Trustor, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest.

15B. No Merger of Fee and Leasehold Estates. So long as any portion of the Obligations shall remain unpaid, unless Beneficiary shall otherwise consent, the fee title to the Premises and the leasehold estate therein created pursuant to the provisions of the Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Trustor or in any other person, by purchase, operation of law or otherwise. If Beneficiary shall acquire the fee title to the Premises and the leasehold estate therein created pursuant to the provisions of the Lease by foreclosure of this Deed of Trust or sale of the Trust Property pursuant to this Deed of Trust or otherwise, such estates shall not merge as a result of such acquisition and shall remain separate and distinct for all purposes after such acquisition unless and until Beneficiary shall elect to merge such estates.

15C. Trustor Acquisition of Fee Estate. So long as any portion of the Obligations remains unpaid, unless Beneficiary shall otherwise consent, if Trustor shall acquire fee title to the Premises the lien of this Deed of Trust shall be spread to cover the fee estate and said fee estate shall be deemed to be included within the definition of the Trust Property. Trustor shall, at its sole cost and expense, execute such instruments as Beneficiary deems useful or necessary to subject the fee estate to the lien of this Deed of Trust.

15D. Lessor Bankruptcy, etc. Upon the filing by or against lessor of a petition pursuant to Title 11 of the United States Code as now constituted or hereafter amended or under any other applicable Federal or state bankruptcy law or other similar law (hereinafter referred to as the Bankruptcy Code), and the subsequent rejection of the Lease by the lessor, Trustor shall not, without the prior written consent of Beneficiary, (i) elect to treat the Lease as terminated pursuant to Section 365(h)(1) of the Bankruptcy Code, or (ii) pursuant to Section 365(h)(2) of the Bankruptcy Code, offset against the rents reserved under the Lease the amount of any damages caused by the lessor's rejection of the Lease. Trustor shall promptly, and so as to be received prior to all hearing dates, return dates or other deadlines, send to Beneficiary copies of all notices, summonses, pleadings, applications and other documents received by Trustor in connection with such petition or proceeding by lessor.

Trustor shall not surrender its leasehold estate and its interest created under the Lease, nor terminate or cancel the Lease. Any attempted surrender, termination or cancellation by Trustor shall be null and void and of no force or effect.

If there shall be filed by or against Trustor a petition under the Bankruptcy Code, 11 U.S.C. Sections 101 et seq. (the "Bankruptcy Code"), Trustor, as tenant under the Lease, or any trustee appointed by the Bankruptcy Court in such proceedings, shall immediately (but in no event more than one (1) day after the filing of such petition) notify Beneficiary in writing of Trustor's or the trustee's intent, as the case may be, to assume or reject the Lease pursuant to Section 365(a) of the Bankruptcy Code. If the intent of Trustor or such

trustee is to reject the Lease or to take no action under such Section 365(a), and Trustor or Beneficiary has received notification from Beneficiary that, if such is the case, Beneficiary desires an assignment of the Lease, then:

(i) Trustor (or Beneficiary upon Trustor's failure to do so promptly) shall file, prior to the expiration of the period provided in Section 365(d)(4) of the Bankruptcy Code, a motion with the Bankruptcy Court to assume and assign the Lease to Beneficiary; and

(ii) Trustor shall bear the burden of establishing with the Bankruptcy Court that Trustor can perform as required by Sections 365(b) and (f) of the Bankruptcy Code.

If Trustor notifies Beneficiary of its intent to assume the Lease, Trustor shall not seek to reject the Lease but shall promptly (and in all events before the expiration of all applicable time periods for such assumption and assignment) obtain consent from the Bankruptcy Court to assume and assign the Lease for the purposes of this paragraph. Trustor agrees that Beneficiary may at any time apply to the Bankruptcy Court for an extension of any time period for the assumption of the Lease by Trustor and that the protection of Beneficiary's security interest in the Lease shall be deemed sufficient cause for such extension and Trustor shall not oppose any application by Beneficiary for such extension. Trustor agrees that, if for any reason the Lease is rejected pursuant to the provisions of Section 365 of the Bankruptcy Code, Trustor will not take the position that such rejection is a termination of the Lease.

16. Performance of Other Agreements. Trustor shall observe and perform each and every term to be observed or performed by Trustor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Trust Property.

17. Events of Default. The Obligations shall become due at the option of Beneficiary upon the occurrence of any one or more of the following events (herein collectively referred to as Events of Default):

(a) if an Event of Default, as defined in the Security Agreement, shall occur;

(b) if Trustor shall fail to pay within fifteen (15) days of notice and demand by Beneficiary, any installment of any assessment against the Trust Property for local improvements heretofore or hereafter laid, which assessment is or may become payable in annual or periodic installments and is or may become a lien on the Trust Property, notwithstanding the fact that such installment may not be due and payable at the time of such notice and demand;

(c) if without the consent of Beneficiary any Leases are made, cancelled or modified or if any portion of the Rents is paid for a period of more than one (1) month in advance or if any of the Rents are further assigned;

(d) if Trustor shall default in the observance or performance of any term, covenant or condition of the Lease on the part of Trustor, as lessee thereunder, to be

observed or performed, unless any such observance or performance shall have been waived or not required in writing by the lessor under the Lease, or if any one or more of the events referred to in the Lease shall occur which would or may cause the Lease to terminate without notice or action by the lessor thereunder or which would entitle the lessor under the Lease to terminate the Lease and the term thereof by giving notice to Trustor, as lessee thereunder, or if the leasehold estate created by the Lease shall be surrendered, in whole or in part, or if the Lease shall be terminated or cancelled for any reason or under any circumstance whatsoever, or if any of the terms, covenants or conditions of the Lease shall in any manner be modified, changed, supplemented, altered or amended without the consent of Beneficiary;

(e) if Trustor or any other person shall be in default under any deed of trust or mortgage covering any part of the Trust Property whether superior or inferior in lien to this Deed of Trust, and including, without limitation, any such deed of trust or mortgage now or hereafter held by Beneficiary; or

(f) if the Trust Property shall become subject (i) to any tax lien, other than a lien for local real estate taxes and assessments not due and payable, or (ii) to any lis pendens, notice of pendency, stop order, notice of intention to file mechanic's or materialman's lien, mechanic's or materialman's lien or other lien of any nature whatsoever and the same shall not either be discharged of record or in the alternative insured over to the satisfaction of Beneficiary by the title company insuring the lien of this Deed of Trust within a period of thirty (30) days after the same is filed or recorded, and irrespective of whether the same is superior or subordinate in lien or other priority to the lien of this Deed of Trust and irrespective of whether the same constitutes a perfected or inchoate lien or encumbrance on the Trust Property or is only a matter of record or notice; or

(g) if an Event of Default shall occur under any deed of trust, mortgage, pledge agreement or other loan documents now or hereafter entered into by Trustor or an affiliate of Trustor in favor of Beneficiary.

18. Right to Cure Defaults. If default in the performance of any of the covenants of Trustor herein occurs, Beneficiary or Trustee may, at their discretion, remedy the same and for such purpose shall have the right to enter upon the Trust Property or any portion thereof without thereby becoming liable to Trustor or any person in possession thereof holding under Trustor. If Beneficiary or Trustee shall remedy such a default or appear in, defend, or bring any action or proceeding to protect their interest in the Trust Property or to foreclose this Deed of Trust or to sell the Trust Property pursuant to the provisions of this Deed of Trust or to collect the Obligations, the costs and expenses thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this paragraph, shall be paid by Trustor to Beneficiary upon demand and shall constitute part of the Obligations secured by this Deed of Trust. All such costs and expenses incurred by Beneficiary or Trustee in remedying such default or in appearing in, defending, or bringing any such action or proceeding shall be paid by Trustor to Beneficiary upon demand, with interest accruing at the Default Rate, as defined in the Security Agreement.

19. Appointment of Receiver. Beneficiary or Trustee, in any action to foreclose this Deed of Trust or upon the actual or threatened waste to any part of the Trust Property or upon the occurrence of any default hereunder, shall be at liberty, without notice, to apply for the appointment of a receiver of the Rents, and shall be entitled to the appointment of such receiver as a matter of right, without regard to the value of the Trust Property as security for the Obligations, or the solvency or insolvency of any person then liable for the payment of the Obligations.

20. Non-Waiver. The failure of Beneficiary or Trustee to insist upon strict performance of any term of this Deed of Trust shall not be deemed to be a waiver of any term of this Deed of Trust. Trustor shall not be relieved of Trustor's obligation to pay the Obligations at the time and in the manner provided for its payment in the Note, the Security Agreement and this Deed of Trust by reason of (i) failure of Beneficiary or Trustee to comply with any request of Trustor to take any action to foreclose this Deed of Trust or sell the Trust Property pursuant to the provisions of this Deed of Trust or otherwise enforce any of the provisions hereof or of the Note or any other deed of trust, mortgage, instrument or document evidencing, securing or guaranteeing payment of the Obligations or any portion thereof, (ii) the release, regardless of consideration, of the whole or any part of the Trust Property or any other security for the Obligations, or (iii) any agreement or stipulation between Beneficiary or Trustee and any subsequent owner or owners of the Trust Property or other person extending the time of payment or otherwise modifying or supplementing the terms of the Note, the Security Agreement, this Deed of Trust or any other deed of trust, mortgage, instrument or document evidencing, securing or guaranteeing payment of the Obligations or any portion thereof, without first having obtained the consent of Trustor, and in the latter event, Trustor shall continue to be obligated to pay the Obligations at the time and in the manner provided in the Note, the Security Agreement and this Deed of Trust, as so extended, modified and supplemented, unless expressly released and discharged from such obligation by Beneficiary in writing. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Trust Property, Beneficiary may release any person at any time liable for the payment of the Obligations or any portion thereof or any part of the security held for the Obligations and may extend the time of payment or otherwise modify the terms of the Note, the Security Agreement or this Deed of Trust, including, without limitation, a modification of the interest rate payable on the principal balance of the Note, without in any manner impairing or affecting this Deed of Trust or the lien thereof or the priority of this Deed of Trust, as so extended and modified, as security for the Obligations over any such subordinate lien, encumbrance, right, title or interest. Beneficiary may resort for the payment of the Obligations to any other security held by Beneficiary in such order and manner as Beneficiary, in its discretion, may elect. Beneficiary or Trustee may take action to recover the Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Beneficiary or Trustee thereafter to foreclose this Deed of Trust or to effect a sale of the Trust Property in accordance with the provisions of this Deed of Trust. Beneficiary and Trustee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by law. The rights of Beneficiary and Trustee under this Deed of Trust shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the

others. No act of Beneficiary or Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

21. Power of Sale. In the event of default by Trustor in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, beyond any applicable grace period, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In the event of default, Beneficiary may employ counsel to enforce payment of the obligations secured hereby and shall, at its option, execute or cause the Trustee to execute a written notice of such default and of his election to cause to be sold the herein described property to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the recorder of each county wherein said Trust Property is situated. Prior to publication of the notice of sale, Beneficiary shall deliver to Trustee this Deed of Trust and the Note or other evidence of indebtedness which is secured hereby, together with a written request for the Trustee to proceed with a sale of the property described herein, pursuant to the provisions of law and this Deed of Trust. Notice of sale having been given as then required by law and not less than the time then required by law having elapsed after recordation of such notice of default, Trustee, without demand on Trustor, shall sell said property at the time and place of sale fixed by it in said notice of sale, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warrant, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary, may purchase at such sale. After deducting all reasonable costs, fees, and expenses of Trustee and of this Trust, including cost of evidence of title and reasonable counsel fees in connection with sale, Trustee shall apply the proceeds of sale (i) to the payment of all sums expended under the terms hereof, not then repaid with accrued interest at the Default Rate, as defined in the Security Agreement, provided, however, that such interest rate shall in no event exceed the maximum interest rate allowed by law; (ii) all other sums then secured hereby; and (iii) the remainder, if any, to the person or persons legally entitled thereto.

22. Concerning the Trustee. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Deed of Trust, covenants to perform and fulfill the trusts herein created, being liable, however, only for willful negligence or misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Trustor and to Beneficiary. Beneficiary may in its sole and absolute discretion and with or without cause remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act as Trustee, or in its sole and absolute discretion for any reason whatsoever Beneficiary may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a

successor trustee, by an instrument recorded wherever this Deed of Trust is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required to do so by Beneficiary.

23. Trustee's Fees. Trustor shall pay all costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Deed of Trust.

24. Construction. The terms of this Deed of Trust shall be construed in accordance with the laws of the State in which the Premises are located.

25. Further Acts, etc. Trustor will, at the cost of Trustor, and without expense to Beneficiary or Trustee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Beneficiary or Trustee shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto Beneficiary or Trustee, as the case may be, the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Beneficiary or Trustee, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust or for filing, registering or recording this Deed of Trust and, on demand, will execute and deliver and hereby authorizes Beneficiary or Trustee to execute in the name of Trustor to the extent Beneficiary and Trustee may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Trust Property.

26. Headings, etc. The headings, titles and captions of various paragraphs of this Deed of Trust are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

27. Filing of Deed of Trust, etc. Trustor forthwith upon the execution and delivery of this Deed of Trust and thereafter, from time to time, will cause this Deed of Trust, and any security instrument creating a lien or evidencing the lien hereof upon the Trust Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect, preserve and perfect the lien hereof upon, and the interest of Beneficiary and Trustee in, the Trust Property. Trustor will pay all filing, registration and recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Deed of Trust, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Trust Property, and any instrument of further assurance, and all Federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Deed of Trust, any deed of trust or any mortgage supplemental hereto, any security instrument with respect to the Trust Property or any instrument of further assurance. Trustor shall hold harmless and indemnify Beneficiary, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Deed of Trust.

28. Sole Discretion of Beneficiary or Trustee. Except as may otherwise be expressly provided to the contrary, wherever pursuant to the Note, this Deed of Trust, or any other document or instrument now or hereafter executed and delivered in connection therewith or otherwise with respect to the loan secured hereby, Beneficiary or Trustee exercises any right given to Beneficiary or Trustee to consent or not consent, or to approve or disapprove, or any arrangement or term is to be satisfactory to Beneficiary or Trustee, the decision of Beneficiary or Trustee to consent or not consent, or to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory, shall be in the sole and absolute discretion of Beneficiary or Trustee and shall be final and conclusive.

29. Duplicate Originals. This Deed of Trust may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

30. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Deed of Trust shall be used interchangeably in singular or plural form and the word "Trustor" shall mean each Trustor and any subsequent owner or owners of the Trust Property or any part thereof or interest therein; the word "Beneficiary" shall mean Beneficiary or any subsequent holder of the Note; the word "Note" shall mean the Secured Promissory Note or any other evidence of indebtedness secured by this Deed of Trust; the words "Security Agreement" shall mean the Pledge and Security Agreement; the word "Guarantor" shall mean each person guaranteeing payment of the Obligations or any portion thereof or performance by Trustor of any of the terms of this Deed of Trust and their respective heirs, executors, administrators, legal representatives, successors and assigns; the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, or other entity; the words "Trust Property" shall include any portion of the Trust Property or interest therein; the word "Obligations" shall mean all sums secured by this Deed of Trust; and the word "default" shall mean the occurrence of any default by Trustor or any other person in the observance or performance of any of the terms, covenants or provisions of the Note, the Security Agreement or this Deed of Trust on the part of Trustor or such other person to be observed or performed without regard to whether such default constitutes or would constitute upon notice or lapse of time, or both, an Event of Default under this Deed of Trust. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

31. Waiver of Notice. Trustor shall not be entitled to any notices of any nature whatsoever from Beneficiary or Trustee except with respect to matters for which this Deed of Trust specifically and expressly provides for the giving of notice by Beneficiary or Trustee to Trustor, and Trustor hereby expressly waives the right to receive any notice from Beneficiary or Trustee with respect to any matter for which this Deed of Trust does not specifically and expressly provide for the giving of notice by Beneficiary or Trustee to Trustor.

32. Waiver of Statutory Rights. Trustor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the

enforcement or foreclosure of this Deed of Trust, but hereby waives the benefit of such laws to the full extent that Trustor may do so under applicable law. Trustor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Trust Property marshalled upon any foreclosure of the lien of this Deed of Trust and agrees that any court having jurisdiction to foreclose such lien may order the Trust Property sold as an entirety. Trustor hereby waives for itself and all who may claim through or under it, and to the full extent Trustor may do so under applicable law, any and all rights of redemption from sale under any order or decree of foreclosure of this Deed of Trust or granted under any statute now existing or hereafter enacted.

33. Waiver of Counterclaims. Trustor absolutely, unconditionally and irrevocably waives any and all right to assert any defense, setoff, counterclaim or crossclaim of any nature with respect to this Deed of Trust or the obligations of Trustor under this Deed of Trust in any action or proceeding brought by Beneficiary to collect the Obligations, or any portion thereof, or to enforce the obligations of the Trustor under this Deed of Trust.

34. Superior Deed of Trust. If Trustor fails to pay any installment of principal or interest or any other sum due under any deed of trust or other lien superior in lien to the lien of this Deed of Trust, as the same becomes due and payable, Beneficiary may, at its option, pay the same, and Trustor shall upon demand reimburse Beneficiary for all sums so expended by Beneficiary, with interest at a rate per annum equal to the Default Rate, as defined in the Security Agreement. All such sums expended by Beneficiary, with interest, shall be secured by this Deed of Trust.

35. Security Agreement. Unless specifically provided to the contrary, all of the terms and provisions of the Security Agreement are hereby incorporated and shall become a part of this Deed of Trust.

36. Solvency, Binding Effect and Enforceability. The Trustor is (and, after giving effect to this Deed of Trust, will be) solvent. This Deed of Trust is the legal, valid and binding obligation of the Trustor enforceable in accordance with its terms.

37. Trustee Acceptance. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

38. Attorneys' Fees. Beneficiary shall be entitled to recover any costs, expenses or liabilities, including attorneys' fees, incurred by Beneficiary and arising from any breach of any covenant, warranty or agreement set forth herein.

IN WITNESS WHEREOF, this Deed of Trust and Assignment of Rents and
Fixture Filing has been duly executed by Trustor as of the date written on the cover page hereof.

THOMAS RESTAURANT ENTERPRISES, LLC,
a California limited liability company

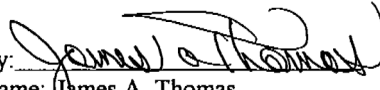
By: 
Name: James A. Thomas
Title: Manager

EXHIBIT A

LEGAL DESCRIPTION

A part of Block 1, Plat D, Logan Farm Survey: Beginning at a point located South along the East Right-of-Way line of U.S. Highway 91 and 89, from the North line of Lot 5 of said Block 1, said point being described in a Warranty Deed recorded in Book 105, Page 437, as being located 67.0 feet South of the "intersection of the East right-of-way line of U.S. Highway 91 and 89 and the South right-of-way line of 14th North Street as now established"; said point of beginning being in the East right-of-way line of U.S. Highway 91 and 89 and the South right-of-way of 14th North Street, and running thence South 88°24'27" East along said South right-of-way line of 14th North Street 205.00 feet; thence South 0°55'43" West 167.6 feet; thence North 87°04' West 205.11 feet to the East right-of-way line of said U.S. Highway 91 and 89; thence North 0°55'43" East along said East line 162.80 feet to the point of beginning.

EXCLUDING THEREFROM THE FOLLOWING: Beginning at a point located South along the East Right-of-Way line of U.S. Highway 91 and 89, from the North line of Lot 5 of said Block 1, said point being described in a Warranty Deed recorded in Book 105, at Page 437, as being located 67.0 feet South of the intersection of the East Right-of-Way line of U.S. Highway 91 and 89 and the South Right-of-Way line of 14th North Street as now established, said point of beginning being in the South Right-of-Way line of 14th North Street, and running South 88°24'27" East along said South Right-of-Way line of 14th North Street 131.44 feet; thence South 88°24'27" East 73.56 feet; thence South 0°55'43" West 167.60 feet; thence North 87°04'00" West 73.60 feet; thence North 0°55'43" East 165.85 feet to the point of beginning.

EXHIBIT A-1

LEASE DESCRIPTION

Ground Lease dated March 31, 1983 between Cache Valley Mall Partnership, as Landlord, and Skipper's, Inc., a Washington corporation, and recorded by a Short Form Lease recorded April 6, 1984 in Book 335 at Page 83 as Instrument No. 469112 in the Official Records of Cache County, Utah (the "Official Records"), as amended by a First Amendment to Lease dated January 7, 1991 and a Second Amendment to Lease dated March 20, 1997, and a Third Amendment to Lease dated September 29, 1997, the Landlord's interest in which was assigned to Price Financing Partnership, L.P., a Delaware limited partnership, by an assignment dated January 1, 1994, and the Tenant's interest in which was assigned to Carl Karcher Enterprises, Inc., a California corporation, by an Assignment and Assumption of Lease recorded May 1, 1997 in Book 747 at Page 312 as Instrument No. 659818 in the Official Records, the Tenant's interest in which is being subleased to Thomas Restaurant Enterprises, LLC, a California limited liability company, by a sublease to be executed substantially concurrently herewith, and a short form memorandum of which is to be recorded in the Official Records substantially concurrently herewith.

STATE OF California)
COUNTY OF Los Angeles) ss.

On March 30, 1998, before me, Sheryl J. McLamb, a Notary Public in and for said state, personally appeared Sam A. Thomas, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Sheryl J. McLamb
Notary Public in and for said State

