

RETURN DOCUMENT TO:

Bryan Petkanics, Esq.
Loeb and Loeb LLP
345 Park Avenue
New York, New York 10154



201208130109
Skagit County Auditor

8/13/2012 Page 1 of 38 3:31PM

Use dark black ink and print legibly. Documents not legible will be rejected per RCW 65.04.045 & 65.04.047

DOCUMENT TITLE(S):	Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing
AUDITOR FILE NUMBER (and VOL. & PG. NUMBERS) OF DOCUMENT(S) BEING ASSIGNED OR RELEASED:	
Additional reference numbers can be found on page _____ of document.	
GRANTOR(S):	Haggen, Inc. a Washington Corp.
Additional grantor(s) can be found on page _____ of document.	
GRANTEE(S):	Citibank, NA - Beneficiary Fidelity National Title Company of Washington, Inc. a Washington Corp. - Trustee
Additional grantee(s) can be found on page _____ of document.	
ABBREVIATED LEGAL DESCRIPTION: (Lot, block, plat name OR; qtr/qtr, section, township & range OR; unit, building and condo name).	Lot 1 of Short Plat Mv-5-98 Haggen Short Plat
Additional legal(s) can be found on page <u>38</u> of document.	
ASSESSOR'S 16-DIGIT GEO-PARCEL NUMBER:	P27117

The Auditor/Recorder will rely on the information provided on this form. The responsibility for the accuracy of the indexing information is that of the document preparer.

NOTICE: RCW 65.04.047. Section 14: eff. 8/1/99

"I AM REQUESTING AN EMERGENCY NONSTANDARD RECORDING FOR AN ADDITIONAL FEE AS PROVIDED IN RCW 36.18.010. I UNDERSTAND THAT THE RECORDING PROCESSING REQUIREMENTS MAY COVER UP OR OTHERWISE OBSCURE SOME PART OF THE TEXT OF THE ORIGINAL DOCUMENT."

SIGNED BY: _____

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

Grantor: Haggen, Inc., a Washington corporation
Trustee: Fidelity National Title Company of Washington, Inc., a
Washington corporation
Beneficiary: Citibank, N.A.
Legal (Abbreviated): Mount Vernon - Skagit County, Washington
Additional legal description is Lot 1 of Short Plat Mu-5-98
on Schedule A of document Hagger Short Plat
Pg. 37.
Tax Parcel No: P27117

Prepared by, and after
recording please return to:

Bryan Petkanics, Esq.
Loeb & Loeb LLP
345 Park Avenue
New York, New York 10154

Requesting Emergency Non-Standard

X 



201208130109
Skagit County Auditor

8/13/2012 Page 2 of 38 3:31PM

RECEIVED AUG 06 2012

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

LEASEHOLD DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING (as amended, restated, supplemented or
otherwise modified from time to time, the "Deed of Trust"), dated as of August 2, 2012, made by
HAGGEN, INC., a Washington corporation, having an office at 2211 Rimland Drive,
Bellingham, Washington 98226, as grantor, assignor and debtor (in such capacities and together
with any successors in such capacities, the "Grantor"), to FIDELITY NATIONAL TITLE
COMPANY OF WASHINGTON, INC., a Washington corporation ("Trustee"), having an office
at 701 Fifth Avenue, Suite 2300, Seattle, Washington 98104, for the benefit of CITIBANK,
N.A., as agent (in such capacity as agent, the "Agent") for its benefit and the benefit of the other
Secured Parties (as defined in the Credit Agreement described below), having an office at 153
East 53rd Street, 21st floor, New York, New York 10022, as beneficiary, assignee and secured
party (in such capacities and together with any successors and assigns in such capacities, the
"Grantee" and "Beneficiary").

RECITALS:

A. Reference is made to that certain Amended and Restated Revolving Credit
Agreement, dated as of August 2, 2012 (as the same may be amended, amended and restated,
supplemented or otherwise modified from time to time, the "Credit Agreement"), among
Comvest Investment Partners IV, L.P., Comvest Investment Partners IV-A, L.P., Citibank, N.A.
as Letter of Credit Issuer, the Lenders party thereto from time to time, and Agent, in its capacity
as Administrative Agent thereunder.

B. The Grantor has, pursuant to terms of the Credit Agreement, become a "Qualified
Borrower" (as such term is defined in the Credit Agreement).

C. The Grantor will receive substantial benefits from the proceeds of the loans that it
will receive as a Qualified Borrower under the Credit Agreement and the execution, delivery and
performance of the Loan Documents (as defined in the Credit Agreement) to which it is a party
and is, therefore, willing to enter into this Deed of Trust.

AGREEMENT:

NOW THEREFORE, in consideration of the foregoing premises and other good and
valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the
Grantor hereby covenants and agrees with the Beneficiary as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

1.1 Definitions. (a) Capitalized terms used but not otherwise defined in this Deed of
Trust have the respective meanings given to them in the Credit Agreement.



201208130109
Skagit County Auditor

(b) The following terms used in this Deed of Trust shall have the following meanings:

“365(h) Election” means the Grantor’s election to treat the Mortgaged Lease as terminated under Section 365(h) of the Bankruptcy Code or any similar Debtor Relief Law, or any comparable right provided under any other Debtor Relief Law, together with all rights, remedies and privileges related thereto.

“Beneficiary” shall have the meaning assigned to such term in the Preamble hereof.

“Charges” shall mean any and all real estate, property and other taxes, assessments and special assessments, levies, fees, all water and sewer rents and charges and all other governmental charges imposed upon or assessed against, and all claims (including, without limitation, claims for landlords’, carriers’, mechanics’, workmen’s, repairmen’s, laborers’, materialmen’s, suppliers’ and warehousemen’s Liens and other claims arising by operation of law), judgments or demands against, all or any portion of the Trust Property due and payable by the Grantor or other amounts due and payable by the Grantor of any nature which, if unpaid, might result in or permit the creation of, a Lien on the Trust Property or which might result in foreclosure of all or any portion of the Trust Property.

“Collateral Agreement” shall mean the Guarantee and Collateral Agreement, dated as of August 2, 2012, by and among the Grantor, Hagen Acquisition, LLC, each other Person named as a “Grantor” therein, and the Agent, as may be amended, restated, supplemented or otherwise modified from time to time.

“Condemnation Awards” shall mean all payments (in any form whatsoever) made or due and payable to the Grantor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any portion of the Trust Property by any Governmental Authority (or any Person acting on behalf of a Governmental Authority).

“Credit Agreement” shall have the meaning assigned to such term in Recital A hereof.

“Deed of Trust” shall have the meaning assigned to such term in the Preamble hereof.

“Event of Default” shall have the meaning assigned to such term in the Credit Agreement.

“First Lien Agent” shall have the meaning assigned to such term in the Intercreditor Agreement.

“First Lien Debt” shall have the meaning assigned to such term in the Intercreditor Agreement.

“First Lien Documents” shall have the meaning assigned to such term in the Intercreditor Agreement.



"First Lien Loan Agreement" shall mean the Loan and Security Agreement, dated as of March 11, 2011, by and among the Grantor, each subsidiary of the Grantor party thereto as a borrower, U.S. Bank National Association, as syndication agent, Harris, N.A., as agent for the lenders party thereto, and the lenders party thereto, as amended by the First Amendment to Loan and Security Agreement, dated as of April 6, 2011, and as further amended by the Second Amendment to Loan and Security Agreement, dated as of June 8, 2012.

"Fixtures" shall mean "fixtures," as defined in Section 9-102(a)(41) of the UCC, including, without limitation, all machinery, apparatus, equipment, fittings, fixtures, improvements and articles of personal property of every kind, description and nature whatsoever now or hereafter attached or affixed to the Land or any other Improvement used in connection with the use and enjoyment of the Land or any other Improvement or the maintenance or preservation thereof, which by the nature of their location thereon or attachment thereto are real property or fixtures under the UCC or any other applicable Requirements of Law, including, without limitation, to the extent that they are real property or fixtures under the UCC or any other applicable Requirement of Law, all HVAC equipment, boilers, electronic data processing, telecommunications or computer equipment, refrigeration, electronic monitoring, power, waste removal, elevators, maintenance or other systems or equipment, utility systems, fire sprinkler and security systems, drainage facilities, lighting facilities, all water, sanitary and storm sewer, drainage, electricity, steam, gas, telephone and other utility equipment and facilities, pipes, fittings and other items of every kind and description now or hereafter attached to or located on the Land.

"Governmental Authority" shall mean any nation, sovereign or government, any state, province, canton or other political subdivision thereof and any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Grantor" shall have the meaning assigned to such term in the Preamble hereof.

"Grantor's Interest" shall have the meaning assigned to such term in Section 2.2 hereof.

"Guarantor" shall have the meaning assigned to such term in the Collateral Agreement.

"Improvements" shall mean all buildings, structures and other improvements of every kind or description and any and all alterations now or hereafter located, attached or erected on the Land, including, without limitation, (i) all Fixtures, (ii) all attachments, railroad tracks, foundations, sidewalks, drives, roads, curbs, streets, ways, alleys, passages, passageways, sewer rights, parking areas, driveways, fences and walls and (iii) all materials now or hereafter located on the Land intended for the construction, reconstruction, repair, replacement, alteration, addition or improvement of or to such buildings, Fixtures, structures and improvements, all of which materials shall be deemed to be part of the Improvements immediately upon delivery thereof on the Land and to be part of the Improvements immediately upon their incorporation therein.



201208130109

Skagit County Auditor

"Indemnity Agreement" means the Environmental Indemnity Agreement, dated as of August 2, 2012, entered into by the Grantor in favor of the Beneficiary, as may be amended, restated, supplemented or otherwise modified from time to time.

"Insurance Policies" means the insurance policies and coverages required to be maintained by the Grantor with respect to the Trust Property pursuant to the Collateral Agreement.

"Intercreditor Agreement" means the Intercreditor Agreement, dated as of August 2, 2012, among the Administrative Agent, Harris, N.A., in its capacity as agent under the First Lien Loan Agreement and certain other collateral documents relating thereto, and the Grantor, as may be amended, restated, supplemented or otherwise modified from time to time.

"Land" shall mean the leasehold estate in the land described in Schedule A annexed to this Deed of Trust created by the Mortgaged Lease, together with all of the Grantor's reversionary rights in and to any and all easements, rights-of-way, strips and gores of land, waters, water courses, water rights, mineral, gas and oil rights and all power, air, light and other rights, estates, titles, interests, privileges, liberties, servitudes, licenses, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining thereto, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto and together with any greater or additional estate therein as may be acquired by the Grantor.

"Landlord" shall mean any landlord, lessor, franchisor, licensor or grantor, as applicable, under a Lease or the Mortgaged Lease.

"Leases" shall mean, collectively, any and all leases and subleases of space, franchise agreements, licenses, occupancy or concession agreements now existing or hereafter entered into, whether or not of record, granting to any Person a possessory interest in, or the right to use, all or any portion of the Premises and any and all amendments, modifications, supplements, replacements, extensions and renewals of any thereof, whether now in effect or hereafter coming into effect.

"Mortgaged Lease" means that Mount Vernon Lease, dated as of March 17, 1999, pursuant to which the Grantor leases all or a portion of the Land from Briar Development Company LLP, a Washington limited liability partnership, a memorandum of which was recorded in Skagit County, Washington on April 1, 1999 as Document No. 9904010055, together with all assignments, modifications, extensions and renewals of the Mortgaged Lease and all credits, deposits, options, privileges and rights of the Grantor, as tenant under the Mortgaged Lease, including, but not limited to, rights of first refusal, if any, and the right, if any, to renew or extend the Mortgaged Lease for a succeeding term or terms.

"Mortgaged Lease Damage Claims" means all of the Grantor's claims and rights to the payment of damages that may arise from failure of the Landlord under the Mortgaged Lease to perform under the Mortgaged Lease or rejection of the Mortgaged Lease by the Landlord under any Debtor Relief Law.

"Permit" shall mean any and all permits, certificates, approvals, authorizations, consents, licenses, variances, franchises or other instruments, however characterized, of any

Governmental Authority (or any Person acting on behalf of a Governmental Authority) now or hereafter acquired or held, issued or in any way furnished in connection with the Trust Property, including, without limitation, building permits, certificates of occupancy, environmental certificates, industrial permits or licenses and certificates of operation (together with all amendments, modifications, extensions, renewals and replacements of any thereof).

“Permitted Collateral Liens” shall mean Liens that constitute Permitted Liens pursuant to the Collateral Agreement.

“Permitted Subordinated Debt” shall mean Indebtedness of the Grantor that is subordinated to the Qualified Borrower Obligations (as defined in the Collateral Agreement) in a manner satisfactory to the Agent and contains terms, including without limitation, payment terms, satisfactory to the Agent.

“Premises” shall mean, collectively, the Land and the Improvements.

“Proceeds” shall mean, collectively, any and all cash proceeds and noncash proceeds and shall include all (i) accessions, replacements, renewals, additions and substitutions for any Trust Property, (ii) proceeds of the conversion, voluntary or involuntary, of any of the Trust Property or any portion thereof into cash or liquidated claims, (iii) proceeds of any insurance (including the interests of the Grantor in the underlying insurance policies and any unearned premiums), indemnity, warranty, guaranty or claim payable to the Beneficiary or to the Grantor from time to time with respect to any of the Trust Property, (iv) Condemnation Awards, (v) products of the Trust Property and (vi) other amounts from time to time paid or payable under or in connection with any of the Trust Property, including, without limitation, refunds of real estate taxes and assessments, including interest thereon.

“Property Agreements” shall mean, collectively, any and all agreements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of the Trust Property, including, without limitation, all construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, option agreements, rights of first refusal, parking agreements, restrictive covenants, easement agreements and access agreements (including all amendments, extensions, replacements, renewals, modifications and/or guarantees thereof), whether or not of record and whether now in existence or hereafter entered into, and all reserves, deferred payments, deposits, refunds and claims of every kind, nature or character relating thereto.

“Property Material Adverse Effect” shall mean, as of any date of determination and whether individually or in the aggregate, any event, circumstance, occurrence or condition which has caused or resulted in (or would reasonably-be expected to cause or result in) a material adverse effect on (a) the business, or operations of the Grantor as presently conducted at the Trust Property; (b) the value or utility of the Trust Property; or (c) the legality, priority or enforceability of the Lien created by this Deed of Trust or the rights and remedies of the Trustee or the Beneficiary hereunder.



“Receiver” means, with respect to any Person (including the Grantor), any receiver, trustee, custodian, debtor in possession, liquidator, sequestrator, administrator, conservator, or other successor appointed (whether by a court or otherwise) pursuant to any creditor’s exercise of remedies against such Person, or pursuant to any proceeding relating to such Person under any Debtor Relief Law, or for purposes of reorganization or liquidation, or otherwise for the benefit of such Person’s creditors, or under any similar circumstances, or otherwise having similar powers over such Person or its property, whether such Receiver acts on an interim, temporary or final basis and whether such appointment applies to all or any significant portion of such Person’s assets or property.

“Records” shall mean, collectively, any and all drawings, plans, specifications, file materials, operating and maintenance records, catalogues, tenant lists, correspondence, advertising materials, operating manuals, warranties, guarantees, appraisals, studies and data relating to the Trust Property or the construction of any alteration relating to the Premises or the maintenance of any Permit.

“Rents” shall mean, collectively, any and all rents, additional rents, royalties, cash, guaranties, letters of credit, bonds, sureties or securities deposited under any Lease to secure performance of the Tenant’s obligations thereunder, revenues, earnings, profits and income, advance rental payments, payments incident to assignment, sublease or surrender of a Lease, claims for forfeited deposits and claims for damages, now due or hereafter to become due with respect to any Lease, any indemnification against, or reimbursement for, sums paid and costs and expenses incurred by the Grantor under any Lease or otherwise, and any award in the event of any proceeding under any Debtor Relief Laws in respect of any Tenant under, or guarantor of, a Lease.

“Requirements of Law” shall mean, with respect to any Person, the common law and all federal, state, provincial, local and foreign laws, treaties, rules and regulations, orders, ordinances, rules, regulations, statutes, case law, judgments, decrees and other determinations of, concessions, grants, franchises, licenses and other contractual obligations with, any Governmental Authority or arbitrator, applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Reserves” shall mean all reserves, escrows or impounds required under any of the Loan Documents and all deposit accounts maintained by the Grantor with respect to the Trust Property.

“Secured Obligations” shall mean the Obligations (as such term is defined in the Credit Agreement) of the Grantor and all obligations of the Grantor to perform the agreements, covenants, conditions, warranties, representations and other obligations required to be performed by it pursuant to the terms of the Loan Documents (including, without limitation, this Deed of Trust).

“Tenant” shall mean any tenant, lessee, sublessee, franchisee, licensee, grantee or obligee, as applicable, under a Lease.

“Trustee” shall have the meaning assigned to such term in the Preamble hereof.



"Trust Property" shall have the meaning assigned to such term in Section 2.1 hereof.

"UCC" shall mean the Uniform Commercial Code as in effect on the date hereof in the state in which the Premises are located; provided, however, that if the creation, perfection or enforcement of any security interest herein granted is governed by the laws of any other state as to the matter in question, "UCC" shall mean the Uniform Commercial Code in effect in such other state.

1.2 Interpretation. The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Deed of Trust as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. The section titles appear as a matter of convenience only and shall not affect the interpretation of this Deed of Trust. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. Accounting terms not otherwise specifically defined herein shall be construed in accordance with GAAP consistently applied.

ARTICLE II

GRANTS; SECURED OBLIGATIONS

2.1 Grant of Trust Property. The Grantor hereby pledges, gives, grants, bargains, sells, assigns, transfers and conveys to the Trustee, its successors and assigns, in trust, with power of sale, for the use and benefit of the Beneficiary, and hereby grants to the Beneficiary a mortgage lien on, and a security interest in and upon, all of the Grantor's estate, right, title and interest in, to and under the following property, whether now owned or held or hereafter acquired from time to time (collectively, the "Trust Property"):

- (i) the Land and the Mortgaged Lease;
- (ii) the Improvements;
- (iii) the Leases;
- (iv) the Rents;
- (v) the Permits;
- (vi) the Property Agreements;
- (vii) the Reserves;
- (viii) the Records; and
- (ix) the Proceeds.

TO HAVE AND TO HOLD the Trust Property, together with all estate, right, title and interest of the Grantor and anyone claiming by, through or under the Grantor in and to the Trust Property



and all rights and appurtenances relating thereto, unto the Beneficiary, its successors and assigns, for the purpose of securing the payment and performance in full of all of the Secured Obligations.

2.2 Assignment of Leases and Rents. As additional security for the payment and performance in full of the Secured Obligations and subject to the provisions of Article V hereof (including the revocable license granted to the Grantor thereunder), the Grantor absolutely, presently, unconditionally and irrevocably assigns, transfers and sets over to the Beneficiary, and grants to the Beneficiary, all of the Grantor's estate, right, title, interest, claim and demand, as Landlord, under any and all of the Leases, including, without limitation, the following (such assigned rights, the "Grantor's Interest"):

(i) the immediate and continuing right to receive and collect Rents payable by the Tenants pursuant to the Leases;

(ii) all claims, rights, powers, privileges and remedies of the Grantor, whether provided for in the Leases or arising by statute or at law or in equity or otherwise, consequent on any failure on the part of the Tenants under the Leases to perform or comply with any term of the Leases;

(iii) all rights to take all actions upon the happening of a default under the Leases as shall be permitted by the Leases or by law, including, without limitation, the commencement, conduct and consummation of proceedings at law or in equity; and

(iv) the full power and authority, in the name of the Grantor or otherwise, to enforce, collect, receive and receipt for any and all of the foregoing and to take all other actions whatsoever which the Grantor, as Landlord, is or may be entitled to take under the Leases.

2.3 Secured Obligations. This Deed of Trust secures, and the Trust Property is collateral security for, the payment and performance of the Secured Obligations in full when due.

2.4 Future Advances. This Deed of Trust shall secure all Secured Obligations, including, without limitation, future advances relating to the Secured Obligations whenever hereafter made with respect to or under the Loan Documents and shall secure not only Secured Obligations with respect to presently existing indebtedness evidencing or representing any of the Secured Obligations, but also any and all other indebtedness evidencing or representing any of the Secured Obligations which may hereafter be owing by the Grantor to the Secured Parties under the Loan Documents, however incurred, whether interest, discount or otherwise, and whether the same shall be deferred, accrued or capitalized, including future advances and re-advances relating to the Secured Obligations pursuant to the Loan Documents, whether such advances are obligatory or to be made at the option of the Secured Parties, or otherwise, and any extensions, refinancings, modifications or renewals of all such Secured Obligations whether or not the Grantor executes any extension agreement or renewal instrument and, in each case, to the same extent as if such future advances were made on the date of the execution of this Deed of Trust.



2.5 Intentionally Deleted.

2.6 Intentionally Deleted.

2.7 No Release. Nothing set forth in this Deed of Trust shall relieve the Grantor from the performance of any term, covenant, condition or agreement on the Grantor's part to be performed or observed under or in respect of any of the Trust Property or from any liability to any Person under or in respect of any of the Trust Property or shall impose any obligation on the Beneficiary or any other Secured Party to perform or observe any such term, covenant, condition or agreement on the Grantor's part to be so performed or observed or shall impose any liability on the Beneficiary or any other Secured Party for any act or omission on the part of the Grantor relating thereto or for any breach of any representation or warranty on the part of the Grantor contained in this Deed of Trust or any other Loan Document, or under or in respect of the Trust Property or made in connection herewith or therewith. The obligations of the Grantor contained in this Section 2.7 shall survive the termination hereof and the discharge of the Grantor's other obligations under this Deed of Trust and the other Loan Documents.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF GRANTOR

3.1 Incorporation of the Loan Documents. The Grantor represents, warrants, covenants and agrees that each of the representations, warranties, covenants and other agreements contained in the Loan Documents that are applicable to the Grantor or the Trust Property are hereby incorporated herein in their entirety by this reference.

3.2 Warranty of Title. The Grantor represents and warrants that:

(i) it has a valid leasehold interest in the Premises and good title to the interest it purports to own or hold in and to each of the Leases, the Property Agreements, the Permits and the Records, in each case subject to no Liens, except for Permitted Collateral Liens;

(ii) based on the title search reports delivered on or prior to the date hereof, upon recordation in the official records in the county (or other applicable jurisdiction) in which the Premises are located, this Deed of Trust will create and constitute a valid and enforceable Lien on the Trust Property in favor of the Beneficiary prior to all other Liens on the Trust Property except for the Liens granted to the First Lien Agent pursuant to the First Lien Documents to secure the First Lien Debt, and, to the extent any of the Trust Property shall consist of Fixtures, a security interest in the Fixtures in favor of the Beneficiary prior to all other security interests on such Fixtures except for the security interests granted to the First Lien Agent pursuant to the First Lien Documents to secure the First Lien Debt, which Lien priority and security interest priority are subject only to Permitted Collateral Liens.

3.3 Condition of Trust Property. The Grantor represents and warrants that:

(i) the Premises and the present and contemplated use and occupancy thereof comply with all applicable Requirements of Law and with all private restrictions and agreements



affecting the Trust Property, except where the failure to be in compliance does not result in a Property Material Adverse Effect;

(ii) as of the date hereof, Grantor has neither received any notice of nor has any knowledge of any disputes regarding boundary lines, encroachments or possession of any portions of the Trust Property and has no knowledge of any state of facts that may exist which could give rise to any such claims, except to the extent that any such disputes, facts or claims constitute Permitted Collateral Liens;

(iii) to the Grantor's knowledge, no portion of the Premises is located in an area identified by the Federal Emergency Management Agency or any successor thereto as an area having special flood hazards pursuant to the Flood Insurance Acts promulgated by the Federal Emergency Management Agency or any successor thereto or, if any portion of the Premises is located within such area as evidenced by the standard flood hazard determination, the Grantor has obtained flood insurance in an amount which shall cause the Premises to comply with the National Flood Insurance Program, as set forth in the Flood Disaster Protection Act of 1973 (as amended from time to time); and

(iv) there are no options or rights of first refusal to purchase or acquire all or any portion of the Trust Property, other than any such options or rights that are Permitted Collateral Liens.

3.4 Charges. The Grantor represents and warrants that, to its knowledge, all Charges imposed upon or assessed against the Trust Property which are due and payable have been paid and discharged except to the extent such Charges constitute a Permitted Collateral Lien.

ARTICLE IV

CERTAIN COVENANTS OF GRANTOR

4.1 Payment and Performance. The Grantor shall pay and perform the Secured Obligations in full as and when the same shall become due or are required to be performed, as applicable, under the Loan Documents.

4.2 Title. The Grantor shall

(i) (A) keep in effect all rights and appurtenances to, or that constitute a part of, the Trust Property and (B) protect, preserve and defend its interest in the Trust Property and title thereto, except in each such case, where the failure to do so does not result in a Property Material Adverse Effect;

(ii) (A) comply with each of the terms, conditions and provisions of each Property Agreement where noncompliance with the same may result in the imposition of a Lien on the Trust Property (other than Permitted Collateral Liens), (B) forever warrant and defend to the Trustee and the Beneficiary the Lien and security interests created and evidenced hereby and the validity and priority hereof in any action or proceeding against the claims of any and all Persons whomsoever affecting or purporting to affect the Trust Property or any of the rights of the Trustee or Beneficiary hereunder (other than the Permitted Collateral Liens) and (C) maintain

UNRECORDED
this Deed of Trust as a valid and enforceable Lien on the Trust Property prior to all other Liens on the Trust Property except for the Liens granted to the First Lien Agent pursuant to the First Lien Documents to secure the First Lien Debt and, to the extent any of the Trust Property shall consist of Fixtures, a security interest in the Trust Property prior to all other security interests on the Trust Property except for the security interests granted to the First Lien Agent pursuant to the First Lien Documents to secure the First Lien Debt, which Lien priority and security interest priority shall be subject only to Permitted Collateral Liens;

(iii) promptly upon obtaining knowledge of the pendency of any proceedings for the eviction of the Grantor from the Trust Property or any material part thereof by paramount title or otherwise questioning the Grantor's right, title and interest in, to and under the Trust Property as warranted in this Deed of Trust, or of any condition that could give rise to any such proceedings, notify the Trustee and the Beneficiary thereof in writing. The Trustee and/or the Beneficiary may participate in such proceedings, and the Grantor will deliver or cause to be delivered to the Trustee and the Beneficiary all instruments requested by the Trustee and Beneficiary to permit such participation. In the event that any adjudication of such proceedings that is adverse to the Grantor or the Trust Property could reasonably be expected to result in a Property Material Adverse Effect, the Trustee and Beneficiary may be represented by counsel satisfactory to the Grantor, Trustee and Beneficiary at the reasonable expense of the Grantor; and

(iv) not initiate, join in or consent to any change in the zoning or any other permitted use classification of the Premises without the prior written consent of the Beneficiary if such change would no longer permit the operation of the material business presently being conducted by the Grantor or any Tenant or other occupant of the Premises.

4.3 Inspection. The Grantor shall permit the Beneficiary, and its agents and employees, to inspect the Trust Property in accordance with the provisions of the Collateral Agreement.

4.4 Limitation on Liens; Transfer Restrictions.

(i) The Grantor may not, without the prior written consent of the Beneficiary, permit to exist or grant any Lien on all or any part of the Trust Property or suffer or allow any such Lien to occur by operation of law or otherwise, except for Permitted Collateral Liens and Permitted Subordinated Debt;

(ii) Except to the extent permitted by the Collateral Agreement, the Grantor may not, without the prior written consent of the Beneficiary, sell, convey, assign, lease or otherwise transfer all or any part of the Trust Property; provided, however, that Grantor shall have the right to enter into concessionaire, license or sublease agreements pursuant to the terms of the Mortgaged Lease.



ARTICLE V

CONCERNING ASSIGNMENT OF LEASES AND RENTS

5.1 Present Assignment; License to the Grantor.

(i) Section 2.2 of this Deed of Trust constitutes a present, absolute, effective, irrevocable and complete assignment by the Grantor to the Beneficiary of the Leases and Rents and the right, subject to applicable Requirements of Law, to collect all sums payable to the Grantor thereunder and apply the same as the Beneficiary may, in its sole discretion, determine to be appropriate to protect the security afforded by this Deed of Trust (including the payment of reasonable costs and expenses in connection with the maintenance, operation, improvement, insurance, taxes and upkeep of the Trust Property), which is not conditioned upon the Beneficiary being in possession of the Premises. This assignment is an absolute assignment and not an assignment for additional security only. The Trustee and the Beneficiary hereby grant to the Grantor, however, a license to collect and apply the Rents and to enforce the obligations of Tenants under the Leases. Immediately upon the occurrence of and during the continuance of any Event of Default, whether or not legal proceedings have commenced and without regard to waste, adequacy of security for the Secured Obligations or the solvency of the Grantor, the license granted in the immediately preceding sentence shall automatically cease and terminate without any notice by the Beneficiary (such notice being hereby expressly waived by the Grantor to the extent permitted by applicable Requirements of Law), or any action or proceeding or the intervention of a Receiver appointed by a court.

(ii) The Grantor acknowledges that the Beneficiary has taken all reasonable actions necessary to obtain (and that upon recordation of this Deed of Trust, the Beneficiary shall have) to the extent permitted under applicable Requirements of Law, a valid and fully perfected, present assignment of the Rents arising out of the Leases and all security for such Leases prior to all other assignments and Liens except for those granted to the First Lien Agent pursuant to the First Lien Documents to secure the First Lien Debt, and subject to the Permitted Collateral Liens and, in the case of security deposits, rights of depositors and applicable Requirements of Law. The Grantor acknowledges and agrees that, upon recordation of this Deed of Trust, the Beneficiary's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to the Grantor and, to the extent permitted by applicable Requirements of Law, all third parties, including, without limitation, any subsequently appointed trustee in any proceeding under any Debtor Relief Laws, without the necessity of commencing a foreclosure action with respect to this Deed of Trust, making formal demand for the Rents, obtaining the appointment of a Receiver or taking any other affirmative action.

(iii) Without limitation of the absolute nature of the assignment of the Rents hereunder, the Grantor and the Beneficiary agree that (a) this Deed of Trust shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Deed of Trust extends to Rents acquired before the commencement of a proceeding under any Debtor Relief Laws and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any proceeding under any Debtor Relief Laws.



5.2 Collection of Rents by the Beneficiary.

(i) Any Rents receivable by the Beneficiary pursuant to this Article V, after payment of all proper costs and expenses as the Beneficiary may, in its sole discretion, determine to be appropriate (including the payment of reasonable costs and expenses in connection with the maintenance, operation, improvement, insurance, taxes and upkeep of the Trust Property), shall be applied in accordance with the provisions of Section 8.2(ii) of this Deed of Trust. The Beneficiary shall be accountable to the Grantor only for Rents actually received by the Beneficiary. The collection of such Rents and the application thereof shall not cure or waive any Event of Default or waive, modify or affect notice of Event of Default or invalidate any act done pursuant to such notice.

(ii) The Grantor hereby irrevocably authorizes and directs the Tenant under each Lease to rely upon and comply with any and all notices or demands from the Beneficiary for payment of Rents to the Beneficiary, and the Grantor shall have no claim against such Tenant or Tenants for Rents paid by such Tenant or Tenants to the Beneficiary pursuant to such notice or demand.

5.3 Irrevocable Interest. All rights, powers and privileges of the Beneficiary set forth in this Article V are coupled with an interest and are irrevocable, subject to the terms and conditions hereof.

ARTICLE VI

TAXES AND CERTAIN STATUTORY LIENS

6.1 Payment of Charges. The Grantor shall pay and discharge, or cause to be paid and discharged, all Charges from time to time as and when required pursuant to the Credit Agreement. The Grantor shall, upon the Beneficiary's request, deliver to the Beneficiary receipts evidencing the payment of all such Charges.

6.2 Stamp and Other Taxes. The Grantor shall pay any documentary stamp taxes and any mortgage recording taxes (in each case, with any interest, fines and/or penalties) that may hereafter be levied, imposed or assessed under or upon or by reason hereof or the Secured Obligations or any instrument or transaction affecting or relating to either thereof, and in default thereof, the Beneficiary may advance the same and the amount so advanced shall be payable by the Grantor to the Beneficiary in accordance with the provisions of the Credit Agreement.

6.3 Certain Tax Law Changes. In the event of the passage after the date hereof of any law deducting from the value of real property, for the purpose of taxation, amounts in respect of any Lien thereon or changing in any way the laws for the taxation of deeds of trust or debts secured by deeds of trust for state or local purposes or the manner of the collection of any taxes, and imposing any taxes, either directly or indirectly, on this Deed of Trust or any other Loan Document (other than taxes imposed on or measured by the net income of any Secured Party by any jurisdiction in which such Secured Party is a resident, has an office, conducts business or has another connection (other than a business or connection resulting solely from such Secured Party being a party to, performing its obligations or receiving payments under, or enforcing, the Loan



Documents or otherwise arising out of the transactions contemplated by the Loan Documents), and franchise or similar taxes imposed in lieu of such net income taxes), the Grantor shall promptly pay to the Beneficiary such amount or amounts as may be necessary from time to time to pay any such taxes, assessments or other charges resulting therefrom; provided, however, that if any such payment or reimbursement shall be unlawful or taxable to the Beneficiary or would constitute usury or render the indebtedness wholly or partially usurious under applicable Requirements of Law, the Grantor shall pay or reimburse the Beneficiary for payment of the lawful and non-usurious portion thereof.

6.4 Proceeds of Tax Claim. In the event that the proceeds of any tax claim against the Premises are paid after the Beneficiary has exercised its right to foreclose the Lien hereof pursuant to Article VIII below, such proceeds shall be paid to the Beneficiary to satisfy any deficiency remaining after such foreclosure. The Beneficiary shall retain its interest in the proceeds of such tax claim during any redemption period. The amount of any such proceeds in excess of any deficiency claim of the Beneficiary shall in a reasonably prompt manner be released to the Grantor.

ARTICLE VII

CONDEMNATION AND INSURANCE

7.1 Condemnation. In the case of any taking, condemnation or other proceeding in the nature thereof with respect to the Trust Property, the Beneficiary may, at its option, participate in any proceedings or negotiations which might result in any taking or condemnation and the Grantor shall deliver or cause to be delivered to the Trustee and the Beneficiary all instruments reasonably requested by it to permit such participation. The Trustee and the Beneficiary may be represented by counsel satisfactory to the Beneficiary and the Grantor at the reasonable expense of the Grantor in connection with any such participation. The Grantor shall pay all reasonable fees, costs and expenses incurred by the Trustee and the Beneficiary in connection therewith and in seeking and obtaining any award or payment on account thereof. The Grantor shall take all steps reasonably necessary to notify the condemning authority of such participation. The Grantor hereby assigns all Condemnation Awards to the Beneficiary and authorizes the Beneficiary to collect and receive such Condemnation Awards and to give proper receipts and acquittances therefor; provided, however, that the Beneficiary shall remit to Grantor any Condemnation Awards received by the Beneficiary that are not required to be applied to the Secured Obligations pursuant to the Loan Documents.

7.2 Insurance. The Grantor shall obtain and keep in full force and effect all Insurance Policies in accordance with the terms of the Collateral Agreement. The Grantor hereby assigns to the Beneficiary all proceeds of the Insurance Policies. Except as otherwise provided in the Credit Agreement and/or any of the other Loan Documents, the Grantor hereby authorizes the Beneficiary to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to the Beneficiary, instead of to the Grantor and the Beneficiary jointly; provided, however, that the Beneficiary shall promptly remit to the Grantor any proceeds received by the Beneficiary that are not required to be applied to the Secured Obligations pursuant to the Loan Documents.



ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

8.1 Remedies in Case of an Event of Default. If any Event of Default shall have occurred and be continuing, the Beneficiary may at its option, in addition to any other action permitted under this Deed of Trust or the other Loan Documents or by law, statute or in equity, take one or more of the following actions to the greatest extent permitted by applicable Requirements of Law:

(i) personally, or by its agents or attorneys, (A) enter into and upon and take possession of all or any part of the Premises together with the books, records and accounts of the Grantor relating thereto and exclude the Grantor, its agents and servants wholly therefrom, (B) use, operate, manage and control the Premises and conduct the business thereof, (C) maintain and restore the Premises, (D) make all necessary or proper repairs, renewals and replacements and such useful alterations thereto and thereon as the Beneficiary may deem advisable, (E) manage, lease and operate the Premises and carry on the business thereof and exercise all rights and powers of the Grantor with respect thereto either in the name of the Grantor or otherwise or (F) collect and receive all Rents. The Beneficiary shall be under no liability to the Grantor for or by reason of any such taking of possession, entry, removal or holding, operation or management except that any amounts so received by the Beneficiary shall be applied in accordance with the provisions of Section 8.2(ii);

(ii) with or without entry, personally or by its agents or attorneys, (A) sell the Trust Property and all estate, right, title and interest, claim and demand therein at one or more sales in one or more parcels, in accordance with the provisions of Section 8.2 or (B) institute and prosecute proceedings for the complete or partial foreclosure of the Lien and security interests created and evidenced hereby; or

(iii) take such steps to protect and enforce its rights whether by action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement in the Loan Documents, or in aid of the execution of any power granted in this Deed of Trust, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Beneficiary shall elect.

8.2 Sale of Trust Property if Event of Default Occurs; Proceeds of Sale.

(i) If any Event of Default shall have occurred and be continuing, the Beneficiary may institute an action to foreclose this Deed of Trust or take such other action as may be permitted and available to the Beneficiary at law or in equity for the enforcement of the Loan Documents and realization on the Trust Property and proceeds thereon through power of sale (if then available under applicable Requirements of Law) or to final judgment an execution thereof for the Secured Obligations, and in furtherance thereof the Beneficiary may sell the Trust Property at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law or statute or in equity. The Beneficiary may execute and deliver to the purchaser at such sale a conveyance of the leasehold interest of the Grantor in the Premises and an assignment or conveyance of all the



Grantor's estate, right, title and interest in and to the other Trust Property, including the Leases, each of which conveyances and assignments shall contain recitals as to the Event of Default upon which the execution of the power of sale herein granted depends, and the Grantor hereby constitutes and appoints the Beneficiary the true and lawful attorney in fact of the Grantor to make any such recitals, sale, assignment and conveyance, and all of the acts of the Beneficiary as such attorney in fact are hereby ratified and confirmed. The Grantor agrees that such recitals shall be binding and conclusive upon the Grantor and that any assignment or conveyance to be made by the Beneficiary shall divest the Grantor of all right, title, interest, equity and right of redemption, including any statutory redemption, in and to the Trust Property, and if the Grantor retains possession of any Trust Property subsequent to such sale, the Grantor will be considered a tenant at sufferance of the purchaser, and will be subject to eviction and removal, forcible or otherwise, with or without process of law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or dissolution, or otherwise, and are in addition to any and all other remedies which the Beneficiary may have hereunder, at law or in equity. So long as the Secured Obligations, or any part thereof, remain unpaid, the Grantor agrees that possession of the Trust Property by the Grantor, or any Person claiming under the Grantor, shall be as tenant, and, in case of a sale under power or upon foreclosure as provided in this Deed of Trust, the Grantor and any Person in possession under the Grantor, as to whose interest such sale was not made subject, shall, at the option of the purchaser at such sale, then become and be tenants holding over, and shall forthwith deliver possession to such purchaser, or be summarily dispossessed in accordance with the laws applicable to tenants holding over. In case of any sale under this Deed of Trust by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceeding or otherwise, the Trust Property may be sold as an entirety or in separate parcels in such manner or order as the Beneficiary in its sole discretion may elect. One or more exercises of powers herein granted shall not extinguish or exhaust such powers, until the entire Trust Property is sold or the Secured Obligations are paid in full.

(ii) The proceeds of any sale made under or by virtue of this Article VIII, together with any other sums which then may be held by the Beneficiary under this Deed of Trust, whether under the provisions of this Article VIII or otherwise, shall be applied in accordance with the provisions of the Collateral Agreement.

(iii) The Beneficiary (on behalf of any Secured Party or on its own behalf) or any Secured Party or any of their respective Affiliates may bid for and acquire the Trust Property or any part thereof at any sale made under or by virtue of this Article VIII and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the purchase price the unpaid amounts (whether or not then due) owing to the Beneficiary, or such Lender in respect of the Secured Obligations, after deducting from the sales price the expense of the sale and the reasonable costs of the action or proceedings and any other sums that the Beneficiary or such Lender is authorized to deduct under this Deed of Trust.

(iv) The Beneficiary may adjourn, from time to time, any sale by it to be made under or by virtue hereof by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and, the Beneficiary, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(v) If the Premises is comprised of more than one parcel of land, the Beneficiary may take any of the actions authorized by this Section 8.2 in respect of any or a number of individual parcels.

8.3 Additional Remedies in Case of an Event of Default.

(i) The Beneficiary shall be entitled to recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of the provisions hereof and, to the extent permitted by applicable Requirement of Law, the right of the Beneficiary to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions hereof, or the foreclosure of, or absolute conveyance pursuant to, this Deed of Trust.

(ii) Any recovery of any judgment by the Beneficiary and any levy of any execution under any judgment upon the Trust Property shall not affect in any manner or to any extent the Lien and security interests created and evidenced hereby upon the Trust Property or any part thereof, or any conveyances, powers, rights and remedies of the Beneficiary hereunder, but such conveyances, powers, rights and remedies shall continue unimpaired as before.

(iii) Any monies collected by the Beneficiary under this Section 8.3 shall be applied in accordance with the provisions of Section 8.2(ii).

8.4 Legal Proceedings After an Event of Default. Upon the occurrence and during the continuance of an Event of Default, the Beneficiary shall be entitled forthwith as a matter of right, concurrently or independently of any other right or remedy hereunder either before or after declaring the Secured Obligations or any part thereof to be due and payable, to the appointment of a Receiver without giving notice to any party and without regard to the adequacy or inadequacy of any security for the Secured Obligations or the solvency or insolvency of any Person or entity then legally or equitably liable for the Secured Obligations or any portion thereof. The Grantor hereby consents to the appointment of such Receiver. Notwithstanding the appointment of any Receiver, the Beneficiary shall be entitled as pledgee to the possession and control of any cash, deposits or instruments at the time held by or payable or deliverable under the terms of the Loan Documents to the Beneficiary.

8.5 Waivers. The Grantor shall not (A) at any time insist upon, or plead, or in any manner whatsoever claim or take any benefit or advantage of any stay or extension or moratorium law or any exemption from execution or sale of the Trust Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance hereof, (B) claim, take or insist on any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Trust Property, or any part thereof, prior to any sale or sales of the Trust Property which may be made pursuant to this Deed of Trust, or pursuant to any decree, judgment or order of any court of competent jurisdiction or (C) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof. To the extent permitted by applicable Requirements of Law, the Grantor hereby expressly (1) waives all benefit or advantage of any such law or laws, including, without limitation, any statute of limitations applicable to this Deed of Trust, (2) as more specifically provided in Section 11.9

below, waives any and all rights to trial by jury in any action or proceeding related to the enforcement hereof, (3) except to the extent expressly required by the terms of a Loan Document, waives all notices of any Event of Default or of any election by the Beneficiary to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents, (4) waives any right to a marshalling of assets or a sale in inverse order of alienation, (5) waives any objection which it may now or hereafter have to the laying of venue of any action, suit or proceeding brought in connection with this Deed of Trust and further waives and agrees not to plead that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum and (6) covenants not to claim the benefits of such law or laws to hinder, delay or impede the execution of any power granted or delegated to the Beneficiary by this Article VIII but to suffer and permit the execution of every such power as though no such law or laws had been made or enacted. The Beneficiary shall not be liable for any incorrect or improper payment made pursuant to this Article VIII in the absence of gross negligence or willful misconduct on its part.

8.6 Remedies Not Exclusive. No remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Deed of Trust or any other Loan Document or now or hereafter existing at law or in equity. Any delay or omission of the Beneficiary to exercise any right or power accruing upon the occurrence of any Event of Default shall not impair any such right or power and shall not be construed to be a waiver of or acquiescence in any such Event of Default. Every power and remedy given by this Deed of Trust may be exercised from time to time concurrently or independently, when and as often as may be deemed expedient by the Beneficiary in such order and manner as the Beneficiary, in its sole discretion, may elect. If the Beneficiary accepts any monies required to be paid by the Grantor under this Deed of Trust after the same become due, such acceptance shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums secured by this Deed of Trust or to declare an Event of Default with regard to subsequent defaults. If the Beneficiary accepts any monies required to be paid by the Grantor under this Deed of Trust in an amount less than the sum then due, such acceptance shall be deemed an acceptance on account only and on the condition that it shall not constitute a waiver of the obligation of the Grantor to pay the entire sum then due, and the Grantor's failure to pay the entire sum then due shall be and continue to be a default hereunder notwithstanding acceptance of such amount on account. Except as otherwise expressly agreed in writing by the Beneficiary, no action by the Beneficiary in the enforcement of any rights, remedies or recourses under this Deed of Trust or otherwise at law or equity shall be deemed to cure any Event of Default.

8.7 Release of and Resort to Collateral. Subject to the terms of the Loan Documents, the Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Trust Property, any part of the Trust Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by this Deed of Trust or their priority with respect to the Trust Property. For payment of the Secured Obligations, the Beneficiary may, subject to the terms of the Intercreditor Agreement, resort to any other security in such order and manner as the Beneficiary may elect.



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

8.9 No Beneficiary in Possession. None of the enforcement of any of the remedies under this Article VIII, the assignment of the Rents and Leases under Section 2.2, the security interests under Article IX nor any other remedies afforded to the Beneficiary under this Deed of Trust, at law or in equity shall cause the Beneficiary or any Secured Party to be deemed or construed to be a beneficiary in possession of the Trust Property, to obligate the Beneficiary or any Secured Party to lease the Trust Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE IX

SECURITY AGREEMENT AND FIXTURE FILING

9.1 Security Agreement. To the extent that the Trust Property includes personal property or items of personal property which are or are to become Fixtures, this Deed of Trust shall also be construed as a security agreement under the UCC; and, upon and during the continuance of an Event of Default, the Beneficiary shall be entitled with respect to the Trust Property to exercise all remedies hereunder, all remedies available under the UCC with respect to Fixtures and all other remedies available under applicable Requirements of Law. Without limiting the foregoing, upon the occurrence of and during the continuance of an Event of Default, the Trust Property may, at the Beneficiary's option (subject to the terms of the Intercreditor Agreement), (i) be sold hereunder together with any sale of any portion of the Trust Property or otherwise, (ii) be sold pursuant to the UCC or (iii) be dealt with by the Beneficiary in any other manner permitted under applicable Requirements of Law. The Beneficiary may also, in its sole discretion and without notice (except as specified in Section 9.3 hereof), sell, assign or grant a license to use such personal property or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of the Beneficiary's offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Beneficiary may deem commercially reasonable. The Beneficiary or any Secured Party or any of their respective Affiliates may be the purchaser, licensee, assignee or recipient of or any part thereof at any such sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of such personal property sold, assigned or licensed at 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 such personal property or any part thereof payable by such person at such sale. Each purchaser, assignee, licensee or recipient at any such sale shall acquire such personal property sold, assigned or licensed absolutely free from any claim or right on the part of the Grantor or any Guarantor, and the Grantor hereby



waives, to the fullest extent permitted by law, all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. The Beneficiary shall not be obligated to make any sale of the Trust Property or any part thereof regardless of notice of sale having been given. The Beneficiary may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Grantor hereby waives, to the fullest extent permitted by Requirements of Law, any claims against the Beneficiary arising by reason of the fact that the price at which such personal property or any part thereof may have been sold, assigned or licensed at such a private sale was less than the price which might have been obtained at a public sale, even if the Beneficiary accepts the first offer received and does not offer such personal property to more than one offeree.

9.2 Fixture Filing. To the extent that the Trust Property includes items of personal property which are or are to become Fixtures, and to the extent permitted under applicable Requirements of Law, the filing hereof in the real estate records of the county in which such Trust Property is located shall also operate from the time of filing as a fixture filing with respect to such Trust Property, and the following information is applicable for the purpose of such fixture filing, to wit:

<p>Name and Address of the Debtor:</p> <p>The Grantor having the address described in the Preamble hereof.</p> <p>The Grantor is a corporation organized under the laws of the State of Washington whose Organization Number is 371010392.</p>	<p>Name and Address of the Secured Party:</p> <p>The Beneficiary having the address described in the Preamble hereof, from which address information concerning the security interest may be obtained.</p>
<p>This Financing Statement covers the following types or items of property:</p> <p>The Trust Property.</p> <p>This instrument covers goods or items of personal property which are or are to become Fixtures upon the Premises.</p> <p>The name of the record owner of the Premises on which such Fixtures are or are to be located is the Grantor.</p>	

In addition, the Grantor authorizes the Beneficiary to file appropriate financing and continuation statements under the UCC in effect in the jurisdiction in which the Trust Property is located or the jurisdiction where the Grantor is located as may be required by law in order to establish, preserve and protect the liens and security interests intended to be granted to the Beneficiary pursuant to this Deed of Trust in the Trust Property. Such financing statements may describe the collateral in the same manner as described in this Deed of Trust or may contain an indication or description of collateral that describes such property in any other manner as the Beneficiary may



determine, in its reasonable discretion, is necessary or prudent to ensure the perfection of the security interest in the collateral granted to the Beneficiary in connection herewith.

9.3 Notice of Sale. The Grantor acknowledges and agrees that, to the extent notice of sale or other disposition of the Trust Property or any part thereof shall be required by applicable Requirements of Law, ten (10) days' prior notice to the Grantor of the time and place of any public sale or of the time after which any private sale or other intended disposition is to take place shall be commercially reasonable notification of such matters. No notification need be given to the Grantor if it has signed, after the occurrence of an Event of Default, a statement renouncing or modifying any right to notification of sale or other intended disposition.

ARTICLE X

FURTHER ASSURANCES

10.1 Recording Documentation To Assure Security. The Grantor shall, forthwith after the execution and delivery hereof and thereafter, from time to time, cause this Deed of Trust and any financing statement, continuation statement or similar instrument relating thereto or to any property intended to be subject to the Lien hereof to be filed, registered and recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the validity and priority thereof or the Lien hereof purported to be created upon the Trust Property and the interest and rights of the Beneficiary therein. The Grantor shall pay or cause to be paid all taxes and fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment thereof, and of any instrument of further assurance, and all federal or state stamp taxes or other taxes, duties and charges arising out of or in connection with the execution and delivery of such instruments.

10.2 Further Acts. The Grantor shall, at the sole cost and expense of the Grantor, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, assignments, notices of assignment, transfers, financing statements, continuation statements, instruments and assurances as the Beneficiary shall from time to time reasonably request, which may be necessary in the judgment of the Beneficiary from time to time to assure, perfect, convey, assign, grant, transfer and confirm unto the Beneficiary, the property and rights hereby conveyed or assigned or which the Grantor may be or may hereafter become bound to convey or assign to the Beneficiary or for carrying out the intention or facilitating the performance of the terms hereof or the filing, registering or recording hereof. Without limiting the generality of the foregoing, in the event that the Beneficiary desires to exercise any remedies, consensual rights or attorney-in-fact powers set forth in this Deed of Trust and determines it necessary to obtain any approvals or consents of any Governmental Authority or any other Person therefor, then, upon the reasonable request of the Beneficiary, the Grantor agrees to use its best efforts to assist and aid the Beneficiary to obtain as soon as practicable any necessary approvals or consents for the exercise of any such remedies, rights and powers. In the event the Grantor shall fail to execute any instrument or take any action required to be executed or taken by the Grantor under this Section 10.2 within five (5) days after receipt of a written request therefor from the Beneficiary, the Beneficiary may execute or take the same as the attorney-in-fact for the Grantor, such power or attorney being coupled with an interest and is irrevocable.

The Grantor shall pay or cause to be paid all taxes and fees incident to any filing, registration, or recording of instruments pursuant to this Section 10.2 and all costs and expenses incident to the preparation, execution and acknowledgment thereof, and of any instrument of further assurance, and all federal or state stamp taxes or other taxes, duties and charges arising out of or in connection with the execution and delivery of such instruments as well as any other costs or expenses in connection with the Grantor's compliance with the provisions of this Section 10.2.

10.3 Additional Security. Without notice to or consent of the Grantor and without impairment of the Lien and rights created by this Deed of Trust, the Beneficiary may accept (but the Grantor shall not be obligated to furnish) from the Grantor or from any other Person, additional security for the Secured Obligations. Neither the giving hereof nor the acceptance of any such additional security shall prevent the Beneficiary from resorting, first, to such additional security, and, second, to the security created by this Deed of Trust without affecting the Beneficiary's Lien and rights under this Deed of Trust.

ARTICLE XI

MISCELLANEOUS

11.1 Covenants To Run with the Land. All of the grants, covenants, terms, provisions and conditions in this Deed of Trust shall run with the Land and shall apply to, and bind the successors and assigns of, the Grantor. All Persons who may have or acquire an interest in the Trust Property shall be deemed to have notice of, and be bound by, the terms of the Loan Documents; provided, however, that no such party shall be entitled to any rights thereunder without the prior written consent of the Beneficiary.

11.2 No Merger. The rights and estate created by this Deed of Trust shall not, under any circumstances, be held to have merged into any other estate or interest now owned or hereafter acquired by the Beneficiary unless the Beneficiary shall have consented to such merger in writing.

11.3 Concerning Beneficiary.

(i) The Beneficiary has been appointed as the Agent for the benefit of the Secured Parties pursuant to the Credit Agreement. The actions of the Beneficiary hereunder are subject to the provisions of the Credit Agreement. The Beneficiary shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking action (including, without limitation, the release or substitution of the Trust Property), in accordance with this Deed of Trust and the other Loan Documents. The Beneficiary shall at all times be the same Person that is the Administrative Agent under the Credit Agreement. Written notice of resignation by the Administrative Agent pursuant to the Credit Agreement shall also constitute notice of resignation of the Agent as the Beneficiary under this Deed of Trust. Removal of the Administrative Agent pursuant to any provision of the Credit Agreement shall also constitute removal of the Agent as Beneficiary under this Deed of Trust. Appointment of a successor Administrative Agent pursuant to the Credit Agreement shall also constitute appointment of a successor Agent as successor Beneficiary under this Deed of Trust. Upon the acceptance of any appointment as the beneficiary hereunder by a successor to



the then-current Beneficiary, that successor Beneficiary shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Beneficiary under this Deed of Trust, and the retiring Beneficiary shall thereupon be discharged from its duties and obligations under this Deed of Trust. After any retiring Beneficiary's resignation, the provisions hereof shall inure to its benefit as to any actions taken or omitted to be taken by it under this Deed of Trust while it was the Beneficiary.

(ii) If any portion of the Trust Property also constitutes collateral granted by the Grantor or any Guarantor to the Beneficiary or the Agent to secure the Secured Obligations under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any conflict between the provisions of this Deed of Trust and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of any type in respect of such collateral, the Agent, in its sole discretion, shall select which provision or provisions shall control.

(iii) The Grantor and all other Persons shall be entitled to rely on releases, waivers, consents, approvals, notifications and other acts of the Beneficiary, without inquiry into the existence of required consents or approvals of the Secured Parties therefor.

11.4 Beneficiary May Perform; Beneficiary Appointed Attorney-in-Fact. If the Grantor shall fail to perform any covenants contained in this Deed of Trust, the Beneficiary may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach, and may expend funds for such purpose; provided, however, that (i) the Beneficiary shall in no event be bound to inquire into the validity of any tax, Lien, imposition or other obligation which the Grantor fails to pay or perform as and when required hereby and which the Grantor does not contest in accordance with any applicable provisions of the Loan Documents and (ii) the Beneficiary shall not under any circumstances be obligated to perform any obligation of the Grantor and shall not be liable to the Grantor or any other person or entity for any failure to take any action which it is empowered to take under this Section 11.4. Any and all amounts so expended by the Beneficiary shall be paid by the Grantor, together with interest thereon at the Default Rate, from the date on which the Beneficiary requests reimbursement from the Grantor, on demand. Neither the provisions of this Section 11.4 nor any action taken by the Beneficiary pursuant to the provisions of this Section 11.4 shall prevent any such failure to observe any covenant contained in this Deed of Trust nor any breach of representation or warranty from constituting an Event of Default. The Grantor hereby appoints the Beneficiary its attorney-in-fact, with full power and authority in the place and stead of the Grantor and in the name of the Grantor, or otherwise, from time to time in the Beneficiary's discretion to take any action and to execute any instrument consistent with the terms of the Loan Documents which the Beneficiary may deem necessary or advisable to accomplish the purposes hereof (but the Beneficiary shall not be obligated to and shall have no liability to the Grantor or any third party for failure to so do or take action). The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term hereof. The Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

11.5 Continuing Security Interest; Assignment. This Deed of Trust shall create a continuing Lien on and security interest in the Trust Property and shall (i) be binding upon the Grantor, its successors and assigns and (ii) inure, together with the rights and remedies of the



Beneficiary hereunder, to the benefit of the Beneficiary for the benefit of the Secured Parties and each of their respective successors, transferees and assigns. In the event there is more than one grantor party hereto, all undertakings hereunder shall be deemed joint and several. No other Persons (including, without limitation, any other creditor of the Grantor or any Guarantor) shall have any interest herein or any right or benefit with respect hereto. Without limiting the generality of the foregoing clause (ii), any Secured Party may assign or otherwise transfer any indebtedness held by it secured by this Deed of Trust to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Secured Party, herein or otherwise, subject, however, to the provisions of the other Loan Documents.

11.6 Termination; Release. The termination and release of the Lien and security interests created by this Deed of Trust shall be governed by the terms and conditions of the Collateral Agreement.

11.7 Modification in Writing. No amendment, modification, supplement, termination or waiver of or to any provision hereof, nor consent to any departure by the Grantor therefrom, shall be effective unless the same shall be done in accordance with the terms of the Credit Agreement and unless in writing and signed by the Beneficiary. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by the Grantor from the terms of any provision hereof shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Deed of Trust or any other Loan Document, no notice to or demand on the Grantor in any case shall entitle the Grantor to any other or further notice or demand in similar or other circumstances.

11.8 Notices. Any notice or other communication herein required or permitted to be given shall be given in the manner and to the addresses and shall become effective as provided in the Collateral Agreement.

11.9 GOVERNING LAW; SERVICE OF PROCESS; WAIVER OF JURY TRIAL. THE PROVISIONS OF THIS DEED OF TRUST REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS, EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR ITEM OR TYPE OF DEED OF TRUST PROPERTY ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN SUCH STATE. ALL OTHER PROVISIONS OF THIS DEED OF TRUST SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

11.10 Severability of Provisions. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.



11.11 Relationship. The relationship of the Beneficiary to the Grantor hereunder is strictly and solely that of lender and borrower and grantor and beneficiary and nothing contained in any Loan Document or any other document or instrument now existing and delivered in connection therewith or otherwise in connection with the Secured Obligations is intended to create, or shall in any event or under any circumstance be construed as creating a partnership, joint venture, tenancy-in-common, joint tenancy or other relationship of any nature whatsoever between the Beneficiary and the Grantor other than as lender and borrower and grantor and beneficiary.


11.12 No Claims Against the Beneficiary. Nothing contained in this Deed of Trust shall constitute any consent or request by the Beneficiary, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof, nor as giving the Grantor any right, power or authority not otherwise granted to it in any other Loan Document to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Beneficiary in respect thereof or any claim that any Lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the Lien hereof.

11.13 Headings. The article, section and subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such articles, sections or subsections.

11.14 Entire Agreement. This Deed of Trust and the other Loan Documents embody the entire agreement and understanding between the Grantor and the Beneficiary relating to the subject matter hereof and thereof and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof.

11.15 Conflict with Credit Agreement or Collateral Agreement. If any conflict or inconsistency exists between this Deed of Trust and the Credit Agreement and/or the Collateral Agreement, the Credit Agreement and/or the Collateral Agreement, as applicable, shall control and govern to the extent of any such conflict or inconsistency.

11.16 Permitted Subordinated Debt. Notwithstanding anything herein to the contrary, Tenant shall have the right to create, incur, assume, or suffer to exist, or permit Permitted Subordinated Debt and encumber the Trust Property with a deed of trust or other instrument junior to the interest of the Beneficiary and no further instrument evidencing such consent shall be required. In connection with the Permitted Subordinated Debt, upon the request of the Grantor, if required by the lender of the Permitted Subordinated Debt, Beneficiary shall furnish a statement of the amount due on the Deed of Trust, whether there are any Events of Default which are continuing under the Deed of Trust and any other information reasonably required by the lender of the Permitted Subordinated Debt.


201208130109
Skagit County Auditor

ARTICLE XII

MORTGAGED LEASE

12.1 Representations, Warranties and Covenants. The Grantor represents and warrants to the Beneficiary that (a) the Mortgaged Lease is unmodified (other than as set forth in the definition of "Mortgaged Lease" in this Deed of Trust) and in full force and effect, (b) all rent and other charges required to be paid under the Mortgaged Lease have been paid to the extent they are payable to the date hereof, (c) the Grantor enjoys the quiet and peaceful possession of the property demised pursuant to the Mortgaged Lease, (d) the Grantor is not in default under any of the terms of the Mortgaged Lease beyond any applicable notice and cure periods, (e) to the knowledge of the Grantor, there are no circumstances which, with the passage of time or the giving of notice or both, would constitute an event of default under the Mortgaged Lease and (f) to the knowledge of the Grantor, the Landlord under the Mortgaged Lease is not in default under any of the terms or provisions thereof on the part of the Landlord to be observed or performed (but this statement is made for the benefit of and may only be relied upon by the Beneficiary and the Secured Parties). The Grantor shall promptly pay, when due and payable, the rent and other charges payable pursuant to the Mortgaged Lease, and will timely perform and observe all of the other terms, covenants and conditions required to be performed and observed by the Grantor as lessee under the Mortgaged Lease. The Grantor shall notify the Beneficiary in writing of any material default by the Grantor in the performance or observance of any terms, covenants or conditions on the part of the Grantor to be performed or observed under the Mortgaged Lease within ten (10) days after the Grantor knows of such default. The Grantor shall, promptly following the receipt thereof, deliver a copy of any notice of default given to the Grantor by the Landlord pursuant to the Mortgaged Lease and promptly notify the Beneficiary in writing of any material default by the Landlord in the performance or observance of any of the terms, covenants or conditions on the part of the Landlord to be performed or observed thereunder (including by reason of a rejection or disaffirmance or purported rejection or disaffirmance of the Mortgaged Lease pursuant to any Debtor Relief Law). Unless required under the terms of the Mortgaged Lease and except as expressly permitted by the Collateral Agreement, the Grantor shall not, without the prior written consent of the Beneficiary (which may be granted or withheld in the Beneficiary's sole and absolute discretion), (i) terminate or surrender the Mortgaged Lease or (ii) enter into any modification of the Mortgaged Lease which materially impairs the practical realization of the security interests granted by this Deed of Trust, and any such attempted termination, modification or surrender without the Beneficiary's written consent shall be void. The Grantor shall, within thirty (30) days after written request from the Beneficiary, use commercially reasonable efforts to obtain from the Landlord and deliver to Beneficiary a certificate setting forth the name of the tenant thereunder and stating that the Mortgaged Lease is in full force and effect, is unmodified or, if the Mortgaged Lease has been modified, the date of each modification (together with copies of each such modification), that no notice of termination thereof has been served on the Grantor, stating that to the best of Landlord's knowledge, no default or event which with notice or lapse of time (or both) would become, a default is existing under the Mortgaged Lease, stating the date to which rent has been paid, and specifying the nature of any defaults, if any, and containing such other statements and representations as may be reasonably requested by the Beneficiary.



12.2 No Merger; Acquisition; Power of Attorney. So long as any of the Secured Obligations remain unpaid or unperformed, the fee title to and the leasehold estate in the premises subject to the Mortgaged Lease shall not merge but shall always be kept separate and distinct notwithstanding the union of such estates in the Landlord or the Grantor, or in a third party, by purchase or otherwise. If the Grantor acquires the fee title or any other estate, title or interest in the property demised by the Mortgaged Lease, or any part thereof; the lien of this Deed of Trust shall attach to, cover and be a lien upon such acquired estate, title or interest and the same shall thereupon be and become a part of the Trust Property with the same force and effect as if specifically encumbered herein. The Grantor agrees to execute all instruments and documents that the Beneficiary may reasonably require to ratify, confirm and further evidence the lien of this Deed of Trust on the acquired estate, title or interest. Furthermore, the Grantor hereby appoints the Beneficiary as its true and lawful attorney-in-fact to execute and deliver, after the occurrence and during the continuance of an Event of Default, all such instruments and documents in the name and on behalf of the Grantor, except that an Event of Default shall not be required to have occurred and be continuing to the extent as set forth in Section 6.2(a) of the Collateral Agreement. This power, being coupled with an interest, shall be irrevocable as long as any portion of the Secured Obligations remains unpaid.

12.3 New Leases. If the Mortgaged Lease shall be terminated prior to the natural expiration of its term due to default by the Grantor, and if, pursuant to the provisions of the Mortgaged Lease, the Beneficiary or its designee shall acquire from the Landlord a new lease of the premises subject to the Mortgaged Lease, the Grantor shall have no right, title or interest in or to such new lease or the leasehold estate created thereby, or renewal privileges therein contained.

12.4 No Assignment. Notwithstanding anything to the contrary contained herein, this Deed of Trust shall not constitute an assignment of the Mortgaged Lease within the meaning of any provision thereof prohibiting its assignment and the Beneficiary shall have no liability or obligation thereunder by reason of its acceptance of this Deed of Trust. The Beneficiary shall be liable for the obligations of the tenant arising out of the Mortgaged Lease for only that period of time for which the Beneficiary is in possession of the premises demised thereunder or has acquired, by foreclosure or otherwise, and is holding all of the Grantor's right, title and interest therein.

12.5 Landlord Bankruptcy Proceedings.

(a) If the Landlord under the Mortgaged Lease rejects or disaffirms, or seeks or purports to reject or disaffirm, the Mortgaged Lease pursuant to any Debtor Relief Law, then the Grantor shall not exercise the 365(h) Election except as otherwise provided in this Section 12.5. To the extent permitted by applicable Requirements of Law, the Grantor shall not suffer or permit the termination of the Mortgaged Lease by the exercise of the 365(h) Election or otherwise without the Beneficiary's consent. The Grantor acknowledges that, because the Mortgaged Lease is a primary element of the Beneficiary's security for the Secured Obligations, it is not anticipated that the Beneficiary would consent to termination of the Mortgaged Lease. If the Grantor makes any 365(h) Election in violation of this Deed of Trust, then such 365(h) Election shall be void and of no force or effect.



(b) The Grantor hereby assigns to the Beneficiary the 365(h) Election with respect to the Mortgaged Lease. The Grantor acknowledges and agrees that the foregoing assignment of the 365(h) Election and related rights is one of the rights that the Beneficiary may use at any time to protect and preserve the Beneficiary's other rights and interests under this Deed of Trust. The Grantor further acknowledges that exercise of the 365(h) Election in favor of terminating the Mortgaged Lease would constitute waste prohibited by this Deed of Trust. The Grantor acknowledges and agrees that the 365(h) Election is in the nature of a remedy available to the Grantor under the Mortgaged Lease, and is not a property interest that the Grantor can separate from the Mortgaged Lease as to which it arises. Therefore, the Grantor agrees and acknowledges that exercise of the 365(h) Election in favor of preserving the right to possession under the Mortgaged Lease shall not be deemed to constitute the Beneficiary's taking or sale of the Trust Property (or any element thereof) and shall not entitle the Grantor to any credit against the Secured Obligations or otherwise impair the Beneficiary's remedies.

(c) The Grantor acknowledges that if the 365(h) Election is exercised in favor of the Grantor's remaining in possession under the Mortgaged Lease, the Grantor's resulting occupancy rights, as adjusted by the effect of Section 365 of the Bankruptcy Code, shall then be part of the Trust Property and shall be subject to the Lien of this Deed of Trust.

(d) If the Landlord under the Mortgaged Lease rejects or disaffirms the Mortgaged Lease or purports or seeks to disaffirm the Mortgaged Lease pursuant to any Debtor Relief Law, then:

- (1) the Grantor shall, in accordance with any applicable Requirements of Law, preserve the leasehold interest created by the Mortgaged Lease to the extent required by the terms of this Deed of Trust and the other Loan Documents; and
- (2) all the terms and provisions of this Deed of Trust and the Lien created by this Deed of Trust shall remain in full force and effect and shall extend automatically to all of the Grantor's rights and remedies arising at any time under, or pursuant to, Section 365(h) of the Bankruptcy Code, including all of the Grantor's rights to remain in possession of the Trust Property.

(e) The Grantor unconditionally assigns, transfers, and sets over to the Beneficiary the Mortgaged Lease Damage Claims. This assignment constitutes a present, irrevocable and unconditional assignment of the Mortgaged Lease Damage Claims, and shall continue in effect until this Deed of Trust is released in accordance with Section 11.6. Any Mortgaged Lease Damage Claims received by the Beneficiary shall be applied in accordance with the provisions of Section 8.2(ii) of this Deed of Trust.

(f) If, pursuant to Section 365(h)(2) of the Bankruptcy Code or any other similar Debtor Relief Law, the Grantor seeks to offset against the rents under the Mortgaged Lease the amount of any Mortgaged Lease Damage Claim, then the Grantor shall notify the Beneficiary of its intent to do so at least twenty (20) days before effecting such offset. Such notice shall set forth the amounts proposed to be so offset (in its reasonable discretion) and the

basis for such offset. If the Beneficiary objects to all or any part of such offset, then the Grantor shall not effect any offset of the amounts to which the Beneficiary objects. If the Beneficiary approves such offset, then the Grantor may effect such offset as set forth in the Grantor's notice. Neither the Beneficiary's failure to object, nor any objection or other communication between the Beneficiary and the Grantor that relates to such offset, shall constitute the Beneficiary's approval of any such offset. The Grantor shall indemnify the Beneficiary against any offset against the rent reserved in the Mortgaged Lease not so approved.

ARTICLE XIII

LEASES

13.1 Grantor's Affirmative Covenants with Respect to Leases. With respect to each Lease, the Grantor shall:

- (i) observe and perform in all material respects all the obligations imposed upon the Landlord under such Lease;
- (ii) promptly send copies to the Beneficiary of all notices of default which the Grantor shall send or receive thereunder; and
- (iii) enforce all of the material terms, covenants and conditions contained in such Lease upon the part of the Tenant thereunder to be observed or performed.

13.2 Grantor's Negative Covenants with Respect to Leases. Unless otherwise permitted by the terms of the First Lien Loan Agreement in effect on the date of this Deed of Trust, with respect to each Lease, the Grantor shall not, without the prior written consent of the Beneficiary:

- (i) receive or collect, or permit the receipt or collection of, any Rent under such Lease more than three (3) months in advance of the respective period in respect of which such Rent is to accrue, except:
 - (A) in connection with the execution and delivery of such Lease (or of any amendment to such Lease), Rent thereunder may be collected and received in advance in an amount not in excess of three (3) months' Rent;
 - (B) the amount held by Landlord as a reasonable security deposit thereunder; and
 - (C) any amount received and collected for escalation and other charges in accordance with the terms of such Lease;
- (ii) assign, transfer or hypothecate (other than to the Beneficiary hereunder) any Rent under such Lease whether then due or to accrue in the future or the interest of the Grantor as Landlord under such Lease;



(iii) enter into any amendment or modification of any Lease if the same results in a Property Material Adverse Effect;

(iv) terminate (whether by exercising any contractual right of the Grantor to recapture leased space or otherwise) or permit the termination of such Lease or accept surrender of all or any portion of the space demised under such Lease prior to the end of the term thereof or accept assignment of such Lease to the Grantor unless the same would not cause a Property Material Adverse Effect; or

(v) waive, excuse, condone or in any manner discharge or release any Tenants of or from the obligations of such Tenants under their respective Leases or guarantors of Tenants from obligations under any guarantees of the Leases unless the same would not cause a Property Material Adverse Effect.

ARTICLE XIV CONCERNING THE TRUSTEE

14.1 Certain Rights. With the approval of the Beneficiary, the Trustee shall have the right to select, employ and consult with counsel. The Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. The Trustee shall be entitled to reimbursement for actual, reasonable expenses incurred by it in the performance of its duties and to reasonable compensation for the Trustee's services hereunder as shall be rendered. The Grantor shall, from time to time, pay the compensation due to the Trustee hereunder and reimburse the Trustee for, and indemnify, defend and save the Trustee harmless against, all liability and reasonable expenses which may be incurred by it in the performance of its duties, including those arising from joint, concurrent, or comparative negligence of the Trustee; provided, however, that Grantor shall not be liable under such indemnification to the extent such liability or expenses result solely from the Trustee's gross negligence or willful misconduct. The Grantor's obligations under this Section 14.1 shall not be reduced or impaired by principles of comparative or contributory negligence.

14.2 Retention of Money. All moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and the Trustee shall be under no liability for interest on any moneys received, by the Trustee hereunder,

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



14.4 Perfection of Appointment. Should any deed, conveyance or instrument of any nature be required from the Grantor by any successor Trustee to more fully and certainly vest in and confirm to such successor Trustee such estates, rights, powers and duties, then, upon request by such Trustee, all such deeds, conveyances and instruments shall be made, executed, acknowledged and delivered and shall be caused to be recorded and/or filed by the Grantor.

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

14.6 One Trustee May Act. The act of any one Trustee, whether such Trustee is a sole acting Trustee or whether there is more than one acting Trustee, shall be sufficient and effective for all purposes set forth herein and any person may rely upon any document or instrument executed and delivered by one Trustee, to the same extent as though the document had been executed by all of the Trustees.

ARTICLE XV

LOCAL LAW PROVISIONS

15.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this ARTICLE XV and the terms and conditions of this Deed of Trust, the terms and conditions of this ARTICLE XV shall control and be binding.

(a) Commercial Loan/No, Agricultural Purpose. Grantor acknowledges that this Deed of Trust was granted to secure a commercial loan as provided in Revised Code of Washington §61.24.030(2) and that the Premises are not used principally for agricultural purposes.

(b) Trustee's Street Address. Trustee's street address where personal service of process may be made is listed the Preamble of this Deed of Trust.

(c) Future Advances Secured. This Deed of Trust secures all future advances pursuant to Revised Code of Washington § 60.04.226, and any and all such advances shall have the same priority as the funds initially advanced under the Secured Obligations regardless of when the same are disbursed or whether they are obligatory. All persons who may have or acquire an interest in the Trust Property are hereby deemed to have notice of the terms of the Secured Obligations and that this Deed of Trust secures future advances, and to have notice, if provided therein, that: (a) the Qualified Borrower Note or any other Secured Obligation may permit borrowing, repayment and reborrowing and (b) the rate of interest on one or more of the Secured Obligations may vary from time to time. Funds may be advanced by Beneficiary, repaid by Grantor and subsequently readvanced by Beneficiary. In addition, all advances thereunder by Beneficiary are secured by this Deed of Trust.

(d) Security Agreement or Pledge. This Deed of Trust constitutes a security agreement under Revised Code of Washington 62A.9A et seq. (the "Applicable UCC") on the

date hereof, covering all Fixtures and Land and, to the extent not covered by such Applicable UCC, a common law pledge.

(e) Power of Sale. Subject to the terms of the *Intercreditor Agreement*, if an Event of Default shall have occurred, Trustee either with or without entry or taking possession as provided in this Deed of Trust or otherwise, and without regard to whether or not Indebtedness shall have been accelerated, and without prejudice to the right of Trustee, thereafter to bring an action of foreclosure or any other action for any default existing at the time such earlier action was commenced or arising thereafter, may sell or offer for sale the Trust Property, in such portions, order and parcels as Trustee may determine, with or without having first taken possession of same, to the highest bidder for cash in lawful money of the United States at public auction in accordance with applicable law, or the UCC, and in the event of a sale, by foreclosure or otherwise, of less than all of the Trust Property, this Deed of Trust shall continue as a lien and security interest on the remaining portion of the Trust Property. Trustee may postpone any sale by public announcement at the time and place noticed for the sale. If the Trust Property consists of several lots, parcels or items of property, Trustee may, in its sole discretion and to the extent permitted by applicable law: (i) designate the order in which such lots, parcels or items shall be offered for sale or sales, or (ii) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales or in any other manner Trustee or Agent, as the case may be, deems in its best interest. Should Trustee desire that more than one sale or other disposition of the Trust Property or any portion thereof be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Trustee may deem to be in its best interests, no such sale shall terminate or otherwise affect the lien and security interest of this Deed of Trust on any part of the Trust Property not sold until all the Indebtedness has been fully satisfied. Grantor shall pay the costs and expenses of any sale of the Trust Property, whether one or more, and of any judicial proceedings wherein the same may be made, and shall pay all expenses, liabilities and advances made or incurred by Trustee in connection with such sale or sales, together with interest on all such advances made by Trustee at the *Default Rate*. Upon any sale hereunder, Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession; and the recitals in any such deed or deeds of facts, such as default, the giving of notice of default and notice of sale, and other facts affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts; and any such deed or deeds shall be conclusive against all persons as to such facts recited therein.

(f) Trustee's Acceptance of Trust. Trustee accepts this trust upon recordation of this Deed of Trust as provided by law. Except as provided by law, Trustee is not obligated to notify any party of a pending sale under this Deed of Trust or of a pending or threatened action, claim or litigation before a legal, equitable or administrative tribunal having proper jurisdiction in which Grantor, Beneficiary or Trustee is a party. Beneficiary may from time to time unilaterally substitute a successor to Trustee by a recordable or other instrument of substitution complying with any applicable requirements of law, or, in the absence of any such requirement, without other formality than *appointment and designation in writing*. The recorded instrument of substitution will be conclusive proof of proper substitution of a new trustee which or who will, without conveyance from predecessor trustee, succeed to all of the predecessor trustee's title, estate, rights, powers and duties.



(g) NOTICE REGARDING ORAL AGREEMENTS. NOTICE IS HEREBY GIVEN THAT ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, MODIFY LOAN TERMS OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

(h) Unsecured Obligations. Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Deed of Trust shall not secure the following obligations (the "Unsecured Obligations"): (a) any obligations in this Deed of Trust or in any of the other Loan Documents to the extent that such other obligations relate specifically to the presence on the Trust Property of hazardous materials and are the same or have the same effect as any of the obligations evidenced by or arising under the Indemnity Agreement, and (b) any obligation of any "Guarantor" under any guaranty provided in connection with the Qualified Borrower Loan. Any breach or default with respect to the Unsecured Obligations shall constitute an Event of Default hereunder, notwithstanding the fact that such Unsecured Obligations are not secured by this Deed of Trust. Nothing in this Section 15.1(h) shall, in itself, impair or limit Beneficiary's right to obtain a judgment in accordance with applicable law after judicial or nonjudicial foreclosure for any deficiency in recovery of all obligations that are secured by this Deed of Trust following judicial or nonjudicial foreclosure.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

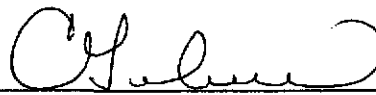


201208130109

Skagit County Auditor

UNOFFICIAL
IN WITNESS WHEREOF, the Grantor has caused this Deed of Trust to be duly executed and delivered under seal the day and year first above written.

HAGGEN, INC., a Washington corporation

By: 
Name: Clarence Gabriel, Jr.
Title: CEO

STATE OF _____)

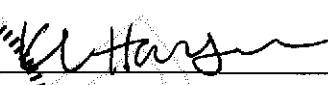
ss.

COUNTY OF _____)

I certify that I know or have satisfactory evidence that Clarence Gabriel is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute this instrument and acknowledged it as the CEO of HAGGEN, INC., a Washington corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN under my hand and official seal this 27 day of July, 2012.




K.L. Hanson
(Print notary's name)

Notary Public in and for the State of WA,
residing at Bellingham WA
My commission expires: 10.10.15



201208130109
Skagit County Auditor

8/13/2012 Page 36 of 38 3:31PM

NY1129610

SIGNATURE PAGE TO
LEASEHOLD DEED OF TRUST, ASSIGNMENT
OF LEASES AND RENTS, SECURITY
AGREEMENT AND FIXTURE FILING

2601 EAST DIVISION
MOUNT VERNON, WA 98273

SCHEDULE A

Legal Description

For APN/Parcel ID(s): P27117

2601 E. Division, Mount Vernon, WA 98273

(See attached)



201208130109

Skagit County Auditor

CHICAGO TITLE COMPANY

COMMITMENT NO.: 620012769

SCHEDULE A

ORDER NO. 620012769



5. THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS FOLLOWS:

For APN/Parcel ID(s): P27117
For Tax Map ID(s): 340421-2-001-0006

Lot 1 of CITY OF 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.

END OF SCHEDULE A

This instrument is being filed as an accommodation only. It has not been examined as to its execution, insurability or affect on title.

Copyright American Land Title Association. All rights reserved.

The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



ALTA Commitment
88CORP00036.doc / Updated: 03.12.2010

Adopted: 08.17.2006

Printed: 03.02.11 @ 02:08PM
WA-CT-FNRV-620012769

MOUNT VERNON

Pg. 37



201208130109
Skagit County Auditor