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

**Paul, Hastings, Janofsky & Walker LLP  
600 Peachtree Street, N.E., Suite 2400  
Atlanta, Georgia 30308  
Attention: David Burch, Esq.**

F-76764

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

**by and from**

**AMERICAN BLUE RIBBON HOLDINGS, LLC, "Grantor"**

**to**

**FOUNDER'S TITLE COMPANY, "Trustee"**

**for the benefit of**

**WELLS FARGO CAPITAL FINANCE, LLC,  
in its capacity as administrative agent, "Beneficiary"**

**Dated as of November 12, 2010**

**Location: 910 East 400 South  
City: Salt Lake City  
County: Salt Lake  
State: Utah**

**LEASEHOLD DEED OF TRUST, ASSIGNMENT OF  
RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING  
STATEMENT  
(Utah)**

THIS LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "**Deed of Trust**") is dated as of November 12, 2010, by and from **AMERICAN BLUE RIBBON HOLDINGS, LLC**, a Delaware limited liability company ("**Grantor**"), whose address is 400 West 48<sup>th</sup> Avenue, Denver Colorado 80216, to **FOUNDER'S TITLE COMPANY**, a Utah corporation ("**Trustee**"), whose address is 746 East Winchester Street, Suite 100, Salt Lake City, Utah 84107, for the benefit of **WELLS FARGO CAPITAL FINANCE, LLC**, (formally known as Wells Fargo Foothill, LLC), a Delaware limited liability company, in its capacity as administrative agent for the Lender Group (as defined below) (in such capacity, together with its successors and assigns, "**Agent**") pursuant to the Credit Agreement (as defined below), whose address is 2450 Colorado Avenue, Suite 3000 West, Santa Monica, California 90404, Attn: Specialty Finance Manager (Agent, together with its successors and assigns, is referred to herein as "**Beneficiary**").

**RECITALS:**

WHEREAS, Grantor is the lessee under the Lease Agreement (as defined below);

WHEREAS, Fidelity Newport Holdings, LLC, a Delaware limited liability company ("**Parent**"), Grantor, Agent and each of the Lenders (as defined in the Credit Agreement) who are or may become a party to the Credit Agreement (as therein defined, the "**Lender Group**") have entered into that certain Credit Agreement dated as of March 27, 2009 (as amended, restated, supplemented or otherwise modified heretofore or hereinafter from time to time, the "**Credit Agreement**"), which Credit Agreement provides for a revolving loan, a term loan and other extensions of credit in the maximum principal amount as specified in said Credit Agreement;

WHEREAS, Grantor is the Borrower under the Credit Agreement and is receiving a good and valuable benefit, the sufficiency and receipt of which is hereby acknowledged, from Agent and the Lender Group entering into the Credit Agreement; and

WHEREAS, Agent and the Lender Group have required that Grantor deliver this Deed of Trust in connection with the transactions described in the Credit Agreement.

**ARTICLE 1**  
**DEFINITIONS**

**Section 1.1 Definitions.** All capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Credit Agreement. As used herein, the following terms shall have the following meanings:

(a) **“Event of Default”**: shall have the meaning ascribed to such term in Article 4 hereof.

(b) **“Indebtedness”**: All Obligations of Grantor to Beneficiary, including, without limitation (but subject to the terms of the Credit Agreement), (1) the repayment of all amounts outstanding from time to time under the Credit Agreement and the other Loan Documents in a maximum principal amount at any one time outstanding not to exceed FIFTY MILLION AND NO/100THS Dollars (\$50,000,000.00) (the **“Total Maximum Principal Amount”**), with such indebtedness maturing on or before March 27, 2013, as provided, in the Credit Agreement, including principal, interest (including all interest that, but for the provisions of the Bankruptcy Code, would have accrued), and other amounts which may now or hereafter be advanced as Advances and Overline Advances, (2) the full and prompt performance of any and all repayment, fee, and indemnification obligations with respect to any Letters of Credit in accordance with the Credit Agreement, (3) fees, costs, expenses, charges and indemnification obligations accrued, incurred or arising in connection with, and subject to the terms of, any Loan Document, (4) any and all future advances made pursuant to the terms of the Credit Agreement, (5) any and all Net Cash Proceeds payable to Agent or the Lender Group in accordance with the Credit Agreement, and (6) all other payment Obligations. The Credit Agreement contains a revolving credit facility that permits Grantor to borrow certain principal amounts, repay all or a portion of such principal amounts, and reborrow the amounts previously paid to the Lender Group, all upon satisfaction of certain conditions stated in the Credit Agreement. This Deed of Trust secures all Advances and re-advances under the revolving credit feature of the Credit Agreement.

(c) **“Lease Agreement”**: The lease agreement described on Exhibit B attached hereto and incorporated herein.

(d) **“Lessor”**: shall have the meaning ascribed to such term on Exhibit B.

(e) **“Trust Property”**: All of Grantor’s right, title, interest and estate (if applicable and to the extent not prohibited by or inconsistent with the terms of the Lease Agreement), whether now owned or hereafter acquired, in (1) the leasehold interest in the real property described in Exhibit A attached hereto and incorporated

herein by this reference (or the portion of such real property as set forth in the Lease Agreement), together with ditches and ditch rights, reservoirs, reservoir rights and storage rights, wells and well rights, well permits, springs and spring rights, groundwater rights (whether tributary, nontributary or not-nontributary), water contracts, water allotments, water taps, stock certificates, shares in ditch or reservoir or water companies, and all other rights of any kind or nature in or to the use of water, whether or not adjudicated, which are appurtenant to, historically used on or in connection with, or located on or under the Land (collectively, "**Water Rights**"), together with any and all associated structures and facilities for the diversion, carriage, transmission, conveyance, measurement, storage or use of Water Rights, and any and all easements, rights of way, fixtures, personal property, contract rights, licenses, permits or decrees associated with or used in connection with any such Water Rights or which may be necessary for the development, operation or maintenance of such Water Rights (the "**Land**"), (2) all improvements now owned or hereafter leased by Grantor under the Lease Agreement, now or at any time situated, placed or constructed upon the Land (the "**Improvements**"; the Land and Improvements are collectively referred to herein as the "**Premises**"), (3) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Grantor and now or hereafter attached to or installed in any of the Improvements or the Land, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements so as to constitute fixtures under the UCC or otherwise under the laws of the State or Commonwealth in which such items are located (the "**Fixtures**"), (4) all reserves, escrows or impounds required under the Credit Agreement and all deposit accounts maintained by Grantor with respect to the Trust Property (the "**Deposit Accounts**"), (5) all existing and future subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person a possessory interest in, or the right to use or occupy, all or any part of the Trust Property, whether made before or after the filing by or against Grantor of any petition for relief under the Bankruptcy Code, together with any extension, renewal or replacement of the same and together with all related security and other deposits (the "**Leases**"), (6) all of the rents, additional rents, revenues, royalties, income, proceeds, profits, early termination fees or payments, security and other types of deposits, and other benefits paid or payable by parties to the Leases for using, subleasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Trust Property or any part thereof, whether paid or accruing before or after the filing by or against Grantor of any petition for relief under the Bankruptcy Code, subject, however, to the right of Grantor to receive and use the same and to exercise all rights and privileges as lessor under all of the Leases until an Event of Default shall have occurred (the "**Rents**"), (7) to the extent assignable, all other agreements to which Grantor is a party, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, franchises, authorizations, consents, approvals, certificates,

entitlements, and other rights and privileges in any way relating to the construction, use, occupancy, operation, maintenance, or enjoyment of the Premises (the "**Property Agreements**"), (8) all rights, privileges, tenements, hereditaments, rights-of-way, easements, air rights, development rights or credits, zoning rights, appendages and appurtenances appertaining to the foregoing, and all right, title and interest of Grantor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, and all right, title and interest of Grantor, if any, in and to all rights, royalties and profits with respect to all minerals, coal, oil, gas and other substances of any kind or character on or underlying the Land, together with all right, title and interest of Grantor, if any, in and to all water and water rights (whether riparian, appropriative or otherwise and whether or not appurtenant), (9) all property tax refunds, utility refunds, awards, and rebates, earned or received by Grantor at any time (the "**Tax Refunds**"), (10) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the "**Proceeds**"), (11) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Grantor (the "**Insurance**"), (12) all of Grantor's right, title and interest in and to any awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements or Fixtures (the "**Condemnation Awards**"), (13) all of Grantor's rights to appear and defend any action or proceeding brought with respect to the Trust Property and, if an Event of Default shall have occurred, to commence any action or proceeding to protect the interest of Grantor in the Trust Property, (14) all rights, powers, privileges, options and other benefits of Grantor as sublessor under the Leases, including, without limitation, if an Event of Default shall have occurred, the immediate and continuing right to claim for, receive, collect and receive all Rents payable or receivable under the Leases or pursuant thereto (and to apply the same to the payment of the Indebtedness and the Obligations), and to do all other things which Grantor or any sublessor is or may become entitled to do under the Leases, (15) all products, proceeds, accessions to, substitutions for and/or replacements of any of the following: all appurtenances with respect to or otherwise relating to the Lease Agreement, including, without limitation, renewal options and expansion rights, and all estate and rights of Grantor of, in and to (i) all modifications, extensions and renewals of the Lease Agreement and all rights to renew or extend the term thereof, (ii) all credits to and deposits of Grantor under the Lease Agreement, (iii) all other options, privileges and rights granted and demised to Grantor under the Lease Agreement, (iv) all of the right and privilege of Grantor to terminate, cancel, abridge, surrender, merge, modify or amend the Lease Agreement, and (v) any and all possessory rights of Grantor and other rights or privileges of possession, including, without limitation, Grantor's right to elect to remain in possession of the Premises pursuant to the Bankruptcy Code, (16) all of Grantor's claims and rights to damages and any other remedies in connection with or arising from the rejection of the Lease Agreement by the Lessor under the Lease Agreement (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 Grantor any petition, action or proceeding under the Bankruptcy Code or under any other similar federal or state law now or hereinafter in effect, and (17) all other property and rights of Grantor of every kind and character relating to and/or used or to be used in connection with the foregoing (to the extent assignable), and all proceeds and products of any of the foregoing. As used in this Deed of Trust, the term "Trust Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein. THE TERM "TRUST PROPERTY" IS INTENDED TO AND SHALL EXCLUDE ALL ITEMS OF PERSONAL PROPERTY IN WHICH BENEFICIARY HAS OBTAINED AND/OR PERFECTED A SECURITY INTEREST UNDER SEPARATE INSTRUMENTS.

(f) **"Obligations"**: All of the "Obligations", as defined in the Credit Agreement.

(g) **"Permitted Liens"**: shall have the meaning ascribed to such term in the Credit Agreement.

(h) **"UCC"**: The Uniform Commercial Code of the state in which the Land is located or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the state in which the Land is located, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

## **ARTICLE 2** **GRANT**

**Section 2.1 Grant.** For and in consideration of good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Grantor herein set forth, to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of all of the Obligations, Grantor hereby irrevocably and unconditionally GRANTS, BARGAINS, ASSIGNS, SELLS, WARRANTS, TRANSFERS, CONFIRMS and CONVEYS to Trustee in trust WITH POWER OF SALE and right of entry and possession (if applicable and to the extent not prohibited by or inconsistent with the terms of the Lease Agreement), for the use and benefit of Beneficiary, as Agent for the Lender Group pursuant to the Credit Agreement, all its right, title, interest and estate in, to and under the Trust Property, subject, however, to the Permitted Liens and the terms of the Lease Agreement, TO HAVE AND TO HOLD the Trust Property and all parts, rights and appurtenances thereof, to Trustee, subject to the terms and conditions of this Deed of Trust, the Credit Agreement and the other Loan Documents, with POWER OF SALE (if applicable and to the extent not prohibited by or inconsistent with the terms of the Lease

Agreement), forever, and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Trust Property unto Trustee and Beneficiary against every Person whomsoever lawfully claiming or to claim the same or any part thereof; and provided, further, that if (i) Grantor, Grantor's administrators, personal representatives, successors or assigns, shall pay to Beneficiary, its successors or assigns, the Indebtedness, as and when the same shall become due and payable and shall fully perform and discharge (or cause to be fully performed and discharged) the Obligations (other than unasserted contingent indemnification Obligations and other than any Bank Product Obligations that, at such time, are allowed by the Bank Product Providers to remain outstanding and that are not required by the provisions of the Credit Agreement to be repaid or cash collateralized) on or before the date same are to be performed and discharged, (ii) no member of the Lender Group shall have any further obligation to provide any additional credit under the Credit Agreement and (iii) all Letters of Credit shall have terminated or expired or shall have been cash collateralized in accordance with the Credit Agreement, then the liens, security interests, estates, and rights granted by this Deed of Trust shall cease, terminate, and be void; otherwise same shall remain in full force and effect. In addition, Beneficiary shall release the Trust Property from this Deed of Trust upon the occurrence of a Permitted Disposition with respect thereto as allowed by and in accordance with the terms of the Credit Agreement.

Grantor hereby agrees and acknowledges that the Indebtedness secured by this Deed of Trust includes a revolving loan and is intended to secure future advances; accordingly, this Deed of Trust shall not be canceled by the full and complete repayment of the Indebtedness, so long as the Credit Agreement remains in force and effect.

**ARTICLE 3**  
**WARRANTIES, REPRESENTATIONS AND COVENANTS**

Grantor warrants, represents and covenants to Beneficiary as follows:

**Section 3.1 Title to Trust Property and Lien of this Instrument.**

Grantor (i) has a valid leasehold interest in the Trust Property (to the extent that the Trust Property constitutes a leasehold interest in real property), free and clear of any Liens except the Permitted Liens and those Liens first approved in writing by Beneficiary, (ii) except as otherwise permitted under the Credit Agreement, has not previously transferred or encumbered any of its interest in and to the Fixtures to the extent that such transfer or encumbrance is effective as of the date of this Deed of Trust, and (iii) has full power and lawful authority to encumber the Trust Property in the manner and form set forth in this Deed of Trust. Upon the recordation of this Deed of Trust in the applicable recording office and payment of any applicable recording fees, this Deed of Trust creates valid, enforceable first priority liens and security interests against the Trust Property (subject to Permitted Liens and any rights of the Lessor and its permitted assigns).

**Section 3.2 First Lien Status.** Grantor shall preserve and protect the first lien and security interest status of this Deed of Trust and the other Loan Documents (subject to Permitted Liens and any rights of the Lessor and its permitted assigns). If any lien or security interest other than the Permitted Liens and any rights of the Lessor and its permitted assigns (or any lien or security interest first approved in writing by Beneficiary) is asserted against the Trust Property, Grantor shall promptly, and at its expense, (a) give Beneficiary a detailed written notice of such lien or security interest (including origin, amount and other material terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Credit Agreement (including the requirement of providing a bond or other security reasonably satisfactory to Beneficiary pursuant to the terms of the Credit Agreement).

**Section 3.3 Payment and Performance.** Grantor shall pay the Indebtedness when due under the Loan Documents and shall perform the Obligations in full when they are required to be performed.

**Section 3.4 Replacement of Fixtures and Alterations.** Subject to the terms of the Lease Agreement and except as expressly permitted pursuant to the terms of the Credit Agreement, Grantor shall not, without the prior written consent of Beneficiary (not to be unreasonably withheld, conditioned or delayed), permit any of the Fixtures to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete, damaged or deemed useless and is replaced by an article of equal or better suitability and value (unless such removed item is redundant or no longer useful for continued operations at the Premises), subject to the liens and security interests of this Deed of Trust and the other Loan Documents, and free and clear of any other lien or security interest except such as may be permitted under the Credit Agreement or first approved in writing by Beneficiary. Subject to the terms of the Lease Agreement, Grantor shall not, without the prior written consent of Beneficiary, make any alterations to the Land or the Improvements if such alterations (i) are structural in nature, (ii) would reasonably be expected to materially and adversely affect the value of the Trust Property, or (iii) would change its current use. Beneficiary's consent to any other alterations shall not be required.

**Section 3.5 Inspection.** Grantor shall permit Beneficiary and its agents, representatives and employees to inspect the Trust Property and all books and records of Grantor located thereon, at reasonable times and, so long as no Event of Default has occurred, with reasonable prior notice to Grantor.



**Section 3.6 Other Covenants.** All of the covenants in the Credit Agreement are incorporated herein by reference and, together with covenants in this Article 3, shall, to the extent applicable, be covenants running with the land.

**Section 3.7 Condemnation Awards and Insurance Proceeds.**

(a) **Condemnation Awards.** Grantor, immediately upon obtaining actual knowledge of the institution of any proceedings for the condemnation of the Premises or any portion thereof, will notify Beneficiary of the pendency of such proceedings. Except as set forth in the Credit Agreement, Beneficiary may participate in any such proceedings and Grantor from time to time will deliver to Beneficiary all instruments reasonably requested by it to permit such participation. Grantor collaterally assigns all awards and compensation to which it is entitled for any condemnation or other taking, or any purchase in lieu thereof, to Beneficiary and authorizes Beneficiary to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, subject, however, to the terms of the Credit Agreement. Grantor, upon written request by Beneficiary, shall make, execute and deliver any and all instruments reasonably requested for the purpose of confirming the assignment of the aforesaid awards and compensation to Beneficiary free and clear of any Liens of any kind or nature whatsoever other than Permitted Liens or Liens first approved in writing by Beneficiary. To the extent allowed by the Credit Agreement, any awards or compensation paid in connection with the condemnation or other taking, or purchase in lieu thereof, of any portion of the Premises shall be made available to Grantor for restoration of the Trust Property.

(b) **Insurance Proceeds.** Grantor collaterally assigns to Beneficiary all proceeds of any insurance policies insuring against loss or damage to the Trust Property. Except as set forth in the Credit Agreement, Grantor authorizes Beneficiary to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Beneficiary, instead of to Grantor and Beneficiary jointly, as more specifically described in the Credit Agreement. In the event that the issuer of such insurance policy fails to disburse directly or solely to Beneficiary but disburses instead either solely to Grantor or to Grantor and Beneficiary, jointly, Grantor shall immediately endorse and transfer such proceeds to Beneficiary; it being agreed, however, that such proceeds shall be applied by Beneficiary in accordance with the Credit Agreement. Upon Grantor's failure to do so within ten (10) days after written request, Beneficiary may execute such endorsements or transfers from and in the name of Grantor, and Grantor hereby irrevocably appoints Beneficiary as Grantor's agent and attorney-in-fact so to do. To the extent allowed by the Credit Agreement, insurance proceeds paid with respect to damage to the Trust Property shall be made available to Grantor for restoration of the Trust Property.

(c) Subject to Lease Agreement. This Section 3.7 shall be subject to the terms of the Lease Agreement governing the disposition of insurance proceeds and awards and compensation provided for any condemnation or other taking and, in the event of any conflict between this Section 3.7 and the Lease Agreement, the terms of the Lease Agreement shall control.

**Section 3.8 Costs of Defending and Upholding the Lien.** If any action or proceeding is commenced to which action or proceeding Trustee or Beneficiary is made a party or in which it becomes necessary for Trustee or Beneficiary to defend or uphold the lien of this Deed of Trust, including any extensions, renewals, amendments or modifications thereof, Grantor shall, on demand, reimburse Trustee and Beneficiary for all expenses (including, without limitation, reasonable attorneys' fees and reasonable appellate attorneys' fees) incurred by Trustee or Beneficiary in any such action or proceeding and all such expenses shall be secured by this Deed of Trust. In any action or proceeding to foreclose this Deed of Trust or to recover or collect the Indebtedness, the provisions of applicable law relating to the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

**Section 3.9 TRANSFER OF THE SECURED PROPERTY.** EXCEPT AS EXPRESSLY PERMITTED PURSUANT TO THE TERMS OF THE CREDIT AGREEMENT, GRANTOR SHALL NOT SELL, TRANSFER, PLEDGE, ENCUMBER, CREATE A SECURITY INTEREST IN OR OTHERWISE HYPOTHECATE, ALL OR ANY PORTION OF THE TRUST PROPERTY WITHOUT THE PRIOR WRITTEN CONSENT OF BENEFICIARY. THE CONSENT BY BENEFICIARY TO ANY SALE, TRANSFER, PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST IN OR OTHER HYPOTHECATION OF, ANY PORTION OF THE TRUST PROPERTY SHALL NOT BE DEEMED TO CONSTITUTE A NOVATION OR A CONSENT TO ANY FURTHER SALE, TRANSFER, PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST IN OR OTHER HYPOTHECATION, OR TO WAIVE THE RIGHT OF BENEFICIARY, AT ITS OPTION, TO DECLARE THE INDEBTEDNESS SECURED HEREBY IMMEDIATELY DUE AND PAYABLE, WITHOUT NOTICE TO GRANTOR OR ANY OTHER PERSON OR ENTITY (EXCEPT AS REQUIRED BY THE CREDIT AGREEMENT), UPON ANY SUCH SALE, TRANSFER, PLEDGE, ENCUMBRANCE, CREATION OF A SECURITY INTEREST OR OTHER HYPOTHECATION TO WHICH BENEFICIARY SHALL NOT HAVE CONSENTED IF SUCH CONSENT IS REQUIRED BY THE CREDIT AGREEMENT.

**Section 3.10 Security Deposits.** To the extent required by law, or after an Event of Default has occurred and during its continuance, if required by Beneficiary, all security deposits of subtenants (if any) of the Trust Property held by Grantor shall be treated as trust funds not to be commingled with any other funds of Grantor. Within

twenty (20) days after written request by Beneficiary, Grantor shall furnish reasonably satisfactory evidence of compliance with this Section 3.10, as necessary, together with a list of all security deposits deposited with Grantor by the subtenants and copies of all subleases not theretofore delivered to Beneficiary, as requested thereby, certified by Grantor.

**Section 3.11 Flood Zone.** To the extent of Grantor's actual knowledge of (a) the location of any of the Trust Property in an area identified by the Federal Emergency Management Agency ("FEMA") as having special flood hazards, or (b) the identification by FEMA of the Land or any part thereof as an area having special flood hazards (including, without limitation, those areas designates as Zone A or Zone V), then Grantor has obtained the insurance required under the Credit Agreement and this Deed of Trust (subject, however, to the terms of the Lease Agreement).

**Section 3.12 Leasehold Representations; Warranties; Covenants**

Grantor hereby represents, warrants and covenants that:

(a) (1) Except as disclosed by Grantor to Beneficiary, the Lease Agreement is unmodified, has not been amended in any manner whatsoever and is in full force and effect, (2) to Grantor's actual knowledge, all rents, additional rents and other charges due and payable on or after March 27, 2009, have been paid in full to the extent they are payable to the date hereof, (3) to Grantor's actual knowledge, Grantor enjoys the quiet and peaceful possession of the Premises, (4) to Grantor's actual knowledge, Grantor is not in default beyond any applicable notice and cure period under any of the terms of the Lease Agreement and there are no circumstances which, with the passage of time or the giving of notice or both, would constitute an event of default thereunder, and (5) to Grantor's actual knowledge, Lessor is not in default beyond any applicable notice and cure period under any of the terms or provisions of the Lease Agreement on the part of Lessor to be observed or performed;

(b) (1) The Lease Agreement or a memorandum thereof (as the same may be amended or otherwise modified from time to time) has been, or contemporaneously with the recordation of this Deed of Trust will be, duly recorded, (2) subject to any consent requirements of Lessor contained in the Lease Agreement, the Lease Agreement permits the interest of the lessee thereunder to be encumbered by this Deed of Trust, and (3) to Grantor's actual knowledge, except as disclosed by Grantor to Beneficiary, there has not been any change in the material terms of the Lease Agreement since its recordation or the recordation of a memorandum thereof;

(c) Grantor has received all necessary consents of Lessor to the extent required by the Lease Agreement to enable Grantor to enter into this Deed of Trust;

(d) Grantor shall promptly pay, when due and payable, the rent and other charges payable pursuant to the Lease Agreement, subject to Grantor's right to contest, if any, under the Lease Agreement;

(e) Grantor shall timely perform and observe all of the other terms, covenants and conditions required to be performed and observed by Grantor as lessee under the Lease Agreement unless such performance or observance shall have been waived in writing by Lessor and subject to Grantor's right to contest, if any, under the Lease Agreement;

(f) Grantor shall notify Beneficiary in writing of any default by Grantor beyond any applicable notice and cure period in the performance or observance of any terms, covenants or conditions on the part of Grantor to be performed or observed under the Lease Agreement within five (5) Business Days after Grantor obtains actual knowledge of such default. Grantor shall, immediately upon receipt thereof, deliver to Beneficiary a copy of each notice of default given to Grantor by Lessor pursuant to the Lease Agreement;

(g) Grantor shall promptly notify Beneficiary in writing of any default by Lessor beyond any applicable notice and cure period in the performance or observance of any of the material terms, covenants or conditions on the part of Lessor to be performed or observed pursuant to the Lease Agreement of which Grantor obtains actual knowledge;

(h) Grantor shall not, without the prior written consent of Beneficiary (which consent shall not be unreasonably withheld, conditioned or delayed) modify any of the material terms of, terminate or surrender the Lease Agreement, and any such attempted modification, termination or surrender without Beneficiary's written consent shall be void;

(i) Grantor shall, within thirty (30) days after written request from Beneficiary, but subject to the terms of the Lease Agreement, use its best efforts to obtain from Lessor and deliver to Beneficiary a certificate setting forth the name of the tenant under the Lease Agreement and stating that the Lease Agreement is in full force and effect, is unmodified or, if the Lease Agreement has been modified, the date of each modification (together with copies of each such modification), that no notice of termination thereof has been served on Grantor, stating that no default or event which with notice or lapse of time (or both) would become a default is existing under the Lease Agreement (or if any such default or event is existing, specifying the nature of such default or event), stating the date to which rent has been paid, and containing such other statements and representations as may be reasonably requested by Beneficiary;

(j) Grantor shall not, without the prior written consent of Beneficiary but subject to the terms of the Lease Agreement, at any time hereafter subordinate its interest in the Trust Property or any portion thereof to the lien or interests of any party holding a security title in Lessor's fee interest in the Premises;

(k) If applicable and so long as any of the Indebtedness remains unpaid or unperformed and is secured by this Deed of Trust, the fee title to and the leasehold estate in the Land subject to the Lease Agreement shall not merge without the prior written consent of Beneficiary but shall always be kept separate and distinct notwithstanding the union of such estates in Lessor or Grantor, or in a third party, by purchase or otherwise. Subject to the terms of the Credit Agreement, if Grantor acquires the fee title or any other estate, title or interest in the Land, or any part thereof by the exercise of any purchase option under the Lease Agreement or otherwise, the lien of this Deed of Trust shall attach to, cover and be a lien upon such acquired estate, title or interest and the same shall thereupon be and become a part of the Trust Property with the same force and effect as if specifically encumbered herein. Subject to the terms of the Credit Agreement, Grantor agrees to execute all instruments and documents that Beneficiary may reasonably require to ratify, confirm and further evidence the lien of this Deed of Trust on the acquired estate, title or interest. Furthermore, Grantor hereby appoints Beneficiary as its true and lawful attorney-in-fact to execute and deliver, during the continuance of an Event of Default, all such instruments and documents in the name and on behalf of Grantor. This power, being coupled with an interest, shall be irrevocable as long as any portion of the Indebtedness remains unpaid and is secured by this Deed of Trust;

(l) If the Lease Agreement shall be terminated prior to the natural expiration of its term due to default by Grantor as tenant thereunder beyond any applicable notice and cure period contained therein, and if, pursuant to the provisions of the Lease Agreement, Beneficiary or its designee shall acquire from Lessor a new lease of the Premises, Grantor shall have no right, title or interest in or to such new lease or the leasehold estate created thereby, or renewal privileges therein contained; and

(m) If Grantor shall default in the performance or observance of any term, covenant or condition of the Lease Agreement on the part of Grantor, as tenant thereunder, and shall fail to cure the same prior to the expiration of any applicable cure period provided thereunder, then subject to the terms of the Lease Agreement, Beneficiary shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be reasonably appropriate to cause all of the terms, covenants and conditions of the Lease Agreement on the part of Grantor to be performed or observed on behalf of Grantor, to the end that the rights of Grantor in, to and under the Lease Agreement shall be kept unimpaired and free from default. If Lessor shall deliver to Beneficiary a copy of any notice of default under the Lease Agreement,

such notice shall constitute full protection to Beneficiary for any action taken or omitted to be taken by Beneficiary, in good faith, in reliance thereon. Grantor shall exercise each individual option, if any, to extend or renew the term of the Lease Agreement upon demand by Beneficiary made at any time within one (1) year prior to the last day upon which any such option may be exercised, and Grantor hereby expressly authorizes and appoints Beneficiary as its attorney-in-fact to exercise any such option in the name of and upon behalf of Grantor during the existence of an Event of Default, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest; provided, however, that notwithstanding anything to the contrary in this Section 3.12(m), Grantor or Beneficiary, as the case may be, shall exercise such option only in accordance with the terms and conditions of the Lease Agreement.

(n) Notwithstanding anything to the contrary contained herein, Beneficiary shall have no liability or obligation under the Lease Agreement solely by reason of its acceptance of this Deed of Trust. Beneficiary shall be liable for the obligations of the tenant arising out of the Lease Agreement for only that period of time for which Beneficiary is in possession of the Premises or has acquired, by foreclosure or otherwise, and is holding all of Grantor's right, title and interest therein; provided, however, that Beneficiary shall also be liable under the Lease Agreement prior to such time for any acts or omissions arising from the gross negligence or willful misconduct of Beneficiary or any of its agents.

#### **ARTICLE 4** **DEFAULT**

**Section 4.1 Events of Default.** The occurrence of an "Event of Default" (as such term is defined in the Credit Agreement, which definition includes defaults of covenants, representations and warranties under this Deed of Trust beyond any applicable notice and cure periods contained in the Credit Agreement) under the Credit Agreement, shall constitute an event of default under this Deed of Trust (each an "Event of Default").

#### **ARTICLE 5** **DEFAULT AND FORECLOSURE**

**Section 5.1 Remedies.** If an Event of Default exists, Beneficiary may, at Beneficiary's election but subject to the terms of the Lease Agreement, and in addition to any rights and remedies of Beneficiary under Article 9 of the Credit Agreement, exercise any or all of the following rights, remedies and recourses, if and to the extent applicable:

(a) To the extent permitted under the Credit Agreement, declare the Indebtedness to be immediately due and payable, without further notice,

presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Grantor to the extent permitted by applicable law), whereupon the same shall become immediately due and payable.

(b) Notify all subtenants of the Premises and all others obligated on subleases of any part of the Premises that all rents and other sums owing on leases have been assigned to Beneficiary and are to be paid directly to Beneficiary, and to enforce payment of all obligations owing on subleases, by suit, ejectment, cancellation, releasing, reletting or otherwise, whether or not Beneficiary has taken possession of the Premises, and to exercise whatever rights and remedies Beneficiary may have under any assignment of rents and leases.

(c) As and to the extent permitted by law, enter the Trust Property, either personally or by its agents, nominees or attorneys, and take exclusive possession thereof and thereupon, Beneficiary may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Premises and conduct business thereat; (ii) complete any construction on the Premises in such manner and form as Beneficiary deems advisable in the reasonable exercise of its judgment; (iii) exercise all rights and power of Grantor with respect to the Premises, whether in the name of Grantor, or otherwise, including, without limitation, the right to make, cancel, enforce or modify subleases, obtain and evict subtenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Premises and every part thereof, which rights shall not be in limitation of Beneficiary's rights under any assignment of rents and leases securing the Indebtedness; and (iv) pursuant to the provisions of the Credit Agreement, apply the receipts from the Premises to the payment of the Indebtedness, after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Trust Property, as well as just and reasonable compensation for the services of Beneficiary, its counsel, agents and employees.

(d) Hold, sublease, develop, manage, operate or otherwise use the Trust Property upon such terms and conditions as Beneficiary may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Beneficiary deems necessary or desirable), and apply all Rents and other amounts collected by Trustee in connection therewith in accordance with the provisions of Section 5.7 hereof.

(e) Require Grantor to assemble any collateral under the UCC and make it available to Beneficiary, at Grantor's sole risk and expense, at a place or places to be designated by Beneficiary, in its sole discretion.

(f) Institute proceedings for the complete foreclosure of this Deed of Trust, either by judicial action or through the Trustee, by power of sale, in which case the Trust Property may be sold for cash or credit in accordance with applicable law in one or more parcels as Beneficiary may determine. Except as otherwise required by applicable law, with respect to any notices required or permitted under the UCC, Grantor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings, power of sale, or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Grantor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Grantor, and against all other Persons claiming or to claim the property sold or any part thereof, by, through or under Grantor. Beneficiary or any of the Lenders may be a purchaser at such sale. If Beneficiary is the highest bidder, Beneficiary may credit the portion of the purchase price that would be distributed to Beneficiary against the Indebtedness in lieu of paying cash. In the event this Deed of Trust is foreclosed by judicial action, appraisal and valuation of the Trust Property is waived to the extent permitted by applicable law. In the event of any sale made under or by virtue of this Article 5 (whether made by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale) the entire Indebtedness, if not previously due and payable, immediately thereupon shall become due and payable. The failure to make any such subtenants of the Premises party to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Grantor, a defense to any proceedings instituted by Beneficiary to collect the sums secured hereby.

(g) With or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Deed of Trust for the portion of the Indebtedness then due and payable (if Beneficiary shall have elected not to declare the entire Indebtedness to be immediately due and owing), subject to the continuing lien of this Deed of Trust for the balance of the Indebtedness not then due; or (1) as and to the extent permitted by law, sell for cash or upon credit the Trust Property or any part thereof and all estate, claim, demand, right, title and interest of Grantor therein, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Trust Property, this Deed of Trust shall continue as a lien on the remaining portion of the Trust Property; or (2) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in any Loan Document; or (3) to the extent permitted by applicable law, recover judgment on the Credit Agreement either before, during or after any proceedings for the enforcement of this Deed of Trust.



(h) Make application to a court of competent jurisdiction for, and obtain to the extent permitted by law from such court as a matter of strict right and without notice to Grantor or regard to the adequacy of the Trust Property for the repayment of the Indebtedness, the appointment of a receiver of the Trust Property, and Grantor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Trust Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 5.7 hereof.

(i) Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity or pursuant to any Loan Document.

**Section 5.2 Separate Sales.** If and to the extent applicable, the Trust Property may be sold in one or more parcels and in such manner and order as Beneficiary in its sole discretion may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

**Section 5.3 Remedies Cumulative, Concurrent and Nonexclusive.** Beneficiary shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulated and concurrent, (b) may be pursued separately, successively or concurrently against Grantor or others obligated under the Loan Documents, or against the Trust Property, or against any one or more of them, at the sole discretion of Beneficiary, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Beneficiary or Trustee in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

**Section 5.4 Release of and Resort to Collateral.** Beneficiary may, without joinder of Trustee, release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Trust Property, any part of the Trust Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Loan Documents or their status as a first and prior lien and security interest in and to the Trust Property. For payment of the Indebtedness, Beneficiary may resort to any other security in such order and manner as Beneficiary may elect.

**Section 5.5 Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Grantor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Grantor by virtue of any present or future statute of limitations or law or judicial decision exempting the Trust Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of any election by Beneficiary to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

**Section 5.6 Discontinuance of Proceedings.** If Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary shall have the unqualified right to do so and, in such an event, Grantor, Trustee and Beneficiary shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Trust Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary, shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Beneficiary, thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

**Section 5.7 Application of Proceeds.** The proceeds of any sale made under or by virtue of this Article 5, together with any Rents and other amounts generated by the holding, leasing, management, operation or other use of the Trust Property, shall be applied by Trustee or Beneficiary (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Trust Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) Trustee's and receiver's fees and expenses, including the repayment of the amounts evidenced by any receiver's certificates, (2) court costs, (3) reasonable attorneys' and accountants' fees and expenses, and (4) costs of advertisement;

(b) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as set forth in the Credit Agreement; and

(c) the balance, if any, to Grantor or the Persons legally entitled thereto.

**Section 5.8 Occupancy After Foreclosure.** Except as otherwise required by applicable law, any sale of the Trust Property or any part thereof in accordance with Section 5.1(f) or Section 5.1(g) hereof will divest all right, title and interest of Grantor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Grantor retains possession of such property or any part thereof subsequent to such sale, Grantor will be considered a tenant at sufferance of the purchaser, and subject to applicable law will, if Grantor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law.

**Section 5.9 Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Beneficiary shall have the right (subject, however, to the terms of the Lease Agreement), but not the obligation, to cure such Event of Default in the name and on behalf of Grantor. All sums advanced and expenses reasonably incurred at any time by Beneficiary under this Section 5.9, or otherwise under this Deed of Trust or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the rate or rates at which interest is then computed on the Indebtedness under the Credit Agreement, and all such sums, together with interest thereon, shall be secured by this Deed of Trust.

(b) Grantor shall pay all expenses (including reasonable attorneys' fees and expenses and all costs and expenses related to legal work, research and litigation if Beneficiary prevails in the applicable action or proceeding) of or incidental to the perfection and enforcement of this Deed of Trust and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Deed of Trust and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Beneficiary in respect thereof, by litigation or otherwise.

**Section 5.10 No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 5, the assignment of the Rents and Leases under Article 6, the security interests under Article 7, nor any other remedies afforded to Beneficiary under the Loan Documents, at law or in equity shall cause Beneficiary or Trustee to be deemed or construed to be a mortgagee in possession of the Trust Property, to obligate Beneficiary or Trustee to lease the Trust Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

**Section 5.11 WAIVER OF GRANTOR'S RIGHTS.** BY EXECUTION OF THIS DEED OF TRUST, GRANTOR EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT OF BENEFICIARY TO ACCELERATE THE INDEBTEDNESS EVIDENCED BY THE CREDIT AGREEMENT OR OTHER LOAN DOCUMENTS UPON THE OCCURRENCE OF AN EVENT OF DEFAULT; (B) TO THE EXTENT ALLOWED BY APPLICABLE LAW, WAIVES ANY AND ALL RIGHTS WHICH GRANTOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES, THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY BENEFICIARY OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO BENEFICIARY; (C) ACKNOWLEDGES THAT GRANTOR HAS READ THIS DEED OF TRUST AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO GRANTOR AND GRANTOR HAS CONSULTED WITH LEGAL COUNSEL OF GRANTOR'S CHOICE PRIOR TO EXECUTING THIS DEED OF TRUST; AND (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF GRANTOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY GRANTOR AS PART OF A BARGAINED FOR LOAN TRANSACTION.

**Section 5.12 Uniform Commercial Code Remedies.** Beneficiary shall have all of the rights, remedies and recourses with respect to the Personalty and the Fixtures afforded to it by the UCC, including, without limitation, the right to take possession of the Fixtures or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the Fixtures, in addition to, and not in limitation of, the other rights, remedies and recourses afforded by this Deed of Trust and the other Loan Documents.

## **ARTICLE 6**

### **ASSIGNMENT OF RENTS AND LEASES**

**Section 6.1 Assignment.** In furtherance of and in addition to the assignment made by Grantor in Section 2.1 of this Deed of Trust, Grantor hereby absolutely and unconditionally assigns, sells, transfers and conveys to Trustee (for the benefit of Beneficiary) and to Beneficiary, as Agent for the Lender Group, all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment and not an assignment for additional security only. Grantor does hereby appoint irrevocably Trustee (for the benefit of Beneficiary) and Beneficiary as Grantor's true and lawful attorney in Grantor's name and stead, which appointment is coupled with an interest to collect all rents; provided, however, so long as no Event of Default shall

have occurred and be continuing and to the extent not prohibited by the Credit Agreement, Grantor shall have a revocable license from Trustee and Beneficiary to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Obligations and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Obligations or solvency of Grantor, the license herein granted shall automatically expire and terminate, without notice by Trustee or Beneficiary (any such notice being hereby expressly waived by Grantor to the extent permitted by applicable law). Upon (i) repayment in full of the Indebtedness and performance in full of the Obligations (other than unasserted contingent indemnification Obligations and other than any Bank Product Obligations that, at such time, are allowed by the Bank Product Providers to remain outstanding and that are not required by the provisions of the Credit Agreement to be repaid or cash collateralized), (ii) termination or expiration of all Letters of Credit, and (iii) termination of any obligation under the Credit Agreement on the part of any member of the Lender Group to make further loans or advances of credit under the Credit Agreement, the foregoing assignment shall terminate and be of no force and effect. In addition, the foregoing assignment shall terminate and be of no force and effect upon the occurrence of a Permitted Disposition with respect to the Trust Property as allowed by and in accordance with the terms of the Credit Agreement. Notwithstanding anything to the contrary contained herein, this Section shall be applicable to the extent not prohibited by or inconsistent with the terms of the Lease Agreement.

**Section 6.2 Perfection Upon Recordation.** Grantor acknowledges that Beneficiary have taken all actions necessary to obtain, and that upon recordation of this Deed of Trust, Beneficiary shall have, to the extent permitted under applicable law, a valid and fully perfected, first priority, absolute and present assignment of the Rents arising out of the Leases and all security for such Leases. Grantor acknowledges and agrees that upon recordation of this Deed of Trust in the applicable recording office and payment of any applicable recording fees, Beneficiary's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Grantor and all third parties, including, without limitation, any subsequently appointed trustee in any case under Title 11 of the United States Code (the "**Bankruptcy Code**"), without the necessity of commencing a foreclosure action with respect to this Deed of Trust, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action, to the extent permitted by applicable law.

**Section 6.3 Bankruptcy Provisions.** Without limitation of the absolute nature of the assignment of the Rents hereunder, Grantor and Beneficiary agree

that (a) this Deed of Trust shall constitute a “security agreement” for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Deed of Trust extends to property of Grantor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

**Section 6.4** Intentionally Omitted.

**ARTICLE 7**  
**SECURITY AGREEMENT**

**Section 7.1** Security Interest. This Deed of Trust constitutes a “security agreement” on personal property within the meaning of the UCC and other applicable law and with respect to the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards. To this end, Grantor grants to Beneficiary a first and prior security interest in the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards and all other Trust Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that if an Event of Default shall have occurred, Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards sent to Grantor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Grantor. THE TERM “TRUST PROPERTY” IS INTENDED TO EXCLUDE ALL ITEMS OF PERSONAL PROPERTY IN WHICH BENEFICIARY HAS OBTAINED AND/OR PERFECTED A SECURITY INTEREST UNDER SEPARATE INSTRUMENTS.

**Section 7.2** Financing Statements. Upon the reasonable request of Beneficiary, Grantor shall execute and deliver to Beneficiary, in form and substance reasonably satisfactory to Beneficiary, such financing statements and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect and preserve Beneficiary’s security interest hereunder and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Grantor’s state of organization is the State of Delaware.

**Section 7.3** Fixture Filing. This Deed of Trust shall also constitute a “fixture filing” for the purposes of the UCC against all of the Trust Property which is or is to become fixtures. Information concerning the security interest herein granted may be

obtained at the address of Debtor (Grantor) and Secured Party (Beneficiary) as set forth in the first paragraph of this Deed of Trust.

**ARTICLE 8**  
**CONCERNING THE TRUSTEE**

**Section 8.1 Certain Rights.** With the approval of Beneficiary, Trustee shall have the right to select, employ and consult with counsel. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. Trustee shall be entitled to reimbursement for actual, reasonable expenses incurred by it in the performance of its duties hereunder and to reasonable compensation for Trustee's services hereunder as shall be rendered. Grantor shall, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and indemnify, defend and save Trustee harmless against, all liability and reasonable expenses which may be incurred by it in the performance of its duties hereunder, including those arising from joint, concurrent, or comparative negligence of Trustee; however, Grantor shall not be liable under such indemnification to the extent such liability or expenses result solely from Trustee's or Beneficiary's gross negligence or willful misconduct. Grantor's obligations under this Section 8.1 shall not be reduced or impaired by principles of comparative or contributory negligence.

**Section 8.2 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 law), and Trustee shall be under no liability for interest on any moneys received by him hereunder.

**Section 8.3 Successor Trustees.** If Trustee or any successor Trustee shall die, resign or become disqualified from acting in the execution of this trust, or Beneficiary shall desire to appoint a substitute Trustee, Beneficiary shall have full power to appoint one or more substitute Trustees and, if preferred, several substitute Trustees in succession who shall succeed to all the estates, rights, powers and duties of Trustee. Such appointment may be executed by any authorized agent of Beneficiary and as so executed, such appointment shall be conclusively presumed to be executed with authority, valid and sufficient, without further proof of any action.

**Section 8.4 Perfection of Appointment.** Should any deed, conveyance or instrument of any nature be reasonably required from Grantor by any successor Trustee to more fully and certainly vest in and confirm to such successor Trustee such estates, rights, powers and duties, then, upon written request by such

Trustee, all such deeds, conveyances and instruments shall be made, executed, acknowledged and delivered and shall be caused to be recorded and/or filed by Grantor.

**Section 8.5 Trustee Liability.** In no event or circumstance shall Trustee or any substitute Trustee hereunder be personally liable under or as a result of this Deed of Trust, either as a result of any action by Trustee (or any substitute Trustee) in the exercise of the powers hereby granted or otherwise.

## **ARTICLE 9** **MISCELLANEOUS**

**Section 9.1 Notices.** Any notice required or permitted to be given under this Deed of Trust shall be given in accordance with Section 11 of the Credit Agreement.

**Section 9.2 Covenants Running with the Land.** All Obligations contained in this Deed of Trust are intended by Grantor and Beneficiary to be, and shall be construed as, covenants running with the Trust Property. As used herein, "Grantor" shall refer to the party named in the first paragraph of this Deed of Trust and to any subsequent owner of all or any portion of the Trust Property. All Persons who may have or acquire an interest in the Trust Property shall be deemed to have notice of, and be bound by, the terms of the Credit Agreement and the other Loan Documents to the extent such terms govern the Trust Property; however, no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary.

**Section 9.3 Attorney-in-Fact.** Grantor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, (a) subject to Grantor's right to contest in accordance with the Credit Agreement, to execute and/or record any notices of completion, cessation of labor or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, if Grantor shall fail to do so within ten (10) days after written request by Beneficiary, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Trust Property, and (d) while any Event of Default exists, to perform any obligation of Grantor hereunder, however: (1) Beneficiary shall not under any circumstances be obligated to perform any obligation of Grantor; (2) any sums advanced



by Beneficiary in such performance shall be added to and included in the Indebtedness and shall bear interest at the rate or rates at which interest is then computed on the Indebtedness under the Credit Agreement; (3) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (4) Beneficiary shall not be liable to Grantor or any other person or entity for any failure to take any action which it is empowered to take under this Section 9.3. Notwithstanding the foregoing, Beneficiary shall be liable for the gross negligence, willful misconduct, fraud and bad faith in connection with exercising its rights hereunder by its agents, representatives and employees. Prior to the occurrence of an Event of Default, if Beneficiary makes any payment or takes any action in accordance with this Section, Beneficiary shall furnish Grantor with prompt written notice thereof.

**Section 9.4 Successors and Assigns.** This Deed of Trust shall be binding upon and inure to the benefit of Beneficiary and Grantor and their respective successors and assigns. Grantor shall not, without the prior written consent of Beneficiary, assign any rights, duties or obligations hereunder.

**Section 9.5 No Waiver.** Any failure by Beneficiary to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Beneficiary or Trustee shall have the right at any time to insist upon strict performance of all such terms, provisions and conditions.

**Section 9.6 Credit Agreement.** If any conflict or inconsistency exists between this Deed of Trust and the Credit Agreement, the Credit Agreement shall govern.

**Section 9.7 Release or Reconveyance.** Upon (i) repayment in full of the Indebtedness and performance in full of the Obligations (other than unasserted contingent indemnification Obligations and other than any Bank Product Obligations that, at such time, are allowed by the Bank Product Providers to remain outstanding and that are not required by the provisions of the Credit Agreement to be repaid or cash collateralized), (ii) termination or expiration of all Letters of Credit, and (iii) termination of any obligation under the Credit Agreement on the part of any member of the Lender Group to make further loans or advances of credit under the Credit Agreement, Beneficiary, at Grantor's expense, shall release the liens and security interests created by this Deed of Trust or reconvey the Trust Property to Grantor. The release or reconveyance of the Trust Property shall be governed by the terms of the Credit Agreement. In addition, Beneficiary shall release the Trust Property from this Deed of Trust upon the occurrence of a Permitted Disposition with respect thereto as allowed by and in accordance with the terms of the Credit Agreement.

**Section 9.8 Waiver of Stay, Moratorium and Similar Rights.** Grantor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Deed of Trust or the Indebtedness secured hereby, or any agreement between Grantor and Beneficiary or any rights or remedies of Beneficiary or Trustee.

**Section 9.9 Applicable Law.** The provisions of this Deed of Trust regarding the creation, perfection and enforcement of the liens and security interests herein granted shall be governed by and construed under the laws of the state in which the Trust Property is located. All other provisions of this Deed of Trust shall be governed by the laws of the State of New York without regard to conflicts of law principles.

**Section 9.10 Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

**Section 9.11 Entire Agreement.** This Deed of Trust and the other Loan Documents embody the entire agreement and understanding between Grantor and Beneficiary and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

**Section 9.12 Beneficiary as Agent; Successor Agents.** Subject to Section 15.9 of the Credit Agreement:

(a) Agent has been appointed to act as Agent hereunder by the Lender Group. Agent shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of the Trust Property) in accordance with the terms of the Credit Agreement, any related agency agreement among Agent and the Lender Group (collectively, as amended, supplemented or otherwise modified or replaced from time to time, the “**Agency Documents**”) and this Deed of Trust. Grantor and all other Persons shall be entitled to rely on releases, waivers, consents, approvals, notifications and other acts of Agent, without inquiry into the existence of required consents or approvals of the Lender Group therefor.

(b) Beneficiary shall at all times be the same Person that is Agent under the Agency Documents. Written notice of resignation by Agent pursuant to the Agency Documents shall also constitute notice of resignation as Agent under this Deed of Trust. Removal of Agent pursuant to any provision of the Agency Documents

shall also constitute removal as Agent under this Deed of Trust. Appointment of a successor Agent pursuant to the Agency Documents shall also constitute appointment of a successor Agent under this Deed of Trust and shall be subject to the terms of the Credit Agreement. Upon the acceptance of any appointment as Agent by a successor Agent under the Agency Documents, that successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Agent as the Beneficiary under this Deed of Trust, and the retiring or removed Agent shall promptly (i) assign and transfer to such successor Agent all of its right, title and interest in and to this Deed of Trust and the Trust Property, and (ii) execute and deliver to such successor Agent such assignments and amendments and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Agent of the liens and security interests created hereunder, whereupon such retiring or removed Agent shall be discharged from its duties and obligations under this Deed of Trust. After any retiring or removed Agent's resignation or removal hereunder as Agent, the provisions of this Deed of Trust and the Agency Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Deed of Trust while it was the Agent hereunder.

(c) Each reference herein to any right granted to, benefit conferred upon or power exercisable, exercised or action taken by the "Beneficiary" shall be deemed to be a reference to or be deemed to have been so taken, as the case may be, by Beneficiary in its capacity as Agent pursuant to the Credit Agreement for the benefit of the Lender Group, all as more fully set forth in the Credit Agreement.

**Section 9.13 Amount Secured; Last Dollar.** So long as the balance of the Obligations exceeds the portion of the Obligations secured by this Deed of Trust, no payment on account of the Obligations shall be deemed to be applied against or to reduce the portion of the Obligations secured by this Deed of Trust, but shall, instead, be deemed to be applied against only such portions of the Obligations that are not secured by this Deed of Trust.

**Section 9.14 Modifications to Credit Agreement.** This Deed of Trust will continue to secure the Obligations under the Credit Agreement, as the Credit Agreement may in the future be amended, modified or otherwise supplemented and in effect from time to time. In the event the Credit Agreement is amended, modified or otherwise supplemented, there shall be no need to amend, modify or otherwise supplement this Deed of Trust, unless required by the laws of any State or Commonwealth in which portions of the Trust Property are situated.

**ARTICLE 10**  
**LOCAL LAW PROVISIONS**

**Section 10.1 Loan Documents.** Notwithstanding anything to the contrary contained in any Loan Document, the definition of "Loan Document" shall not include the Environmental Indemnity Agreement. Beneficiary may waive its lien against the Trust 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.

**Section 10.2 WAIVER OF TRIAL BY JURY.** THE PARTIES TO THIS AGREEMENT HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT OR IN ANY WAY CONNECTED WITH, OR RELATED TO, OR INCIDENTAL TO, THE DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS AGREEMENT OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND IRRESPECTIVE OF WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. THE PARTIES TO THIS AGREEMENT AGREE THAT ANY SUCH CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SUBSECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE OTHER PARTY OR PARTIES HERETO TO WAIVER OF THE RIGHT TO TRIAL BY JURY.

**Section 10.3 Certain Obligations Unsecured.** Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Deed of Trust shall not secure the following obligations (the "Unsecured Obligations"): (a) any obligations evidenced by or arising under the Environmental Indemnity Agreement; and (b) any other obligations in this Deed of Trust or in any of the other Loan Documents to the extent that such other obligations relate specifically to the presence on the Property of Hazardous Materials and are the same or have the same effect as any of the obligations evidenced by or arising under the Environmental Indemnity Agreement. Nothing in this Section 10.3 shall, in itself, impair or limit Beneficiary's right to obtain a judgment in accordance with applicable law after foreclosure for any deficiency in recovery of all Obligations following foreclosure.

**Section 10.4 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 Loan Documents.

**Section 10.5 Attorneys' Fees.**

(a) Grantor shall forthwith pay to Beneficiary the amount of all attorneys' fees and costs incurred by Beneficiary under and pursuant to this Deed of Trust, the Loan Documents or any other agreement given to Beneficiary as security for the Note or in connection with any transaction contemplated hereby or thereby, or with respect to the Trust Property or any defense or protection, interpretation or enforcement of Beneficiary's security interest in the Trust Property which Beneficiary believes is necessary or desirable. The foregoing payment obligation shall be due (regardless of whether any action is filed) in the event Beneficiary 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 Trust Property or any portion thereof; obtain the appointment of a receiver; or represent Beneficiary'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 Note 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 Note 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.

**Section 10.6 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 Grantor specified above.

**Section 10.7 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.

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**Section 10.8 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 intentionally left blank]*

**IN WITNESS WHEREOF**, Grantor has on the date set forth in the acknowledgement hereto, effective as of the date first above written, caused this instrument to be duly EXECUTED AND DELIVERED by authority duly given.

**GRANTOR:**

**AMERICAN BLUE RIBBON  
HOLDINGS, LLC**, a Delaware limited liability company

By:  \_\_\_\_\_

Name: Anita Adams

Title: Authorized Person

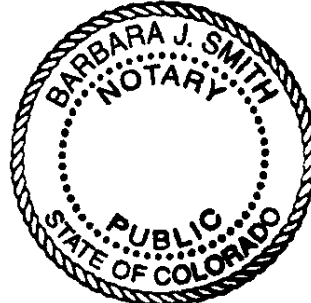
Grantor's Organizational Identification  
Number: 4637681

STATE OF Colorado )  
 ) ss.  
COUNTY OF Denver )

On November 12, 2009, before me, the undersigned, Notary Public in and for said State and County, personally appeared Anita Adams, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Barbara J. Smith  
Notary Public



My Commission Expires 03/30/2012



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**Exhibit A**

**Legal Description**

Beginning at the Northwest Corner of Lot 5, Block 29, Plat "B", Salt Lake City Survey (as the said Northwest corner was established by the City Engineer of Salt Lake City under Order No. 5524, by Survey dated April 4, 1910 and the said Northwest corner of said Lot and Block as so established is 3.5 feet South of the fence line of the North line of said block) and running thence South 0° 00' 52" East along the Westerly line of said Lot 5, same also being the Easterly line of existing 900 East Street a distance of 165.00 feet; thence North 89° 57' 44" East a distance of 206.38 feet; thence North 0° 00' 52" West a distance of 165.00 feet to a point in the Northerly line of said Lot 6, said point being distant North 89° 57' 44" East 41.25 feet from the Northeast Corner of said Lot 5; thence South 89° 57' 44" West along the Northerly line of said Lots 5 and 6, said Northerly line also being the Southerly line of existing 400 South Street a distance of 206.38 feet to the point of beginning.

LESS AND EXCEPTING the following described property described in that Quit Claim Deed recorded May 21, 2001, as Entry No. 7849632, in Book 8436, at Page 6596 as follows:

Beginning at a point on the North line of Lot 6, Block 29, Plat "B", Salt Lake City Survey, said point being 41.25 feet North 89° 57' 25" East from the Northwest Corner of said Lot 6, said point also being the Northeast Corner of the Florence J. Gillmor Property as recorded in the Warranty Deed on Page 55, in Book 3610 of the Salt Lake County Recorder's Official Records; thence South 00° 00' 54" East 165.00 feet along the Easterly line of said Gillmor Property to the Southeast Corner of said Gillmor Property; thence South 89° 59' 20" West 6.00 feet along the Southerly line of said Gillmor Property; thence North 00° 00' 54" West 165.00 feet to a point on the North line of said Lot 6; thence North 89° 57' 25" East 6.00 feet along the North line of said Lot 6 to the point of beginning.

ALSO EXCEPTING THEREFROM all oil, petroleum, natural gas, mineral rights and other hydrocarbon substances lying below a depth of 500 vertical feet from the surface of said land for the purpose of exploring for, extracting, mining, boring, removing or marketing said substances, however, without any right of any entry upon the surface of said land as reserved in Warranty Deed recorded June 14, 1974 as Entry No. 2629289 in Book 3610 at Page 55, of Official Records.

*The following is shown for information purposes only: 16-05-332-001, 16-05-332-002, 16-05-332-009, and 16-05-332-026*

## **Exhibit B**

### **Lease Agreement**

That certain Lease Agreement by and between Florence J. Gillmor, an individual (“**Lessor**”), and Grantor, as successor by assignment from VICORP Restaurants, Inc., dated as of April 20, 1995, as amended by that certain Amendment No. 1 to VICORP Restaurants, Inc. Lease Agreement, dated as of March 12, 2001, as further amended by that certain Second Amendment to VICORP Restaurants, Inc. Lease Agreement, dated as of February 27, 2009 (as further amended, supplemented, restated or otherwise modified from time to time), a short form version of which was recorded in the Official Public Records of Salt Lake County, Utah at 11094827.