

10537863

10537863
10/9/2008 10:33:00 AM \$83.00
Book - 9649 Pg - 8083-8118
Gary W. Ott
Recorder, Salt Lake County, UT
FOUNDERS TITLE
BY: eCASH, DEPUTY - EF 36 P.

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Otterbourg, Steindler, Houston & Rosen, P.C.
230 Park Avenue
New York, New York 10169
Attention: Daniel P. Greenstein

Tax Parcel No(s): 16-29-427-039-0000; 15-33-201-005-000; 15-33-201-007-2000
27-13-227-012-000

MERVYN'S LLC, as grantor
(Borrower)

to

FOUNDERS TITLE CO., as Trustee

and

WACHOVIA CAPITAL FINANCE CORPORATION (WESTERN), formerly known as
Congress Financial Corporation (Western), as Agent, as beneficiary
(Grantee)

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

Dated: as of August 26, 2008
Location: See Exhibit B attached hereto
County: Salt Lake

1114490.2

BK 9649 PG 8083

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

THIS LEASEHOLD DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as amended, supplemented or otherwise modified from time to time, this "**Deed of Trust**"), is made as of this 26th day of August, 2008, among MERVYN'S LLC, a California limited liability company and as Debtor and Debtor in Possession, having an address at 22301 Foothill Boulevard, Hayward, California 94541 ("**Borrower**"), to FOUNDERS TITLE CO., a Utah corporation, having a mailing address at 746 East Winchester Street, Salt Lake City, Utah 84107 ("**Trustee**"), for the benefit of WACHOVIA CAPITAL FINANCE CORPORATION (WESTERN), a California corporation, formerly known as Congress Financial Corporation (Western), having an address at 251 South Lake Avenue, Suite 900, Pasadena, California 91101, on its own behalf and as agent for the lenders from time to time which are party to the Loan Agreement (as hereinafter defined) and Bank Product Providers (together with its successors and assigns "**Grantee**").

All capitalized terms used but not otherwise defined herein have the meanings provided in the Loan Agreement.

RECITALS:

WHEREAS, Borrower has entered into a Loan and Security Agreement among the Borrower and the other parties signatory thereto, the lenders from time to time party to the Loan Agreement (the "**Lenders**") and Grantee, as agent for, and empowered to act on the behalf of, the Lenders (as the same now exists or may hereafter be amended, supplemented or otherwise modified from time to time, the "**Loan Agreement**") and related documents (the "**Financing Agreements**"), dated as of September 2, 2004;

WHEREAS, Borrower and Guarantor have each commenced a case under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware, and Borrower and Guarantor have retained possession of their assets and are authorized under the Bankruptcy Code to continue the operation of their businesses as a debtor-in-possession;

WHEREAS, prior to the commencement of the Chapter 11 Cases, Grantee and Lenders made loans and advances and provided other financial or credit accommodations to Borrower;

WHEREAS, the Bankruptcy Court has entered a Financing Order pursuant to which Grantee and Lenders may make post-petition loans and advances, and provide other financial accommodations, to Borrower secured by substantially all the assets and properties of Borrower and Guarantor as set forth in the Financing Order and the Financing Agreements;

WHEREAS, the Loan Agreement was ratified and modified by Borrower and Guarantor pursuant to Ratification and Modification Agreement, dated as of July 31, 2008 and provides for Loans consisting of Revolving Loans and a Term Loan in an aggregate principal amount not to exceed \$465,000,000;

WHEREAS, the Financing Order provides that as a condition to the making of such post-petition loans, advances and other financial accommodations, Borrower shall execute and deliver this Deed of Trust;

WHEREAS, Borrower is the owner of a leasehold estate in the real property described in Exhibit A (the "**Land**") attached hereto, pursuant to those certain Leases described in Exhibit B attached hereto (collectively, the "**Lease**").

GRANTING CLAUSE

NOW THEREFORE, Borrower, for the purpose of securing (1) the full payment and performance by Borrower of all the terms, agreements, covenants and provisions of this Deed of Trust, the Loan Agreement, and the other Financing Agreements and any renewal, extension, modification or replacement thereof, (2) the Obligations as defined in the Loan Agreement, which include, but are not limited to, both the Pre-Petition Obligations and the Post Petition Obligations, and (3) all other debts, obligations and liabilities of every kind and character of Borrower now or hereafter existing in favor of Grantee, the Lenders and the Bank Product Providers incurred or arising pursuant to the provisions of this Deed of Trust and the other Financing Agreements, whether such debts, obligations or liabilities be direct or indirect, primary or secondary, joint or several, fixed or contingent (collectively the "**Secured Obligations**"), hereby irrevocably mortgages, pledges, warrants, gives, grants, assigns, bargains, sells, releases, transfers, aliens, enfeoffs and conveys to Trustee, IN TRUST WITH POWER OF SALE for the benefit of Grantee, for the benefit of Grantee and Lenders, all of Borrower's right, title and interest in and to the following property with COVENANTS:

(A) **THE LAND AND THE LEASE:** The leasehold estate in, and any other right, title, interest and estate of Borrower with respect to the Land, pursuant to the terms of the Lease, and;

(B) **THE IMPROVEMENTS: TOGETHER WITH** (1) all the buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and (2) all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever including, but without limiting the generality of the foregoing, all heating, electrical, mechanical, lighting, lifting, plumbing, ventilating, air conditioning and air-cooling fixtures, systems, machinery, apparatus and equipment, refrigerating, incinerating and power fixtures, systems, machinery, apparatus and equipment, loading and unloading fixtures, systems, machinery, apparatus and equipment, escalators, elevators, boilers, communication systems, switchboards, sprinkler systems and other fire prevention and extinguishing fixtures, systems, machinery, apparatus and equipment, and all engines, motors, dynamos, machinery, wiring, pipes, pumps, tanks, conduits and ducts constituting a part of any of the foregoing, now or hereafter owned by Borrower and located in or on, or attached to, and used or intended to be used in connection with or with the operation of, the Land, buildings, structures or other improvements, or in connection with any construction being conducted or which may be conducted thereon, and owned by Borrower, and all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing, and all of the right, title and interest of Borrower in and to any such personal property or fixtures subject to any lien, security interest or claim, which, to the fullest extent permitted by law, shall be conclusively

deemed fixtures and a part of the real property encumbered hereby (hereinafter called the "**Improvements**");

(C) EASEMENTS: TOGETHER WITH all right, title and interest, if any, of Borrower in and to the streets and roads abutting said land to the center lines thereof, and strips and gores within or adjoining said land, the airspace and all development rights with respect thereto and right to use said airspace and development rights above said Land, all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, drainage, mineral, oil, gas and timber rights, air rights, conduits and wires and all other facilities furnishing services to, and all appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property described in paragraphs (A) and (B) hereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower;

(D) TOGETHER WITH (i) all the estate, right, title and interest of Borrower of, in and to all judgments, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property described in paragraphs (A), (B) and (C) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in paragraphs (A), (B) and (C) hereof or any part thereof, or to any rights, appurtenant thereto, and all proceeds of any sales or other dispositions of the property described in paragraphs (A), (B) and (C) hereof or any part thereof; and Grantee is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor, and (if it so elects) to apply the same toward the payment of the Secured Obligations in accordance with the terms of the Loan Agreement, notwithstanding the fact that the amount owing thereon may not then be due and payable, (ii) all contract rights, general intangibles, actions and rights in action, including without limitation all rights to insurance proceeds and unearned premiums arising from or relating to the property described in paragraphs (A), (B), and (C) above; and (iii) all proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the property described in paragraphs (A), (B) and (C);

(E) TOGETHER WITH all right, title and interest of Borrower in and to any and all subleases, underlettings, concession agreements, licenses and other occupancy agreements or other agreements heretofore or hereafter entered into by Borrower or any of its predecessors in interest under any Lease, affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, any portion of the Land and the Improvements, including any extensions, renewals, modifications or amendments thereof (hereinafter collectively referred to as the "**Subleases**"), together with all rent, rent equivalents, royalties, income, fees, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or employees from any and all sources arising from or attributable to the Land, the Lease and the Improvements (the "**Rents**"), together with all proceeds from the sale or other disposition of the Subleases and the right to receive and apply the Rents to the payment of the Secured Obligations; provided, however, that subject to the provisions of this Deed of Trust and the other Financing Agreements, Grantee hereby gives Borrower a revocable license to collect and use such Rents as they become due and payable, but not in advance thereof. The

foregoing assignment shall be fully operative without any further action on the part of either party and specifically Grantee shall be entitled, at its option upon the occurrence of an Event of Default, to all rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof whether or not Grantee takes possession of the property described in paragraphs (A), (B) and (C) hereof. Upon the occurrence of an Event of Default, the revocable license hereby given to Borrower to collect such rents, royalties, issues, profits, revenues, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof shall automatically terminate without further action by Grantee, and such license shall be permanently revoked and shall not be reinstated upon a cure of the default without Grantee's specific consent. Neither the exercise of any rights under this paragraph by Borrower nor the application of any such rents, royalties, issues, profits, revenues, income or other benefits to the Secured Obligations, shall cure or waive any Event of Default or notice of any Event of Default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies; The foregoing provisions hereof shall constitute an absolute and present assignment of the rents, income and other benefits from the property described in (A), (B) and (C) above, subject, however, to the revocable license given to Borrower to collect and use such rents, income and other benefits as hereinabove provided; and the existence or exercise of such license of Borrower shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Borrower, and any such subsequent assignment by Borrower shall be subject to the rights of Grantee hereunder;

(F) Grantee shall have the right, at any time and from time to time, to notify any lessee of the rights of Grantee as provided by this paragraph;

(G) TOGETHER WITH (i) Borrower's rights further to encumber the property described in paragraphs (A), (B) and (C) above for debt and (ii) all of Borrower's rights to enter into any lease or lease agreement;

(H) TOGETHER WITH, all awards or payments, including interest thereof, that may heretofore and hereafter be made with respect to the Land, the Lease and/or the Improvements, whether from the exercise of the right of eminent domain or condemnation (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Land, Lease and/or Improvements

(I) TOGETHER WITH all proceeds of and any unearned premiums on any insurance policies covering the 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 Land, the Lease or the Improvements;

(J) TOGETHER WITH all appurtenances with respect to or otherwise relating to the Lease, including, without limitation, renewal options and expansion rights, and all estate and rights of Borrower of, in and to (i) all modifications, extensions and renewals of the Lease and all rights to renew or extend the term thereof, (ii) all credits to and deposits of Borrower under the Lease, (iii) all other options, privileges and rights granted and demised to Borrower under the Lease, (iv) all of the right and privilege of Borrower to terminate, cancel, abridge, surrender, merge, modify or amend the Lease, and (v) any and all possessory rights of

Borrower and other rights or privileges of possession, including, without limitation, Borrower's right to elect to remain in possession of the property and the leasehold estate pursuant to Section 365(h)(1) of the federal bankruptcy code (the "**Bankruptcy Code**"); and

(K) TOGETHER WITH all of Borrower's claims and rights to damages and any other remedies in connection with or arising from the rejection of the Lease by the lessor under the Lease (including any successor or assign thereof) or any trustee, custodian or receiver appointed pursuant to the Bankruptcy Code in the event that there shall be filed by or against the fee owner any petition, action or proceeding under the Bankruptcy Code or under any other similar federal or state law now or hereinafter in effect.

All of the property described in paragraphs (A), (B), (C), (D), (E), (F), (G), (H), (I), (J) and (K) above, and each item of property therein described, is herein referred to as the "**Property**".

TO HAVE AND TO HOLD THE PROPERTY unto Grantee and Trustee, their successors and assigns forever until termination of all the Commitments, payment and satisfaction of all Obligations in full, and termination, cash collateralization or expiration of all Letters of Credit.

ARTICLE I

WARRANTIES, REPRESENTATIONS AND COVENANTS

Borrower warrants, represents, covenants and agrees with Grantee and Trustee, as follows:

1.1 Title to Property; Liens. (a) Borrower holds pursuant to the Lease a valid leasehold estate in and to the Property, and (b) the Property is free and clear of all liens except any encumbrances permitted pursuant to Section 9.8 of the Loan Agreement and, subject to the proviso below, those non-consensual liens that may affect title to the Property arising or related to the period prior to the commencement of the Chapter 11 Cases (collectively "**Permitted Exceptions**") and Borrower shall at all times keep the Property free and clear of all liens other than the Permitted Exceptions; (c) Borrower will maintain and preserve the lien of this Deed of Trust until termination of all the Commitments, payment and satisfaction of all Obligations in full, and termination, cash collateralization or expiration of all Letters of Credit; and (d) there are presently no leases, subleases, underlettings, concession agreements, licenses or other occupancy agreements affecting the Property, or any other parties in possession, other than Borrower, at the Property other than those communicated in writing to Grantee prior to execution hereof. Borrower fully warrants and will forever defend the title to the Property against the claims of all Persons whomsoever claiming or to claim the same or any part thereof, other than those claims relating to Permitted Exceptions, and Borrower agrees that the foregoing covenant shall not be extinguished by any foreclosure of this Deed of Trust but shall run with the Land. Notwithstanding any representation, warranty or covenant contained in this Deed of Trust to the contrary, Borrower shall not be obligated to comply with and shall not be in breach of any provision of this Deed of Trust related to or arising from non-consensual liens and claims

affecting title to the Property arising prior to the commencement of the Chapter 11 Cases; provided, however, the acknowledgment of any such non-consensual liens does not constitute an acknowledgment by either Borrower or Grantee that such non-consensual liens are Senior Liens and Claims as defined in the Financing Order.

1.2 Leasehold Lien. Borrower (as Debtor) hereby grants, assigns, conveys, pledges, hypothecates and transfers to Grantee and Trustee (as creditor and secured party), for the benefit of Grantee and Lenders, as security for the prompt and complete payment and performance of the Secured Obligations a lien in all of Borrower's right, title and interest in and to all real property and improvements covered by the Lease, and upon all property interests acquired by Borrower as a result of the exercise of any option contained in any Lease, in the same manner and to the same extent as if the real property encompassed in the applicable Lease, and option agreements, to the extent such option agreements exist, had been held in fee by Borrower at the time of the execution of this Deed of Trust, and Borrower agrees not to amend, change or modify any Lease in a manner adverse to Grantee, without the prior written consent of Grantee, and a lien in any and all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever constituting part of the Property, subject only to Permitted Exceptions. Nothing in this Section 1.2 shall limit in any manner whatsoever any right Grantee or the Lenders may have under the Loan Agreement or any other Financing Agreements.

1.3 Insurance; Casualties. Borrower shall at its sole expense obtain for, deliver to, and maintain for the benefit of Grantee insurance in accordance with Section 9.5 of the Loan Agreement insuring the Property. All proceeds of such insurance shall be applied in accordance with Section 9.5 of the Loan Agreement without affecting the lien of this Deed of Trust for the full amount secured hereby before such payment took place. Borrower promptly shall comply with, and shall cause the Property to comply with, (i) all of the provisions of each such insurance policy required under this Section 1.3, and (ii) all of the requirements of the insurers thereunder applicable to Borrower or to any of the Property or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or restoration of any of the Property, even if such compliance would necessitate structural changes or improvements. If any part of the Property shall be lost, damaged or destroyed by fire or any other cause, Borrower shall restore the Property in accordance with and subject to the terms of the Loan Agreement.

1.4 Condemnation.

(a) As of the date hereof Borrower has not received any notice of any proceeding for the condemnation or other taking of the Property or any part thereof and has no knowledge that any such proceeding is contemplated. Borrower shall, promptly upon learning of the institution of any such proceeding, notify Grantee of the pendency of such proceeding, and shall deliver to Grantee copies of any and all papers served in connection with such condemnation. Following the occurrence of a condemnation, regardless of whether an Award (as hereinafter defined) is available, shall, subject to the terms of the Lease and to the extent possible to do so, promptly proceed to restore, repair, replace or rebuild the same to the extent possible to be of at least equal value and of substantially the same character as prior to such condemnation, all to be effected in accordance with applicable law.

(b) Subject to the provisions of the Lease and subject to Section 6.4 of the Loan Agreement, Grantee shall (and is hereby authorized to) collect any and all awards, payments or other proceeds of any such condemnation or taking ("**Condemnation Proceeds**") and apply Condemnation Proceeds to the reduction of the Secured Obligations in the manner set forth in Section 6.4 of the Loan Agreement or, at Grantee's option in its discretion, may permit or require Borrower to use Condemnation Proceeds, or any part thereof, to replace, repair or restore the Property. All Condemnation Proceeds shall be applied in accordance with this **Section 1.3** without affecting the lien of this Deed of Trust for the full amount secured hereby before such payment took place. Borrower agrees to execute such further assignments of any Condemnation Proceeds as Grantee may require.

(c) Notwithstanding any taking by any public or quasi-public authority (including, without limitation, any transfer made in lieu of or in anticipation of such a taking), Borrower shall continue to make all payments pursuant to the terms contained in the Loan Agreement, in this Deed of Trust and the other Financing Agreements and the Secured Obligations shall not be reduced unless and until any Award shall have been actually received and applied by Grantee to the expenses of collecting the Award and to the discharge of the Secured Obligations.

1.5 **Care of the Property.** Borrower shall not abandon the Property and shall preserve and maintain the Property in good condition and repair, reasonable wear and tear excepted. Except as otherwise provided in Section 9.7 of the Loan Agreement, no part of the Property shall be sold, transferred, disposed of, removed or demolished in any manner, without the prior written consent of Grantee.

1.6 **Transfer of the Property.** Except as otherwise permitted under the Loan Agreement, there shall be no sale, conveyance, transfer, lease, sublease, pledge or further encumbrance or transfer of any interest in any part of the Property, without the prior written consent of Grantee.

1.7 **Other Representations, Warranties and Covenants.** All of the representations, warranties and covenants in the Loan Agreement are incorporated herein by reference and, together with covenants in this Article I, shall be covenants running with the Land. The covenants set forth in the Loan Agreement include, among other provisions: (a) the obligation to pay when due all taxes, assessments and charges on the Property or assessed against Lender with respect to the Loans; (b) the right of Lender to inspect the books and records of the Borrower; (c) the obligation to keep the Property free and clear of all Hazardous Materials and in compliance with all Environmental Laws; and (d) the obligation to comply with all legal requirements (including Environmental Laws).

1.8 **Further Assurances.** At any time and from time to time, upon Grantee's request and at Borrower's sole expense, Borrower shall make, execute and deliver, or cause to be made, executed and delivered, to Grantee and Trustee and where appropriate shall cause to be recorded or filed, and from time to time thereafter to be re-recorded and refiled at such time and in such offices and places as shall be reasonably deemed desirable by Grantee and Trustee, any and all such further deeds of trust, instruments of further assurance, financing statements, certificates and other documents as Grantee and Trustee may consider necessary or desirable in

order to effectuate, complete, or perfect, or to continue and preserve the obligations of Borrower under this Deed of Trust, and the lien of this Deed of Trust on the Property subject only to the Permitted Exceptions. Upon any failure by Borrower to do so, Grantee or Trustee may make, execute, record, file, re-record or refile any and all such deeds of trust, instruments, financing statements, certificates and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Grantee and Trustee, the agent and attorney-in-fact of Borrower to do so.

1.9 Security Agreement and Financing Statements. This Deed of Trust constitutes not only a real property Deed of Trust, but also a "security agreement" and a "fixture filing" within the meaning of the Uniform Commercial Code of the state where the Property is located (the "UCC"). The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. Borrower by executing and delivering this Deed of Trust has granted and hereby grants to Grantee, Lenders and Trustee, as security for the Secured Obligations, a security interest in the Property to the full extent that the Property may be subject to the UCC (said portion of the Property so subject to the UCC being called in this paragraph the "Collateral"). This Deed of Trust shall cover all items of the Collateral that are or are to become fixtures. If an Event of Default shall occur, Grantee, Lenders and Trustee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Grantee, Lenders and Trustee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Grantee, Lenders and Trustee, Borrower shall at its expense assemble the Collateral and make it available to Grantee, Lenders and Trustee, at a convenient place acceptable to Grantee. Borrower shall pay to Grantee, Lenders and Trustee on demand any and all reasonable out-of-pocket expenses, including attorneys' fees and disbursements, incurred or paid by Grantee, Lenders and/or Trustee in protecting its interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Grantee, Lenders and Trustee with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Grantee or Lenders to the payment of the Secured Obligations in such priority and proportions as Grantee in its sole discretion shall deem proper. Borrower hereby irrevocably appoints Grantee as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Grantee, as secured party, in connection with the Collateral covered by this Deed of Trust. The address of the Borrower (Debtor) and Grantee (Secured Party) are as set forth in Section 5.1 herein.

1.10 Assignment of Leases and Rents. Borrower does hereby absolutely and unconditionally assign to Grantee, all Borrower's right, title and interest in all current and future Subleases and Rents, it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. The assignment contained herein and in Paragraph (E) of the Granting Clause shall be fully operative without any further action on the part of either party and specifically Grantee and Trustee shall be entitled, at their option, upon the occurrence of an Event of Default, to all rents, income and other benefits from the property described in Paragraphs (A), (B), (C) and (D) of the Granting

Clause whether or not Grantee or Trustee takes possession of such property. Such assignment to Grantee shall not be construed to bind Grantee to the performance of any of the covenants, conditions, or provisions contained in any such Sublease or otherwise impose any obligation upon Grantee. Nevertheless, subject to the terms of this **Section** and **Paragraph E** of the Granting Clause, Grantee grants to Borrower a revocable license to operate and manage the Property and to collect the Rents. After an Event of Default has occurred and is continuing, without the need for notice or demand, the license granted to Borrower herein shall automatically be revoked, and Grantee shall immediately be entitled to possession of all Rents, whether or not Grantee enters upon or takes control of the Property. The execution of this Deed of Trust constitutes and evidences the irrevocable consent of Borrower to the entry upon and taking possession of the Property by Grantee or Trustee pursuant to such grant, whether or not foreclosure has been instituted. Notwithstanding anything contained in this Deed of Trust, Grantee or Trustee shall not be deemed to be a lender-in-possession unless Grantee or Trustee shall have taken and continues in actual possession of the Property. Neither the exercise of any rights under this **Section 1.10** by Grantee or Trustee nor the application of any such rents, income or other benefits to the Secured Obligations, shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

1.11 **After Acquired Property.** To the extent permitted by and subject to applicable law, the lien of this Deed of Trust will automatically attach, without further act, to all after acquired property located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Property or any part thereof.

1.12 **Future Indebtedness of Borrower.** This Deed of Trust is given in part to secure a revolving credit loan as described in the Loan Agreement and shall secure not only existing indebtedness hereby secured as of the date hereof, but also, without further act, any and all future indebtedness of Borrower to Grantee or the Lenders pursuant to the Financing Agreements, whether such advances are obligatory or are to be made at the option of Grantee, or otherwise, to the same extent as if such advances or future indebtedness were made as of the date hereof. Pursuant to and subject to the terms of the Financing Agreements, the Lenders have committed to advance or apply certain funds to or on behalf of Borrower, and it is hereby acknowledged and intended that the lien of this Deed of Trust shall be valid as to all such advances (whenever hereafter made) from the time of the recording of this Deed of Trust. The total amount of the Secured Obligations may increase or decrease from time to time.

1.13 **Transfer or Encumbrance of the Property.** Borrower acknowledges that Grantee and Lenders have examined and relied on the creditworthiness and experience of Borrower in owning and operating properties such as the Property in agreeing to make the Loan, and that Grantee and Lenders will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Secured Obligations. Borrower acknowledges that Grantee and Lenders have a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Secured Obligations, Grantee and Lender's can recover the Secured Obligations by a sale of the Property. Borrower shall not, without the prior written consent of Grantee, transfer the Property in violation of the Loan Agreement, including, but not limited to, **Section 9.8** thereof.

1.14 Flood Hazard. Borrower hereby represents that the Land does not comprise property identified by the Secretary of Housing and Urban Development as an area having special flood hazards. If the Land at any time is so identified by the Secretary of Housing and Urban Development as having special flood hazards, Borrower will keep the Land insured against loss by flood hazards in an amount at least equal to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973.

1.15 Estoppel Certificates and No Default Affidavits. Borrower shall, within ten (10) days after request by Grantee, furnish Grantee with a statement setting forth (i) the original principal amount of the Loan Agreement, (ii) the unpaid principal amount of the Loan Agreement, (iii) the rate of interest of the Loan Agreement, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Secured Obligations, if any, and (vi) a statement that the Loan Agreement, this Deed of Trust and the other Financing Agreements are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

1.16 Changes in Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Deed of Trust which deducts the Secured Obligations from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Secured Obligations or Grantee's interest in the Property, Borrower will pay such tax, with interest and penalties thereon, if any. In the event Grantee is advised by counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Grantee or Lenders or unenforceable or provide the basis for a defense of usury, then in any such event, Grantee, Lenders or Trustee shall have the option, upon not less than ninety (90) days written notice to Borrower, to declare the Secured Obligations immediately due and payable.

1.17 No Credits on Account of the Indebtedness. Borrower will not claim or demand or be entitled to any credit or credits on account of the Secured Obligations for any part of the Taxes or ground rents, maintenance charges, and other impositions and charges now or hereafter levied or assessed or imposed against the Property or any part thereof and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Deed of Trust or the Secured Obligations.

ARTICLE II

LEASEHOLD REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 Leasehold Representations and Warranties. Borrower hereby represents, warrants and covenants as follows:

(a) the Lease is in full force and effect, and is unmodified by any writing or otherwise, and Borrower has not waived, canceled or surrendered any of its rights thereunder;

(b) all rent, additional rent and/or other charges reserved in or payable under the Lease have been paid to the extent that they are payable to the date hereof;

(c) Borrower enjoys the quiet and peaceful possession of the leasehold estate;

(d) except as disclosed by Borrower to Grantee in writing prior to the recordation of this Deed of Trust, Borrower has not delivered or received any notices of default under the Lease, and there are no circumstances which, with the passage of time or the giving of notice, or both, would constitute a default under the Lease;

(e) the lessor is not in default under any of the terms of the Lease on its part to be observed or performed;

(f) Borrower has delivered to Grantee a true, accurate and complete copy of the Lease;

(g) Borrower promptly shall pay the rent and all other sums and charges mentioned in, and payable under, the Lease;

(h) Borrower promptly shall perform and observe all of the terms, covenants and conditions required to be performed and observed by the lessee under the Lease, the breach of which could permit any party to the Lease to validly terminate the Lease (including, without limitation, all payment obligations), shall do all things necessary to preserve and to keep unimpaired its rights under the Lease, shall not waive, excuse or discharge any of the obligations of the lessor without Grantee's prior written consent in each instance, and shall diligently and continuously enforce the obligations of the lessor under the Lease;

(i) Borrower shall not do, permit or suffer any event or omission as a result of which there could occur a default under the Lease or any event which, with the giving of notice or the passage of time, or both, would constitute a default under the Lease which could permit any party to the Lease to validly terminate the Lease (including, without limitation, a default in any payment obligation), and Borrower shall obtain the consent or approval of the lessor to the extent required pursuant to the terms of the Lease;

(j) Borrower shall not (1) cancel, terminate, surrender, modify or amend or in any way alter, surrender all or any portion of the Property, (2) permit the amendment, modification or alteration of any of the provisions of the Lease, or (3) agree to any termination or surrender of the Lease, without Grantee's prior written consent in each instance;

(k) Borrower shall deliver to Grantee copies of any notice of default by any party under the Lease, or of any notice from the lessor of its intention to terminate the Lease or to re-enter and take possession of the Land, immediately upon delivery or receipt of such notice, as the case may be;

(l) Borrower shall promptly furnish to Grantee copies of such information and evidence as Grantee may request concerning Borrower's due observance, performance and compliance with the terms, covenants and conditions of the Lease;

(m) Borrower knows of no adverse claim to the title or possession of Borrower or the lessor;

(n) Borrower shall not consent to the subordination of the Lease to any mortgage or other lease of the fee interest in the Land, except as expressly required by the Lease;

(o) Borrower, at its sole cost and expense, shall execute and deliver to Grantee or Trustee, within five (5) days after request, such documents, instruments or agreements as may be required to permit Grantee or Trustee to cure any default under the Lease;

(p) Borrower shall, upon request, furnish Grantee and Lenders with executed copies of all Subleases;

(q) Borrower shall cause all renewals of existing Subleases and all proposed new Subleases to provide for rental rates comparable to existing local market rates and shall be arms length transactions and all Subleases entered into after the date hereof shall provide that they are subordinate to this Deed of Trust and that the tenant agrees to attorn to Grantee and Lenders;

(r) Borrower shall (i) observe and perform in all material respects all the obligations imposed upon the lessor under the Subleases and shall not do or permit to be done anything to materially impair the value of the Subleases as security for the Secured Obligations; (ii) promptly send copies to Grantee and Lenders of all notices of default which Borrower shall send or receive thereunder; (iii) enforce all the material terms, covenants and conditions contained in the Subleases upon the part of the lessee thereunder to be observed or performed, (iv) not collect any of the Rents more than one (1) month in advance, except as may be specifically required in the applicable Sublease; (v) not execute any other assignment of the lessor's interest in the Subleases or the Rents; and (vi) use reasonable efforts to obtain and deliver to Grantee and Lenders, upon request, tenant estoppel certificates from each tenant at the Property in the form required under the applicable Sublease, or if no such form is provided, in form and substance reasonably satisfactory to Grantee and Lenders;

(s) Borrower shall not, except to the extent Borrower has received the prior written consent of Grantee, (A) alter, modify or change the terms of any Sublease in any material respect; (B) consent to any assignment of or subletting under any Sublease not in accordance with its terms; and (C) cancel or terminate any Sublease or accept a surrender thereof, unless such tenant is in default thereunder and a new Sublease has been entered into on substantially the same terms or more favorable terms as the canceled Sublease; and

(t) Borrower shall not commingle any security deposits of tenants, whether held in cash or in any other fund of Borrower.

2.2 Cure by Grantee or Trustee. In the event of a default by Borrower in the performance of any of its obligations under the Lease, including, without limitation, any default in the payment of any sums payable thereunder, then, in each and every case, Grantee or Trustee may, at their option, cause the default or defaults to be remedied and otherwise exercise any and all of the rights of Borrower thereunder in the name of and on behalf of Borrower. Borrower shall, on demand, reimburse Grantee and Trustee for all advances made and expenses incurred

by Grantee or Trustee in curing any such default (including, without limitation, reasonable attorneys' fees and disbursements), together with interest thereon computed at the rate set forth in Section 1.75(c) of the Loan Agreement from the date that such advance is made to and including the date the same is paid to Grantee or Trustee.

2.3 Options to Renew or Extend the Lease. Borrower shall give Grantee and Trustee written notice of its intention to exercise each and every option, if any, to renew or extend the term of the Lease, at least thirty (30) days prior to the expiration of the time to exercise such option under the terms thereof. If required by Grantee or Trustee, Borrower shall duly exercise any renewal or extension option with respect to the Lease if Grantee or Trustee reasonably determines that the exercise of such option is necessary to protect Grantee's security for the Loans. If Borrower intends to renew or extend the term of the Lease, it shall deliver to Grantee and Trustee, with the notice of such decision, a copy of the notice of renewal or extension delivered to the lessor, together with the terms and conditions of such renewal or extension. If Borrower does not renew or extend the term of the Lease, Grantee or Trustee may, at their option, exercise the option to renew or extend in the name of and on behalf of Borrower. Borrower hereby irrevocably appoints Grantee and Trustee as its attorney-in-fact, coupled with an interest, to execute and deliver, for and in the name of Borrower, all instruments and agreements necessary under the Lease or otherwise to cause any renewal or extension of the Lease

2.4 Additional Lease Covenants.

(a) In the event the Lease shall be terminated by reason of a default thereunder by Borrower and Grantee or Trustee shall require from the lessor a new Lease, Borrower hereby waives any right, title and interest in and to such new lease or the leasehold estate created thereby, waiving all rights of redemption now or hereafter operable under any law.

(b) Borrower shall not elect to treat the Lease as terminated, canceled or surrendered pursuant to the applicable provisions of the Bankruptcy Code (including, but not limited to, Section 365(h)(1) thereof) without Grantee's or Trustee's prior written consent in the event of the owner of the fee's bankruptcy. In addition, Borrower shall, in the event of the owner of the fee's bankruptcy, reaffirm and ratify the legality, validity, binding effect and enforceability of the Lease and shall remain in possession of the Land and the leasehold estate, notwithstanding any rejection thereof by the owner of the fee or any trustee, custodian or receiver.

(c) Borrower shall give Grantee and Trustee not less than thirty (30) days prior written notice of the date on which Borrower shall apply to any court or other governmental authority for authority and permission to reject the Lease in the event that there shall be filed by or against Borrower any petition, action or proceeding under the Bankruptcy Code or under any other similar federal or state law now or hereafter in effect and if Borrower determines to reject the Lease. Grantee and Trustee shall have the right, but not the obligation, to serve upon Borrower within such thirty (30) day period a notice stating that (i) Grantee or Trustee demands that Borrower assume and assign the Lease to Grantee or Trustee subject to and in accordance with the Bankruptcy Code and (ii) Grantee covenants to cure or provide reasonably adequate assurance thereof with respect to all defaults reasonably susceptible of being

cured by Grantee or Trustee and of future performance under the Lease. If Grantee or Trustee serves upon Borrower the notice described above, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) above within fifteen (15) days after the notice shall have been given by Grantee and Trustee.

(d) During the continuance of an Event of Default, Grantee and Trustee shall have the right, but not the obligation, (i) to perform and comply with all obligations of Borrower under the Lease without relying on any grace period provided therein, (ii) to do and take, without any obligation to do so, such action as Grantee or Trustee deems necessary or desirable to prevent or cure any default by Borrower under the Lease, including, without limitation, any act, deed, matter or thing whatsoever that Borrower may do in order to cure a default under the Lease and (iii) to enter in and upon the Land or any part thereof to such extent and as often as Grantee or Trustee deems necessary or desirable in order to prevent or cure any default of Borrower under the Lease. Borrower shall, within five (5) days after written request is made therefor by Grantee or Trustee, execute and deliver to Grantee or to any party designated by Grantee or Trustee, such further instruments, agreements, powers, assignments, conveyances or the like as may be reasonably necessary to complete or perfect the interest, rights or powers of Grantee pursuant to this paragraph or as may otherwise be required by Grantee or Trustee.

(e) In the event of any arbitration under or pursuant to the Lease in which Grantee elects to participate, Borrower hereby irrevocably appoints Grantee and Trustee as its true and lawful attorney-in-fact (which appointment shall be deemed coupled with an interest) to exercise, during the continuance of an Event of Default, all right, title and interest of Borrower in connection with such arbitration, including, without limitation, the right to appoint arbitrators and to conduct arbitration proceedings on behalf of Borrower and Grantee. All costs and expenses incurred by Grantee and Trustee in connection with such arbitration and the settlement thereof shall be borne solely by Borrower, including, without limitation, attorneys' fees and disbursements. Nothing contained in this paragraph shall obligate Grantee or Trustee to participate in any such arbitration.

(f) Grantee shall have the right, but not the obligation, to proceed in respect of any claim, suit, action or proceeding relating to the rejection of the Lease by fee owner of the Land as a result of the fee owner's bankruptcy, including, but not limited to, the right to file and prosecute any and all proofs of claims, complaints, notices and other documents in any case in respect of the fee owner under and pursuant to the Bankruptcy Code.

2.5 Estoppel Certificates. Borrower shall obtain and deliver to Grantee within twenty (20) days after written demand by Grantee, an estoppel certificate from the lessor setting forth (i) the name of the lessee and the lessor thereunder, (ii) that the Lease is in full force and effect and has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification), (iii) the basic rent payable under the Lease, (iv) the date to which all rental charges have been paid by the lessee under the Lease, (v) whether a notice of default has been received by the fee owner which has not been cured, and if such notice has been received, the date it was received and the nature of the default, (vi) whether there are any alleged defaults of the lessee under the Lease and, if there are, setting forth the nature thereof in reasonable detail, and (vii) if the lessee under the Lease shall be in default, the default.

2.6 No Liability. Anything contained herein to the contrary notwithstanding, this Deed of Trust shall not constitute an assignment of the Lease within the meaning of any provision thereof prohibiting its assignment and Grantee and Trustee shall have no liability or obligation thereunder by reason of its acceptance of this Deed of Trust. Grantee shall be liable for the obligations of the lessee arising under the Lease for only that period of time which Grantee is in possession of Land or has acquired, by foreclosure or otherwise, and is holding all of Borrower's right, title and interest therein.

2.7 No Merger. It is hereby agreed that the fee title to Land and the leasehold estate created by the Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates in either lessor, Borrower or a third party, whether by purchase or otherwise. If Borrower shall acquire fee title to the Land or any other estate, title or interest in the Land or any portion thereof, then, immediately upon Borrower's acquisition thereof, this Deed of Trust automatically shall spread to cover Borrower's interest in such leased property on the same terms, covenants and conditions as set forth herein. It is the intention of Borrower and Grantee that no documents, instruments or agreements shall be necessary to confirm the foregoing spread of this Deed of Trust to cover Borrower's interest in such leased property, as aforesaid, and that such spreading shall occur automatically upon the consummation of Borrower's acquisition of such estate, title or interest to such leased property. Notwithstanding the foregoing, Borrower shall make, execute, acknowledge and deliver to Grantee and Trustee or so cause to be made, executed, acknowledged and delivered to Grantee and Trustee, in form satisfactory to Grantee and Trustee, all such further or other documents, instruments, agreements or assurances as may be required by Grantee and Trustee to confirm the foregoing spread of this Deed of Trust to cover Borrower's interest in such leased property. Borrower shall pay all reasonable expenses incurred by Grantee and Trustee in connection with the preparation, execution, acknowledgment, delivery and/or recording of any such documents, including, without limitation, all filing, registration and recording fees and charges, documentary stamps, mortgage taxes, intangible taxes, and reasonable attorneys' fees, costs and disbursements.

ARTICLE III

DEFAULTS

3.1 Event of Default. The term Event of Default, wherever used in this Deed of Trust, shall mean any one or more of the following events:

(a) Failure by Borrower to perform or comply with any of the terms, covenants or conditions of this Deed of Trust beyond any applicable period set forth in Section 10.1 of the Loan Agreement; or

(b) The occurrence of any other Event of Default under and as defined in the Loan Agreement.

ARTICLE IV

REMEDIES

4.1 Acceleration of Maturity. If an Event of Default shall have occurred and be continuing, Borrower agrees that Grantee or Trustee may declare without demand or notice all Secured Obligations to be due and payable immediately, and upon such declaration all Secured Obligations shall immediately become and be due and payable without demand or notice.

4.2 Grantee's and Trustee's Right to Enter and Take Possession, Operate and Apply Income.

(a) If an Event of Default shall have occurred and be continuing, Borrower, upon demand of Grantee or Trustee, shall forthwith surrender to Grantee or Trustee the actual possession and, if and to the extent permitted by law, Grantee itself, or by such officers or agents as it may appoint, may enter upon and take possession of the Property and may exclude Borrower and its agents and employees wholly therefrom, and may have joint access with Borrower to the books, papers and accounts of Borrower.

(b) If an Event of Default shall have occurred and be continuing and Borrower shall for any reason fail to surrender or deliver the Property or any part thereof after Grantee's or Trustee's demand, Grantee or Trustee may obtain a judgment or decree conferring on Grantee the right to immediate possession or requiring Borrower to deliver immediate possession of all or part of the Property to Grantee and Trustee, and Borrower hereby specifically consents to the entry of such judgment or decree. Borrower shall pay to Grantee and Trustee, upon demand, all costs and expenses of obtaining such judgment or decree and reasonable compensation to Grantee, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Deed of Trust.

(c) Upon every such entering upon or taking of possession, Grantee or Trustee may hold, store, use, operate, manage and control the Property and conduct the business thereof, and, from time to time may:

(i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;

(ii) insure or keep the Property insured;

(iii) manage and operate the Property and exercise all the rights and powers of Borrower in its name or otherwise with respect to the same;

(iv) enter into agreements with others to exercise the powers herein granted Grantee and Trustee, all as Grantee or Trustee from time to time may determine; and Grantee and Trustee may collect and receive all the rents, income and other benefits thereof, including those past due as well as those accruing thereafter; and shall apply the monies so received by Grantee or Trustee to the Secured Obligation in accordance with the Loan Agreement. All costs, expenses and liabilities of every character incurred by Grantee and

Trustee in managing, operating and maintaining the Property shall constitute a portion of the Secured Obligations. While in possession of the Property, Grantee, Trustee or the receiver shall be liable to account only for the rents, issues and profits actually received. The taking of possession and collection of rents by Grantee shall not be construed to be an affirmation of any lease or acceptance of attornment with respect to any lease of all or any portion of the Property. Grantee or Trustee shall surrender possession of the Property to Borrower only as of the termination of all the Commitments, payment and satisfaction of all Obligations in full, and termination, cash collateralization or expiration of all Letters of Credit.

(v) enforce Borrower's interest in the Lease, Subleases and Rents and enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, and thereupon Grantee or Trustee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (B) complete any construction on the Property in such manner and form as Grantee or Trustee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Property; (D) exercise all rights and powers of Borrower with respect to the Property with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify the Lease and Subleases, obtain and evict tenants and demand, sue for, collect and receive all Rents; and (E) apply the receipts from the Property to the payment of the Secured Obligations, after deducting therefrom all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Property, as well as just and reasonable compensation for the services of Grantee, its counsel, agents and employees; and

(vi) pursue such other rights and remedies as may be available at law or in equity under the UCC.

4.3 Grantee's and Trustee's Power of Enforcement. If an Event of Default shall have occurred and be continuing, Grantee or Trustee may, either with or without entry or taking possession as hereinabove provided or otherwise, (a) sell the Property or any part thereof to the extent permitted and pursuant to the procedures provided by the law of state where the Property is located, and all estate, right, title and interest, claim and demand therein, at one or more sales, as an entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; or (b) proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy: (i) to enforce payment under the Financing Agreements or the performance of any term hereof or any other right; (ii) to foreclose this Deed of Trust and to sell, as an entirety or in separate lots or parcels, the Property, under the judgment or decree of a court or courts of competent jurisdiction; and (iii) to pursue any other remedy available to it, including without limitation as provided in **Section 1.10** hereof. Grantee or Trustee shall take action either by such proceedings or by the exercise of its powers with respect to sale or entry or taking possession, or any of them, as it may determine.

4.4 Foreclosure Sale. (a) Grantee or Trustee may adjourn from time to time any sale to be made by it under or by virtue of this Deed of Trust by announcement at the time and place appointed for such sale or for such adjourned sale or sales and, except as otherwise

provided by any applicable provision of law, Grantee or Trustee, without further notice or publication, may conduct such sale at the time and place to which the same shall be so adjourned.

(b) Upon the completion of any sale or sales made by Grantee or Trustee under or by virtue of this **Article IV**, Grantee, Trustee or any officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument or instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Grantee and Trustee are hereby irrevocably appointed the true and lawful attorney-in-fact of Borrower, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of any part of the Property and rights so sold. Grantee and Trustee may, for such purpose, execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Borrower hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, Borrower, if so requested by Grantee or Trustee, shall ratify and confirm any such sale or sales by executing and delivering to Grantee, Trustee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Grantee or Trustee, for the purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this **Article IV**, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Borrower in and to the properties, interests and rights so sold, and shall be a perpetual bar both at law and in equity against Borrower and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Borrower.

(c) Upon any sale held by Grantee, Trustee or by any receiver or public officer, Grantee and Trustee may bid for and purchase the Property and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in their own absolute right without further accountability.

4.5 Application of Indebtedness Toward Purchase Price. Upon any such sale, Grantee may, if permitted by law, and after allowing for costs and expenses of the sale, compensation and other charges, in paying the purchase price, apply all or any portion of the Secured Obligations, in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon, to the extent of the purchase price.

4.6 Waiver by Borrower. (a) To the fullest extent permitted under applicable law, Borrower hereby waives all errors and imperfections in any proceedings instituted by Grantee or Trustee under this Deed of Trust or any other Financing Agreements and all benefit of any present or future statute of limitations or any other present or future statute, law, stay, moratorium, appraisal or valuation law, regulation or judicial decision, nor shall Borrower at any time insist upon or plead, or in any manner whatsoever, claim or take any benefit or advantage of any such statute, law, stay, moratorium, regulation or judicial decision which (i) provides for the valuation or appraisal of the Property prior to any sale or sales thereof which may be made pursuant to any provision herein or pursuant to any decree, judgment or order of any court of competent jurisdiction, (ii) exempts any of the Property or any other property, real or personal, or

any part of the proceeds arising from any sale thereof, from attachment, levy or sale under execution, (iii) provides for any stay of execution, moratorium, marshalling of assets, exemption from civil process, redemption or extension of time for payment, (iv) requires Grantee or Trustee to institute proceedings in mortgage foreclosure against the Property before exercising any other remedy afforded Grantee or Trustee hereunder with respect to any Event of Default, (v) affects any of the terms, covenants, conditions or provisions of this Deed of Trust, or (vi) conflicts with or may affect, in a manner which may be adverse to Grantee or Trustee, any provision, covenant, condition or term of this Deed of Trust or any other Financing Agreements, nor shall Borrower at any time after any sale or sales of the Property pursuant to any provision herein, including, but without limiting the generality of the foregoing, after any sale pursuant to a judgment of foreclosure, claim or exercise any right under any present or future statute, law, stay, moratorium, regulation or judicial decision to redeem the Property or the portion thereof so sold.

(b) Borrower hereby waives the right, if any, to require any sale to be made in parcels, or the right, if any, to select parcels to be sold, and there shall be no requirement for marshalling of assets with respect to either the Property or any other Collateral.

(c) Borrower hereby waives personal service of process and consents to service in the manner and to the address of Borrower set forth or referred to in Section 13.3 of the Loan Agreement.

(d) BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND BORROWER AND GRANTEE WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), BORROWER AND GRANTEE 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, BORROWER 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 DEED OF TRUST OR ANY OF THE OTHER FINANCING AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

4.7 Receiver. If an Event of Default shall have occurred and be continuing, Grantee or Trustee, to the extent permitted by law and without notice to Borrower or regard to the value of the Property or the adequacy of the security or occupancy of the Property, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Property and to collect all rents, revenues, issues, income, product and profits thereof and apply the same as the court may direct. The receiver shall have all rights and powers permitted under the laws of the jurisdiction where the Property is located and such other powers as the court making such appointment shall confer. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Deed of Trust. The right to enter and take possession of and to manage and operate the Property, and to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by

law, and may be exercised concurrently therewith or independently thereof. Grantee and Trustee shall be liable to account only for such rents, issues and profits actually received by Grantee and Trustee, respectively. Notwithstanding the appointment of any receiver or other custodian, Grantee and Trustee shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Deed of Trust to, Grantee and Trustee.

4.8 Suits to Protect the Property. (a) Grantee and Trustee shall have the power and authority to institute and maintain any suits and proceedings as Grantee or Trustee may deem advisable (i) to prevent any impairment of the Property by any acts which may be unlawful or any violation of this Deed of Trust, (ii) to preserve or protect Grantee's and Trustee's interest in the Property, and (iii) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Grantee's and Trustee's interest.

(b) Borrower agrees that if any action or proceeding be commenced, excepting an action to foreclose this Deed of Trust or to collect the indebtedness hereby secured, to which action or proceeding Grantee or Trustee is a party by reason of the execution of this Deed of Trust or the other Financing Agreements, or in which it becomes necessary to defend or uphold the lien of this Deed of Trust, all sums paid by Grantee and Trustee for the expense of any litigation to prosecute or defend the transaction and the rights and lien created hereby (including, without limitation, attorneys' fees) shall be paid by Borrower together with interest thereon from the date of payment by Grantee or Trustee at the rate set forth in Section 1.75(c) under the Loan Agreement. All such sums paid and the interest thereon shall be a lien upon the Property, and shall be secured hereby.

4.9 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Borrower or any guarantor, co-maker or endorser of any of Borrower's obligations, its creditors or its property, Grantee and Trustee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have Grantee's and Trustee's claims allowed in such proceedings for the entire amount due and payable by Borrower under this Deed of Trust and any other Financing Agreements, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Borrower after such date.

4.10 Borrower to Pay the Indebtedness on Any Default in Payment; Application of Monies by Grantee and Trustee.

(a) If an Event of Default shall have occurred and be continuing, then, upon demand by Grantee or Trustee, Borrower shall pay to Grantee or Trustee the whole amount which then shall have become due and payable under the Financing Agreements. If Borrower shall fail to pay such amounts forthwith upon such demand, Grantee or Trustee shall be entitled to sue for and to recover judgment against Borrower for the whole amount so due and unpaid together with costs and expenses, including without limitation the reasonable compensation, expenses and disbursements of Grantee's or Trustee's agents, attorneys and other

representatives, either before, after or during the pendency of any proceedings for the enforcement of this Deed of Trust. The right of Grantee and Trustee to recover such judgment shall not be affected by any taking possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Deed of Trust, or the foreclosure of the lien hereof.

(b) In case of a foreclosure sale of all or any part of the Property and of the application of the proceeds of sale to the payment of the sums secured hereby, Grantee and Trustee shall be entitled to enforce payment from Borrower of all amounts then remaining due and unpaid and to recover judgment against Borrower for any portion thereof remaining unpaid, with interest.

(c) Borrower hereby agrees, to the extent permitted by law, that no recovery of any such judgment by Grantee or Trustee and no attachment or levy of any execution upon any of the Property or any other property shall in any way affect the lien of this Deed of Trust upon the Property or any part thereof of any lien, rights, powers or remedies of Grantee or Trustee hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before.

(d) Any monies collected or received by Grantee or Trustee under this **Section 4.10** shall be applied to the payment of compensation, expenses and disbursements of the agents, attorneys and other representatives of Grantee or Trustee, and the balance remaining shall be applied to the Secured Obligations in accordance with the Loan Agreement.

(e) The provisions of this paragraph shall not be deemed to limit or otherwise modify the provisions of any guaranty of the Secured Obligations.

4.11 Discontinuance of Proceedings; Position of Parties Restored. If Grantee or Trustee shall have proceeded to enforce any right or remedy under this Deed of Trust by foreclosure, entry or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Grantee, then and in every such case, to the extent permitted by law, Borrower and Grantee and Trustee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Grantee and Trustee shall continue as if no such proceedings had occurred or had been taken and no such proceedings or actions shall be deemed to be a cure by Borrower or a waiver by Grantee or Trustee of any default hereunder or under any other Financing Agreements.

4.12 Limitation on Grantee's and Lenders' Duty in Respect of Property. Grantee, Trustee and each Lender shall use reasonable care with respect to the Property in its possession or under its control. Neither Grantee, Trustee nor any Lender shall have any other duty as to any Property in its possession or control or in the possession or control of any agent or nominee of Grantee, Trustee or such Lender, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto.

4.13 Reinstatement. This Deed of Trust shall remain in full force and effect and continue to be effective should any petition be filed by or against Borrower for liquidation or reorganization, should Borrower 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 Borrower'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 Secured 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 Secured 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 Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

4.14 No Waiver; Cumulative Remedies. None of Grantee, Trustee or any Lender shall by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder, and no waiver shall be valid unless in writing, signed by Grantee and Trustee and then only to the extent therein set forth. A waiver by Grantee and Trustee of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which Grantee or Trustee would otherwise have had on any future occasion. No failure to exercise nor any delay in exercising on the part of Grantee, Trustee or any Lender, any right, power or privilege hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or future exercise thereof or the exercise of any other right, power or privilege. The rights and remedies hereunder provided are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights and remedies provided by law. None of the terms or provisions of this Deed of Trust may be waived, altered, modified or amended except by an instrument in writing, duly executed by Grantee, Trustee and Borrower.

4.15 Limitation by Law. All rights, remedies and powers provided in this Deed of Trust may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Deed of Trust are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they shall not render this Deed of Trust invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

ARTICLE V

MISCELLANEOUS PROVISIONS

5.1 Addresses for Notices, Etc. Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other party, or whenever any of the parties desires to give and serve upon any other party any communication with respect to this Deed of Trust, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be given in the manner, and deemed received, as provided for in the Loan Agreement. In addition, any notice, report, demand or other instrument authorized or required to be given or furnished under this

Deed of Trust to Trustee shall be given in accordance with Section 13.3 of the Loan Agreement to Trustee at 746 East Winchester Street, Salt Lake City, Utah 84107.

5.2 Severability. Whenever possible, each provision of this Deed of Trust shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision of this Deed of Trust shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Deed of Trust. This Deed of Trust is to be read, construed and applied together with the Loan Agreement and the other Financing Agreements which, taken together, set forth the complete understanding and agreement of Grantee, Trustees Lenders and Borrower with respect to the matters referred to herein and therein.

5.3 Termination. This Deed of Trust shall terminate upon termination of the Commitments, payment and satisfaction of all Obligations in full, and termination, cash collateralization or expiration of all Letters of Credit.

5.4 Successors and Assigns. This Deed of Trust and all obligations of Borrower hereunder shall be binding upon the successors and assigns of Borrower (including any debtor-in-possession on behalf of Borrower) and shall, together with the rights and remedies of Grantee and Trustee, for the benefit of Grantee and Lenders, hereunder, inure to the benefit of Grantee, Trustee and Lenders, all future holders of any instrument evidencing any of the Secured Obligations and their respective successors and assigns. No sales of participations, other sales, assignments, transfers or other dispositions of any agreement governing or instrument evidencing the Secured Obligations or any portion thereof or interest therein shall in any manner affect the Lien granted to Trustee, for the benefit of Grantee and Lenders, hereunder. Borrower may not assign, sell, hypothecate or otherwise transfer any interest in or obligation under this Deed of Trust.

5.5 Counterparts. This Deed of Trust may be executed in any number of separate counterparts, each of which shall collectively and separately constitute one and the same agreement.

5.6 GOVERNING LAW. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ANY OF THE FINANCING AGREEMENTS, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS DEED OF TRUST AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THAT STATE, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA; EXCEPT WITH RESPECT TO THE CREATION AND ENFORCEMENT OF LIENS, WHICH SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED.

5.7 Inconsistent Provisions. To the extent that any of the provisions of this Deed of Trust are inconsistent with the provisions of the Loan Agreement covering the same subject matter, the provisions of the Loan Agreement shall control.

5.8 Section Titles. The Section titles contained in this Deed of Trust are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

5.9 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Deed of Trust. In the event an ambiguity or question of intent or interpretation arises, this Deed of Trust 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.

5.10 Advice of Counsel. Each of the parties represents to each other party hereto that it has discussed this Deed of Trust and, specifically, the provisions of Section 4.6(d), with its counsel.

5.11 Benefit of Lenders. All liens granted or contemplated hereby shall be for the benefit of Trustee, Grantee and Lenders, and all proceeds or payments realized from the Property in accordance herewith shall be applied to the Secured Obligations in accordance with the terms of the Loan Agreement.

ARTICLE VI

DEED OF TRUST PROVISIONS

6.1 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 and any other lawful action permitted under this Deed of Trust and requested by Grantee. Trustee shall not be answerable or accountable hereunder except for its own willful misconduct or gross negligence, and Borrower agrees to indemnify, defend and hold Trustee harmless from and against any cost, loss, damage, liability or expense (including, without limitation, reasonable attorney's fees and disbursements) which Trustee may incur or sustain in the exercise or performance of its powers and duties hereunder. Trustee 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 at least thirty (30) days' notice to Borrower and Grantee. In the event of the death, removal, resignation, refusal or inability to act of Trustee, or in its sole discretion for any reason whatsoever, Grantee 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 by Grantee. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

6.2 Trustee's Fees. Borrower shall pay all reasonable 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.

6.3 Certain Rights. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, which is believed by Trustee in good faith to be genuine.

6.4 Retention of Money. All moneys received by 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 applicable law), and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

6.5 Perfection of Appointment. Should any deed, conveyance or other instrument of any nature be required from Borrower by Trustee or any substitute trustee to more fully and certainly vest in and confirm to Trustee or such substitute trustee the estates rights, powers, and duties conferred hereunder unto Trustee, then, upon request by Trustee or such substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Borrower at its sole expense.

6.6 Succession Instruments. Any substitute 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 its predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Grantee or of the substitute trustee, the predecessor trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all of the estates, properties, rights, powers and trusts of such predecessor trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such trustee to such substitute trustee.

6.7 Conveyance by Trustee. Upon receipt by Trustee of written notice from Grantee that all the Commitments have been terminated, payment and satisfaction of all Obligations in full has occurred, and termination, cash collateralization or expiration of all Letters of Credit has occurred, and payment of Trustee fees has occurred, Trustee shall reconvey the Property, without warranty, to Borrower or such Person or Persons lawfully entitled thereto.

ARTICLE VII
UTAH PROVISIONS

In the event of any conflict between the terms and provisions of this Article and any other provision of this Deed of Trust, the terms and provisions of this Article shall govern and control.

7.1 Waiver of Lien Grantee may waive its lien against the Property or any portion thereof if such property is found to be environmentally impaired in accordance with Section 78-37-1.5 of the Utah Code and may exercise all rights and remedies thereunder.

7.2 Time is of the Essence. Time is of the essence with respect to each and every covenant, agreement, and obligation of Grantor under this Deed of Trust and all other Financing Agreements.

7.3 Attorneys' Fees.

(a) Borrower shall forthwith pay to Grantee the amount of all attorneys' fees and costs incurred by Grantee under and pursuant to this Deed of Trust, the Financing Agreements or any other agreement given to Grantee as security for the Loan Agreement or in connection with any transaction contemplated hereby or thereby, or with respect to the Property or any defense or protection, interpretation or enforcement of Grantee's security interest in the Property which Grantee believes is necessary or desirable. The foregoing payment obligation shall be due (regardless of whether any action is filed) in the event Grantee retains counsel, or incurs costs in order to: obtain legal advice; enforce, or seek to enforce, any of its rights; commence, intervene in, respond to, or defend any action or proceeding; file or prosecute a claim in any action or proceeding (including without limitation, any probate claim, bankruptcy claim, third-party claim, or secured creditor claim); protect, obtain possession of, lease, dispose of or otherwise enforce Grantor's right, title and interest in the Property or any portion thereof; obtain the appointment of a receiver; or represent Grantee's interests in any litigation with respect to Grantor's affairs.

(b) Grantor shall and does hereby agree that, if all or a portion of the principal sum of the Loan Agreement has, prior to the maturity date fixed in the obligation, become due or been declared due by reason of an Event of Default, the entire amount then due under the terms of this Deed of Trust and the Loan Agreement shall include all attorneys' fees and costs and expenses which are actually incurred as stated above.

(c) The meaning of the terms "legal fees" or "attorneys' fees" or any other reference to the fees of attorneys or counsel, wherever used in this Deed of Trust, shall be deemed to include, without limitation, all legal fees relating to litigation or appeals at any and all levels of courts and administrative tribunals (including any appeal or petition for review or any bankruptcy court action), and allocated costs of in-house counsel.

7.4 Request for Notice. Grantor specifically requests that a copy of any notice of default and a copy of any notice of sale under this Deed of Trust be mailed to Grantor at the address for Trustor specified above.

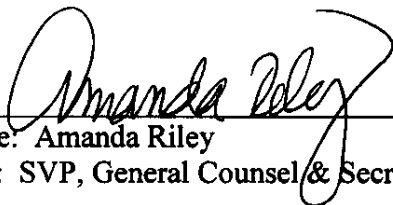
7.5 No Presumption Against Any Party. Neither this Deed of Trust nor any uncertainty or ambiguity herein shall be construed or resolved using any presumption against any party hereto, whether under any rule of construction or otherwise. On the contrary, this Deed of Trust has been reviewed by each of the parties and their counsel and, in the case of any ambiguity or uncertainty, shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto.

7.6 Severability. If any provision of this Deed of Trust is prohibited by or invalid under the applicable law of any jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity and only in such jurisdiction, without prohibiting or invalidating such provision in any other jurisdiction or the remaining provisions of this Deed of Trust in any jurisdiction.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust under seal effective as of the 26th day of August, 2008.

BORROWER:
MERVYN'S LLC,
A California limited liability company
and as Debtor and Debtor in Possession

By: 
Name: Amanda Riley
Title: SVP, General Counsel & Secretary

GENERAL ACKNOWLEDGMENT

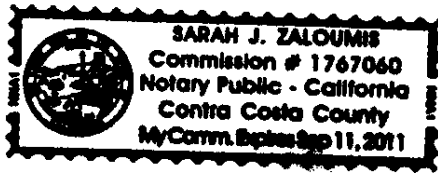
STATE OF CALIFORNIA }
COUNTY OF ALAMEDA } S.S.

On September 17, 2008, before me, Sarah Zaloumis, a Notary Public in and for said County and State, personally appeared, Amanda Riley, who 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 she executed the same in her authorized capacity, and that by her signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND and official seal.

Signature: 



Title of Document Type: Leasehold Deed of Trust
Number of Pages including notary acknowledgement : 34
Signors other than named above: None
Date of Document: as of August 26, 2008

Exhibit A

LEGAL DESCRIPTION

[See attached]

Store #64

REAL PROPERTY IN THE CITY OF SALT LAKE CITY, COUNTY OF SALT LAKE, STATE OF UTAH, DESCRIBED AS FOLLOWS:

PARCEL

1:

BEGINNING AT A POINT NORTH 696.60 FEET AND WEST 1402.5 FEET FROM THE SALT LAKE COUNTY MONUMENT LOCATED AT THE INTERSECTION OF 3300 SOUTH STREET AND 1300 EAST STREET, SAID POINT OF BEGINNING ALSO BEING SOUTH 831.14 FEET AND WEST 1673.52 FEET FROM THE EAST QUARTER CORNER OF SECTION 29, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE NORTH 55°00' EAST 230.00 FEET; THENCE SOUTH 35°00' EAST 230.00 FEET; THENCE SOUTH 55°00' WEST 230.00 FEET; THENCE NORTH 35°00' WEST 230.00 FEET TO THE POINT OF BEGINNING.

PARCEL

2:

EASEMENT AGREEMENT INCLUDING RESTRICTIVE COVENANTS RECORDED DECEMBER 10, 1976 AS ENTRY NO. 2885901, IN BOOK 4424, AT PAGE 1504 IN THE OFFICE OF THE RECORDER OF SALT LAKE COUNTY, UTAH, AS SAID INSTRUMENT MAY HAVE BEEN AMENDED AND OR SUPPLEMENTED IN THAT CERTAIN AMENDMENT TO EASEMENT AGREEMENT INCLUDING RESTRICTIVE COVENANTS RECORDED SEPTEMBER 27, 1977 AS ENTRY NO. 3002083, IN THE BOOK 4554, AT PAGE 1444 IN THE OFFICE OF THE RECORDER OF SALT LAKE COUNTY, UTAH, AND IN THAT CERTAIN SECOND AMENDMENT TO EASEMENT AGREEMENT INCLUDING RESTRICTIVE COVENANTS RECORDED APRIL 5, 1993 AS ENTRY NO. 5470080, IN BOOK 6633, AT PAGE 1633 IN THE OFFICE OF THE RECORDER OF SALT LAKE COUNTY, UTAH.

Tax Parcel No. 16-29-427-039-0000.

Store #66

REAL PROPERTY IN THE CITY OF WEST VALLEY CITY, COUNTY OF SALT LAKE, STATE OF UTAH, DESCRIBED AS FOLLOWS:

PARCEL 1:

BEGINNING AT A POINT SOUTH 119.50 FEET OF A POINT CENTERED BETWEEN EXISTING GRID LINES NUMBERED 16 AND 17 OF THE VALLEY FAIR MALL SHOPPING CENTER; SAID POINT OF BEGINNING ALSO BEING NORTH 823.22 FEET AND WEST 366 FEET, MORE OR LESS, FROM THE SOUTHEAST CORNER OF PARCEL 1 OF SAID VALLEY FAIR MALL; SAID SOUTHEAST CORNER OF BEING SOUTH 89°56' WEST 1322.02 FEET AND NORTH 661.58 FEET FROM THE EAST QUARTER CORNER OF SECTION 33, TOWNSHIP 1 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE NORTH 257.00 FEET; THENCE EAST 224.50 FEET TO A POINT OF A 15.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE 23.56 FEET TO A POINT OF TANGENCY; THENCE SOUTH 212.00 FEET TO A POINT OF A 30.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE 47.12 FEET TO A POINT OF TANGENCY; THENCE WEST 209.50 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

TOGETHER WITH NON-EXCLUSIVE USE OF COMMON DRIVEWAYS, PEDESTRIAN WAYS AND OTHER COMMON PORTIONS OF THE SHOPPING CENTER KNOWN AS THE VALLEY FAIR MALL, ALL AS SET FORTH IN THE SHORT-FORM GROUND LEASE, RECORDED NOVEMBER 20, 1979 AS ENTRY NO. 3366819 IN BOOK 4989 AT PAGE 153 OF OFFICIAL RECORDS.

APN: 15-33-201-005-000; 15-33-201-007-2000

Store #294

REAL PROPERTY IN THE CITY OF SANDY, COUNTY OF SALT LAKE, STATE OF UTAH, DESCRIBED AS FOLLOWS:

PARCEL 1:

ALL OF LOT 2 OF THE SOUTH TOWNE CENTER MALL SUBDIVISION BEING A PART OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 3 SOUTH, RANGE 1 WEST AND PART OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AS RECORDED IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER AS ENTRY NO. 6644162 AT BOOK 97-5P, PAGE 152.

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PARCEL OF LAND IN THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, BEING EVEN MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 926.18 FEET WEST AND 700.84 FEET SOUTH FROM THE NORTHEAST CORNER OF SAID SECTION 13 (BASIS BEARING BEING SOUTH 00°01'50" EAST ALONG THE STATE STREET MONUMENT LINE BETWEEN THE MONUMENTS OPPOSITE THE NORTHEAST CORNER AND THE EAST QUARTER CORNER OF SAID SECTION 13), SAID POINT BEING ON A 315.48 FOOT RADIUS CURVE TO THE RIGHT (RADIUS POINT BEARS NORTH 76°12'01" WEST) AND RUNNING THENCE SOUTHWESTERLY 6.61 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 01°12'01" TO A POINT OF TANGENCY; THENCE SOUTH 15°00'00" WEST 113.39 FEET; THENCE SOUTH 83°05'00" EAST 19.20 FEET TO A POINT ON A 147.50 FOOT RADIUS CURVE TO THE LEFT (RADIUS POINT BEARS SOUTH 83°05'00" EAST); THENCE SOUTHERLY 17.73 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 06°53'25" TO A POINT OF TANGENCY; THENCE SOUTH 00°01'35" WEST 184.00 FEET; THENCE SOUTH 89°39'32" WEST 263.49 FEET; THENCE NORTH 00°01'35" EAST 10.50 FEET TO THE POINT OF CURVATURE WITH A 49.50 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHEASTERLY 35.99 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 41°39'23" TO A POINT OF REVERSE CURVATURE WITH A 50.50 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHEASTERLY 36.72 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 41°39'23" TO A POINT OF TANGENCY; THENCE NORTH 00°01'35" EAST 128.85 FEET TO THE POINT OF CURVATURE WITH A 14.50 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHEASTERLY 22.78 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE 90°00'00" TO A POINT OF TANGENCY; THENCE SOUTH 89°58'25" EAST 103.56 FEET TO THE POINT OF CURVATURE WITH A 75.50 FOOT RADIUS CURVE TO THE LEFT; THENCE

NORTHEASTERLY 69.60 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 52°48'57" TO A POINT OF TANGENCY, THENCE NORTH 37°12'38" EAST 32.85 FEET; THENCE NORTH 15°00'00" EAST 56.14 FEET; THENCE SOUTH 75°00'00" EAST 39.93 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

PERPETUAL EASEMENTS FOR PARKING AND ACCESS CREATED BY THAT CERTAIN GENERAL WARRANTY DEED DATED OCTOBER 19, 1993 BY AND BETWEEN SOUTH TOWNE INVESTORS LIMITED PARTNERSHIP, AN ILLINOIS LIMITED PARTNERSHIP (GRANTOR) AND MERVYN'S, A CALIFORNIA CORPORATION (GRANTEE) RECORDED OCTOBER 21, 1993 AS ENTRY NO. 5634888 IN BOOK 6781 AT PAGE 764 OF OFFICIAL RECORDS.

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PARCEL OF LAND IN THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 1506.28 FEET WEST AND 627.79 FEET SOUTH FROM THE NORTHEAST CORNER OF SAID SECTION 13 (BASIS OF BEARING BEING SOUTH 00°01'50" EAST ALONG THE STATE STREET MONUMENT LINE BETWEEN THE MONUMENTS OPPOSITE THE NORTHEAST CORNER AND THE EAST QUARTER CORNER OF SAID SECTION 13); SAID POINT BEING ON THE NORTHERLY LINE OF THE SOUTH TOWNE MAIL RING ROAD AT A POINT ON A 758.00 FOOT RADIUS CURVE TO THE RIGHT (RADIUS POINT BEARS SOUTH 38°01'35" EAST); AND RUNNING THENCE NORTHEASTERLY 215.26 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 16°16'15" (CHORD BEARS NORTH 60°06'32" EAST 214.53 FEET); THENCE NORTH 10.75 FEET TO THE SOUTHERLY LINE OF THE FUTURE SANDY BOULEVARD RIGHT OF WAY, SAID POINT BEING ON A 768.00 FOOT RADIUS CURVE TO THE RIGHT (RADIUS POINT BEARS SOUTH 21°27'29" EAST); THENCE NORTHEASTERLY 299.68 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 22°21'25" (CHORD BEARS NORTH 79°43'14" EAST 297.78 FEET); THENCE SOUTH 00°00'36" WEST 9.99 FEET TO SAID NORTHERLY LINE OF THE SOUTH TOWNE MAIL RING ROAD, SAID POINT BEING ON A 758.00 FOOT RADIUS CURVE TO THE RIGHT (RADIUS POINT BEARS SOUTH 00°54'37" WEST); THENCE SOUTHEASTERLY 300.10 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 22°41'04" (CHORD BEARS SOUTH 77°44'52" EAST 298.14 FEET); THENCE SOUTH 15°51'56" WEST 509.94 FEET; THENCE SOUTH 89°59'52" WEST 63.92 FEET TO A POINT ON MERVYN'S PARCEL 1; THENCE RUNNING ALONG SAID PARCEL NORTH 00°01'35" EAST 184.00 FEET TO THE POINT OF CURVATURE WITH A 147.50 FOOT RADIUS CURVE TO THE RIGHT; THENCE

NORTHEASTERLY 17.73 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 06°53'25"; THENCE NORTH 83°05'00" WEST 19.20 FEET; THENCE NORTH 15°00'00" EAST 113.39 FEET TO A POINT OF CURVATURE WITH A 315.48 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHEASTERLY 6.61 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 01°12'01"; THENCE NORTH 75°00'00" WEST 39.93 FEET; THENCE SOUTH 15°00'00" WEST 56.14 FEET; THENCE SOUTH 37°12'38" WEST 32.85 FEET TO THE POINT OF CURVATURE WITH A 75.50 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY 69.60 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 52°49'57" TO A POINT OF TANGENCY; THENCE NORTH 89°58'25" WEST 103.56 FEET TO A POINT OF CURVATURE WITH A 14.50 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHWESTERLY 22.78 FEET ALONG THE ARC OF SAID CURVE THROUGH CENTRAL ANGLE OF 90°00'00" TO A POINT OF TANGENCY; THENCE SOUTH 00°01'35" WEST 128.85 FEET TO A POINT OF CURVATURE WITH A 50.50 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY 36.72 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 41°39'23" TO A POINT OF REVERSE CURVATURE WITH A 49.50 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHWESTERLY 6.15 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 07°07'19"; THENCE LEAVING SAID MERVYN'S PARCEL NORTH 44°58'25" WEST 324.58 FEET; THENCE NORTH 45°01'35" EAST 29.75 FEET; THENCE NORTH 44°58'25" WEST 147.00 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

THOSE RIGHTS APPURTENANT TO PARCEL 1 CREATED AND DESCRIBED IN THAT CERTAIN GRANT OF RECIPROCAL EASEMENTS, DECLARATION OF COVENANTS RUNNING WITH THE LAND AND DEVELOPMENT AGREEMENT DATED OCTOBER 21, 1993 BY AND BETWEEN MERVYN'S, A CALIFORNIA CORPORATION AND SOUTH TOWNE INVESTORS LIMITED PARTNERSHIP, AN ILLINOIS LIMITED PARTNERSHIP, RECORDED IN THE OFFICIAL RECORDS OF SALT LAKE COUNTY, UTAH, AS ENTRY NO. 5634889 IN BOOK 6781 AT PAGE 765 AND AS AMENDED BY THAT FIRST AMENDMENT TO GRANT OF RECIPROCAL EASEMENTS, DECLARATION OF COVENANTS RUNNING WITH THE LAND AND DEVELOPMENT AGREEMENT DATED MAY 16, 1997 AND RECORDED MAY 16, 1997 AS ENTRY NO. 6646767 IN BOOK 7668 AT PAGE 2882 AND RE-RECORDED MAY 30, 1997 AS ENTRY NO. 6657114 IN BOOK 7679 AT PAGE 787 OF OFFICIAL RECORDS BY AND BETWEEN MERVYN'S, A CALIFORNIA CORP., MACERICH SOUTH TOWNE LIMITED PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP AND DILLARD USA, INC., A NEVADA CORPORATION (THE "REA").

APN: 27-13-227-012-0000

Exhibit B

LEASE

Store No. 64 located at 1154 Brickyard Road, Salt Lake City, Utah:

Lease, dated as of December 17, 2007, by and between Macerich Brickyard Holdings LLC, whose address is 401 Wilshire Boulevard, Suite 700, Santa Monica, California 90401, as landlord, and Mervyn's LLC, as Tenant. A Memorandum of Lease was filed in the Recorder's Office of Salt Lake County, Utah on January 4, 2008 as Document No. 10316352 in Book 9556, Page 2467.

Store No. 66 located at 3601 Constitution Boulevard, West Valley City, Utah:

Lease, dated as of December 17, 2007, by and between Macerich Brickyard Holdings LLC, whose address is 401 Wilshire Boulevard, Suite 700, Santa Monica, California 90401, as landlord, and Mervyn's LLC, as Tenant. A Memorandum of Lease was filed in the Recorder's Office of Salt Lake County, Utah on January 4, 2008 as Document No. 10316349 in Book 9556, Page 2449.

Store No. 294 located at 10450 South State Street, Sandy, Utah:

Lease, dated as of December 17, 2007, by and between Macerich South Towne Holdings LLC, whose address is 401 Wilshire Boulevard, Suite 700, Santa Monica, California 90401, as landlord, and Mervyn's LLC, as Tenant. A Memorandum of Lease was filed in the Recorder's Office of Salt Lake County, Utah on January 4, 2008 as Document No. 10317056 in Book 9556, Page 5629.