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Kathy Hill, Skagit County Auditor  
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**WHEN RECORDED RETURN TO:**

Davis Wright Tremaine LLP  
2600 Century Square  
1501 Fourth Avenue  
Seattle, Washington 98101-1688  
Attention: Peter J. Mucklestone

**Document Title:** Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing

**Grantor:** Haggen, Inc.

- Grantee:**
1. U.S. Bank National Association, Beneficiary
  2. Chicago Title Insurance Company, Trustee

**Legal Description:** Abbreviated Legal Description: Lot 1, CITY OF MOUNT VERNON SHORT PLAT NO. MV-5-98; being ptn. NW, Sec. 21, T34N, R4E W.M.

ISLAND TITLE CO.  
SB 16387 ✓

**Full Legal Description:** See Exhibit A attached hereto.

**Assessor's Tax Parcel No:** 340421-2-001-0006

**Reference Nos. of Documents Released or Assigned:** Not applicable

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

THIS LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Instrument") is dated as of May 26, 2000, and is made by HAGGEN, INC., a Washington corporation, as grantor, whose address is 2211 Rimland, Bellingham, Washington 98226 ("Borrower"), to CHICAGO TITLE INSURANCE COMPANY, as trustee, whose address is 1800 Columbia Center, 701 Fifth Avenue, Seattle, Washington 98104, as trustee, (the "Trustee"), for the benefit of U.S. BANK NATIONAL ASSOCIATION, as agent (in such capacity, herein called the "Secured Party") for and representative of the financial institutions ("Lenders") party to that certain first amended and restated credit agreement dated as of September 21, 1998 (as heretofore and hereafter amended, supplemented or otherwise modified from time to time, the "Credit Agreement")

among Borrower, Agent and Lenders. The address of Secured Party is 1420 Fifth Avenue, Eleventh Floor, Seattle, Washington 98101. Unless otherwise stated, words and phrases with initial capitalized letters not defined herein shall have the meanings ascribed thereto in the Credit Agreement.

PORTIONS OF THE COLLATERAL ARE GOODS WHICH ARE OR ARE TO BECOME AFFIXED TO OR FIXTURES ON THE LAND DESCRIBED IN OR REFERRED TO IN EXHIBIT A HERETO. THIS FINANCING STATEMENT IS TO BE FILED FOR RECORD OR RECORDED, AMONG OTHER PLACES, IN THE REAL ESTATE RECORDS OF EACH COUNTY IN WHICH SAID LAND OR ANY PORTION THEREOF IS LOCATED.

BRIAR DEVELOPMENT COMPANY IS THE OWNER OF RECORD INTEREST IN THE REAL ESTATE CONCERNED.

All of the property described under paragraphs 1 through 12 below is herein collectively called the "Collateral":

1. All right, title and interest of Borrower in and to each leasehold estate (individually, a "Subject Leasehold Estate" and collectively, the "Subject Leasehold Estates") created pursuant to the lease or leases more particularly described in EXHIBIT B attached hereto and by this reference incorporated herein (such lease or leases, together with any amendments, modifications, extensions, renewals or substitutions therefore, are referred to herein individually, as the "Subject Lease" and collectively as the "Subject Leases"), or otherwise, and affecting all or the portions indicated in EXHIBIT B of that certain real property more particularly described in EXHIBIT A attached hereto and by this reference incorporated herein (the "Land");

2. All of Borrower's right, title and interest in and to any and all buildings, constructions and improvements now or hereafter erected in or on the Land, including, but not limited to, those attachments, appliances, equipment, machinery and other articles which are attached to said buildings, constructions and improvements (collectively, the "Improvements"; the Improvements and the Land are collectively referred to herein as the "Premises"), all of which shall be deemed and construed to be a part of the realty;

3. All right, title and interest of Borrower in and to all of the items incorporated as part of or attributed or affixed to any of the Premises or other real property included in the Collateral or any other interest of Borrower, whether now owned or hereafter acquired, in, to or relating to the Premises or such other real property, in such a manner that such items constitute real property under the law of the state where the property is situate;

4. All personal property, including, without limitation, all supplies, equipment, tools, furniture, furnishings, fixtures, machinery and construction materials which Borrower



now or hereafter owns or in which Borrower now or hereafter acquires an interest or right and which are now or hereafter located on or affixed to the Premises or used or useful in the operation, use or occupancy thereof (including, without limitation, in connection with the grocery business conducted thereon by or on behalf of Borrower) or the construction of any improvements thereon and which are or may hereafter become fixtures, and all equipment related to any of the foregoing, all racking and shelving systems, all heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and/or compacting plants, systems, fixtures and equipment, elevators, escalators, stoves, ranges, vacuum, window-washing and other cleaning and building service systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, ducts, conduits, dynamos, engines, compressors, generators, boilers, stokers, furnaces, pumps, tanks, appliances and garbage and pest control systems, but excluding such property that is not owned by Borrower, but rather is leased to Borrower by any other person or entity (collectively, the "Fixtures");

5. All rents, issues, profits, royalties, income and other benefits (collectively, the "Rents") derived by Borrower from the Premises or any other portion of the Collateral or from any leases, subleases or licenses of, or any concessions, franchises or similar agreements with respect to, the Premises or any other portion of the Collateral, whether now or hereafter existing (which together with any amendments, modifications, extensions, renewals or substitutions thereto or therefor are collectively referred to as the "Leases"), and all right, title and interest of Borrower as lessor in and to the Subject Leases (Borrower Lessor), or subject to the rights, powers and authorities hereinafter given to Secured Party and Borrower as set forth in Article III;

6. All rights, titles, interests, estates or other claims, both in law and in equity, which Borrower now has or may hereafter acquire in the Premises or in and to any greater estate in the Premises;

7. All easements, rights-of-way and rights now owned or hereafter acquired by Borrower used in connection with the foregoing described Collateral or as a means of access thereto, including, without limiting the generality of the foregoing, all rights pursuant to any trackage agreement and all rights to the nonexclusive use of common drive entries, and all tenements, hereditaments and appurtenances thereof and thereto, and all water and water rights (whether riparian, appropriative, ground water, drilling rights, well rights, water development rights or otherwise, and whether or not appurtenant) and shares of stock evidencing the same;

8. All leasehold estates, rights, titles and interests of Borrower as lessee in and to all leases, subleases, licenses, concessions, franchises or similar agreements covering the Premises, or any portion thereof, now or hereafter existing or entered into (which, together with any amendments, modifications, extensions, renewals or substitutions, are collectively referred to as the "Leases," it being understood that the term "Leases" shall include, but shall



not be limited to, the Subject Leases, and all right, title and interest of Borrower thereunder, including, without limitation, all cash or security deposits, advance rentals, refunds and deposits or payments of similar nature;

9. All right, title and interest now owned or hereafter acquired by Borrower in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Premises, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Premises;

10. All rights and interests of Borrower in, to and under all plans, specifications, maps, surveys, studies, reports, permits, licenses, architectural, engineering and construction contracts, books of account, insurance policies and other documents, of whatever kind or character, whether now or hereafter existing, relating to use, construction upon, occupancy, leasing, sale or operation of the Premises;

11. All of the estate, interest, right, title, other claim or demand, both in law and in equity, and except as otherwise provided herein, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Borrower now has or may hereafter acquire in the Premises or other portions of the Collateral and, except as otherwise provided herein, other proceeds from sale or disposition of the Collateral which Borrower now has or may hereafter acquire and awards made for any damages relating to the Collateral or for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Collateral, including, without limitation, any award resulting from a change of grade of streets and any award for severance damages; and

12. All existing and future corrections, modifications, supplements or amendments to, or renewals, extensions or ratification of, or replacements or substitutions for, or accessions, additions or attachments to, or proceeds of, any of the foregoing, and all privileges and appurtenances thereunto belonging.

IN CONSIDERATION of the extension of credit by Lenders to Borrower, and, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby irrevocably

A. Grants, bargains, sells, mortgages, assigns, transfers, conveys, pledges and sets over to Trustee, with power of sale in trust for the benefit of Secured Party for the benefit of Lenders, those portions of the Collateral that constitute real property (including, without limitation, the Land and Improvements) under the laws of the state wherein located (the "RP Collateral"), but subject to the rights of Secured Party under the assignment made in paragraph C below, TO HAVE AND TO HOLD the RP Collateral, by Trustee and its successors and assigns forever, in trust, subject to all of the terms, conditions, covenants and agreements herein set forth, for the security and benefit of Secured Party and Lenders and their respective successors and assigns as holders of the Secured Instruments (as hereinafter defined) or any other Secured Obligations (as hereinafter defined); and



B. Grants a security interest to Secured Party for the benefit of Lenders in those portions of the Collateral that either are Fixtures or are not RP Collateral; and

C. Assigns and transfers to Secured Party for the benefit of Lenders all of the Rents and other benefits derived from any Subject Leases, whether now existing or hereafter created.

The real property interest conveyed hereby is not used principally for agricultural purposes.

IN FURTHERANCE OF THE FOREGOING GRANTS (INCLUDING GRANTS OF SECURITY INTERESTS), BARGAINS, SALES, MORTGAGES, ASSIGNMENTS, TRANSFERS, CONVEYANCES AND PLEDGES, AND TO PROTECT THE PREMISES AND THE SECURITY GRANTED BY THIS INSTRUMENT, BORROWER HEREBY WARRANTS, REPRESENTS, COVENANTS AND AGREES AS FOLLOWS:

## ARTICLE I

### SECURED OBLIGATIONS

#### Section 1.1 Secured Obligations

This Instrument is executed, acknowledged and delivered by Borrower to secure the following obligations (all such obligations, the "Secured Obligations"):

(a) Prompt payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), of all obligations and liabilities of every nature of Borrower now or hereafter existing under or arising out of or in connection with the Credit Agreement and the other Loan Documents, and all extensions or renewals thereof, whether for principal, interest (including, without limitation, interest that, but for the filing of a petition in bankruptcy with respect to Borrower, would accrue on such obligations), reimbursement of amounts drawn under Letters of Credit, fees, prepayment fees, expenses, indemnities or otherwise, whether voluntary or involuntary, direct or indirect, absolute or contingent, liquidated or unliquidated, whether or not jointly owed with others, and whether or not from time to time decreased or extinguished and later increased, created or incurred, and all or any portion of such obligations or liabilities that are paid, to the extent all or any part of such payment is avoided or recovered directly or indirectly from Secured Party or any Lender as a preference, fraudulent transfer or otherwise. The obligations of Borrower under each and every certificate and indemnity regarding hazardous substances heretofore and hereafter executed by Borrower and delivered to Secured Party are not included within the "Secured Obligations" under this instrument.



(b) Payment of all obligations of Borrower for fees, reasonable costs and reasonable expenses (including reasonable attorneys' fees and paralegal fees) under this Instrument and the other Financing Documents (as hereinafter defined);

(c) Payment of all sums advanced by Secured Party, Lenders or Trustee to protect the Collateral, with interest thereon at the rate or rates (the "Agreed Rate") then applicable under the Credit Agreement;

(d) Payment of all sums advanced and reasonable costs and reasonable expenses incurred by Secured Party, Lenders or Trustee in connection with the Secured Obligations or any part thereof, any renewal, extension or change of or substitution for the Secured Obligations or any part thereof, or the acquisition or perfection of the security therefor, whether such advances, costs and expenses were made or incurred at the request of Borrower, Lender, Secured Party or Trustee;

(e) Payment and performance of every obligation, covenant and agreement of Borrower contained in this Instrument or in any agreement now or hereafter executed by Borrower which recites that the obligations thereunder are secured by this Instrument; and

(f) Payment and performance of every obligation, covenant and agreement of Borrower under any agreement between Debtor and any Lender, whether or not in writing, relating to (i) any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, cap, collar or floor transaction, swap option, or any other, similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, and unless the context otherwise clearly requires, any master agreement relating to or governing any or all of the foregoing, (ii) funds transfers, whether by Fedwire, Automated Clearing House or other means, and (iii) granting provisional credit for deposits or paying checks, drafts or other instruments.

(g) All renewals, extensions, amendments, amendments and restatements, and changes of, or substitutions or replacements for, all or any part of the items described under paragraphs (a) through (f) above.

This Instrument secures, *inter alia*, future and/or revolving credit advances and readvances to the same extent as if such advances or readvances were made on the date hereof whether or not (i) any advances or readvances were made on the date hereof and (ii) any indebtedness is outstanding at the time any advance or readvance is made.

## **Section 1.2 Secured Instruments/Financing Documents**

The Notes, Credit Agreement and/or any other instruments which create and/or evidence the Secured Obligations are sometimes collectively referred to herein as the "Secured Instruments." This Instrument, the Secured Instruments, any other Loan Documents and any

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other deed of trust, mortgage, security agreement, deed to secure debt, collateral mortgage, chattel mortgage, pledge, act of pledge, act of mortgage, act of collateral mortgage, agreement, guaranty, assignment of rents or leases or other instrument given to evidence, secure or facilitate the payment and performance of any of the Secured Obligations may hereinafter be collectively referred to as the "Financing Documents."

## ARTICLE II

### COVENANTS AND AGREEMENTS OF BORROWER

#### Section 2.1 Payment of Secured Obligations

Borrower shall perform the Secured Obligations and shall pay when due the Secured Obligations, including, without limitation, the principal of, and the interest on, the indebtedness evidenced by the Secured Instruments (including, without limitation, (a) amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S. C. § 362(a), and (b) interest that, but for the filing of a petition in bankruptcy with respect to Borrower, would accrue on such obligations, whether or not a claim is allowed against Borrower for such interest in any bankruptcy proceeding); all charges, fees (including early termination fees) and other sums to be paid by Borrower as provided in any Financing Document; the principal of and interest on any future advances under any Financing Document secured by this Instrument; and the principal of and interest on any other indebtedness secured by this Instrument.

#### Section 2.2 Maintenance, Repair, Alterations

Borrower (a) will maintain or cause to be maintained in good repair, working order and condition (subject to reasonable wear and tear), all Collateral; (b) shall complete promptly and in a good and workmanlike manner any Improvements which may be now or hereafter constructed on the Premises and promptly restore (except as and to the extent (i) permitted by the Credit Agreement or (ii) Borrower may be prevented from performing such restoration under the terms of the Subject Leases) in like manner any portion of the Improvements which may be damaged or destroyed thereon from any cause whatsoever, and pay when due all claims for labor performed and materials furnished therefor; (c) shall comply with all material laws, statutes, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Collateral or any part thereof or requiring any alterations or improvements; (d) shall not commit, or permit, any waste, impairment or deterioration of the Collateral; (e) shall comply with the provisions of any Lease; (f) shall not commit, suffer or permit any act to be done in or upon the Collateral in violation of any law, ordinance, regulation or order of any governmental authority, now or hereafter affecting the Collateral or any part thereof, whether foreseen or unforeseen; and (g) shall not commit, suffer or permit any violation of any covenants, conditions or restrictions affecting any part of the Collateral.



### **Section 2.3 Required Insurance**

Borrower shall, at its own expense, at all times provide, maintain and keep in full force, or cause to be provided, maintained or kept in full force, policies of insurance for the Premises in form and amounts, and issued by companies, associations or organizations in accordance with the Subject Leases. In the event that the area in which the Land is located is designated as "flood prone" or a "flood risk area," as defined by the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4121), as amended from time to time, then (a) if the land is located in a community that participates in the National Flood Insurance Program, Borrower shall at all times maintain flood insurance in an amount equal to the replacement value of the Improvements and the Fixtures or the maximum amount of flood insurance available under the National Flood Insurance Program, whichever is the lesser, and (b) if the Land is not located in a community that participates in the National Flood Insurance Program, Borrower shall at all times maintain flood insurance in an amount reasonably satisfactory to Secured Party, if available at a reasonable price. Without limiting the foregoing, Borrower acknowledges receipt of notice from Secured Party given at least ten (10) days prior to the date hereof that if the Land is located in a community that does not participate in the National Flood Insurance Program, then federal flood insurance will not be available to Borrower. Each such policy of insurance shall in addition (i) name Borrower and Secured Party as insured parties thereunder (without any representation or warranty by or obligation upon Secured Party) as their interests may appear, (ii) contain an agreement by the insurer that any loss thereunder shall be payable to Secured Party notwithstanding any action, inaction or breach of representation or warranty by Borrower, (iii) contain, to the extent available, a provision that no act or omission of Borrower that would otherwise result in a forfeiture or reduction of the insurance therein contained shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained, (iv) have attached thereto a lender's loss payable endorsement for the benefit of Secured Party in form satisfactory to Secured Party, or contain a loss payable clause reasonably acceptable to Secured Party, and (v) provide that at least ten days' prior written notice of cancellation, material amendment, reduction in scope or limits of coverage or lapse shall be given to Secured Party by the insurer. Borrower shall, if so requested by Secured Party, deliver to Secured Party original or duplicate copies of such insurance policies.

### **Section 2.4 Delivery of Policies; Payment of Premiums**

In the event Borrower fails to provide to, maintain, keep in force or deliver to, or cause to be provided to, maintained, kept in force or delivered to, Secured Party the policies of insurance required by this Instrument or by any Financing Document, Secured Party may (but shall have no obligation to) procure, upon reasonable prior notice to Borrower (provided that the failure to give such notice shall not give rise to any right on the part of Borrower, be deemed to be a default by Secured Party hereunder or under any other Financing Document, or prevent, delay or otherwise affect Secured Party's right and power to take any such action) such insurance or single-interest insurance for such risks covering Secured Party's interest. Borrower will pay all premiums thereon promptly upon demand by Secured Party, and until



such payment is made by Borrower to Secured Party, the amount of all such premiums paid by Secured Party shall bear interest at the Agreed Rate.

### **Section 2.5 Casualties; Insurance Proceeds**

(a) Borrower shall give prompt written notice to Secured Party of any material casualty to or in connection with the Collateral or any part thereof, whether or not such casualty is covered by insurance. In the event that all or any part of the Collateral is damaged, destroyed or lost, and such damage, destruction or loss is covered, in whole or in part, by insurance, and provided no Event of Default (as hereinafter defined) shall have occurred and be continuing, Borrower may make proof of loss and settle, adjust and compromise any claims under such insurance; provided, however, that such settlement, adjustment or compromise shall be subject to Secured Party's reasonable prior written approval. After the occurrence of an Event of Default which is continuing, Secured Party is hereby authorized and empowered by Borrower to settle, adjust or compromise any and all claims for loss, damage or destruction under any policy or policies of insurance with or without the consent of Borrower.

(b) Proceeds of insurance shall be applied as set forth in this Section 2.5(b). Proceeds of insurance payable on account of damage, destruction or loss shall be payable to Secured Party, and Borrower hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Secured Party. If Borrower receives any proceeds of insurance resulting from such casualty, Borrower shall promptly pay over such proceeds to Secured Party and Borrower covenants that until so paid over to Secured Party Borrower shall hold such proceeds in trust for the benefit of Secured Party and Lenders and shall not commingle such proceeds with any other funds or assets of Borrower or any other party. Any loss proceeds payable to Secured Party under this Instrument in connection with such damage or destruction shall be applied as set forth in this Section 2.5(b). Unless Secured Party shall have otherwise consented to restoration of the Collateral, Secured Party shall apply such proceeds to the Secured Obligations in accordance with the applicable Subject Lease.

### **Section 2.6 Assignment of Policies Upon Foreclosure**

In the event of foreclosure of this Instrument or other transfer of title or assignment of the Collateral in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Borrower in and to all policies of insurance required under this Instrument and any unearned premiums thereon shall, without further act, but only if and to the extent permitted under the terms of such insurance policies, inure to the benefit of and pass to the successor in interest to Borrower or the purchaser or grantee of the Collateral.

### **Section 2.7 Taxes and Impositions**

(a) Borrower will pay all taxes, assessments and other governmental charges imposed upon or in respect of any of the Collateral before any penalty or interest accrues thereon and all claims (including, without limitation, claims for labor, services, materials and

supplies, nongovernmental levies or assessments and levies or charges resulting from covenants, conditions and restrictions affecting the Collateral) for sums which have become due and payable and which by law have or may become a lien upon any of the Collateral prior to the time when any penalty or fine shall be incurred with respect thereto (all of the above hereinafter referred to, collectively, as "Impositions"); provided that no such charge or claim need be paid if (i) Borrower is contesting such charge or claim in good faith by appropriate proceedings promptly instituted and diligently conducted, and (ii) Borrower shall have given Secured Party written notice of Borrower's intent to so contest such charge or claim, and (iii) at Secured Party's sole option, Borrower shall demonstrate to Secured Party's satisfaction that the proceedings shall conclusively operate to prevent the sale of the Collateral, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings, and (iv) such reserve or other appropriate provision, if any, as shall be required in conformity with generally accepted accounting principles shall have been made therefore; provided further that no such charge or claim with respect to amounts not previously paid in good faith, including interest, penalty or fines, shall result in a breach of this Section 2.7 so long as such charge or claim and any interest, penalty or fines incurred thereon are (A) paid when due upon first notice thereof from the applicable taxing authority (if any) or (B) contested in accordance with the first proviso hereof.

(b) If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Collateral in lieu of or in addition to those otherwise payable by Borrower pursuant to Section 2.7(a), or (ii) a license fee, tax or assessment imposed on Secured Party, any Lender or Trustee and measured by or based in whole (or in part) upon the amount of the outstanding obligations secured hereby, or (iii) a license fee, tax or assessment imposed on Secured Party, any Lender or Trustee because of the interest of any of them in the Collateral (other than taxes on income), then all (or said part of) such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in Section 2.7(a) and Borrower shall pay and discharge the same as herein provided with respect to the payment of the Impositions.

(c) Upon request by Secured Party, Borrower shall deliver to Secured Party, within 30 days after the date upon which any such Imposition is due and payable by Borrower in accordance with this Instrument, official receipts of the appropriate taxing authority, or other proof satisfactory to Secured Party, evidencing the payment thereof.

## **Section 2.8 Eminent Domain**

In the event that any proceeding or action be commenced for the taking of the Collateral, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, condemnation or otherwise, or if the same be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Borrower receive any notice or other information regarding such proceeding, action, taking or damage (including, without limitation, a proposal to purchase the Collateral or some

portion thereof in lieu of condemnation), Borrower shall give prompt written notice thereof to Secured Party and Trustee. Except as otherwise provided herein, Borrower shall be entitled to investigate and negotiate with the condemnor concerning the proposed taking, to commence, appear in, and prosecute in its own name any such action or proceeding, and be entitled to make any compromise or settlement in connection with such taking or damage; provided that such compromise or settlement is undertaken by Borrower in good faith; and provided further that any compromise or settlement shall not be entered into without the prior written approval of Secured Party, which shall not be unreasonably withheld. After the occurrence of an Event of Default that is continuing, Secured Party shall be entitled, at Secured Party's option, without regard to the adequacy of its security, to investigate and negotiate with the condemnor concerning the proposed taking and with or without Trustee, to commence, appear in and prosecute in its own name any such action or proceeding. After the occurrence of an Event of Default that is continuing, Secured Party shall also be entitled to make any compromise or settlement in connection with such taking or damage with or without the consent of Borrower. All compensation, awards, damages, rights of action and proceeds awarded to Borrower by reason of any such taking or damage (the "Condemnation Proceeds") are hereby assigned to Secured Party for the benefit of Lenders, and Borrower agrees to execute such further assignments of the Condemnation Proceeds as Secured Party or Trustee may require. Proceeds shall be applied in accordance with the applicable Subject Lease.

## **Section 2.9        Liens**

Borrower shall pay and discharge promptly, or cause to be paid and discharged promptly, at Borrower's cost and expense, all liens, encumbrances and charges other than the Permitted Liens. If Borrower shall fail to remove and discharge, or cause to be removed or discharged, any such lien, encumbrance or charge, then in addition to any other right or remedy of Secured Party, Secured Party may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due or by procuring the discharge of such lien, encumbrance or charge by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Borrower shall, immediately upon demand therefor by Secured Party, pay to Secured Party an amount equal to all reasonable costs and expenses incurred by Secured Party in connection with the exercise by Secured Party of the foregoing right to discharge any such lien, encumbrance or charge, together with interest thereon from the date of such expenditure at the Agreed Rate and until so paid. Such amount together with such interest shall be secured hereby.

## **Section 2.10        Title**

Borrower represents and warrants that (a) it holds good and insurable title to the Collateral other than the Subject Leasehold Estates (if any are described as or are a part of the Collateral) and, pursuant to the Subject Leases and filed or recorded memoranda thereof, it

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holds a good and valid leasehold estate in and record title to each of the Subject Leasehold Estates, (b) it has authority to grant this Instrument on the same, (c) the Collateral is free and clear of all liens and encumbrances whatsoever, except as heretofore disclosed in writing to Secured Party and except for Permitted Liens, and (d) it will warrant and defend title to the Collateral against the lawful claims of all persons until all Secured Obligations have been satisfied or performed in full.

#### **Section 2.11 Other Instruments**

Borrower shall punctually pay all amounts due and payable under, and shall promptly and faithfully perform or observe each and every other obligation or condition to be performed or observed under, each deed of trust, deed to secure debt, mortgage, security agreement or other lien or security interest, or encumbrance, lease, sublease, declaration, covenant, condition, restriction, license, order or other instrument or agreement which affects or may affect the Collateral in any material or adverse respect, in law or in equity.

#### **Section 2.12 Leasehold**

(a) Borrower hereby represents and warrants (as of the date on which such Subject Lease becomes subject to this Instrument) and covenants to Secured Party and Lenders with respect to the Subject Leases as follows:

(i) No material default by Borrower as lessee has occurred and is continuing under any of the Subject Leases and no event has occurred which, with the passage of time or service of notice, or both, would constitute an event of default under any of the Subject Leases. The Subject Leases are each in full force and effect. All rents, additional rents, percentage rents and all other charges due and payable under each of the Subject Leases have been fully paid. Borrower is the owner of the entire lessee's interest in and under each of the Subject Leases and has the right and authority under each of the Subject Leases to execute this Instrument and to encumber Borrower's interest therein. The Subject Leases have not been amended, modified, extended, renewed, substituted or assigned except as described in Exhibit B hereto, and Borrower has delivered to Secured Party true, accurate and complete copies of all items noted on Exhibit B.

(ii) Borrower shall, at its sole cost and expense, promptly and timely perform and observe all the material terms, covenants and conditions required to be performed and observed by Borrower as lessee under each of the Subject Leases. If Borrower shall breach the foregoing covenant, Borrower grants Secured Party the right (but not the obligation), upon three days' prior notice to Borrower, to take any action as may be necessary to prevent or cure any default of Borrower under any of the Subject Leases, and Secured Party shall have the right to enter all or any portion of the Land in order to prevent or to cure any such default. All sums expended by Secured Party in order to cure any such default shall be paid by Borrower to Secured



Party, upon demand, with interest thereon at the Agreed Rate. All such indebtedness shall be secured by this Instrument.

(iii) Borrower shall notify Secured Party promptly in writing of the receipt by Borrower of any notice (written or otherwise) from the lessor under any of the Subject Leases noting or claiming the occurrence of a default by Borrower under any of the Subject Leases. Borrower shall deliver to Secured Party a copy of any such written notice of default.

(iv) Borrower shall not, without Secured Party's prior written consent, which consent shall not unreasonably be withheld, surrender, terminate, forfeit, or suffer or permit the surrender, termination or forfeiture of, or change, modify or amend in a manner that materially adversely affects the rights or benefits of Borrower thereunder, any of the Subject Leases. Consent to one amendment, change, agreement or modification shall not be deemed to be a waiver of the right to require consent to other, future or successive amendments, changes, agreements or modifications. Any acquisition of any lessor's interest in any of the Subject Leases by Borrower or any affiliate of Borrower shall be accomplished by Borrower in such a manner so as to avoid a merger of the interests of lessor and lessee in such Subject Leases, unless consent to such merger is granted by Secured Party. If Borrower or any affiliate of Borrower shall acquire fee title to the property subject to any of the Subject Leases, this Instrument shall automatically be a lien on the fee title.

(v) Borrower shall not, without Secured Party's written consent, elect to treat any of the Subject Leases as terminated under subsection 365(h)(1) of the Bankruptcy Code. Any such election made without Secured Party's prior written consent shall be void. Borrower shall promptly, after obtaining knowledge thereof, notify Secured Party of any filing by or against any lessor of a petition under the Bankruptcy Code.

(vi) To the extent permitted by law, the price payable by Borrower or any other party in the exercise of the right of redemption, if any, from any sale under or decree of foreclosure of this Instrument shall include all rents and other amounts paid and other sums advanced by Secured Party on behalf of Borrower as the lessee under the Subject Leases.

(vii) All subleases entered into by Borrower of the entire Subject Leasehold Estate (and all such existing subleases modified or amended by Borrower) shall provide that such subleases are, at the option and election of Secured Party, subordinate to the lien of this Instrument and any extensions, replacements and modifications of this Instrument and the Obligations (as defined in the Credit Agreement) and that if Secured Party forecloses under this Instrument or enters into a new lease with any lessor under any of the Subject Leases pursuant to the provisions



for a new lease, if any, contained in the applicable Subject Leases, then the sublessee shall attorn to Secured Party or its assignee and the sublease will remain in full force and effect in accordance with its terms notwithstanding the termination of the applicable Subject Lease.

(viii) Borrower shall cause each Subject Lease or a legally valid memorandum thereof to be properly filed or recorded in the city, town, county or parish records (as appropriate) in which the Land covered thereby is located and shall cause the filing and recording data for the same to be accurately set forth in Exhibit B hereto. Borrower has no knowledge of any Subject Leases other than the Subject Leases listed on Exhibit B hereto, and Borrower agrees to notify Secured Party promptly (in any event within ten days) after Borrower obtains any notice or knowledge of any Subject Lease not included in the Subject Leases listed on Exhibit B hereto.

(b) A breach or default of Borrower under any condition or obligation contained in any of the Subject Leases which is not cured within any applicable cure period provided therein to Borrower; provided that, in Secured Party's reasonable opinion, such breach or default, if left uncured, is likely to result in the termination of the Subject Lease in question and alone or together with any breaches or defaults under any condition or obligation contained in any other Subject Lease which is encumbered by a mortgage, deed of trust or other financing instrument intended as security for the Obligations, such termination would result in and constitute a material adverse effect, shall, at Secured Party's option, constitute an Event of Default hereunder, in which event Secured Party shall have all of the rights and remedies available to it under Article V.

### **Section 2.13 Utilities**

Borrower shall pay, or cause to be paid, when due, all utility charges in accordance with the Subject Leases.

### **Section 2.14 Inspections**

Secured Party or its agents or representatives are authorized to enter, at any reasonable time and upon reasonable prior notice to Borrower, upon or in any part of the Collateral for the purpose of inspecting the same and for the purpose of performing any of the acts they are authorized to perform hereunder or under the terms of any Financing Document.

### **Section 2.15 Actions by Trustee or Secured Party to Preserve Collateral**

Upon the occurrence of an Event of Default which is continuing, if Borrower fails to perform any act Borrower is required to perform hereunder, as and in the manner provided herein, Secured Party or Trustee, without obligation to do so, without releasing Borrower from any obligation and without notice to or demand upon Borrower, may make or do the



same in such manner and to such extent as it may deem necessary to protect the security hereof. Notwithstanding the foregoing, Secured Party shall endeavor in good faith to provide Borrower with notice of any action taken by Secured Party under this Section 2.15; provided, however, that the failure of Secured Party to actually provide such notice shall not prevent Secured Party from taking any such action or invalidate any action taken. In connection therewith, upon the occurrence of an Event of Default which is continuing (without limiting Secured Party's general and other powers, whether conferred herein, in another Financing Document or by law), Secured Party and Trustee shall have and are hereby given the right, but not the obligation: (a) to enter upon and take possession of the Collateral; (b) to make additions, alterations, repairs and improvements to the Collateral which Secured Party may consider necessary or proper to keep the Collateral in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Secured Party; (d) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of Secured Party may affect or appears to affect the security of this Instrument or to be prior or superior hereto; and (e) in exercising such powers, to pay reasonable and necessary expenses, including employment of counsel or other necessary or desirable consultants. Borrower shall, immediately upon demand therefor by Secured Party or Trustee, pay to Secured Party or Trustee, as applicable, an amount equal to all respective reasonable costs and expenses incurred by Secured Party in connection with the exercise by either Secured Party or Trustee of the foregoing rights, including, without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and reasonable attorneys' fees and paralegal fees, together with interest thereon from the date of such expenditures at the Agreed Rate.

**Section 2.16 Indemnification; Subrogation; Waiver of Offset**

(a) If the title, interest, lien or encumbrance, as the case may be, of Borrower, Secured Party, Lenders or Trustee in and to the Collateral or any part thereof, or the security of this Instrument, or the rights or powers of Secured Party, Trustee, Lenders or Borrower hereunder, shall be attacked, either directly or indirectly, or if any legal proceedings are commenced involving Borrower or the Collateral, Borrower shall promptly give written notice thereof to Secured Party and Trustee and at Borrower's own expense shall, in consultation with Secured Party and Trustee, take all reasonable steps to defend diligently against any such attack or proceedings, employing attorneys reasonably acceptable to Secured Party and Trustee; and Secured Party or Trustee may take such independent action in connection therewith as it may in its reasonable discretion deem advisable, and all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, paralegal fees, and legal expenses, incurred by Secured Party, Trustee and Lenders in connection therewith shall be a demand obligation owing by Borrower to Secured Party and Lenders or Trustee, as applicable, and shall bear interest at the Agreed Rate. Borrower agrees that, if Borrower fails to perform any act which Borrower is required to perform hereunder within the time such performance is required, Secured Party and Trustee each may, but shall not be obligated to, perform or cause to be performed such act, and any reasonable expense incurred by Secured

Party and Lenders or Trustee in connection therewith shall be a demand obligation owing by Borrower to Secured Party and Lenders or Trustee, as applicable, and shall bear interest at the Agreed Rate, and Secured Party and Lenders and Trustee shall be subrogated to all of the rights of the party receiving such payment. The liabilities of Borrower as set forth in this Section 2.16 shall survive the termination of this Instrument.

(b) Borrower waives any and all right to claim or recover against Secured Party, Lenders and Trustee, or their respective officers, employees, agents and representatives, for loss of or damage to Borrower, the Collateral, Borrower's other property or the property of others under Borrower's control from any cause insured against or required to be insured against by the provisions of this Instrument.

(c) All sums payable by Borrower pursuant to this Instrument shall be paid without notice, demand (except as such notice or demand is required in the applicable Financing Document), counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Borrower hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Collateral or any part thereof; (ii) any restriction, or prevention of or interference by any third party with any use of the Collateral or any part, thereof; (iii) any title defect or encumbrance or any eviction from the Premises or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Secured Party or any Lender or Trustee, or any action taken with respect to this Instrument by any trustee or receiver of Secured Party or any Lender or Trustee, or by any court, in any such proceeding; (v) any claim which Borrower has or might have against Secured Party or any Lender or Trustee; (vi) any default or failure on the part of Secured Party or any Lender or Trustee to perform or comply with any of the terms hereof or of any other agreement with Borrower; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Borrower shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Borrower.

(d) If Trustee or Secured Party or any Lender shall become a party to any suit at law or in equity or any administrative proceeding in reference to its interest in the Collateral described herein, or shall deem it necessary or desirable to take any action, either out of court or by suit, or to intervene in any pending suit or proceeding, in order to defend or uphold the security of this Instrument, including, but not limited to, eminent domain proceedings, the reasonable costs and expenses thereof, including a reasonable sum for attorneys' fees, shall be paid by Borrower; provided that Borrower shall not have any obligation to pay the costs and expenses thereof, to the extent, and only to the extent, that it is finally determined in such suit,



proceeding or action, that Secured Party or any such Lender was grossly negligent or had engaged in willful misconduct.

**Section 2.17 Transfer of Collateral by Borrower**

(a) Borrower understands and acknowledges that a transfer of the Collateral may significantly and materially alter and reduce Secured Party's security for the Secured Obligations and the indebtedness evidenced by the Secured Instruments and The Financing Documents. Therefore, in order to induce Lenders to make the extensions of credit secured hereby, Borrower agrees that, except as permitted under the terms of the Credit Agreement, Borrower will not transfer the Collateral, or any portion thereof, without the prior written consent of Secured Party. In the event of any transfer of the Collateral, or any portion thereof, that is not permitted under the terms of the Credit Agreement and is without the prior written consent of Secured Party, all amounts then remaining unpaid on the Secured Obligations shall, as provided in the Credit Agreement, be immediately due and payable, all without further demand, presentment, notice or other requirement of any kind, all of which are hereby expressly waived by Borrower, and the lien, encumbrance and security interest evidenced or created hereby shall be subject to foreclosure in any manner provided for herein or provided for by law. Consent to one such transfer shall not be deemed to be a waiver of the right to require consent to future or successive transfers. Secured Party may grant or deny such consent in its sole and absolute discretion. If consent should be given to a transfer and if this Instrument is not released to the extent of the transferred portion of the Collateral by a writing signed by Secured Party and recorded in the proper city, town, county or parish records, then any such transfer shall be subject to this Instrument and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Any such assumption shall not, however, release Borrower or any co-borrower or guarantor of the Secured Obligations from any liability thereunder without the prior written consent of Secured Party. As used herein, "transfer" shall include (i) the direct or indirect sale, agreement to sell, transfer or conveyance of the Collateral or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law (other than by reason of a taking for public or quasi-public use under the power of eminent domain or condemnation or otherwise) or otherwise; (ii) the execution by Borrower of any installment land sale contract or similar instrument affecting all or a portion of the Collateral; or (iii) any transfer by way of security, including the placing or the permitting of the placing, subsequent to the date hereof, of any mortgage, deed of trust, deed to secure debt, assignment of rents or other security device on Borrower's interest in the Premises or any part thereof. This covenant shall run with the land of the Premises and remain in full force and effect until all of the Secured Obligations are paid and fully performed and all Letters of Credit have expired or been terminated and the Commitments terminated, and Secured Party may, without notice to Borrower, deal with any transferees with reference to the Secured Obligations in the same manner as Borrower, without in any way altering or discharging Borrower's liability or the liability of any guarantor of Borrower with respect thereto.



(b) With respect to any such transfer to which Secured Party has consented and for which Secured Party has agreed to release its lien thereon which constitutes a transfer of less than all of the Collateral, Secured Party shall promptly deliver to Borrower a partial reconveyance, partial termination or partial release of this Instrument to the extent of the portion of the Collateral so transferred if, and only if: (i) Borrower shall have given Secured Party a 15-day prior written request for such partial reconveyance, partial termination or partial release; (ii) Secured Party shall have received evidence reasonably satisfactory to Secured Party that such partial reconveyance, partial termination or partial release will not be and will not create a violation of any applicable zoning, platting, subdivision, parcel map or other land use laws and ordinances; (iii) Secured Party shall have received evidence reasonably satisfactory to Secured Party that such partial reconveyance, partial termination or partial release will not have a material adverse effect on any of the remaining Collateral; (iv) any net cash proceeds arising in connection therewith have been paid to Secured Party; and (v) no Event of Default or Default shall have occurred and be continuing at a time that this Section 2.17 would otherwise obligate Secured Party to deliver such partial reconveyance, partial termination or partial release. Borrower shall pay all reasonable legal fees and other expenses incurred by Secured Party for preparing and reviewing any such partial reconveyance, partial termination or partial release and the execution and delivery thereof. Upon receipt by Borrower of such partial reconveyance, partial termination or partial release and upon the instruction of Secured Party, Borrower shall promptly and at its own expense record or file such partial reconveyance, partial termination or partial release in each of the cities, towns, counties or parishes, as appropriate, in which portions of the Collateral so transferred may be located. Upon request of Secured Party, Borrower shall promptly deliver to Secured Party evidence reasonably satisfactory to Secured Party of such recordation or filing.

### **Section 2.18 Additional Security**

No other security now existing, or hereafter taken, to secure the Secured Obligations shall be impaired or affected by the execution of this Instrument; and all additional security shall be taken, considered and held as cumulative. The taking of additional security, execution of partial or complete releases of the additional security, or any extension of the time of payment of any indebtedness or other obligations shall not diminish the force, effect or lien of this Instrument and shall not affect or impair the liability of any maker, surety, guarantor or endorser for the payment of said indebtedness or other obligations. Neither the acceptance of this Instrument nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Secured Party's or Trustee's right to realize upon or enforce any other security now or hereafter held by Secured Party or Trustee, it being agreed that Secured Party and Trustee shall be entitled to enforce this Instrument and any other security now or hereafter held by Secured Party or Trustee in such order and manner as they may in their absolute discretion determine.



## **Section 2.19 Further Acts**

Borrower shall do and perform all acts necessary to keep valid and effective the charges and lien hereof and to carry into effect its objective and purposes, in order to protect Secured Party and the lawful owner of the Secured Instruments and the other Secured Obligations. Promptly upon request, from time to time, of Secured Party or Trustee and at Borrower's expense, Borrower shall execute, acknowledge and deliver to Secured Party and Trustee for the benefit of Lenders such other and further instruments and do such other acts as in the reasonable opinion of Secured Party or Trustee may be necessary to (a) grant to Trustee and to Secured Party for the benefit of Lenders a perfected lien on the Collateral of the highest priority, subject to any Permitted Liens, on all of the Collateral to secure all of the Secured Obligations, (b) grant to Trustee and to Secured Party for the benefit of Lenders, to the fullest extent permitted by applicable law, the right to foreclose on the Collateral nonjudicially, (c) correct any defect, error or omission which may be discovered in the contents of this Instrument which render it inconsistent with the intent of the parties (including, without limitation, all exhibits and/or schedules hereto), (d) identify more fully and subject to the liens, encumbrances and security interests and assignments created hereby any property intended by the terms hereof to be covered hereby (including, without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Collateral), (e) assure the first priority of this Instrument and of such liens, encumbrances, security interests and assignments (except as otherwise provided in the Credit Agreement), and (f) otherwise effect the intent of this Instrument. Without limiting the generality of the foregoing, Borrower shall promptly and, insofar as not contrary to applicable law, at Borrower's own expense, record, rerecord, file and refile in such offices, at such times and as often as may be necessary, this Instrument, additional mortgages and deeds of trust, and every other instrument in addition or supplemental hereto, including applicable financing statements, as may be necessary to create, perfect, maintain and preserve the liens, encumbrances and security interests (and priority thereof) intended to be created hereby and the rights and remedies of Secured Party and Lenders and Trustee hereunder. Upon request by Secured Party, Borrower shall supply evidence of fulfillment of each of the covenants herein contained concerning which a request for such evidence has been made.

## **ARTICLE III**

### **ASSIGNMENT OF RENTS, ISSUES AND PROFITS**

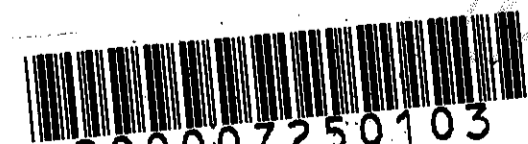
#### **Section 3.1 Assignment of Rents, Issues and Profits**

Pursuant to the assignment made by Borrower in paragraph C of the granting clause of this Instrument, Secured Party on behalf of Lenders is entitled to receive the Rents. In furtherance thereof, Borrower hereby gives to and confers upon Secured Party on behalf of Lenders the right, power and authority to collect the Rents, and Borrower irrevocably appoints Secured Party its true and lawful attorney-in-fact, at the option of Secured Party, at

any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Borrower, for all Rents accrued but unpaid and in arrears at the date of an Event of Default hereunder as well as the Rents thereafter accruing and becoming payable during the continuance of such Event of Default and, after deducting costs and expenses of operation and collection and reasonable reserves, apply the same to the Secured Obligations; provided, however, that Borrower shall have the right to collect the Rents (but not more than 30 days in advance unless the prior written reasonable approval of Secured Party has first been obtained), and to retain and enjoy the same, so long as an Event of Default shall not have occurred hereunder and be continuing. Upon request of Secured Party, Borrower shall execute and deliver to Secured Party (a) a specific assignment, in recordable form, of any lease, sublease, license, concession or other agreement now or hereafter affecting the Collateral or any portion thereof to further evidence the assignment hereby made and (b) upon the occurrence of an Event of Default which is continuing, such other instruments as Secured Party may deem necessary, convenient or appropriate in connection with the payment and delivery directly to Secured Party of all of the Rents. Borrower acknowledges that in order to facilitate the performance of the Secured Obligations, the assignment of the rents, issues and profits of the Collateral in this Article III is intended to be an absolute assignment from Borrower to Secured Party on behalf of Lenders and not merely the passing of a security interest.

### **Section 3.2 Collection Upon Default**

(a) Upon the occurrence of an Event of Default which is continuing, Secured Party may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Secured Obligations, enter upon and take possession of the Collateral, or any part thereof, and, with or without taking possession of the Collateral or any part thereof, in its own name or on behalf of Lenders sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less reasonable costs and expenses of operation and collection, including, without limitation, reasonable attorneys' fees and paralegal fees, upon the Secured Obligations, notwithstanding that such Secured Obligations may not then be due, but the manner of the application of such net income and which items shall be credited shall be determined in the sole discretion of Secured Party. Upon the occurrence of an Event of Default which is continuing, Borrower also hereby authorizes Secured Party upon such entry, at its option, to take over and assume the management, operation and maintenance of the Collateral and to perform all acts Secured Party in its sole discretion deems necessary and proper and to expend such reasonable sums out of income of the Collateral as may be needed in connection therewith, in the same manner and to the same extent as Borrower theretofore might do, including the right to effect new leases, subleases, licenses, concessions, franchises or similar agreements, including, without limitation, the Leases, to cancel, surrender, alter or amend the terms of, and/or renew then-existing Leases, and/or to make concessions to tenants or other parties to such agreements. The collection of the Rents, or the entering upon and taking possession of the Collateral, or the application thereof as aforesaid, shall not cure or waive any default or notice of default



hereunder or invalidate any act done in response to such default or pursuant to such notice of default. Secured Party and Lenders and Trustee are hereby absolved from all liability for failure to enforce collection of any Rents, and from all other responsibility in connection therewith, except the responsibility to account to Borrower for Rents actually received.

(b) Upon such entry as provided in this Section 3.2, Secured Party shall, after payment of all reasonable and proper charges and expenses, including reasonable compensation to such managing agent as it may select and employ, and after the accumulation of a reserve to meet requisite amounts, credit the net amount of the income received by it from the Collateral by virtue of the assignment contained in this Article III to the Secured Obligations, notwithstanding that such Secured Obligations may not then be due, but the manner of the application of such net income and which items shall be credited shall be determined in the sole discretion of Secured Party. Neither Secured Party nor any Lender shall be accountable for more monies than Secured Party actually receives from the Collateral; nor shall Secured Party or any Lender be liable for failure to collect Rents. Upon such entry, Secured Party shall make reasonable efforts to collect Rents, reserving, however, within its own sole discretion, the right to determine the method of collection and the extent to which enforcement or collection of Rents shall be prosecuted.

(c) Borrower hereby authorizes and directs that all other parties now or hereafter owing or paying Rents, in, with respect to or relating to the Premises or to any of the other interests included in the Collateral, or any part thereof, or now or hereafter having in their possession or control any Rents from or allocated to the Collateral, or any part thereof, or the proceeds therefrom, shall, upon the request of Secured Party after the occurrence of an Event of Default and until Secured Party directs otherwise, pay and deliver such Rents directly to Secured Party at Secured Party's address set forth in the introduction to this Instrument, or in such other manner as Secured Party may direct such parties in writing, and this authorization shall continue until this Instrument is released. Borrower agrees that all instruments that Secured Party may from time to time execute and deliver for the purpose of collecting and receipting for Rents which it is entitled to collect hereunder shall be binding upon Borrower and its successors and assigns. No payor making payments to Secured Party at its request under the assignment contained herein shall have any responsibility to see to the application of any of such funds, and any party paying or delivering Rents to Secured Party under such assignment shall be released thereby from any and all liability to Borrower to the full extent and amount of all Rents so delivered. Borrower agrees to indemnify and hold harmless any and all parties making payments to Secured Party, at Secured Party's request under the assignment contained herein, against any and all liabilities, actions, claims, judgments, reasonable costs, reasonable charges and reasonable attorneys' fees and paralegal fees resulting from the delivery of such Rents to Secured Party. The indemnity agreement contained in the previous sentence is made for the direct benefit of and shall be enforceable by all such persons. Should Secured Party bring suit against any third party for collection of any amounts or sum included within this assignment which it is entitled to receive and collect (and



Secured Party shall have the right to bring any such suit), it may sue either in its own name or in the name of Borrower, or both.

(d) It is not the intention of the parties hereto that an entry by Secured Party upon the Premises under the terms of this Instrument shall make Secured Party or any Lender a party in possession in contemplation of the law, except at the option of Secured Party.

(e) Nothing contained herein shall operate or be construed to obligate Secured Party or any Lender to perform any of the terms, covenants and conditions contained in any Subject Lease of or relating to the Premises or any portion thereof or otherwise to impose any obligation upon Secured Party or any Lender with respect to any Subject Lease of or relating to the Premises or any portion thereof, including, but not limited to, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee or other party under any such Subject Lease shall have been joined as a party defendant in any action to foreclose and the estate of such lessee or other party shall have been thereby terminated. Prior to actual entry into and taking possession of the Premises by Secured Party in accordance with this Article III, the assignment contained in this Article III shall not operate to place upon Secured Party or any Lender any responsibility for the operation, control, care, management or repair of the Collateral or any portion thereof, and the execution of this Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Premises is and shall be that of Borrower, prior to such actual entry and taking of possession.

(f) The assignment of rents, issues, profits and proceeds herein made shall not be construed to limit in any way Secured Party's other rights hereunder or any other rights of Secured Party or any Lender under any other Financing Document, including, without limitation, any right to accelerate any indebtedness. Monies received under the assignments herein made shall not be deemed to have been applied in payment of any Secured Obligations unless and until such monies actually are applied thereto by Secured Party. However, any net amount of the income received shall be reasonably promptly applied by Secured Party in payment of Secured Obligations.

### **Section 3.3 Sale of Collateral**

Upon any sale of any of the Collateral by or for the benefit of Secured Party pursuant to Article V, the Rents attributable to the part of the Collateral so sold shall be included in such sale and shall pass to the purchaser free and clear of (a) the assignment made by Borrower in paragraph C of the granting clause of this Instrument and (b) the provisions of this Article III.



## ARTICLE IV

### TERMINATION

If all of the Secured Obligations shall be paid and performed in full pursuant to the terms and conditions of this Instrument and the instruments evidencing the Secured Obligations and all commitments of Lenders to extend credit have terminated and all Letters of Credit have expired, then Secured Party (and Trustee to the extent required by law to effect a full and proper termination, release and reconveyance) shall, promptly, after the request of Borrower, execute, acknowledge and deliver to Borrower proper instruments evidencing the termination and release of this Instrument and, to the extent the Collateral is in the possession thereof, deliver the Collateral thereunder. Borrower shall pay all reasonable legal fees and other reasonable expenses incurred by Secured Party and Trustee for preparing and reviewing such instruments and the execution and delivery thereof, and Secured Party may require payment of the same prior to delivery of such instruments. Upon the receipt by Borrower of terminations or releases signed by Secured Party and Trustee, and in recordable form and evidencing the termination of this Instrument, Borrower shall promptly and at its own expense record or file such terminations or releases in each of the cities, towns, counties and parishes, as appropriate, in which portions of the Collateral may be located, in such a manner so as to effect a release of all of the Collateral of record. Upon the request of Secured Party, Borrower shall promptly deliver to Secured Party evidence reasonably satisfactory to Secured Party of such recordation or filing. Otherwise, this Instrument shall remain and continue in full force and effect. The obligations under this Article IV shall survive the termination of this Instrument.

## ARTICLE V

### DEFAULT

#### Section 5.1 Fixtures

Upon the occurrence of any Event of Default which is continuing, Secured Party may, to the extent permitted under Applicable Law, elect to treat the Fixtures included in the Collateral either as real property or as personal property, or both, and proceed to exercise such rights as apply thereto. With respect to any sale of real property included in the Collateral made under the powers of sale herein granted and conferred, Secured Party may, to the extent permitted by Applicable Law, include in such sale any personal property and Fixtures included in the Collateral and relating to such real property.

#### Section 5.2 Remedies

(a) Upon the occurrence of any Event of Default, and at any time during the continuation thereof, in addition to all other powers, rights and remedies herein granted or by law or at equity conferred,

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(i) Secured Party shall have all of the rights and remedies of a mortgagee (the power of sale permitted and provided by applicable statute being hereby expressly granted by Borrower to Trustee) with respect to all of the Collateral and in addition Trustee shall have all of the rights and remedies of a mortgagee and a trustee under a deed of trust granted, conferred or permitted by Applicable Law, and Secured Party shall have all of the rights of a beneficiary thereunder. Secured Party and Trustee shall, to the extent permitted by Applicable Law, have the right and power, but not the obligation, to enter upon and take immediate possession of the RP Collateral and the Fixtures or any part thereof, to exclude Borrower therefrom, to hold, use, operate, manage and control such real property, to make all such repairs, replacements, alterations, additions and improvements to the same as Secured Party may deem proper, and to demand, collect and retain the Rents as provided in Article III.

(ii) Secured Party and Trustee with respect to any or all of the Collateral, in lieu of or in addition to exercising any other power, right or remedy herein granted or by law or equity conferred, may, without notice, demand or declaration of default which are hereby waived by Borrower, proceed by an action or actions in equity or at law for the seizure and sale of the RP Collateral and the Fixtures or any part thereof, for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power, right or remedy herein granted or by law or equity conferred, for the foreclosure or sale of such real property or any part thereof under the judgment or decree of any court of competent jurisdiction, for the appointment of a receiver (without any requirement to post a receiver's bond) pending any foreclosure hereunder or the sale of such real property or any part thereof or for the enforcement of any other appropriate equitable or legal remedy.

(iii) Secured Party and Trustee with respect to any or all of the Fixtures shall have all of the rights and remedies of an assignee and secured party granted to the "Secured Party" under and as defined in the Security Agreement in respect of the "Collateral" under and as defined in such Security Agreement as if such rights and remedies were set forth herein, and under Applicable Law, including the Uniform Commercial Code, and shall, to the extent permitted to such Secured Party by applicable provisions of such Security Agreement, have the right and power, but not the obligation, to take possession of the Fixtures and to exercise any and all other rights and remedies granted to such Secured Party under such Security Agreement.

(iv) Trustee may, subject to any mandatory requirements of Applicable Law, sell or have sold the RP Collateral and the Fixtures or interests therein or any part thereof at one or more sales, as an entirety or in parcels, at such place or places and otherwise in such manner and upon such notice as may be required by law or by this Instrument, or, in the absence of any such requirement, as Trustee or Secured Party may deem appropriate. Trustee is specifically authorized, but not required, to hold the public sale of the RP Collateral in any county in which any part of the RP



Collateral is situated. Trustee shall make a conveyance to the purchaser or purchasers thereof without, to the extent permitted by Applicable Law, any warranties express or implied, and Borrower shall warrant title thereto to such purchaser or purchasers. Trustee or Secured Party may postpone the sale of such RP Collateral and the Fixtures or interests therein or any part thereof by public announcement at the time and place of such sale, and from time to time thereafter may further postpone such sale by public announcement made at the time of sale fixed by the preceding postponement. Sale of a part of the RP Collateral and the Fixtures or interests therein or any defective or irregular sale hereunder will not exhaust the power of sale (to the extent permitted under Applicable Law), and sales may be made from time to time until all such property is sold without defect or irregularity or the Secured Obligations are paid in full. Trustee or Secured Party shall have the right, to the extent permitted by Applicable Law, to appoint one or more attorneys-in-fact to act in conducting the foreclosure sale and executing a deed to the purchaser. It shall not be necessary for any of the Collateral at any such sale to be physically present or constructively in the possession of Secured Party or Trustee and Borrower shall deliver all of the Collateral to the purchaser at such sale. If it should be impossible or impracticable to take actual delivery of the Collateral, then the title and right of possession to the Collateral shall pass to the purchaser at such sale as completely as if the same had been actually present and delivered.

(b) Secured Party (or any Lender or any other person owning, directly or indirectly, any interest in any of the Secured Obligations) shall have the right to become the purchaser at any sale made pursuant to the provisions of this Article V and Secured Party (but not such Lender or other person unless such Secured Party or other person is the owner, directly or indirectly, of all of the Secured Obligations) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale, to use and apply any of the Secured Obligations owed to such person as a credit on account of the purchase price of any Collateral payable by such person at such sale. All other sales shall be, to the extent permitted by Applicable law, on a cash basis. Recitals contained in any conveyance to any purchaser at any sale made hereunder will conclusively establish the truth and accuracy of the matters therein stated, including, without limitation, nonpayment of the Secured Obligations and advertisement and conduct of such sale in the manner provided herein or provided by law. Borrower does hereby ratify and confirm all legal acts that Secured Party and Trustee may do in carrying out the provisions of this Instrument.

(c) Any sale of the Collateral or any part thereof pursuant to the provisions of this Article V will operate to divest all right, title, interest, claim and demand of Borrower in and to the property sold. Nevertheless, if requested by Secured Party so to do, Borrower shall join in the execution, acknowledgment and delivery of all proper conveyances, assignments and transfers of the property so sold. Any purchaser at a foreclosure sale will receive immediate possession of the property purchased, and Borrower agrees that if Borrower



retains possession of the property or any part thereof subsequent to such sale, Borrower will be considered a tenant at sufferance of the purchaser, and will, if Borrower remains in possession after demand to remove, be guilty of forcible detainer and will be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages to Borrower by reason thereof are hereby expressly waived by Borrower.

(d) Borrower acknowledges that it is aware of and has had the advice of counsel of its choice with respect to its rights, under Applicable Law, with respect to this Instrument, the Secured Obligations, the Collateral, and the other Financing Documents. Nevertheless, Borrower hereby waives and relinquishes to the maximum extent permitted by law any right under any law relating to, and subject to any mandatory requirements of Applicable Law Borrower hereby agrees that Borrower shall not at any time hereafter have or assert any right under any law pertaining to: marshalling, whether of assets or liens, the sale of property in the inverse order of alienation, the exemption of homesteads, the administration of estates of decedents, appraisal, valuation, stay, extension, redemption, the maturing or declaring due of the whole or any part of the Secured Obligations, notice of intention of such maturing or declaring due, other notice (whether of defaults, advances, the creation, existence, extension or renewal of any of the Secured Obligations or otherwise), subrogation, or abatement, suspension, deferment, diminution or reduction of any of the Secured Obligations (including, without limitation, setoff), now or hereafter in force.

(e) Upon the occurrence of an Event of Default which is continuing, Secured Party, at its option, is authorized to foreclose this Instrument subject to the rights of any tenants of the Premises, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Borrower, a defense to any proceedings instituted by Secured Party to collect any Secured Obligations.

(f) Upon the occurrence of an Event of Default which is continuing, Secured Party shall, to the extent permitted by Applicable Law, have the option to proceed with foreclosure or the exercise by Trustee of the power of sale in satisfaction of any part of the Secured Obligations (prior to the declaration of the whole of the Secured Obligations as immediately mature), and such foreclosure or sale may be made subject to the unmatured part of the Secured Obligations, and it is agreed that such foreclosure, if so made, shall not in any manner affect the unmatured part of the Secured Obligations, but as to such unmatured part of the Secured Obligations, this Instrument and the other Financing Documents shall remain in full force and effect just as though no foreclosure or sale had been made. Several foreclosures or sales may be made without exhausting the right of foreclosure or the power of sale for any unmatured part of the Secured Obligations, it being the purpose to provide for a foreclosure and sale of the security for any matured portion of the Secured Obligations without exhausting the power of foreclosure and the power to sell the Collateral for any other part of the Secured Obligations.



### **Section 5.3 Costs and Expenses**

All reasonable costs and expenses (including reasonable attorneys' fees and paralegal fees, legal expenses, title premiums, title report and work charges, filing fees, and mortgage, mortgage registration, transfer, stamp, and other excise taxes) incurred by Secured Party and Lenders or Trustee in perfecting, protecting or enforcing its rights hereunder, whether or not an Event of Default shall have occurred, shall be a demand obligation of Borrower to Secured Party or Lenders or Trustee, as applicable, and shall bear interest at the Agreed Rate, all of which shall be part of the Secured Obligations. Borrower's obligation to reimburse Secured Party and Lenders for attorneys' fees shall include fees incurred at trial, on appeal, upon petition for review, and in any bankruptcy proceeding. Borrower agrees to indemnify Secured Party and Lenders and Trustee for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, reasonable costs, reasonable expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against Secured Party or any Lender or Trustee in any way relating to or arising out of this Instrument or any other documents contemplated by or referred to herein or the transactions contemplated hereby or the enforcement of any of the terms hereof (other than tax upon income deemed payable by Secured Party, Trustee or Lenders); provided, however, that Borrower shall not be liable for any of the foregoing to the extent they arise from the gross negligence or willful misconduct of Secured Party or any Lender or Trustee.

### **Section 5.4 Application of Proceeds**

(a) The proceeds of any sale of the Collateral or any part thereof made pursuant to this Article V shall be applied as follows:

**FIRST:** To the payment of all costs and expenses of such sale, collection or other realization, including reasonable compensation to Secured Party and its agents and counsel, and all other expenses, liabilities and advances made or incurred by Secured Party in connection therewith, and all amounts for which Secured Party is entitled to indemnification hereunder and all advances made by Secured Party hereunder for the account of Borrower, and to the payment of all costs and expenses paid or incurred by Secured Party or Trustee in connection with the exercise of any right or remedy hereunder;

**SECOND:** To the payment of all other Secured Obligations (for the ratable benefit of the holders thereof) in such order as Secured Party shall elect; and

**THIRD:** To the payment to or upon the order of Borrower, or to whomsoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct, of any surplus then remaining from such proceeds;



provided, however, that if Applicable Law requires such proceeds to be paid or applied in a manner other than as set forth above in this Section 5.4(a), then such proceeds shall be paid or applied in accordance with such Applicable Law.

(b) Upon any sale made under the powers of sale herein granted and conferred, the receipt of Secured Party or Trustee will be sufficient discharge to the purchaser or purchasers at any sale for the purchase money, and such purchaser or purchasers and the heirs, devisees, personal representatives, successors and assigns thereof will not, after paying such purchase money and receiving such receipt of Secured Party or Trustee, be obligated to see to the application thereof or be in any way answerable for any loss, misapplication or nonapplication thereof.

### **Section 5.5 Request for Notice**

Borrower hereby requests that a copy of any notice of default and a copy of any notice of sale hereunder be mailed to Borrower in the manner set forth in Section 7.11 of this Instrument.

## **ARTICLE VI**

### **TRUSTEE**

### **Section 6.1 Successor Trustee**

Trustee may resign in writing addressed to Secured Party or be removed at any time with or without cause by an instrument in writing duly executed by Secured Party. In case of the death, resignation, or removal of Trustee, a successor Trustee may be appointed by Secured Party without other formality than an appointment and designation in writing unless otherwise required by Applicable Law, which writing shall be effective when filed for record in the public office(s) wherein this Instrument has previously been recorded. Such appointment and designation will be full evidence of the right and authority to make the same and of all facts therein recited, and upon the making of any such appointment and designation, this Instrument will vest in the named successor trustee all the right, title and interest of Trustee in the Collateral, and said successor will thereupon succeed to all the rights, powers, privileges, immunities and duties hereby conferred upon Trustee; provided, however, that Secured Party may at its option, appoint and designate several successor trustees and, in such manner, appoint and designate a different successor trustee for each county wherein a portion of the Collateral is located, as described in such written appointment and designation, and upon the making of any such appointment and designation, this Instrument will vest in each such named successor trustee all of the right, title and interest of Trustee in that portion of the Collateral ascribed to such named successor trustee, and each such named successor trustee will thereupon succeed to all the rights, powers, privileges, immunities and duties hereby conferred upon Trustee in that portion of the Collateral ascribed to such named successor



trustee. All references herein to Trustee will be deemed to refer to the trustee or trustees from time to time acting hereunder.

### **Section 6.2 Trustee's Powers**

At any time, or from time to time without liability therefor and without notice, upon written request of Secured Party and presentation of this Instrument and the Secured Instrument for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Instrument upon the remainder of the Collateral, Trustee may (a) reconvey any part of the Collateral, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

### **Section 6.3 Full Reconveyance by Trustee**

To the extent Trustee's signature is necessary on any full reconveyance of this Instrument, then, upon written request of Secured Party stating that all sums secured hereby have been paid and upon surrender of this Instrument and the Secured Instrument to Trustee for cancellation and retention (or disposal in accordance with Applicable Law) and upon payment by Borrower of Trustee's fees, Trustee shall reconvey to Borrower, or to the person or persons legally entitled thereto, without warranty, any portion of the Collateral then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

### **Section 6.4 Indemnity**

Lenders shall indemnify Trustee against all claims, actions, liabilities, judgments, costs, attorneys' fees or other charges of whatsoever kind or nature made against or incurred by Trustee, and arising out of the performance by Trustee of the duties of Trustee hereunder.

## **ARTICLE VII**

### **MISCELLANEOUS COVENANTS AND AGREEMENTS**

#### **Section 7.1 Cumulative Rights; Waivers; Modifications**

Each and every right, power and remedy hereby granted to Secured Party and Trustee shall be cumulative and not exclusive, and each and every right, power and remedy whether specifically hereby granted or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by Secured Party or Trustee and the exercise of any such right, power or remedy will not be deemed a waiver of the right to exercise, at the same time or thereafter, any other right, power or remedy. No delay or omission by Secured Party or Trustee in the exercise of any right, power or remedy will impair

any such right, power or remedy or operate as a waiver thereof or of any other right, power or remedy then or thereafter existing. Any and all covenants of Borrower in this Instrument may from time to time, by instrument in writing signed by Secured Party, be waived to such extent and in such manner as Secured Party may desire, but no such waiver will ever affect or impair the rights of Secured Party or Trustee hereunder, except to the extent specifically stated in such written instrument. All changes to and modifications of this Instrument must be in writing and signed by Borrower and Secured Party.

#### **Section 7.2 Partial Releases**

No release from the lien or encumbrance of this Instrument of any part of the Collateral shall in any way alter, vary or diminish the force or effect of this Instrument on the balance of the Collateral or the priority of the lien of this Instrument on the balance of the Collateral.

#### **Section 7.3 Severability**

If any provision hereof or of any of the other documents constituting, evidencing or creating all or any part of the Secured Obligations is invalid or unenforceable in any jurisdiction, the other provisions hereof or of said documents shall remain in full force and effect in such jurisdiction and the remaining provisions hereof will be liberally construed in favor of Secured Party in order to carry out the provisions hereof and of such other documents. The invalidity of any provision of this Instrument in any jurisdiction will not affect the validity or enforceability of any such provision in any other jurisdiction.

#### **Section 7.4 Subrogation**

This Instrument is made with full substitution and subrogation of Secured Party on behalf of Lenders and of Trustee in and to all covenants and warranties by others heretofore given or made in respect of the Collateral or any part thereof. To the extent that proceeds of the Loans and other credit facilities and obligations evidenced or guaranteed by the Secured Instruments are used to pay any outstanding lien, charge or prior encumbrance against the Collateral, such proceeds have been or will be advanced at Borrower's request and Secured Party on behalf of Lenders shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

#### **Section 7.5 Secured Party's Powers**

Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Instrument upon any portion of the Premises not then or theretofore released as security for the full amount of all unpaid Secured Obligations, Secured Party may, in accordance with the provisions of Section 7.1, from time to time and without notice, (a) release any persons liable, (b) extend



the maturity or alter any of the terms of any such obligation, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed at any time at Secured Party's option any parcel, portion or all of the Collateral, (e) take or release any other or additional security for any obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

#### **Section 7.6 Enforceability of Instrument**

This Instrument is deemed to be and may be enforced from time to time as an assignment, chattel mortgage, contract, deed of trust, deed to secure debt, financing statement, real estate mortgage or security agreement, and from time to time as any one or more thereof, as is appropriate under applicable state law. A carbon, photographic or other reproduction of this Instrument or any financing statement in connection herewith shall be sufficient as a financing statement for any and all purposes.

#### **Section 7.7 Interest**

All interest required hereunder and under the Secured Obligations shall be calculated in the manner set forth in the applicable Financing Document. Notwithstanding anything to the contrary contained herein, no rate of interest required hereunder or under the Secured Obligations shall exceed the maximum legal rate under Applicable Law, and, in the event any such rate is found to exceed such maximum legal rate, Borrower shall be required to pay only such maximum legal rate. All agreements between Borrower, Secured Party and Lenders are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to Secured Party or Lenders for the use, forbearance or detention of the money due under the Secured Instruments exceed the maximum amount permissible under Applicable Law. If, due to any circumstances whatsoever, fulfillment of any provision hereof, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any circumstances Secured Party or any Lender should ever receive as interest an amount that would exceed the highest lawful rate, such amount that would be excessive interest shall be applied to the reduction of the principal amount owing under the applicable Secured Instrument and not to the payment of interest. Under the terms and provisions of the Secured Obligations which this Instrument secures and under the terms and provisions of any future or further advances secured hereby, the interest rate payable thereunder may be variable. ONE OF THE PURPOSES OF THIS SECTION IS TO PROVIDE RECORD NOTICE OF THE RIGHT OF SECURED PARTY AND LENDERS TO INCREASE OR DECREASE THE INTEREST RATE ON ANY OF THE SECURED OBLIGATIONS WHERE THE TERMS AND PROVISIONS OF SUCH SECURED OBLIGATIONS PROVIDE FOR A VARIABLE INTEREST RATE.



**Section 7.8 Choice of Law**

This Instrument shall be, and the Credit Agreement provides that they are to be, governed by, and construed and enforced in accordance with, the laws of the state of Washington, without regard to conflict of law rules and principles.

**Section 7.9 Counterparts**

This Instrument may be executed in any number of original counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Instrument with the same effect as if all parties had signed the same signature page. Any signature page of this Instrument may be detached from any counterpart of this Instrument and reattached to any other counterpart of this Instrument so that all signature pages are physically attached to the same instrument.

**Section 7.10 Recording References**

Unless otherwise specified in any of the Exhibits attached hereto, all recording references in an Exhibit are to the official real property records of the city, town, county or parish, as appropriate, in which the affected land is located. The references in an Exhibit to liens, encumbrances and other burdens, if any, shall not be deemed to recognize or create any rights in third parties.

**Section 7.11 Notices**

Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given in accordance with the Credit Agreement.

**Section 7.12 Successors and Assigns**

This Instrument shall bind and inure to the benefit of the respective successors and assigns of Borrower, Secured Party and Lenders, including, without limitation, any and all other banks, lending institutions and parties which may participate in the indebtedness evidenced by the Secured Obligations or any of them (all such banks, lending institutions and other parties who participate in the indebtedness evidenced by the Obligations or any of them being referred to herein as the "Participants"). The Participants may, by agreement among them, provide for and regulate the exercise of their rights and remedies hereunder, but, unless and until modified to the contrary in writing executed by the Participants and recorded in the same offices as this Instrument is recorded, Borrower and all others shall be entitled to rely on the releases, waivers, consents, approvals, notifications and other acts of Secured Party, without inquiry into any such agreements or the existence of required consents or approvals of the Participants therefor. As used herein, the term "Secured Party" shall mean, at any particular time, any person, corporation, partnership, trust, estate or other entity serving as the administrative agent under the Credit Agreement. Any waiver, consent, approval, notification



or other action required or permitted to be obtained from or taken by Secured Party may be obtained from or taken by the agent or agents of Lenders appointed from time to time for that purpose. Lenders may, by agreement among such persons or entities, provide for and regulate the exercise of their rights and remedies hereunder, but, unless and until modified to the contrary in writing by such persons or entities, Borrower and all others shall be entitled to rely on the waivers, consents, approvals, notifications, and other acts of such agent, without inquiry into any such agreements or the existence of required consents or approvals of Lenders therefor.

**Section 7.13      Fixture Filing Financing Statements**

Some of the above goods are or are to become fixtures on the Premises. This Instrument shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included in the Collateral and is to be filed for record in, among other places, the real estate records of each county and each parish in which the affected real estate is located; to wit, all of those listed in Exhibit A. Borrower is the owner of a record interest in the real estate concerned. The secured party is Secured Party. The mailing address of Borrower and the address of Secured Party from which information concerning the security interest may be obtained are as set forth herein.

**Section 7.14      Captions**

The captions or headings at the beginning of Articles and Sections hereof are for the convenience of the parties and are not a part of this Instrument.

**Section 7.15      No Merger of Lease**

If both the lessor's and lessee's estate under any lease, including, without limitation, any Subject Lease, or any portion thereof which constitutes a part of the Collateral shall at any time become vested in one owner, this Instrument and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Secured Party so elects as evidenced by recording a written declaration so stating and, unless and until Secured Party so elects, Secured Party shall continue to have and enjoy all of the rights and privileges of Secured Party as to the separate estates. In addition, upon the foreclosure of the lien created by this Instrument on the Collateral pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Collateral shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Secured Party or any purchaser at such foreclosure shall so elect. No act by or on behalf of Secured Party or any such purchaser shall constitute a termination of any lease or sublease unless Secured Party or such purchaser shall give written notice thereof to such tenant or subtenant.



**Section 7.16 Interpretation**

In this Instrument the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

**Section 7.17 Purpose of the Loan**

Borrower hereby represents and agrees that the Loans, credit facilities and other obligations evidenced or guaranteed by the Secured Instruments as secured by this Instrument are being obtained for business or commercial purposes, and the proceeds thereof will not be used for personal, family, residential, household or agricultural purposes.

**Section 7.18 Relationship of Parties**

The relationship between Borrower and Secured Party is that of borrower and representative of Lenders, as lenders only, and neither Borrower nor Secured Party is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other.

IN WITNESS WHEREOF, Borrower has caused this Instrument to be duly executed and delivered by its officers thereunto duly authorized as of the date first above written.

HAGGEN, INC., a Washington corporation, as

Borrower

By *[Signature]*

Title PRESIDENT & CEO



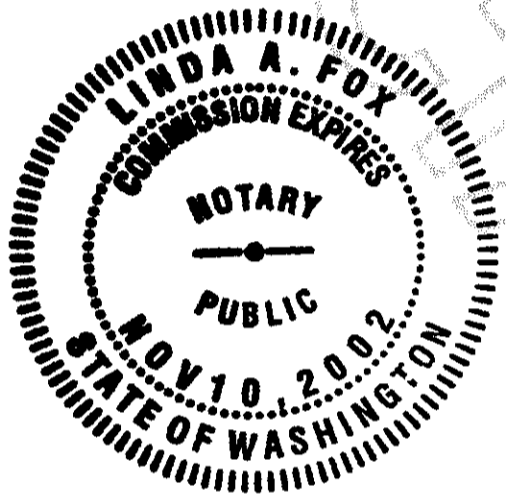
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Kathy Hill, Skagit County Auditor  
7/25/2000 Page 34 of 37 4:00:40PM

State of Washington )  
 ) ss.  
County of Whatcom )

I certify that I know or have satisfactory evidence that DALE HENLEY is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument, and acknowledged it as the PRESIDENT & CEO of Haggen, Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: MAY 26, 2000.



Linda A. Fox  
Notary Public for Washington

LINDA A. FOX  
(Printed or Stamped Name of Notary)

Residing at Blaine, WA

My appointment expires: NOV. 10, 2002



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Kathy Hill, Skagit County Auditor  
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**EXHIBIT A**

**LEGAL DESCRIPTION OF THE LAND**

Lot 1, MOUNT VERNON SHORT PLAT NO. MV-5-98, approved August 30, 1999, and recorded August 31, 1999, under Auditor's File No. 199908310020, records of Skagit County, Washington; being a portion of the Northwest Quarter of Section 21, Township 34 North, Range 4 East of the Willamette Meridian.

Situated in Skagit County, Washington.



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Kathy Hill, Skagit County Auditor

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**EXHIBIT B**

**DESCRIPTION OF THE LEASES**

That certain Mt Vernon Lease entered into between Briar Development Company and Hagen, Inc., dated March 17, 1999, a memorandum of which was recorded in the real estate records of Skagit County, Washington under Recording No. 9904010055.

  
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Kathy Hill, Skagit County Auditor  
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