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STATE OF WASHINGTON BY AND MAIL TO:

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Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006

CHICAGO TITLE  
620027145

**Document Title:** Deed of Trust, Assignment of Rents and Leases, Collateral Assignment of Property Agreements, Security Agreement and Fixture Filing

**Grantors:** Kmart of Washington, a Washington limited liability company, and Kmart Corporation, a Michigan corporation

**Beneficiary:** JPP, LLC, a Delaware limited liability company, and JPP II, LLC, a Delaware limited liability company

**Trustee** CHICAGO TITLE COMPANY OF WASHINGTON

**Abbreviated Legal Description:** Lots A AND B K-MART COMMERCIAL PARK, PTN LOT 4 SHORT PLAT NO. BU3-88 AND PTN NW NW, 08-34-04

Full legal description on Exhibit A

**Tax Parcel Nos.** P105309 / 340408-2-010-0800, P105310 / 340408-2-011-0100, P83924 / 4532-000-001-0008 and P83925 / 4532-000-002-0007

For purposes of Article 9 of the Uniform Commercial Code (RCW 62A.9A), this Deed of Trust constitutes a Security Agreement and a Financing Statement with Grantor being the Debtor and Beneficiary being the Secured Party. This Deed of Trust shall also constitute a Financing Statement filed as a fixture filing pursuant to Article 9 of the Uniform Commercial Code (RCW 62A.9A-402(6)).

DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, COLLATERAL  
ASSIGNMENT OF PROPERTY AGREEMENTS, SECURITY AGREEMENT AND  
FIXTURE FILING

This Deed of Trust, Assignment of Rents and Leases, Collateral Assignment of Property Agreements, Security Agreement and Fixture Filing (as amended from time to time, this "Deed of Trust") is made, and is executed as of JANUARY 3, 2017, by Kmart of Washington, a Washington limited liability company and Kmart Corporation, a Michigan corporation (collectively, together with their permitted successors and permitted assigns, "Grantor"), whose address for all purposes hereunder is 3333 Beverly Road, Hoffman Estates, IL 60179, to Chicago Title Company of Washington (together with its permitted successors and permitted assigns, "Trustee"), whose address for all purposes hereunder is 701 5<sup>th</sup> Avenue, #2700, Seattle, Washington 98104 for the benefit of JPP, LLC, a Delaware limited liability company, and JPP II, LLC, a Delaware limited liability company (collectively, together with all of their successors and assigns, the "Beneficiary"), whose address for all purposes hereunder is c/o ESL Investments, Inc., 1170 Kane Concourse, Suite 200, Bay Harbor Islands, FL 33154.

ARTICLE 1

DEFINITIONS

Section 1.1 Definitions. As used herein, the following terms shall have the following meanings:

"Borrower" means, collectively, the Persons identified as "Borrower" or "Borrowers" in the Loan Agreement.

"Excluded Collateral" has the meaning set forth on Exhibit C hereto.

"Indebtedness": The sum of all principal, interest and other amounts due from Borrower under, or secured by, the Loan Documents.

"Loan Agreement": The Loan Agreement, dated as of the date hereof, by and between Beneficiary, as lender, and Borrower, as borrower, as the same may be replaced, amended, supplemented, extended or otherwise modified from time to time.

"Loan Documents": The (1) Loan Agreement, (2) that certain promissory note, dated as of the date hereof, executed by Grantor pursuant to the Loan Agreement, in the original principal amount of \$500,000,000 (as the same may be amended, restated, componentized, supplemented, modified, assigned in whole or in part, replaced and/or divided into multiple notes from time to time, the "Note" or "Notes", as applicable), (3) this Deed of Trust and the other mortgages and deeds of trust executed by Borrower pursuant to the Loan Agreement, (4) all other documents now or hereafter executed by Grantor or any other person or entity to evidence or secure the payment of the Indebtedness, and (5) all modifications, restatements, extensions, renewals and replacements of the foregoing.

**"Obligations"**: All of the agreements, covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower under the Loan Documents.

**"Property"**: All of Grantor's right, title and interest in and to each of the following which specifically and directly relate to or arise from the Land and Improvements as hereinafter defined (whether now owned or hereafter acquired):

- (1) the real property described in Exhibit A attached hereto and made a part hereof, together with any greater estate therein as hereafter may be acquired by Grantor (the "Land"),
- (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the "Improvements"),
- (3) all materials, machinery, supplies, equipment, fixtures (including "fixtures" as defined in the UCC), apparatus and other items of personal property now owned or hereafter acquired by Grantor and now or hereafter attached to or installed in any of the Improvements or the Land, including any and all partitions, dynamos, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, plumbing, lighting, communications and elevator fixtures, laundry, incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery and equipment, disposals, dishwashers, furniture, refrigerators and ranges, security systems, artwork, recreational and pool equipment and facilities of all kinds, water, gas, electrical, storm and sanitary sewer facilities of all kinds, and all other utilities whether or not situated in easements together with all accessions, replacements, betterments and substitutions for any of the foregoing, in each case now owned or hereafter acquired by Grantor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and/or the Improvements or that may be used in or relating to the planning, development, financing or operation of the Land and/or the Improvements, but expressly excluding all trade fixtures and tenant improvements owned by lessees, sublessees or licensees of Grantor (the "Fixtures"),
- (4) all reserves, escrows or impounds required under the Loan Agreement and all security deposits held by Grantor in connection with any Lease of the Land and/or Improvements,
- (5) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (together with any and all modifications, renewals, extensions and substitutions of the foregoing, the "Plans"),

(6) all leasehold estates, leases, subleases, sub-subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect and every modification, amendment or other agreement relating thereto, including every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto) that grant a possessory interest in, or the right to use or occupy, all or any part of the Land and/or Improvements, together with all related security and other deposits (together with any and all modifications, renewals, extensions and substitutions of the foregoing, the "Leases"), but specifically excluding (a) all Leases under which Grantor is not the landlord, sub-landlord or licensor thereunder, (b) national, multi-site or master leases, licenses, or concession or department agreements with tenants or licensees that operate within and as a part of Grantor's store, or that operate kiosks, ATM or vending machines or drive-through facilities located on the Land or Improvements, in each case, solely to the extent any such leases, licenses, concessions or agreements terminate with respect to the Property upon the cessation of Grantor's operations at the Property (c) any existing reciprocal access, easement, construction and/or operating or similar agreements (collectively "REA's") that expressly prohibit the encumbrance of Grantor's interests, rights and obligations thereunder (collectively, "Excluded Leases"),

(7) all of the rents, revenues, income, proceeds, issues, profits (including all oil or gas or other mineral royalties and bonuses), security and other types of deposits, and other benefits paid or payable and to become due or payable by parties to the Leases other than Grantor for using, leasing, licensing, possessing, occupying, operating from, residing in, selling or otherwise enjoying any portion or portions of the Land and/or Improvements (the "Rents"),

(8) all contracts and agreements with respect to the Land and Improvements not otherwise specified herein, including all right, title and interest of Grantor in, to and under (a) all construction contracts, architects' agreements, engineers' contracts, utility contracts, letters of credit, escrow agreements, maintenance agreements, management, leasing and related agreements, parking agreements, equipment leases, service contracts, operating leases, catering and restaurant leases and agreements, agreements for the sale, lease or exchange of goods or other property, agreements for the performance of services, permits, variances, licenses, certificates and entitlements, (b) all material agreements and instruments under which Grantor has remaining rights or obligations in respect of Grantor's acquisition of the Property or equity interests therein, (c) applicable business licenses, variances, entitlements, certificates, state health department licenses, liquor licenses, food service licenses, licenses to conduct business, certificates of need and all other permits, licenses and rights obtained from any Governmental Authority or private Person, (d) all rights of Grantor to receive monies due and to become due under or pursuant to the Property Agreements, (e) all claims of Grantor for damages arising out of or for breach of or default under the Property Agreements, (f) all rights of Grantor to terminate, amend, supplement, modify or waive performance under the Property Agreements, to compel performance and otherwise to exercise all remedies thereunder,

and, with respect to Property Agreements that are letters of credit, to make any draws thereon, and (g) to the extent not included in the foregoing, all cash and non-cash proceeds, products, offspring, rents, revenues, issues, profits, royalties, income, benefits, additions, renewals, extensions, substitutions, replacements and accessions of and to any and all of the foregoing, in each case pursuant to the foregoing clauses (a) through (g) relating to, executed in connection with, or used in, the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition, management or ownership of the Land and/or Improvements (together with any and all modifications, renewals, extensions and substitutions of the foregoing, the "Property Agreements"), if and to the extent the same are permitted to be encumbered, and expressly excluding Excluded Leases and all national, multi-site or master agreements, licenses or contracts for fire, safety, security, maintenance, landscaping and/or snow removal, or other matters that cover properties in addition to the Property.

(9) all rights, privileges, titles, interests, liberties, tenements, hereditaments, rights-of-way, easements, sewer rights, water, water courses, water rights and powers, air rights and development rights, licenses, permits and construction and equipment warranties, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Grantor in and to any streets, ways, alleys, underground vaults, passages, strips or gores of land adjoining the Land or any part thereof, subject to any express limitation in any REA on the encumbrance of Grantor's interests, rights and obligations thereunder,

(10) all accessions, replacements, renewals, additions and substitutions for any of the foregoing and all proceeds thereof,

(11) all insurance policies, unearned premiums therefor and proceeds from such policies, including the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, covering any of the above property now or hereafter acquired by Grantor, provided, however, where Grantor is self-insured or insured through an affiliated entity, only the actual insurance proceeds payable to Grantor in respect of property damage or personal injury with respect to the Improvements and Fixtures shall constitute a part of the Property,

(12) all mineral, riparian, littoral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Land and/or Improvements, provided that Grantor makes no warranty or representation as to the extent of its right, title or ownership (if any) in, to or of any oil, gas, mineral, water, littoral, riparian or other rights,

(13) any condemnation awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to a taking or condemnation of the Land, Improvements or Fixtures, and

(14) all after acquired title to or remainder or reversion in any of the property (or any portion thereof) described herein.

Notwithstanding the foregoing, and for the avoidance of doubt, Property shall not include (i) any right, title or interest of Grantor in any Excluded Collateral or intellectual property, (ii) any Fixtures that are subject to a financing lease or similar Permitted Encumbrance that expressly prohibits any further encumbrance thereof, (iii) proceeds or consideration for the grant of easements, restrictions, covenants, reservations and rights of way in the ordinary course of business for traffic circulation, ingress, egress, parking, access, utilities lines or for other similar purposes, in each case, solely to the extent that the same does not result in a Material Adverse Effect (but, in any event, expressly including any proceeds or consideration for the easement previously agreed to be granted with respect to the real property identified as Store 1069 located in Redmond, Washington) (iv) assets or property of Grantor related to the general business of Grantor (including without limitation all Excluded Collateral) or to the extent that they relate to or serve properties of Grantor other than the Property (it being agreed that no portion of the Land, the Improvements or the Fixtures shall be construed as being excluded from the definition of "Property" by virtue of this clause (iv)).

"UCC" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in the jurisdiction in which the Land is located.

Capitalized terms used herein but not otherwise defined shall have the respective meanings ascribed to such terms in the Loan Agreement.

## ARTICLE 2

### HABENDUM

Section 2.1 Grant. To secure in part the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby irrevocably GRANTS, TRANSFERS, CONVEYS and ASSIGNS the Property to Trustee, IN TRUST, WITH POWER OF SALE. Grantor does hereby bind itself, its heirs, successors and assigns to WARRANT AND FOREVER DEFEND (i) the title to the Property unto Trustee, subject only to Permitted Encumbrances and (ii) the validity and priority of the Liens of this Deed of Trust, subject only to Permitted Encumbrances, in each case (including the obligation to warrant or defend) against the claims of all Persons whomsoever to the extent claiming by, through or under Grantor or any affiliate thereof, and no other Persons.

## ARTICLE 3

### DEFAULT AND FORECLOSURE

Section 3.1 Remedies. If an Event of Default is continuing, Beneficiary may, at Beneficiary's election, take such action permitted at law or in equity, without notice or demand (except as explicitly provided in the Loan Agreement, including all cure periods), as it deems advisable to protect and enforce its rights against Grantor and to the Property, including but not

limited to, any or all of the following rights, remedies and recourses each of which may be pursued concurrently or otherwise, at such time and in such order as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Beneficiary:

(a) Acceleration. Declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Grantor (except as any such notice is required pursuant to the Loan Agreement)), whereupon the same shall become immediately due and payable.

(b) Entry on Property. Subject to the rights of lessees, tenants, licensees and other parties that occupy the Property pursuant to a written agreement, enter the Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Grantor remains in possession of the Property after the occurrence and during the continuance of an Event of Default and without Beneficiary's prior written consent, Beneficiary may invoke any legal remedies to dispossess Grantor.

(c) Operation of Property. Whether or not a receiver has been appointed pursuant to Section 3.1(e) hereof, hold, lease, develop, manage, operate, control and otherwise use the Property upon such terms and conditions as Beneficiary may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Beneficiary deems reasonably necessary or desirable), exercise all rights and powers of Grantor with respect to the Property, whether in the name of Grantor or otherwise, including the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents, and apply all Rents and other amounts collected by Beneficiary or Trustee in connection therewith in accordance with the provisions of Section 3.7 hereof.

(d) Foreclosure and Sale. Institute proceedings for the complete foreclosure of this Deed of Trust, either by judicial action or by exercise of the STATUTORY POWER OF SALE or otherwise, in which case the Property may be sold for cash or credit in one or more parcels or in several interests or portions and in any order or manner in accordance with applicable law governing foreclosures. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse including power of sale, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Grantor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Grantor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Grantor. Beneficiary may be a purchaser at such sale and if Beneficiary is the highest bidder, may credit the portion of the purchase price that would be distributed to Beneficiary against the Indebtedness in lieu of paying cash. With respect to any notices required or permitted under the UCC, Grantor agrees that ten (10) Business Days' prior written notice shall be deemed commercially reasonable. Notwithstanding the foregoing, Beneficiary shall give Grantor 30

days' notice of any foreclosure sale, so that Grantor can windup its business at the Property, and in the event that Beneficiary has taken possession or control of the Property prior to any foreclosure sale, Beneficiary shall reasonably cooperate for a period of up to 30 days to permit Grantor to windup its business at the Property.

(e) Receiver. Prior to, concurrently with, or subsequent to the institution of foreclosure proceedings, make application to a court of competent jurisdiction for, and (to the extent permitted by applicable law) obtain from such court as a matter of strict right and without notice to Grantor or anyone claiming under Grantor or regard to the value of the Property or the solvency or insolvency of Grantor or the adequacy of any collateral for the repayment of the Indebtedness or the interest of Grantor therein, the appointment of a receiver or receivers of the Property, and Grantor irrevocably consents to such appointment. Any such receiver or receivers shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 3.7 hereof.

(f) Other. Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Notes either before, during or after any proceeding to enforce this Deed of Trust).

Section 3.2 Separate Sales. In connection with the exercise by Beneficiary of its rights and remedies hereunder, the Property may be sold in one or more parcels and in such manner and order as Beneficiary in its sole discretion, may elect, subject to applicable law; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 3.3 Remedies Cumulative, Concurrent and Nonexclusive. Beneficiary shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent and shall be in addition to every other remedy so provided or permitted, (b) may be pursued separately, successively or concurrently against Grantor, or against the Property, or against any one or more of them, at the sole discretion of Beneficiary, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Beneficiary or Trustee in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 3.4 Release of and Resort to Collateral. Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Property, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Property. For payment of the Indebtedness, Beneficiary may resort to any other security in such order and manner as Beneficiary may elect.



Section 3.5 Waiver of Redemption, Notice and Marshaling of Assets. To the fullest extent permitted by law, Grantor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Grantor by virtue of any present or future statute of limitations or "moratorium law" or other law or judicial decision exempting the Property or any part thereof or any part of the proceeds arising from any sale of any such property, from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption reinstatement (to the extent permitted by law) or extension of time for payment, (b) any right to a marshaling of assets or a sale in inverse order of alienation, and (c) any and all rights it may have to require that the Property be sold as separate tracts or units in the event of foreclosure.

Section 3.6 Discontinuance of Proceedings. If Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary shall have the unqualified right to do so and, in such an event, Grantor and Beneficiary shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default that may then exist or the right of Beneficiary thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 3.7 Application of Proceeds. Except as otherwise provided in the Loan Documents and unless otherwise required by applicable law, the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Property, shall be applied by Beneficiary or Trustee (or the receiver, if one is appointed) in the following order or in such other order as Beneficiary shall determine in its sole discretion:

(a) to the payment of the reasonable costs and expenses of taking possession of the Property and of holding, using, leasing, repairing, improving and selling the same, including (1) receiver's fees and expenses, (2) court costs, (3) reasonable attorneys', accountants', appraisers', environmental consultants', engineers' and other experts' fees and expenses, (4) costs of advertisement, (5) costs of procuring title searches, title policies and similar data and assurance with respect to title, (6) the payment of all applicable transfer taxes and mortgage recording taxes, and (7) the payment of all ground rent, real estate taxes and assessments;

(b) to the payment of all amounts, other than the unpaid principal balance of the Notes and accrued but unpaid interest, which may be due under the Loan Documents;

(c) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Beneficiary in its sole discretion may determine; and

(d) the balance, if any, to the payment of the Persons legally entitled thereto.

If Beneficiary shall be ordered, in connection with any bankruptcy, insolvency or reorganization of Grantor, to restore or repay to or for the account of Grantor or its creditors any

amount theretofore received under this Section 3.7, the amount of such restoration or repayment shall be deemed to be a part of the Indebtedness so as to place Beneficiary in the same position it would have been in had such amount never been received by Beneficiary.

Section 3.8 Occupancy After Foreclosure. The purchaser at any foreclosure sale pursuant to Section 3.1(d) shall become the legal owner of the Property. All occupants of the Property shall deliver possession thereof immediately to the purchaser upon demand, subject to the rights of Tenants under Third-Party Leases. Subject to Legal Requirements, it shall not be necessary for the purchaser at said sale to bring any action for possession of the Property other than the statutory action of forcible detainer in any court having jurisdiction over the Property.

Section 3.9 Additional Advances and Disbursements; Costs of Enforcement. If any Event of Default is continuing, Beneficiary shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Grantor. All sums advanced and expenses incurred at any time by Beneficiary under this Section 3.9, or otherwise under this Deed of Trust or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate, and all such sums, together with interest thereon, shall constitute additions to the Indebtedness and shall be secured by this Deed of Trust and Grantor covenants and agrees to pay them to the order of Beneficiary promptly upon demand.

Section 3.10 No Beneficiary in Possession. Neither the enforcement of any of the remedies under this Article 3, the assignment of the Rents and Leases under Article 4, the collateral assignment of the Property Agreements under Article 5, the security interests under Article 6, nor any other remedies afforded to Beneficiary under the Loan Documents, at law or in equity shall cause Beneficiary or Trustee to be deemed or construed to be a mortgagee in possession of the Property, to obligate Beneficiary or Trustee to lease the 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. Grantor shall, and hereby agrees to indemnify Beneficiary for, and to hold Beneficiary harmless from and against, any and all claims, liability, expenses, losses or damages that may or might be asserted against or incurred by Beneficiary, as the case may be, solely by reason of Beneficiary's status as an assignee pursuant to the assignment of Rents and Leases contained herein, but excluding any claim to the extent of Beneficiary's gross negligence or willful misconduct. Should Beneficiary incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Indebtedness secured hereby, and Grantor shall reimburse Beneficiary, as the case may be, therefor immediately upon demand.

#### ARTICLE 4

##### ASSIGNMENT OF RENTS AND LEASES

Section 4.1 Assignment. As security for the Indebtedness and other Obligations, Grantor does hereby assign to Beneficiary, Grantor's right, title and interest in all current and future Leases and the right to receive and collect all Rents. Such assignment to Beneficiary shall

not be construed to bind Beneficiary to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Beneficiary, but Beneficiary's right to collect Rents may be subject to landlord's compliance with any applicable Lease. Beneficiary shall have no responsibility on account of this assignment for the control, care, maintenance, management or repair of the Property, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Grantor agrees to execute and deliver to Beneficiary such additional instruments, in form and substance reasonably satisfactory to Beneficiary, as may hereafter be requested by Beneficiary to further evidence and confirm such assignment.

**Section 4.2 License.** Beneficiary hereby grants to Grantor and its successors a revocable license to collect and receive the Rents and to retain, use and enjoy the same and otherwise exercise all rights as landlord under any Lease, in each case subject to the terms hereof and of the Loan Agreement. Upon the occurrence and during the continuance of any Event of Default, (i) the license granted herein to Grantor shall immediately and automatically cease and terminate and shall be void and of no further force or effect, (ii) Beneficiary shall immediately be entitled to possession of all Rents (whether or not Beneficiary enters upon or takes control of the Property) and (iii) at the request of Beneficiary, Grantor shall notify in writing all tenants (and, to the extent Grantor is entitled to do so, all subtenants) under any of the Leases that all Rent due thereunder should be paid to Beneficiary at its address set forth in the Loan Agreement, or at such other place as Beneficiary shall notify Grantor in writing; provided that, Beneficiary covenants and agrees that if such Event of Default ceases to exist, the license described in the foregoing clause (i) shall automatically be reinstated in full without further action by Beneficiary and Grantor shall be entitled to so advise all tenants and subtenants. Notwithstanding said license, Grantor agrees that Beneficiary, and not Grantor, shall be deemed to be the creditor of each tenant (or subtenant, to the extent Grantor would otherwise be so entitled) under any Lease in respect to assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such tenant or subtenant (without obligation on the part of Beneficiary, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditors' rights therein), with an option to apply in accordance with the Loan Documents any money received from such tenant or subtenant in reduction of any amounts due under the Loan Documents. Upon the occurrence and during the continuance of an Event of Default, any portion of the Rents held by Grantor shall be held in trust for the benefit of Beneficiary for use in the payment of the Indebtedness.

**Section 4.3 Certain Rights of Beneficiary.** Subject to the revocable license granted above, and the automatic reinstatement provisions related thereto, upon the occurrence and during the continuance of an Event of Default, Beneficiary shall have the immediate and continuing right, power and authority, either in person or by agent, without bringing any action or proceeding, or by a receiver appointed by a court, without the necessity of taking possession of the Property in its own name, and without the need for any other authorization or action by Grantor or Beneficiary, in addition to and without limiting any of Beneficiary's rights and remedies hereunder, under the Loan Agreement and any other Loan Documents and as otherwise available at law or in equity, (a) to notify any tenant or other person that the Leases have been

assigned to Beneficiary and that all Rents are to be paid directly to Beneficiary, whether or not Beneficiary has commenced or completed foreclosure or taken possession of the Property; (b) to settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations in, to and under the Leases; (c) to demand, sue for, collect, receive and enforce payment of Rents, including those past-due and unpaid and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to the Rents and Leases; (d) to enter upon, take possession of and operate the Property whether or not foreclosure under this Deed of Trust has been instituted and without applying for a receiver; (e) to lease all or any part of the Property; and/or (f) to perform any and all obligations of Grantor under the Leases and exercise any and all rights of Grantor therein contained to the full extent of Grantor's rights and obligations thereunder.

**Section 4.4 Irrevocable Instructions to Tenants.** At Beneficiary's request, Grantor shall deliver a copy of this Deed of Trust to each tenant under a Lease and to each third-party manager and managing agent or operator of the Property, and Beneficiary shall have the continuing right to do so. Grantor irrevocably directs any tenant, manager, managing agent, or operator of the Property, without any requirement for notice to or consent by Grantor, to comply with all demands of Beneficiary under this Article 4 and to turn over to Beneficiary on demand all Rents that it receives; provided, that Beneficiary hereby covenants to Grantor that it will not make any such demand except upon the occurrence and during the continuance of an Event of Default. Grantor hereby acknowledges and agrees that payment of any Rents by a person to Beneficiary as hereinabove provided shall constitute payment by such person, as fully and with the same effect as if such Rents had been paid to Grantor. Beneficiary is hereby granted and assigned by Grantor the right, at its option, upon revocation of the license granted herein, upon an Event of Default that is continuing, to enter upon the Property in person or by agent, without bringing any action or proceeding, or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license shall be applied in accordance with the provisions of the Loan Agreement. Neither the enforcement of any of the remedies under this Article 4 nor any other remedies or security interests afforded to Beneficiary under the Loan Documents, at law or in equity shall cause Beneficiary to be deemed or construed to be a mortgagee in possession of the Property, to obligate Beneficiary to lease the 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. Grantor shall, and hereby agrees to indemnify Beneficiary for, and to hold Beneficiary harmless from and against, any and all claims, liability, expenses, losses or damages that may or might be asserted against or incurred by Beneficiary solely by reason of Beneficiary's status as an assignee pursuant to the assignment of Rents and Leases contained herein, but excluding any claim to the extent caused by Beneficiary's gross negligence or willful misconduct. Should Beneficiary incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Indebtedness secured hereby, and Grantor shall reimburse Beneficiary therefor within 10 Business Days after demand.

**Section 4.5 Unilateral Subordination.** Beneficiary may, at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the

lien of this Deed of Trust to any Lease, without joinder or consent of, or notice to, Grantor, any tenant or any other person, and notice is hereby given to each tenant under a Lease of such right to subordinate. No such subordination shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder; and nothing herein shall be construed as subordinating this Deed of Trust to any Lease.

Section 4.6 Automatic Reinstatement; Termination. Notwithstanding any of the foregoing provisions to the contrary, (a) all of Beneficiary's rights and remedies in this Article 4 are subject to the revocable license and automatic reinstatement of Grantor's rights to collect all Rents and deal with all Leases as provided in Section 4.2, and (b) upon release of this Deed of Trust, the foregoing assignment of rents and all of Beneficiary's rights and remedies in this Article 4 shall automatically terminate.

## ARTICLE 5

### COLLATERAL ASSIGNMENT OF PROPERTY AGREEMENTS

Section 5.1 Collateral Assignment. Grantor does hereby collaterally assign and pledge to Beneficiary, Grantor's right, title and interest in, to and under all current and future Property Agreements as security for the performance of Grantor's Obligations.. Such collateral assignment to Beneficiary shall not be construed to bind Beneficiary to the performance of any of the covenants, conditions or provisions contained in any such Property Agreement or otherwise impose any obligation upon Beneficiary. Grantor agrees to execute and deliver to Beneficiary such additional instruments, in form and substance reasonably satisfactory to Beneficiary, as may hereafter be reasonably requested by Beneficiary to further evidence and confirm such collateral assignment.

Section 5.2 Retained Rights of Grantor. Subject to the other provisions of this Article 5 and the provisions of the other Loan Documents, for so long as no Event of Default shall have occurred and be continuing, Grantor may exercise all of its rights and privileges under the Property Agreements and shall have the exclusive right and authority to deal with, enjoy the benefit under, grant any consents and approvals under, and amend, modify or terminate, such Property Agreements, collect, receive and retain for its own benefit all monies due or to become due under such Property Agreements, sue and enforce all claims of Grantor for damages arising under such Property Agreements, and retain for its own benefit all items described in clause (d) of paragraph (8) of the definition of "Property" above, if and to the extent not prohibited by the Loan Agreement or the other Loan Documents. Upon the occurrence and during the continuance of any Event of Default, the rights of Grantor described in this Section 5.2 shall immediately and automatically cease and terminate and shall be void and of no further force or effect. Upon the occurrence and during the continuance of an Event of Default, any amounts held by Grantor as a party to the Property Agreements shall be held in trust for the benefit of Beneficiary for use in the payment of the Indebtedness. If Lender, in its sole discretion, shall waive an Event of Default, all rights of Grantor in such Property Agreements shall automatically be reinstated in full without further action by Beneficiary, and Grantor shall be entitled to so advise all grantors.

licensors, vendors, contractors, and other counter-parties to any and all Property Agreements of same.

**Section 5.3 Exercise of Assigned Rights.** Grantor hereby irrevocably directs the grantor or licensor of, or the contracting party to, any Property Agreement, upon demand from Beneficiary, to recognize and accept Beneficiary as the party to such Property Agreement for any and all purposes as fully as it would recognize and accept Grantor and the performance of Grantor thereunder; provided, that Beneficiary hereby covenants to Grantor that it will not make such demand except upon the occurrence and during the continuance of an Event of Default. Upon the occurrence, and during the continuance, of an Event of Default, without further notice or demand and at Grantor's sole cost and expense, Beneficiary shall be entitled to exercise all rights of Grantor arising under the Property Agreements. Grantor hereby acknowledges and agrees that payment of any amounts owing under any Property Agreement by a person to Beneficiary as hereinabove provided shall constitute payment by such person, as fully and with the same effect as if such amounts had been paid to Grantor. Any amounts collected after the occurrence and during the continuance of an Event of Default shall be applied in accordance with the provisions of the Loan Agreement. At Beneficiary's request, Grantor shall deliver a copy of this Deed of Trust to each grantor or licensor of or the contracting party to a Property Agreement, and Beneficiary shall have the continuing right to do so.

**Section 5.4 Indemnity.** Grantor shall, and hereby agrees to indemnify Beneficiary for, and to hold Beneficiary harmless from and against, any and all claims, liability, expenses, losses or damages that may or might be asserted against or incurred by Beneficiary solely by reason of Beneficiary's status as an assignee pursuant to the collateral assignment of Property Agreements contained herein, but excluding any claim to the extent caused by Beneficiary's gross negligence or willful misconduct, or any claim arising as a result of an act or omission of Beneficiary after the date on which Beneficiary has taken actual possession of the Property pursuant to an exercise of its rights and remedies hereunder. Should Beneficiary incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute indebtedness secured hereby, and Grantor shall reimburse Beneficiary therefor within 10 Business Days after demand.

**Section 5.5 Property Agreement Covenants.** (a) Grantor shall perform and observe, in a timely manner, all of the material covenants, conditions, obligations and agreements of Grantor under the Property Agreements to be performed or observed by Grantor, provided Grantor may suffer or permit a delinquency or non-performance on its part to exist thereunder if such action is not prohibited by the Loan Agreement and would not have a Material Adverse Effect.

(b) Grantor shall not (i) sell, assign, transfer, mortgage or pledge any Property Agreement or any such right or interest under any Property Agreement, or (ii) cancel, terminate, amend, supplement or modify any Property Agreement, in either case, if such action is prohibited by the Loan Agreement or would have a Material Adverse Effect.

(c) Grantor shall exercise all reasonable efforts in accordance with its usual and customary past practices to enforce or secure the performance of each and every material obligation, covenant, condition and agreement to be performed by the franchisor, manager, licensor, grantor or other contracting party under the Property Agreements, if the failure to take such action would have a Material Adverse Effect.

## ARTICLE 6

### SECURITY AGREEMENT

**Section 6.1 Security Interest.** This Deed of Trust constitutes both a real property mortgage and a "Security Agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Fixtures, Plans, Leases, Rents and Property Agreements (said portion of the Property subject to the UCC, the "Collateral"). The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Grantor in the Property. Grantor, by executing and delivering this Deed of Trust, hereby grants to Beneficiary a security interest in the Fixtures, Plans, Leases, Rents and Property Agreements and all other Property that is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such property including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Beneficiary during the continuance of an Event of Default, Grantor shall at its expense assemble the respective Collateral and make it available to Beneficiary at the respective Land and Improvements to which it relates. Grantor shall pay to Beneficiary on demand any and all expenses, including actual reasonable legal expenses and attorneys' fees, incurred or paid by Beneficiary in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Collateral sent to Grantor in accordance with the provisions hereof at least 10 Business Days prior to such action, shall constitute commercially reasonable notice to Grantor. The proceeds of any disposition of the Collateral, or any part thereof, shall, except as otherwise required by law, be applied by Beneficiary in accordance with Section 3.7 hereof.

**Section 6.2 Further Assurances.** Grantor shall execute and deliver to Beneficiary and/or file, in form and substance reasonably satisfactory to Beneficiary, such further statements, documents and agreements, financing statements, continuation statements, and such further assurances and instruments, and do such further acts, as Beneficiary may, from time to time, reasonably consider necessary, desirable or proper to create, perfect and preserve Beneficiary's security interest hereunder and to carry out the intents and the purposes of this Deed of Trust, and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest; provided that such further statements, documents, agreements, assurances, instruments and acts do not increase the liability or obligations or decrease the rights of Grantor

from those provided for in the Loan Documents, including this Deed of Trust. Grantor hereby irrevocably authorizes Beneficiary to file UCC financing statements in each jurisdiction that Beneficiary deems necessary or desirable in its sole discretion in order to perfect the security interests in all or any portion of the Collateral. Such financing statements may indicate or describe the Collateral in any reasonable manner Beneficiary chooses, but may not describe such collateral as "all assets of debtor, whether now owned or hereafter acquired," "all personal property of debtor, whether now owned or hereafter acquired" or using words of similar import. As of the date hereof, Grantor's chief executive office and principal place of business is at the address set forth in the first paragraph of this Deed of Trust, and Grantor shall promptly notify Beneficiary of any change in such address.

Section 6.3 Fixture Filing. This Deed of Trust shall also constitute a "fixture filing" for the purposes of the UCC upon all of the Property that is or is to become "fixtures" (as that term is defined in the UCC), upon being filed for record in the real estate records of the county wherein such fixtures are located. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Grantor) and Secured Party (Beneficiary) as set forth in the first paragraph of this Deed of Trust.

## ARTICLE 7

### MISCELLANEOUS

Section 7.1 Notices. Any notice required or permitted to be given under this Deed of Trust shall be given in the manner described in the Loan Agreement.

Section 7.2 Covenant Running with the Land. All representations, warranties, covenants and Obligations contained in the Loan Agreement are incorporated herein by this reference and, to the extent relating to the Land or Improvements, are intended by the parties to be, and shall be construed as, covenants running with the land. All persons or entities who may have or acquire an interest in the Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents, however, no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary.

Section 7.3 Attorney-in-Fact. Grantor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which appointment is irrevocable and coupled with an interest, after the occurrence and during the continuance of an Event of Default, upon notice to Grantor (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, if Grantor shall fail to do so within 10 days after written request by Beneficiary, (b) upon the issuance of a deed or assignment of lease pursuant to the foreclosure of this Deed of Trust or the delivery of a deed or assignment of lease in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed or the assignee of any such assignment of lease and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for



registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Collateral, and (d) to perform any obligation of Grantor hereunder; however: (1) Beneficiary shall not under any circumstances be obligated to perform any obligation of Grantor; (2) any sums reasonably advanced by Beneficiary in such performance shall be included in the Indebtedness and shall bear interest at the Default Rate; (3) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (4) Beneficiary shall not be liable to Grantor or any other person or entity for any failure to take any action that it is empowered to take under this Section except for Beneficiary's willful malfeasance or gross negligence.

Section 7.4 Successors and Assigns. This Deed of Trust shall be binding upon and inure to the benefit of Beneficiary and Grantor and their respective successors and assigns.

Section 7.5 No Waiver. Any failure by Beneficiary or Trustee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Beneficiary and Trustee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.6 Reserved.

Section 7.7 Loan Agreement. If any conflict or inconsistency exists between this Deed of Trust and the Loan Agreement, the Loan Agreement shall govern.

Section 7.8 Release. Upon payment in full of the Indebtedness and performance in full of all of the outstanding Obligations (other than contingent obligations such as environmental or other indemnities under the Loan Agreement that have not matured at the time of payment in full of the Indebtedness), the estate hereby granted shall cease, terminate and be void and Beneficiary, at Grantor's expense, shall release the liens and security interests created by this Deed of Trust or assign this Deed of Trust, in each case in accordance with the Loan Agreement.

Section 7.9 Waiver of Stay, Moratorium and Similar Rights. Grantor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of, and hereby waives, any appraisement, valuation, stay, marshaling of assets, exemption, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Deed of Trust or the indebtedness secured hereby, or any agreement between Grantor and Beneficiary or any rights or remedies of Beneficiary.

Section 7.10 Waiver of Jury Trial; Consent to Jurisdiction. (a) TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, GRANTOR AND, BY ITS ACCEPTANCE HEREOF, BENEFICIARY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS DEED OF TRUST, ANY OTHER LOAN DOCUMENT, OR ANY DEALINGS, CONDUCT,

STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS BY EITHER OF THEM RELATING TO THE SUBJECT MATTER OF THIS DEED OF TRUST. THE SCOPE OF THIS WAIVER IS INTENDED TO ENCOMPASS ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. GRANTOR AND, BY ITS ACCEPTANCE HEREOF, BENEFICIARY ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS DEED OF TRUST. GRANTOR AND, BY ITS ACCEPTANCE HEREOF, BENEFICIARY FURTHER WARRANT AND REPRESENT THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS DEED OF TRUST, OR ANY OTHER LOAN DOCUMENTS OR AGREEMENTS RELATING TO THIS DEED OF TRUST. IN THE EVENT OF LITIGATION, THIS DEED OF TRUST MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(b) GRANTOR AND, BY ITS ACCEPTANCE HEREOF, BENEFICIARY HEREBY CONSENT FOR THEMSELVES AND GRANTOR HEREBY CONSENTS IN RESPECT OF ITS PROPERTIES, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS IN THE STATE OF NEW YORK WITH RESPECT TO ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING UNDER THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY. GRANTOR AND, BY ITS ACCEPTANCE HEREOF, BENEFICIARY FURTHER CONSENT, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE IN WHICH ANY OF THE COLLATERAL IS LOCATED IN RESPECT OF ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING WITH RESPECT TO SUCH COLLATERAL. GRANTOR AND BENEFICIARY FURTHER IRREVOCABLY CONSENT TO THE SERVICE OF PROCESS BY MAIL, PERSONAL SERVICE OR IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, AT THE ADDRESSES SET FORTH IN SECTION 7.4 OF THE LOAN AGREEMENT IN CONNECTION WITH ANY OF THE AFORESAID PROCEEDINGS IN ACCORDANCE WITH THE RULES APPLICABLE TO SUCH PROCEEDINGS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, GRANTOR AND, BY ITS ACCEPTANCE HEREOF, BENEFICIARY HEREBY IRREVOCABLY WAIVE ANY OBJECTION THAT THEY MAY NOW HAVE OR HAVE IN THE FUTURE TO THE LAYING OF VENUE IN RESPECT OF ANY OF THE AFORESAID PROCEEDINGS BROUGHT IN THE COURTS REFERRED TO ABOVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN

INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF BENEFICIARY TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR TO COMMENCE PROCEEDINGS OR OTHERWISE PROCEED AGAINST GRANTOR IN ANY JURISDICTION.

Section 7.11 Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify, limit or define, or be used in construing, the scope, intent or text of such Articles, Sections or Subsections.

Section 7.12 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK; PROVIDED, HOWEVER, AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO (OTHER THAN WITH RESPECT TO LIENS AND SECURITY INTERESTS IN PROPERTY WHOSE PERFECTION AND PRIORITY IS COVERED BY ARTICLE 9 OF THE UCC, WHICH SHALL BE GOVERNED BY THE LAW OF THE JURISDICTION APPLICABLE THERETO IN ACCORDANCE WITH THE UCC AS IN EFFECT IN THE STATE OF NEW YORK) SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL OTHERWISE GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF THIS DEED OF TRUST.

Section 7.13 General Indemnity; Payment of Expenses. Section 7.17 of the Loan Agreement is incorporated by this reference, as if fully set forth herein.

Section 7.14 Entire Agreement. This Deed of Trust and the other Loan Documents embody the entire agreement and understanding between Beneficiary and Grantor pertaining to the subject matter hereof and thereof and supersede all prior agreements, understandings, representations or other arrangements, whether express or implied, written or oral, between such parties relating to the subject matter hereof and thereof. This Deed of Trust and the other Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 7.15 Severability. If any provision of this Deed of Trust is invalid or unenforceable, then such provision shall be given full force and effect to the fullest possible extent, and all of the remaining provisions of this Deed of Trust shall remain in full force and effect and shall be binding on the parties hereto.

Section 7.16 Reserved.

Section 7.17 Lien Absolute. Grantor acknowledges that this Deed of Trust and a number of other Loan Documents and those documents required by the Loan Documents

UNION BANK  
together secure the Indebtedness. Grantor agrees that, to the extent permitted by law, the lien of this Deed of Trust and all obligations of Grantor hereunder shall be absolute and unconditional and shall not in any manner be affected or impaired by:

(a) any lack of validity or enforceability of the Loan Agreement or any other Loan Document, any agreement with respect to any of the Indebtedness or Obligations or any other agreement or instrument relating to any of the foregoing;

(b) any acceptance by Beneficiary of any security for or guarantees of any of the Indebtedness;

(c) any failure, neglect or omission on the part of Beneficiary to realize upon or protect any of the Indebtedness or any of the collateral security therefor, including the Loan Documents, or due to any other circumstance that might otherwise constitute a defense available to, or a discharge of, Grantor in respect of the Indebtedness and Obligations hereby secured or any collateral security therefor, including the Loan Documents, or due to any other circumstance that might otherwise constitute a defense available to, or a discharge of, Grantor in respect of the Indebtedness or Obligations or this Deed of Trust (other than the indefeasible payment in full in cash of all the Indebtedness and Obligations hereby secured);

(d) any change in the time, manner or place of payment of, or in any other term of, all or any of the Indebtedness or Obligations;

(e) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, nonperfection, renewal, extension, indulgence, alteration, exchange, modification or disposition of any of the Indebtedness or Obligations hereby secured or of any of the collateral security therefor;

(f) any amendment or waiver of or any consent to any departure from the Loan Agreement or any other Loan Documents or of any guaranty thereof, if any, and Beneficiary may in its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Loan Documents without first exercising or enforcing any of its rights and remedies hereunder; and

(g) any exercise of the rights or remedies of Beneficiary hereunder or under any or all of the Loan Documents.

Section 7.18 Real Estate Taxes. Grantor shall not be entitled to any credit upon the Indebtedness or deduction from the assessed value of the Property by virtue of payment of real estate taxes on the Property. If any law or regulation applicable to Beneficiary, any Note, any of the Property or this Deed of Trust is enacted that deducts from the value of property for the purpose of taxation any Lien thereon, or imposes upon Beneficiary the payment of the whole or any portion of the taxes or assessments or charges or Liens required by any of the Loan Documents to be paid by Grantor, or changes in any way the laws or regulations relating to the taxation of mortgages or security agreements or debts secured by mortgages or security

agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect the Deed of Trust, the Indebtedness or Beneficiary, then Grantor, upon demand by Beneficiary, shall pay such taxes, assessments, charges or Liens, or reimburse Beneficiary for any amounts paid by Beneficiary.

Section 7.19 Incorporation by Reference. The parties hereby acknowledge that the Loan Agreement, among other things, contains restrictions on the sale, transfer and encumbrance of the Property and the ownership interests of Grantor.

Section 7.20 State Specific Provisions. The provisions of Exhibit B attached hereto are hereby incorporated by reference as though set forth in full herein.

Section 7.21 Last Dollars Secured. The parties agree that any payments or repayments of the Indebtedness shall be and be deemed to be applied first to the portion of the Indebtedness that is not secured hereby, if any, it being the parties' intent that the portion of the Indebtedness last remaining unpaid shall be secured hereby.

Section 7.22 Deed of Trust Recording Taxes. Grantor hereby covenants to pay any and all mortgage recording or other taxes or fees due in connection with this Deed of Trust.

Section 7.23 Multiple Exercise of Remedies. To the extent permitted by law, Grantor specifically consents and agrees that Beneficiary and Trustee may exercise rights and remedies hereunder and under the other Loan Documents separately or concurrently and in any order that Beneficiary and Trustee may deem appropriate.

Section 7.24 Rules of Construction. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons referred to may require. All references to sections, schedules and exhibits are to sections, schedules and exhibits in or to this Deed of Trust unless otherwise specified. Unless otherwise specified: (i) all meanings attributed to defined terms in this Deed of Trust shall be equally applicable to both the singular and plural forms of the terms so defined, (ii) "including" means "including, but not limited to" and "including, without limitation" and (iii) the words "hereof," "herein," "hereby," "hereunder" and words of similar import when used in this Deed of Trust shall refer to this Deed of Trust as a whole and not to any particular provision, article, section or other subdivision of this Deed of Trust.

Section 7.25 Counterparts; Facsimile Signatures. This Deed of Trust may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Any counterpart delivered by facsimile, pdf or other electronic means shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Deed of Trust.

Grantor hereby acknowledges receipt of a true copy of the within Deed of Trust.

[No further text on this page; Signature page follows]

EXECUTED as of the date first above written.

**GRANTOR:**

**KMART OF WASHINGTON LLC,**  
a Washington limited liability company

By: Kmart Corporation, a Michigan corporation, as  
Sole Member

By: 

Name: Robert A. Riecker  
Title: Vice President, Controller and  
Chief Accounting Officer

**KMART CORPORATION,**  
a Michigan corporation

By: 

Name: Robert A. Riecker  
Title: Vice President, Controller and  
Chief Accounting Officer

ACKNOWLEDGMENT

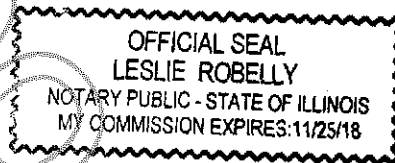
STATE OF Illinois  
COUNTY OF Cook ) SS.

On the 2<sup>nd</sup> day of December in the year 2016, before me, the undersigned, a Notary Public in and for said state, personally appeared Robert A. Pickett, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the person(s), or the entity, in its capacity(ies) above noted, upon behalf of which the person(s) acted, executed the instrument.

Signature:

Name: Leslie Robelly

Official Seal





## EXHIBIT A

### Legal Description

For APN/Parcel ID(s): P105309 / 340408-2-010-0800, P105310 / 340408-2-011-0100, P83924 / 4532-000-001-0008 and P83925 / 4532-000-002-0007

#### PARCEL A:

Tract A, PLAT OF K-MART COMMERCIAL PARK, as per plat recorded in Volume 14 of Plats, pages 126 and 127, records of Skagit County, Washington;

EXCEPT that portion thereof conveyed to the City of Burlington for Pease Road by deed recorded February 18, 1994 under Auditor's File No. 9402180068, records of Skagit County, Washington.

Situate in Skagit County, Washington.

#### PARCEL B:

Tract B, PLAT OF K-MART COMMERCIAL PARK as per plat recorded in Volume 14 of Plats, pages 126 and 127, records of Skagit County, Washington.

Situate in Skagit County, Washington.

#### PARCEL C:

The North 130 feet of the following described tract:

The South 400 feet of the East 200 feet of the West 500 feet of that portion of the Northwest Quarter of the Northwest Quarter of Section 8, Township 34 North, Range 4 East of the Willamette Meridian, lying East of the East margin of Old State Highway 99, now designated as Burlington Boulevard. (As said road existed prior to August 25, 1996.)

Situate in Skagit County., Washington

#### PARCEL D:

That portion of Lot 4 of Short Plat BU3-88 within the Northwest Quarter of the Northwest Quarter, as recorded in Book 8 of Short Plats at page 80, records of Skagit County, Washington, lying West of the East line of Lots 2 and 3 of said Short Plat BU3-88 and said East lines produces.

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## EXHIBIT B

### Special Provisions for the State of Washington

The following provisions are incorporated by reference into Section 7.20 of the foregoing Deed of Trust. If any conflict or inconsistency exists between this Exhibit B and the remainder of foregoing Deed of Trust, this Exhibit B shall govern.

(A) ADDITIONAL REPRESENTATION AND WARRANTY CONCERNING THE LOAN.

Grantor represents, warrants and covenants that the Property is not and will not be used principally for agricultural purposes.

(B) RECONVEYANCE OF PROPERTY. Subject to Section 7.8, upon the performance of all obligations and the payment in full of all sums secured by this Deed of Trust, Beneficiary shall request the Trustee to reconvey the Property. Upon payment of its fees and any other sums owing to it under this Deed of Trust, the Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. The recitals in such conveyance of any matters or facts shall be conclusive of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

(C) NO ORAL COMMITMENTS NOTICE. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

## EXHIBIT C

### Excluded Collateral

"Excluded Collateral" means:

- (a) all Credit Card Accounts Receivable;
- (b) all Pharmacy Receivables;
- (c) all Inventory;
- (d) all Chattel Paper relating to Credit Card Accounts Receivable and Pharmacy Receivables;
- (e) all Instruments relating to Credit Card Accounts Receivable and Pharmacy Receivables;
- (f) all Prescription Lists;
- (g) all Documents relating to any Inventory;
- (h) all Deposit Accounts;
- (i) all cash and cash equivalents;
- (j) all books and records pertaining to the any of the foregoing; and
- (k) to the extent not otherwise included, all Proceeds, insurance claims, Supporting Obligations and products of any and all of the foregoing and all collateral security and guarantees given by any person or entity with respect to any of the foregoing.

"Credit Card Accounts Receivable" means each Account together with all income, payments and proceeds thereof, owed by a credit card payment processor or an issuer of credit cards to a Borrower resulting from charges by a customer of a Group Member (other than Sears Canada) on credit cards issued by such issuer in connection with the sale of goods by a Group Member (other than Sears Canada), or services performed by a Group Member (other than Sears Canada), in each case in the ordinary course of its business.

"Chattel Paper" as defined in the New York Uniform Commercial Code ("UCC").

"Group Members" as defined in in that certain Second Amended and Restated Credit Agreement, dated as of April 8, 2011, as amended October 2, 2013, among inter alia Guarantor, certain affiliates of Guarantor, Bank of America, N.A., as Administrative Agent, and the lenders party thereto.

"Deposit Accounts" as defined in the UCC.

"Documents" as defined in the UCC.

"Instruments" as defined in the UCC.

"Inventory" as defined in the UCC.

"Pharmacy Receivables" means Accounts (as defined in the UCC) arising from the sale of prescription drugs or other Inventory which can be dispensed only through an order of a licensed professional.

"Proceeds" as defined in the UCC.

"Prescription List" means all right, title and interest of any Borrower in and to all prescription files maintained by it or on its behalf, including without limitation, all patient profiles, customer lists, customer information, and other records of prescriptions filled by it, in whatever form and wherever maintained by it or on its behalf, and all goodwill and other intangible assets arising from the maintenance of such records and the possession of the information contained therein.

"Supporting Obligations" as defined in the UCC.