



W2389807

RECORDING REQUESTED BY:
Paul, Hastings, Janofsky & Walker LLP

AND WHEN RECORDED MAIL TO:

Paul, Hastings, Janofsky & Walker LLP
75 East 55th Street
New York, NY 10022

Attn.: Carolyn Sullivan, Esq.

E# 2389807 PG 1 OF 30
ERNEST D ROWLEY, WEBER COUNTY RECORDER
06-FEB-09 438 PM FEE \$71.00 DEP SPY
REC FOR: FIRST AMERICAN TITLE

Tax Parcel Nos. 01-017-0001, 01-
017-0006, 01-017-0042

Space above this line for recorder's use only

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

dated as of February 3, 2009

**INTERSTATE BRANDS CORPORATION, a Delaware corporation, as successor by merger to
Continental Baking Company, formerly known as ITT Continental Baking Company, as
successor by merger to Continental Baking Company, as successor to Ogden Baking Company,
as Trustor**

to

**FIRST AMERICAN TITLE INSURANCE COMPANY,
as Trustee**

and

**GENERAL ELECTRIC CAPITAL CORPORATION, as administrative agent and collateral
agent for the Lenders (defined below),
as Beneficiary**

2557 GRANT AVENUE, OGDEN, UTAH

Table of Contents

	<u>Page</u>
Article I DEFINITIONS	1
Section 1.01 Definitions	1
Section 1.02 Interpretation.....	3
Article II GRANT	4
Article III WARRANTIES, REPRESENTATIONS AND COVENANTS	4
Section 3.01 Title.....	4
Section 3.02 Lien Status	4
Section 3.03 Payment and Performance	5
Section 3.04 Replacement of Fixtures and Personalty.....	5
Section 3.05 Inspection.....	5
Section 3.06 Covenants Running with the Land.....	5
Section 3.07 Condemnation Awards and Insurance Proceeds.....	5
Section 3.08 Change in Tax Law.....	5
Section 3.09 Mortgage Tax.....	6
Section 3.10 Prohibited Transfers.....	6
Section 3.11 Flood Hazards	6
Section 3.12 Covenants Relating to the Mortgaged Property.....	6
Section 3.13 Liens and Liabilities.....	6
Section 3.14 Zoning, Restrictive Covenants, Easements and Adverse Possession	7
Section 3.15 Future Indebtedness of the Loan Parties	7
Article IV DEFAULT AND FORECLOSURE	7
Section 4.01 Remedies.....	7
Section 4.02 Separate Sales	8
Section 4.03 Remedies Cumulative, Concurrent and Nonexclusive	8
Section 4.04 Release of and Resort to Collateral.....	9
Section 4.05 Waiver of Redemption, Notice and Marshalling of Assets	9
Section 4.06 Discontinuance of Proceedings.....	9
Section 4.07 Application of Proceeds.....	9
Section 4.08 Occupancy After Foreclosure	9
Section 4.09 Additional Advances and Disbursements; Costs of Enforcement.....	10

Section 4.10	No Beneficiary in Possession.....	10
Section 4.11	Multiple Security	10
Section 4.12	Reinstatement.....	11
Section 4.13	Waiver by Trustor	12
Article V	ASSIGNMENT OF RENTS AND LEASES	12
Section 5.01	Assignment	12
Section 5.02	Perfection Upon Recordation.....	12
Section 5.03	Bankruptcy Provisions	13
Section 5.04	Additional Rights	13
Article VI	SECURITY AGREEMENT; FIXTURE FILING	13
Section 6.01	Security Interest	13
Section 6.02	Financing Statements	14
Section 6.03	Fixture Filing	14
Article VII	ATTORNEY-IN-FACT.....	14
Article VIII	BENEFICIARY AS AGENT	14
Article IX	RIGHTS AND RESPONSIBILITIES OF TRUSTEE; OTHER PROVISIONS RELATING TO TRUSTEE.....	15
Section 9.01	Exercise of Remedies by Trustee.....	15
Section 9.02	Rights and Privileges of Trustee	16
Section 9.03	Authority of Beneficiary	16
Section 9.04	Effect of Appointment of Successor Trustee	16
Section 9.05	Confirmation of Transfer and Succession.....	16
Section 9.06	Exculpation	16
Section 9.07	Endorsement and Execution of Documents	17
Section 9.08	Multiple Trustees	17
Section 9.09	No Required Action	17
Section 9.10	Terms of Trustee's Acceptance	17
Article X	MISCELLANEOUS	18
Section 10.01	Notices	18
Section 10.02	No Waiver; Rights Cumulative.....	18
Section 10.03	Severability; Covenants Independent	18
Section 10.04	Release or Reconveyance	18
Section 10.05	Choice of Law.....	18

Section 10.06 Successors and Assigns.....19

Section 10.07 No Waiver.....19

Section 10.08 Subrogation.....19

Section 10.09 Conflict With Credit Agreement.....19

Section 10.10 Waiver of Stay, Moratorium and Similar Rights.....19

Section 10.11 Entire Agreement.....19

Section 10.12 Counterparts.....19

Section 10.13 Right to Deal.....19

Section 10.14 Sole Discretion of Beneficiary.....20

Section 10.15 Provisions as to Covenants and Agreements.....20

Section 10.16 Matters to be in Writing.....20

Section 10.17 Beneficiary’s Relationship to Others.....20

Section 10.18 No Strict Construction.....21

Section 10.19 Last Dollars Secured; Priority.....21

Section 10.20 Further Assurances.....21

Section 10.21 Subordination.....21

EXHIBIT A Legal Description

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

This DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING, dated as of February 3, 2009 (this "Security Instrument"), by and between INTERSTATE BRANDS CORPORATION, a Delaware corporation ("Trustor" or the "Company"), having an address at c/o Interstate Bakeries Corporation, 12 East Armour Boulevard, Kansas City, MO 64111, FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, having an address at 200 East South Temple, Suite 200, Salt Lake City, Utah 84111, as trustee ("Trustee") and GENERAL ELECTRIC CAPITAL CORPORATION, a Delaware corporation ("GE"), having an address at 299 Park Avenue, 5th Floor, New York, New York 10171, as administrative agent and collateral agent for the Lenders (as defined below) (in such capacity, "Beneficiary").

RECITALS:

WHEREAS, reference is made to that certain Credit Agreement, dated as of the date hereof (as it may be amended, supplemented, restated or otherwise modified, the "Credit Agreement"), by and among Trustor, Interstate Bakeries Corporation, a Delaware corporation ("IBC") and together with Trustor, collectively, the "Borrowers"), and certain subsidiaries of IBC, as guarantors (collectively, with the Borrowers, the "Loan Parties" and each a "Loan Party"), the lenders and L/C Issuers from time to time party thereto, and Beneficiary as administrative agent and collateral agent for the Lenders and L/C issuers (collectively, the "Lenders"); and

WHEREAS, Trustor is a Borrower under the Credit Agreement; and

WHEREAS, in consideration of the extension of certain credit facilities and other accommodations of Beneficiary and/or Lenders in an aggregate amount of up to One Hundred Five Million Dollars (\$105,000,000) as set forth in the Credit Agreement, to secure obligations of the Borrowers (including, without limitation, the Trustor) under the Credit Agreement and the other Loan Documents as set forth herein;

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, Beneficiary, Trustee and the Trustor agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.01 Definitions. Capitalized terms used herein (including the recitals hereto) not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement. In addition, as used herein, the following terms shall have the following meanings: "Mortgaged Property" means all that certain real property or interest therein (the "Land") described in Exhibit A attached to this Security Instrument together with Trustor's estate, right, title and/or interest in, to, under or derived from the following:

(i) any greater or additional estate in the Land as hereafter may be acquired by Trustor;

(ii) all buildings and improvements now owned or hereafter acquired by Trustor, now or at any time situated, placed or constructed upon the Land (the "Improvements"; the Land and Improvements, collectively, the "Premises");

(iii) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Trustor and now or hereafter attached to or installed in any of the Improvements or on the Land, which, by the nature of the attachment or installation in any of the Improvements or on the Land are real property or fixtures under the UCC or any other applicable law, including, without limitation, any water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the "Fixtures");

(iv) to the extent mortgageable, deedable or assignable, the streets, roads, ways, passages, sidewalks and alleys abutting the Land (whether open or proposed); the strips and gores within or adjoining the Land; the air space above the Land (and the right to use said air space); any transferable development rights or similar rights appurtenant to the Land; all sewers, sewer rights, water rights, water powers, ditches, ditch rights, reservoirs, reservoir rights and mineral rights appurtenant to the Land; all rights of ingress and egress by motor vehicles to and from the Land; and all other rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the Premises, the Fixtures or any of the foregoing (all of the foregoing, the "Rights");

(v) all goods, accounts, general intangibles, instruments, documents, chattel paper and all other personal property of any kind or character, including such items of personal property as defined in the UCC (defined below), now owned or hereafter acquired by Trustor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Premises (the "Personalty");

(vi) all reserves, escrows or impounds required under the Credit Agreement and all deposit accounts maintained by Trustor with respect to any of the Mortgaged Property (the "Deposit Accounts");

(vii) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person (other than Trustor) a possessory interest in, or the right to use, all or any part of the Mortgaged Property (the "Leases");

(viii) all of the rents, revenues, royalties, income, proceeds, profits, security and other types of deposits subject to depositors rights and requirements of law, and other benefits paid or payable by parties to the Leases for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying any of the Mortgaged Property, together with all related security and other deposits subject to depositors rights and requirements of law (the "Rents");

(ix) to the extent mortgageable or assignable, all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property (the "Property Agreements");

(x) all property tax refunds paid or payable with respect to the Premises (the "Tax Refunds");

(xi) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the "Proceeds");

(xii) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Trustor (the "Insurance");

(xiii) all awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures, Rights or Personalty (the "Condemnation Awards"); and

(xiv) all rights and privileges appertaining to any of the foregoing.

As used in this Security Instrument, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

"UCC" means the Uniform Commercial Code of New York or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than New York, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

Section 1.02 Interpretation.

(a) References to "Sections" shall be to Sections of this Security Instrument unless otherwise specifically provided. Section headings in this Security Instrument are included herein for convenience of reference only and shall not constitute a part of this Security Instrument for any other purpose or be given any substantive effect.

(b) The rules of construction set forth in Section 1.6 of the Credit Agreement shall be applicable to this Security Instrument mutatis mutandis.

(c) If any conflict or inconsistency exists between this Security Instrument and the Credit Agreement, the Credit Agreement shall govern.

(d) Wherever herein contained, the phrase "Trustee and/or Beneficiary" or any similar phrase (i) shall be deemed to refer to Trustee as trustee for the benefit of Beneficiary

as beneficiary, and (ii) shall be construed as if followed by the phrase "as and to the extent applicable".

(e) References in this Security Instrument to Beneficiary shall, if the context so requires, be deemed to be references to Beneficiary, as beneficiary.

ARTICLE II GRANT

To secure the full and timely payment and performance of the Obligations, Trustor hereby MORTGAGES, GRANTS, BARGAINS, ASSIGNS, SELLS AND CONVEYS, unto Trustee and its successors and assigns IN TRUST, WITH THE POWER OF SALE the Mortgaged Property, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD for the benefit of Beneficiary, its successors and assigns, and Trustor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Trustee for so long as any of the Obligations remains outstanding.

ARTICLE III WARRANTIES, REPRESENTATIONS AND COVENANTS

Section 3.01 Title. Trustor represents and warrants to Trustee and/or Beneficiary that except for Permitted Encumbrances (a) Trustor holds title to the Mortgaged Property free and clear of any liens, claims or interests and (b) this Security Instrument creates valid, enforceable second liens (subject only to that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing (as amended, amended and restated, increased, renewed, consolidated or otherwise modified from time to time), dated as of the date hereof, between Trustor and Silver Point Finance, LLC (the "Silver Point Mortgage")) and security interests against the Mortgaged Property.

Section 3.02 Lien Status. Trustor shall preserve and protect the second lien (subject only to the Silver Point Mortgage), and security interest status of this Security Instrument and the Credit Agreement to the extent related to the Mortgaged Property. If any lien or security interest other than a Permitted Encumbrance is asserted against the Mortgaged Property, Trustor shall, within a commercially reasonable period of time, satisfy the underlying claim in full or take such other action so as to cause it to be released; provided, however that Trustor may, at its own expense, contest in good faith such lien or security interest in accordance with Section 7.3 of the Credit Agreement.

Section 3.03 Payment and Performance. Trustor shall pay (or cause to be paid) the Obligations as and when due under the Loan Documents and shall perform (or cause to be performed) the Obligations in full as and when they are required to be performed as required under the Loan Documents.

Section 3.04 Replacement of Fixtures and Personalty. Unless otherwise permitted under the terms of the Credit Agreement, Trustor shall not, without the prior written consent of [Beneficiary], which consent shall not be unreasonably withheld, conditioned or delayed, permit any of the Improvements, Fixtures or Personalty to be removed at any time, unless the removed item is removed temporarily for maintenance and repair or, if such removal

is, in the commercially reasonable judgment of the Trustor, desirable in the conduct of its business on the Mortgaged Property or if such removal will not materially impair the ability of the Trustor to conduct its business as currently conducted on the Mortgaged Property or to utilize the Mortgaged Property for its intended purpose.

Section 3.05 Inspection. Trustor shall permit Beneficiary, and Beneficiary's agents, representatives and employees, upon reasonable prior notice to Trustor, to inspect the Mortgaged Property and all books and records of Trustor pertaining thereto (wherever located); provided, such inspections shall not unreasonably and materially interfere with the use and operation of the Mortgaged Property.

Section 3.06 Covenants Running with the Land. All obligations contained in this Security Instrument are intended by Trustor and Beneficiary to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Trustor" shall refer to the party named as such in the first paragraph of this Security Instrument and to any subsequent owner of all or any portion of the Mortgaged Property. All Persons who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement; however, no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary. In addition, all of the covenants of Trustor in the Credit Agreement are incorporated herein by reference and, together with covenants in this Section 3.06, shall be covenants running with the land.

Section 3.07 Condemnation Awards and Insurance Proceeds. Trustor assigns all awards and compensation to which it is entitled for any condemnation or other taking, or any purchase in lieu thereof, to Beneficiary in accordance with the terms of the Credit Agreement and authorizes Beneficiary to collect and receive such awards and compensation and to give proper receipts and acquittances therefor. Trustor assigns to Beneficiary all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property, subject to the terms of the Credit Agreement. Trustor authorizes Beneficiary to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Beneficiary, instead of to Trustor and Beneficiary jointly, subject to the terms of the Credit Agreement.

Section 3.08 Change in Tax Law. Upon the enactment of or change in (including, without limitation, a change in interpretation of) any applicable law (i) deducting or allowing Trustor to deduct from the value of the Mortgaged Property for the purpose of taxation any lien or security interest thereon or (ii) subjecting Beneficiary or any of the Lenders to any tax or changing the basis of taxation of mortgages, deeds of trust, or other liens or debts secured thereby, or the manner of collection of such taxes, in each such case, so as to affect this Security Instrument or the Obligations, and (in either such case) the result is to increase the taxes imposed upon or the cost to Beneficiary of maintaining the Obligations, or to reduce the amount of any payments receivable hereunder or under the Credit Agreement, then, and in any such event, Trustor shall, on demand, pay to Beneficiary and/or the Lenders (as applicable) additional amounts to compensate for such increased costs or reduced amounts, provided that if any such payment or reimbursement shall be unlawful, or taxable to Beneficiary, or would constitute usury or render the Obligations wholly or partially usurious under applicable law, then Trustor shall

pay or reimburse Beneficiary or the Lenders for payment of the lawful and non-usurious portion thereof.

Section 3.09 Mortgage Tax. Trustor shall (i) pay, before the date upon which penalties attach thereto, any tax imposed upon it or upon Beneficiary or any Lender pursuant to the tax law of the state in which the Mortgaged Property is located in connection with the execution, delivery, recordation and/or enforcement of this Security Instrument and the Credit Agreement, and (ii) prepare, execute and file any form required to be prepared, executed and filed in connection therewith.

Section 3.10 Prohibited Transfers. Except as expressly permitted by the Credit Agreement (including Sections 8.2 and 8.4 thereof), Trustor shall not sell, lease, license, grant any right of occupancy in, or otherwise transfer, convey all or any part of the Mortgaged Property.

Section 3.11 Flood Hazards. Trustor represents and warrants to Beneficiary that it shall maintain flood insurance covering the Land and Improvements, to the extent required, in accordance with the terms of the Credit Agreement.

Section 3.12 Covenants Relating to the Mortgaged Property. Trustor hereby covenants to (a) pay, or cause to be paid, all Taxes provided that, Trustor may, at its own expense, contest such Tax in good faith in accordance with Section 7.3 of the Credit Agreement, and (b) comply with all applicable laws, regulations and orders of any Governmental Authority (including all applicable Environmental Laws) in accordance with Section 7.2 of the Credit Agreement. Trustor further agrees to keep the Mortgaged Property insured in compliance with Section 7.5 of the Credit Agreement and to comply with the provisions of Section 7.8 of the Credit Agreement regarding environmental matters.

Section 3.13 Liens and Liabilities. Trustor hereby covenants to keep the Mortgaged Property free of Liens (except for Permitted Encumbrances) in compliance with Section 8.2 of the Credit Agreement. Nothing in this Security Instrument shall be deemed or construed in any way as constituting the consent or request by any Beneficiary, express or implied, to any contractor, subcontractor, laborer, mechanic or materialman for the performance of any labor or the furnishing of any material for any improvement, construction, alteration or repair of any portion of the Premises. Trustor further agrees that neither Trustee nor Beneficiary stands in any fiduciary relationship to Trustor.

Section 3.14 Zoning, Restrictive Covenants, Easements and Adverse Possession. Unless a Permitted Encumbrance pursuant to the Credit Agreement or as would not, individually or in the aggregate, materially impair the ability of the Trustor to conduct its business as currently conducted on the Mortgaged Property or to utilize the Mortgaged Property for its intended purpose, Trustor will not, without the prior written consent of Beneficiary, such consent not to be unreasonably withheld, conditioned or delayed, (i) initiate or support any zoning reclassification of the Land or use or permit the use of the Mortgaged Property in a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances, (ii) impose or consent to the imposition of any public or private restrictive covenants upon the Land, (iii) execute, file or consent to any subdivision plat affecting the Land or consent

to the annexation of the Land to any municipality, or (iv) permit or suffer the Land to be used by the public or any Person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication or easement.

Section 3.15 Future Indebtedness of the Loan Parties. This Security Instrument is given in part to secure a revolving credit loan as described in the Loan Documents and shall secure not only existing indebtedness hereby secured as of the date hereof, but also, without further act and to the extent permitted by law, any and all future indebtedness of Trustor and the other Loan Parties to Beneficiary or the Lenders pursuant to the Loan Documents, whether such advances are obligatory or are to be made at the option of Beneficiary, or otherwise, to the same extent as if such advances or future indebtedness were made as of the date hereof. The total amount of the Obligations may increase or decrease from time to time. Pursuant to and subject to the terms of the Loan Documents, the Lenders have committed to advance or apply certain funds to or on behalf of the Borrowers, and it is hereby acknowledged and intended that to the extent permitted by law (i) the lien of this Security Instrument shall be valid as to all such advances (whenever hereafter made) from the time of the recording of this Security Instrument, and (ii) this Security Instrument shall remain in full force and effect without loss of priority, until the Revolving Credit Termination Date, as confirmed by Lender in writing (and, to the full extent permitted by applicable law, Trustor hereby waives the operation of any applicable law, statutory or otherwise, having a contrary effect). The total amount of the Obligations may increase or decrease from time to time.

ARTICLE IV DEFAULT AND FORECLOSURE

Section 4.01 Remedies. If an Event of Default has occurred and is continuing, Beneficiary may, at Beneficiary's election, exercise any or all of the following rights, remedies and recourses: (a) declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Trustor), whereupon the same shall become immediately due and payable; (b) enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto or located thereon, and if Trustor remains in possession of the Mortgaged Property after an Event of Default has occurred and is continuing and without Beneficiary's prior written consent, Beneficiary may invoke any legal remedies to dispossess Trustor; (c) hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Beneficiary may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Beneficiary deems necessary or desirable), and apply all Rents and other amounts collected by Beneficiary in connection therewith in accordance with the provisions hereof; (d) institute proceedings for the complete foreclosure of this Security Instrument, either by judicial action or by power of sale, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels; (e) make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Trustor or regard to the adequacy of the Mortgaged Property for the repayment of the Obligations, the appointment of a receiver of the Mortgaged Property, and Trustor irrevocably consents to such appointment (any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power

to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions hereof); and/or (f) exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity. With respect to any notices required or permitted under the UCC, Trustor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings, power of sale, or exercise of any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Trustor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Trustor, and against all other Persons claiming or to claim the property sold or any part thereof, by, through or under Trustor. Beneficiary or any of the Lenders may be a purchaser at such sale and if Beneficiary is the highest bidder, Beneficiary shall credit the portion of the purchase price that would be distributed to Beneficiary against the Obligations in lieu of paying cash. In the event this Security Instrument is foreclosed by judicial action, Trustor, on behalf of itself and the other Credit Parties, waives, to the fullest extent permitted by law, appraisal of the Mortgaged Property.

Section 4.02 Separate Sales. To the fullest extent permitted by applicable law the Mortgaged Property may be sold in one or more parcels and in such manner and order as Beneficiary in its sole discretion may elect; the right of sale arising out of any Event of Default that has occurred and is continuing beyond all applicable cure periods shall not be exhausted by any one or more sales.

Section 4.03 Remedies Cumulative, Concurrent and Nonexclusive. Beneficiary shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Trustor or others obligated under the Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Beneficiary or the Lenders, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Beneficiary or the Lenders in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.04 Release of and Resort to Collateral. Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Loan Documents or their status as a second (subject only to the Silver Point Mortgage) lien and security interest in and to the Mortgaged Property. For payment of the Obligations Beneficiary may resort to any other security in such order and manner as Beneficiary may elect.

~~Section 4.05~~ Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Trustor hereby irrevocably and unconditionally waives and releases (a) all benefits that might accrue to Trustor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment; (b) all notices of Beneficiary's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Credit Agreement; and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 4.06 Discontinuance of Proceedings. If Beneficiary or the Lenders shall have proceeded to invoke any right, remedy or recourse permitted under the Credit Agreement and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary or the Lenders shall have the unqualified right to do so and, in such an event, Trustor and Beneficiary or the Lenders shall be restored to their former positions with respect to the Obligations, the Credit Agreement, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary or the Lenders shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Beneficiary or the Lenders thereafter to exercise any right, remedy or recourse under the Credit Agreement for such Event of Default while it is continuing.

Section 4.07 Application of Proceeds. To the fullest extent permitted by applicable law the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Beneficiary (or the receiver, if one is appointed) in accordance with Section 2.12(c) of the Credit Agreement.

Section 4.08 Occupancy After Foreclosure. Any sale of the Mortgaged Property or any part thereof will divest all right, title and interest of Trustor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Trustor retains possession of such property or any part thereof subsequent to such sale, Trustor will be considered a tenant at sufferance of the purchaser, and will, if Trustor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law.

Section 4.09 Additional Advances and Disbursements; Costs of Enforcement. If any Event of Default exists, Beneficiary and each of the Lenders shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Trustor in accordance with the Loan Documents. All sums advanced and expenses incurred at any time by Beneficiary or any Lender under this section, or otherwise under this Security Instrument or applicable law, shall bear interest from the date that such sum is advanced or expense incurred to and including the date of reimbursement, computed at the rate or rates at which interest is then computed on the Obligations, and all such sums, together with interest thereon, shall be secured by this Security Instrument. Trustor shall pay all actual out-of-pocket expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Security Instrument, or the enforcement, compromise or settlement of the Obligations or any claim under this Security

Instrument, and for the curing thereof, or for defending or asserting the rights and claims of Beneficiary or the Lenders in respect thereof, by litigation or otherwise.

Section 4.10 No Beneficiary in Possession. Neither the enforcement of any of the remedies under this Section 4.10, the assignment of the Rents and Leases under Section 5.01, the security interests under Section 6.01, nor any other remedies afforded to Beneficiary or the Lenders under the Loan Documents, at law or in equity shall cause Beneficiary or any Lender to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Beneficiary or any Lender to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

Section 4.11 Multiple Security. If (a) the Mortgaged Property shall consist of one or more parcels, whether or not contiguous and whether or not located in the same county, or (b) in addition to this Security Instrument, Beneficiary shall now or hereafter hold or be the beneficiary of one or more additional mortgages, liens, deeds of trust or other security (directly or indirectly) securing the Obligations upon other property in the state in which the Mortgaged Property is located (whether or not such property is owned by Trustor or by others) or (c) both the circumstances described in clauses (a) and (b) shall be true, then to the fullest extent permitted by law, Beneficiary may, at its election, commence or consolidate in a single foreclosure action all foreclosure proceedings against all such collateral securing the Obligations (including the Mortgaged Property), which action may be brought or consolidated in the courts of, or sale conducted in, any county in which any of such collateral is located. Trustor acknowledges that the right to maintain a consolidated foreclosure action is a specific inducement to Beneficiary to extend the indebtedness borrowed pursuant to or guaranteed by the Loan Documents, and Trustor expressly and irrevocably waives, to the fullest extent permitted by law, any objections to the commencement or consolidation of the foreclosure proceedings in a single action and any objections to the laying of venue or based on the grounds of forum non conveniens which it may now or hereafter have. Trustor further agrees that if Beneficiary shall be prosecuting one or more foreclosure or other proceedings against a portion of the Mortgaged Property or against any collateral other than the Mortgaged Property, which collateral directly or indirectly secures the Obligations, or if Beneficiary shall have obtained a judgment of foreclosure and sale or similar judgment against such collateral, then, whether or not such proceedings are being maintained or judgments were obtained in or outside the state in which the Mortgaged Property is located, Beneficiary may commence or continue any foreclosure proceedings and exercise its other remedies granted in this Security Instrument against all or any part of the Mortgaged Property and Trustor waives, to the fullest extent permitted by law, any objections to the commencement or continuation of a foreclosure in accordance with the terms of this Security Instrument or exercise of any other remedies hereunder based on such other proceedings or judgments, and waives, to the fullest extent permitted by law, any right to seek to dismiss, stay, remove, transfer or consolidate either any action under this Security Instrument or such other proceedings on such basis. Neither the commencement nor continuation of foreclosure proceedings in accordance with the provisions of this Security Instrument, nor the exercise of any other rights hereunder, nor the recovery of any judgment by Beneficiary in any such proceedings or the occurrence of any sale in any such proceedings shall prejudice, limit or preclude Beneficiary's right to commence or continue one or more foreclosure or other

proceedings or obtain a judgment against any other collateral (either in or outside the state in which the Premises is located) which directly or indirectly secures the Obligations, and Trustor expressly waives, to the fullest extent permitted by law, any objections to the commencement of, continuation of, or entry of a judgment in such other sales or proceedings or exercise of any remedies in such sales or proceedings based upon any action or judgment connected to this Security Instrument, and Trustor also waives, to the fullest extent permitted by law, any right to seek to dismiss, stay, remove, transfer or consolidate either such other sales or proceedings or any sale or action under this Security Instrument on such basis. It is expressly understood and agreed that to the fullest extent permitted by law, Beneficiary may, at its election, cause the sale of all collateral which is the subject of a single foreclosure action at either a single sale or at multiple sales conducted simultaneously and take such other measures as are appropriate in order to effect the agreement of the parties to dispose of and administer all collateral securing the Obligations (directly or indirectly) in the most economical and least time-consuming manner.

Section 4.12 Reinstatement. This Security Instrument shall remain in full force and effect and continue to be effective should any petition be filed by or against any Borrower or Trustor for liquidation or reorganization, should any Borrower or Trustor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of such Borrower's or Trustor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 4.13 Waiver by Trustor. (a) Trustor hereby waives personal service of process and consents to service in the manner and to the address of Trustor set forth or referred to in Sections 11.11 and 11.13 of the Credit Agreement

(b) BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND TRUSTOR AND BENEFICIARY WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), TRUSTOR AND BENEFICIARY DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, TRUSTOR HEREBY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER IN CONTRACT, TORT, OR OTHERWISE ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO, THIS SECURITY INSTRUMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

~~ARTICLE V~~
ASSIGNMENT OF RENTS AND LEASES

Section 5.01 Assignment. In furtherance of and in addition to the assignment made by Trustor herein, Trustor hereby absolutely and unconditionally assigns, sells, transfers and conveys to Beneficiary all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment and not an assignment for additional security only. So long as no Event of Default shall have occurred and be continuing, Trustor shall have a revocable license from Beneficiary to exercise all rights extended to the lessor under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Obligations and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Obligations or solvency of Trustor, the license herein granted shall automatically expire and terminate, without notice by Beneficiary (any such notice being hereby expressly waived by Trustor).

Section 5.02 Perfection Upon Recordation. Trustor acknowledges that Beneficiary has taken all reasonable actions necessary to obtain, and that upon recordation of this Security Instrument Beneficiary shall have, to the extent permitted under applicable law, a valid and fully perfected, second priority, present assignment of the Rents arising out of the Leases and all security for such Leases subject to the Permitted Encumbrances and in the case of security deposits, rights of depositors and requirements of law. Trustor acknowledges and agrees that upon recordation of this Security Instrument, Beneficiary's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Trustor and all third parties, including, without limitation, any subsequently appointed trustee in any case under Title 11 of the United States Code (the "Bankruptcy Code"), without the necessity of commencing a foreclosure action with respect to this Security Instrument, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

Section 5.03 Bankruptcy Provisions. Without limitation of the absolute nature of the assignment of the Rents hereunder, Trustor and Beneficiary agree that (a) this Security Instrument shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Security Instrument extends to property of Trustor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents, and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

Section 5.04 Additional Rights. The holder of any subordinate lien or subordinate mortgage on the Mortgaged Property shall have no right to terminate any Lease whether or not such Lease is subordinate to this Security Instrument nor shall Trustor consent to any holder of any subordinate lien or subordinate mortgage joining any tenant under any Lease in any action to foreclose the lien or modify, interfere with, disturb or terminate the rights of any tenant under any Lease. By recordation of this Security Instrument all subordinate lienholders

and the mortgagees and beneficiaries under subordinate mortgages are subject to and notified of this provision, and any action taken by any such lienholder or beneficiary contrary to this provision shall be null and void. Any such application shall not be construed to cure or waive any Event of Default or invalidate any act taken by Beneficiary on account of such Event of Default.

ARTICLE VI SECURITY AGREEMENT; FIXTURE FILING

Section 6.01 Security Interest. This Security Instrument constitutes a "security agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards. To this end, Trustor grants to Beneficiary a second lien (subject only to the Silver Point Mortgage) security interest in the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance, Condemnation Awards and all other Mortgaged Property which is personal property to secure the payment of the Obligations and performance of the Obligations subject to the Permitted Encumbrances, and agrees that Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards sent to Trustor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Trustor.

Section 6.02 Financing Statements. Trustor shall execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such financing statements and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect and preserve Beneficiary's security interest hereunder and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

Section 6.03 Fixture Filing. This Security Instrument shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of the applicable Debtor (Trustor) and Secured Party (Beneficiary) as set forth in the first paragraph of this Security Instrument.

ARTICLE VII ATTORNEY-IN-FACT

Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, if Trustor shall fail to do so within five (5) days after written request by Beneficiary, (b) upon the issuance of a deed or assignment pursuant to the foreclosure of this Security Instrument or the delivery of a deed or assignment in lieu of foreclosure, to execute all instruments of assignment, conveyance

or further assurance with respect to the Mortgaged Property in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Mortgaged Property, and (d) while any Event of Default exists and is continuing, to perform any obligation of Trustor hereunder; provided, (i) Beneficiary shall not under any circumstances be obligated to perform any obligation of Trustor; (ii) any sums advanced by Beneficiary in such performance shall be added to and included in the Obligations and shall bear interest at the rate or rates at which interest is then computed on the Obligations pursuant to the Credit Agreement; (iii) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (iv) Beneficiary shall not be liable to Trustor or any other Person or entity for any failure to take any action which it is empowered to take under this Article VII.

ARTICLE VIII BENEFICIARY AS AGENT

Beneficiary has been appointed to act as Beneficiary hereunder by Lenders. Beneficiary shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including the release or substitution of Mortgaged Property), solely in accordance with this Security Instrument and the Credit Agreement. In furtherance of the foregoing provisions of this Section, each Lender, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Mortgaged Property, it being understood and agreed by such Lender that all rights and remedies hereunder may be exercised solely by Beneficiary for the benefit of Lenders in accordance with the terms of this Article VIII. Beneficiary shall at all times be the same Person that is Collateral Agent under the Credit Agreement. Written notice of resignation by Collateral Agent pursuant to the terms of the Credit Agreement shall also constitute notice of resignation as Beneficiary under this Security Instrument; removal of Collateral Agent pursuant to the terms of the Credit Agreement shall also constitute removal as Beneficiary under this Security Instrument; and appointment of a successor Collateral Agent pursuant to the terms of the Credit Agreement shall also constitute appointment of a successor Beneficiary under this Security Instrument. Upon the acceptance of any appointment as Collateral Agent under the terms of the Credit Agreement by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Beneficiary under this Security Instrument, and the retiring or removed Beneficiary under this Security Instrument shall promptly (i) transfer to such successor Beneficiary all sums, securities and other items of Mortgaged Property held hereunder, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Beneficiary under this Security Instrument, and (ii) execute and deliver to such successor Beneficiary such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Beneficiary of the security interests created hereunder, whereupon such retiring or removed Beneficiary shall be discharged from its duties and obligations under this Security Instrument thereafter accruing. After any retiring or removed Collateral Agent's resignation or removal hereunder as Beneficiary, the

provisions of this Security Instrument shall continue to inure to its benefit as to any actions taken or omitted to be taken by it under this Security Instrument while it was Beneficiary hereunder.

**ARTICLE IX
RIGHTS AND RESPONSIBILITIES OF TRUSTEE;
OTHER PROVISIONS RELATING TO TRUSTEE**

Notwithstanding anything to the contrary in this Security Instrument, Beneficiary and each Trustor agree as follows:

Section 9.01 Exercise of Remedies by Trustee. To the extent that this Security Instrument or applicable law authorizes or empowers Beneficiary to exercise any remedies set forth in Article IV hereof or otherwise, or perform any acts in connection therewith, Trustee (but not to the exclusion of Beneficiary unless so required under law) shall have the power to exercise any or all such remedies, and to perform any acts provided for in this Security Instrument in connection therewith, all for the benefit of Beneficiary and on Beneficiary's behalf in accordance with applicable law of the applicable state. In connection therewith, Trustee (a) shall not exercise, or waive the exercise of, any Beneficiary's remedies (other than any rights of Trustee to any indemnity or reimbursement), except at Beneficiary's request, and (b) shall exercise, or waive the exercise of, any or all of Beneficiary's remedies at Beneficiary's request, and in accordance with Beneficiary's directions as to the manner of such exercise or waiver. Trustee may, however, decline to follow Beneficiary's request or direction if Trustee shall be advised by counsel that the action or proceeding, or manner thereof, so directed may not lawfully be taken or waived.

Section 9.02 Rights and Privileges of Trustee. To the extent that this Security Instrument requires Trustor to reimburse Beneficiary for any expenditures Beneficiary may incur, Trustee shall be entitled to the same rights to reimbursement of expenses as Beneficiary, subject to such limitations and conditions as would apply in the case of Beneficiary. To the extent that this Security Instrument negates or limits Beneficiary's liability as to any matter, Trustee shall be entitled to the same negation or limitation of liability. To the extent that Trustor, pursuant to this Security Instrument, appoints Beneficiary as Trustor's attorney in fact for any purpose, Beneficiary or (when so instructed by Beneficiary) Trustee shall be entitled to act on Trustor's behalf without joinder or confirmation by the other.

Section 9.03 Authority of Beneficiary. If Beneficiary is a banking corporation, state banking corporation or a national banking association and the instrument of appointment of any successor or replacement Trustee is executed on Beneficiary's behalf by an officer of such corporation, state banking corporation or national banking association, then such appointment may be executed by any authorized officer or agent of Beneficiary and such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of Beneficiary.

Section 9.04 Effect of Appointment of Successor Trustee. Upon the appointment and designation of any successor, substitute or replacement Trustee, in accordance with applicable law, the Trustee's entire estate and title in the Mortgaged Property shall vest in the designated successor, substitute or replacement Trustee. Such successor, substitute or

replacement Trustee shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to Trustee shall be deemed to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder in such capacity.

Section 9.05 Confirmation of Transfer and Succession. Any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of any successor, substitute or replacement Trustee, any former Trustee ceasing to act shall execute and deliver an instrument transferring to such successor, substitute or replacement Trustee all of the right, title, estate and interest in the Mortgaged Property of Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and deliver all properties and moneys held by said Trustee hereunder to said successor, substitute or replacement Trustee.

Section 9.06 Exculpation. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or otherwise be responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence, willful misconduct or knowing violation of law. Trustee shall not be personally liable in case of entry by him, her or it, or anyone entering by virtue of the powers herein granted him, her or it, upon the Mortgaged Property for debts contracted or liability or damages incurred in the management or operation of the Mortgaged Property. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him, her or it hereunder, believed by him, her or it in good faith to be genuine. All moneys received by any Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law). Trustee shall not be under any liability for interest on any moneys received by him, her or it hereunder.

Section 9.07 Endorsement and Execution of Documents. Upon Beneficiary's written request, Trustee shall, without liability or notice to Trustor, execute, consent to, or join in any instrument or agreement in connection with or necessary to effectuate the purposes of the Loan Documents. Trustor hereby irrevocably designates Trustee as its attorney in fact to execute, acknowledge and deliver, on Trustor's behalf and in Trustor's name, all instruments or agreements necessary to implement any provision(s) of this Security Instrument or to further perfect the lien created by this Security Instrument on the Mortgaged Property. This power of attorney shall be deemed to be coupled with an interest.

Section 9.08 Multiple Trustees. If Beneficiary appoints multiple trustees with respect to Mortgaged Property located in any state, then any Trustee, individually, may exercise all powers granted to Trustee under this instrument with respect to Mortgaged Property located in such state, without the need for action by any other Trustee(s).

Section 9.09 No Required Action. Trustee shall not be required to take any action under this Security Instrument or to institute, appear in or defend any action, suit or other

proceeding in connection therewith where in his, her or its opinion such action will be likely to involve him, her or it in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to him, her or it against any and all costs, expense and liabilities arising therefrom. Trustee shall not be responsible for the execution, acknowledgment or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and makes no representation in respect thereof or in respect of the rights, remedies and recourses of Beneficiary.

Section 9.10 Terms of Trustee's Acceptance. Trustee accepts the trust created by this Security Instrument upon the following terms and conditions:

(a) Delegation. Trustee may exercise any of its powers through appointment of attorney(s) in fact or agents.

(b) Security. Trustee shall not be under any obligation to take any action upon any Event of Default unless furnished security or indemnity, in form reasonably satisfactory to Trustee, against costs, expenses, and liabilities that Trustee may incur.

(c) Costs and Expenses. The Trustor shall reimburse Trustee, as part of the Obligations, for all reasonable disbursements and expenses (including reasonable legal fees and expenses) incurred by reason of or arising from an Event of Default and as provided for in this Security Instrument, including any of the foregoing incurred in Trustee's administering and executing the trust created by this Security Instrument and performing Trustee's duties and exercising Trustee's powers under this Security Instrument.

ARTICLE X MISCELLANEOUS

Section 10.01 Notices. Any notice required or permitted to be given under this Security Instrument shall be given in accordance with Section 11.11 of the Credit Agreement.

Section 10.02 No Waiver; Rights Cumulative. No failure or delay on the part of Beneficiary or any Lender in the exercise of any power, right or privilege hereunder shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Security Instrument are cumulative to, and not exclusive of, any rights or remedies otherwise available.

Section 10.03 Severability; Covenants Independent. In case any provision in or obligation under this Security Instrument shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 10.04 Release or Reconveyance. Upon payment in full of all of the Obligations, subject to and in accordance with the terms and provisions of the Credit Agreement,

Beneficiary, at Trustor's expense, shall release the liens and security interests created by this Security Instrument or reconvey the Mortgaged Property to the Trustor or, at the request of Trustor, assign this Security Instrument without recourse, representation or warranty.

Section 10.05 Choice of Law. THE PROVISIONS OF THIS SECURITY INSTRUMENT REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE IN WHICH THE MORTGAGED PROPERTY IS LOCATED. ALL OTHER PROVISIONS OF THIS SECURITY INSTRUMENT AND THE RIGHTS AND OBLIGATIONS OF TRUSTOR AND BENEFICIARY SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND RULE 327(b) OF THE NEW YORK CIVIL PRACTICE LAW AND RULES.

Section 10.06 Successors and Assigns. This Security Instrument shall be binding upon and inure to the benefit of Beneficiary and Trustor and their respective successors and assigns. Trustor shall not, without the prior written consent of Beneficiary, assign any rights, duties or obligations hereunder.

Section 10.07 No Waiver. Any failure by Beneficiary to insist upon strict performance of any of the terms, provisions or conditions of the Credit Agreement shall not be deemed to be a waiver of same, and Beneficiary shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 10.08 Subrogation. To the extent proceeds of the Loan have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Beneficiary shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Beneficiary.

Section 10.09 Conflict With Credit Agreement. If any conflict or inconsistency exists between this Security Instrument and the Credit Agreement, the Credit Agreement shall govern.

Section 10.10 Waiver of Stay, Moratorium and Similar Rights. Trustor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Security Instrument or the Obligations secured hereby, or any agreement between Trustor and Beneficiary or any rights or remedies of Beneficiary.

Section 10.11 Entire Agreement. This Security Instrument and the Credit Agreement embody the entire agreement and understanding between Beneficiary and Trustor and supersede all prior agreements and understandings between such parties relating to the subject

matter hereof and thereof. Accordingly, neither this Security Instrument nor the Credit Agreement may be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 10.12 Counterparts. This Security Instrument is being executed in several counterparts, all of which are identical. Each of such counterparts shall for all purposes be deemed to be an original and all such counterparts shall together constitute but one and the same instrument.

Section 10.13 Right to Deal. If ownership of any portion of the Mortgaged Property becomes vested in a Person other than Trustor, then Beneficiary may, without notice to any Trustor, deal with such successor or successors in interest with reference to this Security Instrument or the Obligations in the same manner as with Trustor, without in any way vitiating or discharging Trustor's liability hereunder or for the payment of the Obligations or being deemed a consent to such vesting.

Section 10.14 Sole Discretion of Beneficiary.

(a) Whenever Trustee or Beneficiary's judgment, consent or approval is required hereunder for any matter, or either shall have an option or election hereunder, such judgment, the decision whether or not to consent to or approve the same or the exercise of such option or election shall be in the sole discretion of Beneficiary, as the case may be, unless otherwise expressly set forth herein.

(b) Notwithstanding anything contained herein to the contrary, in the event that Trustee or Beneficiary fails or refuses to grant consent or approval when required hereunder or under the Credit Agreement for any matter, the parties agree that the remedies of specific performance or declaratory judgment shall be the sole remedies of Trustor with respect to such actions and Trustor hereby waives, to the fullest extent permitted by law, all claims for damages with respect thereto.

Section 10.15 Provisions as to Covenants and Agreements. All of the Trustor's covenants and agreements hereunder shall run with the land and time is of the essence with respect thereto.

Section 10.16 Matters to be in Writing. This Security Instrument cannot be altered, amended, modified, terminated, waived, released or discharged except in a writing signed by the party against whom enforcement is sought.

Section 10.17 Beneficiary's Relationship to Others.

(a) Beneficiary is not a partner or joint venturer in any manner whatsoever with Trustor or any other Person in the ownership, operation or development of the Mortgaged Property. The Credit Agreement is a contract between Beneficiary and/or the other parties thereto for their mutual benefit, and no Person other than Beneficiary or said parties shall have any right, claim or interest against either Beneficiary or Trustor by virtue of any provision thereof. Without limiting the generality of the foregoing, it is expressly intended that no such other Person, including any general contractor, architect, subcontractor, laborer or materialman,

shall be a third party beneficiary of this Security Instrument or the Credit Agreement. Further, any action taken by Beneficiary pursuant to authority conferred in the Credit Agreement, including procuring lien waivers and financial and other information and making or causing to be made any inspection of the Mortgaged Property, will be taken by Beneficiary for its own protection only, and Beneficiary does not and shall not be deemed to have assumed any responsibility to Trustor or any other Person or entity with respect to the proper construction, maintenance or operation of the Mortgaged Property.

(b) Beneficiary shall not be responsible for the solvency of any company issuing any policy of insurance pursuant to the Credit Agreement whether or not approved by it, or for the collection of any amounts due under any such policy, and shall be responsible and accountable only for such money as may be actually received by it, and then only in accordance with the terms of the Credit Agreement. Nothing contained in the Credit Agreement shall be construed as making Beneficiary liable in any way for any loss, damage, or injury resulting from the non-insurance of the Mortgaged Property.

Section 10.18 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Security Instrument. In the event an ambiguity or question of intent or interpretation arises, this Security Instrument shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions hereof.

Section 10.19 Last Dollars Secured; Priority. To the extent that this Security Instrument secures only a portion of the indebtedness owing or which may become owing by Trustor and any of the other Loan Parties to the Lenders, the parties agree that any payments or repayments of such indebtedness shall be and be deemed to be applied first to the portion of the indebtedness that is not secured hereby, it being the parties' intent that the portion of the indebtedness last remaining unpaid shall be secured hereby. If at any time this Security Instrument shall secure less than all of the principal amount of the Obligations, it is expressly agreed that any repayments of the principal amount of the Obligations shall not reduce the amount of the lien of this Security Instrument until the lien amount shall equal the principal amount of the Obligations outstanding.

Section 10.20 Further Assurances. To further assure Beneficiary's rights under this Security Instrument, Trustor agrees promptly upon demand of Beneficiary to do any act or execute any additional documents (including, but not limited to, security agreements on any personalty included or to be included in the Mortgaged Property and a separate assignment of each Lease in recordable form) as may be reasonably requested by Beneficiary to confirm the lien of this Security Instrument and all other rights or benefits conferred on Beneficiary by this Security Instrument.


Section 10.21 Subordination. Notwithstanding anything herein to the contrary, the lien and security interest granted pursuant to this Security Instrument and the exercise of any right or remedy by the Beneficiary hereunder are subject to the provisions of the Intercreditor and Subordination Agreement, dated as of the date hereof (as amended, restated, supplemented, modified or replaced from time to time, the "Intercreditor Agreement"), among Beneficiary, as administrative agent and collateral agent under and pursuant to the Revolving Credit Agreement, Silver Point Finance, LLC, a Delaware limited liability company ("Silver Point"), as

administrative agent and collateral agent under and pursuant to the First Lien Term Loan Credit Agreement, Silver Point, as administrative agent and collateral agent under and pursuant to the Third Lien Term Loan Credit Agreement, and The Bank of New York Mellon Trust, N.A., a national banking association, as trustee and collateral trustee under and pursuant to the Fourth Lien Indenture (all as defined in the Intercreditor Agreement) and certain other persons party or that may become party thereto from time to time. In the event of any conflict between the terms of the Intercreditor Agreement and this Security Instrument, the terms of the Intercreditor Agreement shall govern and control.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, Mortgagor has executed this Deed of Trust as of the date first written above.

MORTGAGOR:
INTERSTATE BRANDS CORPORATION,
a Delaware corporation

By: 
Name: **J. Randall Vance**
Title: **Senior Vice President
Chief Financial Officer and Treasurer**

Utah

Illinois
State of ~~New York~~)
Cook) ss.:
County of ~~New York~~)

On the *23rd* day of January in the year 2009 before me, the undersigned, personally appeared *J. Russell Brown* personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, such individual, and the entity upon behalf of which the individual acted, executed the instrument.

Edwin P. Abaya

Notary Public

Commission Expires ____ day of ____, 2009.



Seal:

**EXHIBIT A
TO
DEED OF TRUST**

Legal Description of the Land

[See attached.]

UTAH - NCS-357248-051

Real property in the City of Ogden, County of Weber, State of Utah,
described as follows:

PARCEL 1:

ALL OF LOTS 1 AND 10, AND PART OF LOTS 2, 3 AND 4, BLOCK 19, PLAT A, OGDEN CITY SURVEY, WEBER COUNTY, UTAH: BEGINNING 165 FEET EAST FROM THE SOUTHWEST CORNER OF SAID BLOCK 19, THENCE NORTH 326.5 FEET, MORE OR LESS, TO A POINT SOUTH 41°37' WEST FROM A POINT 224.5 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 4; THENCE NORTH 41°37' EAST TO A POINT WHICH IS EAST OF A POINT 65 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 4; THENCE WEST TO A POINT 165 FEET EAST OF THE WEST LINE OF LOT 4; THENCE NORTH 35 FEET, THENCE EAST TO A POINT SOUTH 41°37' WEST OF A POINT 224.5 FEET EAST OF THE NORTHWEST CORNER OF LOT 4; THENCE NORTH 41°37' EAST TO THE NORTH LINE OF LOT 4; THENCE EAST 105.45 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF LOT 4; THENCE SOUTH 132 FEET TO THE SOUTHEAST CORNER OF LOT 4; THENCE EAST 333.5 FEET TO THE NORTHEAST CORNER OF SAID LOT 10; THENCE SOUTH 265.36 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF BLOCK 19; THENCE WEST 502 FEET, MORE OR LESS, TO THE PLACE OF BEGINNING.

PARCEL 2:

BEGINNING AT A POINT 10 RODS EAST OF THE SOUTHWEST CORNER OF LOT 2, BLOCK 19, PLAT A, OGDEN CITY SURVEY, WEBER COUNTY, UTAH; AND RUNNING WEST 10 RODS, THENCE NORTH 366.68 FEET TO A POINT 30 FEET SOUTH OF THE NORTHWEST CORNER OF LOT 4, BLOCK 19, PLAT A, OGDEN CITY SURVEY; RUNNING THENCE EAST 165 FEET; THENCE SOUTH 35 FEET; THENCE EAST 10 FEET; THENCE SOUTH 417 FEET WEST TO A POINT DUE NORTH OF THE POINT OF BEGINNING; THENCE SOUTH TO THE POINT OF BEGINNING.

PARCEL 3:

THE SOUTH 2.25 FEET OF LOT 9, BLOCK 19, PLAT A, OGDEN CITY, WEBER COUNTY, UTAH.

PARCEL 4:

AN EASEMENT FOR INGRESS AND EGRESS AS GRANTED BY INSTRUMENT RECORDED NOVEMBER 10, 1993 AS ENTRY NO. 1257045 IN BOOK 1688 AT PAGE 2595 OF OFFICIAL RECORDS OVER THE FOLLOWING DESCRIBED PROPERTY:

PART OF LOT 9, BLOCK 19, PLAT A, OGDEN CITY SURVEY, IN OGDEN CITY, WEBER COUNTY, STATE OF UTAH, DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT 7.25 FEET NORTH 0°58' EAST FROM THE

SOUTHEAST CORNER OF SAID LOT 9, SAID POINT BEING SOUTH $0^{\circ}58'$ WEST 440.29 FEET AND NORTH $89^{\circ}02'$ WEST 49.2 FEET FROM THE MONUMENT OF THE CENTERLINE INTERSECTION OF 25TH STREET AND GRANT AVENUE AND RUNNING THENCE SOUTH $0^{\circ}58'$ WEST 5.0 FEET; THENCE NORTH $89^{\circ}02'$ WEST 333.50 FEET; THENCE NORTH $0^{\circ}58'$ EAST 5.0 FEET; THENCE SOUTH $89^{\circ}02'$ EAST 333.50 FEET TO THE POINT OF BEGINNING.