

**Return Address:**

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Cahill Gordon & Reindel LLP  
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(212) 701-3000



201801020152

Skagit County Auditor

\$322.00

1/2/2018 Page

1 of

26 1:21PM

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)**Document Title(s)** (or transactions contained therein): (all areas applicable to your document must be filled in)

1. Amended and Restated First Lien Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing

**Reference Number(s) of Documents assigned or released:**

201502250097

Additional reference #'s on page \_\_\_\_\_ of document

**Grantor(s)**

1. SAFEWAY INC., a Delaware corporation

CHICAGO TITLE

Additional names on page \_\_\_\_\_ of document.

620021700

**Grantee(s)**

1. CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Agent
2. FIDELITY NATIONAL TITLE OF WASHINGTON, as Trustee

Additional names on page \_\_\_\_\_ of document.

**Legal description** (abbreviated: i.e. lot, block, plat or section, township, range)

Lots 1 & 1C, City of Mount Vernon Binding Site Plan No. MV 1-94

Additional legal is on page 24 of document.**Assessor's Property Tax Parcel/Account Number**

P107479; 80050000010000; P107482; 80050000010302

Assessor Tax # not yet assigned

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

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.

\_\_\_\_\_  
Signature of Requesting Party

This instrument prepared in consultation with counsel in the state in which the Trust Property is located by the attorney described below and after recording return to:

Artemis Anninos, Esq.  
Cahill Gordon & Reindel LLP  
80 Pine Street  
New York, NY 10005  
(212) 701-3000

Store No.: 1472

**AMENDED AND RESTATED FIRST LIEN DEED OF TRUST, ASSIGNMENT OF  
LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING**  
(Skagit County, Washington (the "State"))

THIS AMENDED AND RESTATED FIRST LIEN DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust"), dated as of December 21, 2017, is made and executed by SAFEWAY INC., a Delaware corporation (which acquired title as Safeway, Inc., a Delaware corporation) ("Grantor"), having its principal offices at c/o Albertson's LLC, 250 Parkcenter Boulevard, Boise, ID 83706, to **Fidelity National Title of Washington** having an office at 3500 18<sup>th</sup> Street SW, Suite 300, Lynwood, WA 98037, as trustee under this Deed of Trust (together with any successors in such capacities, the "Trustee") for the benefit of **Credit Suisse AG, Cayman Islands Branch**, having an office at Eleven Madison Avenue, 23rd Floor, New York, NY, 10010, Attn: Loan Operations – Agency Manager, as beneficiary ("Agent"), as Agent for the benefit of the Secured Parties (as each such term is defined in the Credit Agreement defined below) (and, to the extent provided in Section 6.1 of this Deed of Trust, for the benefit of the 2037 ASC Debentures Holders (as such term is defined in the Security Agreement)).

**RECITALS**

A. Grantor previously executed and delivered that certain First Lien Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of February 23, 2015, and recorded on February 25, 2015, as instrument number 201502250097 in the Official Records of the County of Skagit, State of Washington (the "Existing Deed of Trust"). The Existing Deed of Trust encumbers the Trust Property (as defined therein), including certain land, improvements and fixtures located in the aforesaid County and State, which land is more particularly described in **Exhibit A** attached thereto.

B. The Existing Deed of Trust secures all Secured Obligations (as such term is defined in the Security Agreement) including without limitation those under that certain Term Loan Agreement dated as of March 21, 2013 (the "Original Credit Agreement"), as amended by (i) that certain Amendment No. 1 to the Term Loan Agreement dated as of May 9, 2013 ("Amendment No.

1 to Original Credit Agreement”), (ii) that certain Consent and Amendment No. 2 dated as of September 19, 2013 (“Amendment No. 2 to Original Credit Agreement”), (iii) that certain Amendment No. 3 dated as of December 27, 2013 (“Amendment No. 3 to Original Credit Agreement”), (iv) that certain Consent and Amendment No. 4 dated as of May 5, 2014 (“Amendment No. 4 to Original Credit Agreement”), as amended and restated by that certain Amendment No. 5 dated as of August 25, 2014, pursuant to which that certain First Amended and Restated Term Loan Agreement dated as of August 25, 2014 is attached as Annex A (“First ARCA”), as amended by that certain Incremental Amendment dated as of October 23, 2014 (“Amendment No. 1 to First ARCA”), as further amended and restated by that certain Second Amended and Restated Term Loan Agreement dated as of August 25, 2014 and effective as of January 30, 2015 (“Second ARCA”; the Original Credit Agreement, as amended by Amendment No. 1 to Original Credit Agreement, Amendment No. 2 to Original Credit Agreement, Amendment No. 3 to Original Credit Agreement, Amendment No. 4 to Original Credit Agreement, the First ARCA, Amendment No. 1 to First ARCA, and the Second ARCA, collectively, the “Existing Credit Agreement”), as more fully described in the Existing Deed of Trust.

C. The Parent Borrower and Agent have modified the Existing Credit Agreement pursuant to the terms and conditions of (i) that certain Amendment No. 1 dated as of December 21, 2015 (“Amendment No. 1 to Second ARCA”), (ii) that certain Amendment No. 2 dated as of December 21, 2015 (“Amendment No. 2 to Second ARCA”), (iii) that certain Joinder and Assumption Agreement of NAI Guarantors dated December 21, 2015 (“Joinder to Second ARCA”) (iv) that certain Amendment No. 3 and Consent dated as of February 11, 2016 (“Amendment No. 3 to Second ARCA”), (v) that certain Amendment No. 4 dated as of June 22, 2016 (“Amendment No. 4 to Second ARCA”), (vi) that certain Amendment No. 5 dated as of December 23, 2016 (“Amendment No. 5 to Second ARCA”) and (vii) that certain Amendment No. 6 dated as of June 27, 2017 (“Amendment No. 6 to Second ARCA”; and together with Amendment No. 1 to Second ARCA, Amendment No. 2 to Second ARCA, Joinder to Second ARCA, Amendment No. 3 to Second ARCA, Amendment No. 4 to Second ARCA and Amendment No. 5 to Second ARCA, the “Credit Agreement Amendments”; the Existing Credit Agreement, as amended by the Credit Agreement Amendments, as the same may be further amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”, capitalized terms used and not defined herein have the meanings given to them in the Credit Agreement).

D. The Parent Borrower, the other grantors from time to time party thereto, and Agent have also entered into that certain Third Amended and Restated Security Agreement dated as of March 21, 2013, as amended and restated as of December 27, 2013, as further amended and restated as of January 30, 2015, and as further amended and restated as of February 11, 2016 (as so amended and supplemented and as may be further amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) pursuant to the Credit Agreement.

E. Holdings owns, directly or through its Subsidiaries, all of the issued and outstanding capital stock of the Grantor.

F. Pursuant to the Credit Agreement, the Grantor is obligated to execute and deliver certain documents, including this Deed of Trust.

G. This Deed of Trust is made by the Grantor in favor of the Trustee for the benefit of Agent for its benefit and the benefit of the Secured Parties (and, to the extent provided for in Section 6.1 of this Deed of Trust, for the benefit of the 2037 ASC Debentures Holders) to secure the payment and performance of all of the Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations (as such term is defined in the Security Agreement)).

H. Grantor and Agent have agreed to amend and restate the Existing Deed of Trust to, among other things, give notice of the modifications reflected in the Credit Agreement Amendments and to confirm that the Existing Deed of Trust remains in full force and effect, except only to the extent expressly modified herein.

### GRANTING CLAUSES

To secure the payment and performance in full of all the Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations), Grantor does hereby convey, mortgage, warrant, grant, assign, transfer, pledge and deliver unto, and hereby confirms its continuing prior conveyance, mortgage, warranty, grant, assignment, transfer, pledge and delivery unto, Trustee, its successors and assigns, in trust, for the use and benefit of Agent with power of sale (subject to applicable law) for its benefit and for the benefit of the other Secured Parties (and, to the extent provided for in Section 6.1 of this Deed of Trust, for the benefit of the 2037 ASC Debentures Holders), and does hereby grant, and hereby confirms its continuing prior grant, to Agent for its benefit and for the benefit of the other Secured Parties (and, to the extent provided for in Section 6.1 of this Deed of Trust, for the benefit of the 2037 ASC Debentures Holders) a security interest in and lien upon, all of Grantor's right, title and interest in, to and under the following described property, whether now owned or held or hereafter acquired from time to time:

(A) The land legally described in attached **Exhibit A** ("Land");

(B) All the buildings, structures, improvements and fixtures of every kind or nature now or hereafter situated on the Land and all machinery, appliances, equipment, furniture and all other personal property of every kind or nature which constitute fixtures with respect to the Land, together with all extensions, additions, improvements, substitutions and replacements of the foregoing ("Improvements");

(C) All easements, tenements, rights-of-way, vaults, gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired ("Appurtenances");

(D)(i) All judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any portion of the Land, Improvements or Appurtenances or any part thereof or to any rights appurtenant thereto;

(ii) All compensation, awards, damages, claims, rights of action and proceeds of or on account of (a) any damage to or taking of all or any portion of the Land, Improvements or Appurtenances by reason of the taking, pursuant to the power of eminent domain, of all or any portion of the Land, Improvements, Appurtenances or of other property, or (b) the alteration of the grade of any street or highway on or about the Land, Improvements, Appurtenances or any part thereof; and, except as otherwise provided herein or in the Credit Agreement, Agent is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor and, except as otherwise provided herein or in the Credit Agreement, to apply the same toward the payment of the indebtedness and other sums secured hereby; and

(iii) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, Improvements or Appurtenances;

(E) All rents, issues, profits, income and other benefits now or hereafter arising from or in respect of the Land, Improvements or Appurtenances (the "Rents");

(F) Any and all leases, licenses and other occupancy agreements now or hereafter affecting the Land, Improvements or Appurtenances, together with all security therefor and guaranties thereof and all monies payable thereunder, and all books and records owned by Grantor which contain evidence of payments made under the leases and all security given therefor (collectively, the "Leases");

(G) Any and all after-acquired right, title or interest of Grantor in and to any of the property described in the preceding Granting Clauses; and

(H) The proceeds from the sale, transfer, pledge or other disposition of any or all of the property described in the preceding Granting Clauses.

All of the trust property described in the Granting Clauses is hereinafter referred to as the "Trust Property."

TO HAVE AND TO HOLD the Trust Property and all parts thereof unto Trustee, its successors and assigns forever, in trust, for the use and benefit of Agent, for its benefit and for the benefit of the other Secured Parties (and, to the extent provided for in Section 6.1 of this Deed of Trust, for the benefit of the 2037 ASC Debentures Holders) for purposes of securing the payment and performance in full of all the Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations).

## **ARTICLE I. COVENANTS OF GRANTOR**

Grantor covenants and agrees with Trustee and Agent as follows:

**SECTION 1.1. Performance under Credit Agreement and Deed of Trust.** Grantor shall perform, observe and comply with or cause to be performed, observed and complied with in a complete and timely manner, so as not to cause an Event of Default (as de-

defined herein), all provisions hereof, of the Credit Agreement, and every instrument evidencing or securing the Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations).

**SECTION 1.2. General Covenants and Representations.** Grantor covenants, represents and warrants that as of the date hereof and at all times thereafter during the term hereof: (a) Grantor owns in fee simple that portion of the Trust Property which is real property, and has good and valid title thereto and the balance of the Trust Property free and clear of all liens, security interests, charges and encumbrances whatsoever, except for Liens permitted under Section 10.1 of the Credit Agreement ("Permitted Liens"); and (b) Grantor will maintain and preserve the lien of this Deed of Trust as a first lien on the Trust Property, subject only to the Permitted Liens or as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, until the Secured Obligations (and, to the extent provided for in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations) have been paid in full and this Deed of Trust has been released in whole pursuant to Section 4.11 hereof.

**SECTION 1.3. Compliance with Laws and Other Restrictions.** Grantor covenants and represents that the Land and the Improvements and the use thereof presently comply with all Laws in accordance with Section 9.2 of the Credit Agreement.

**SECTION 1.4. Taxes and Other Charges.** Except for failures that could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, Grantor shall pay promptly when due and payable all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations, liens and encumbrances of every kind and nature whatsoever now or hereafter imposed, levied or assessed upon or against the Trust Property or any part thereof, or in connection with this Deed of Trust (including any mortgage recording taxes) or the Credit Agreement; provided, however, that Grantor may in good faith contest the validity, applicability or amount of any tax, assessment or other charge, in accordance with the terms of the Credit Agreement.

**SECTION 1.5. Mechanic's and Other Liens.** Except as otherwise may be provided by the Credit Agreement, Grantor shall not permit or suffer any mechanic's, laborer's, materialman's, statutory or other lien or encumbrance (other than any lien for taxes and assessments not yet due or payable) to be created upon or against the Trust Property; provided, however, that Grantor may in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted lien, in accordance with the terms of the Credit Agreement.

**SECTION 1.6. Insurance and Condemnation.**

(a) **Insurance Policies.** Grantor shall obtain and keep in full force and effect the policies of insurance required by Section 9.4 of the Credit Agreement pursuant to the terms thereof.

(b) **Adjustment of Loss; Application of Proceeds.** Except as otherwise may be provided by the Credit Agreement, Agent is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies covering the Trust Property and to collect and receive the proceeds from any such policy or policies. The entire amount of such

proceeds, awards or compensation shall be applied in accordance with Section 2.3(b) of the Credit Agreement.

(c) **Condemnation Awards.** Except as otherwise may be provided by the Credit Agreement, Agent shall be entitled to all compensation, awards, damages, claims, rights of action and proceeds of, or on account of, (i) any damage or taking, pursuant to the power of eminent domain, of the Trust Property or any part thereof, (ii) damage to the Trust Property by reason of the taking, pursuant to the power of eminent domain, of other property, or (iii) the alteration of the grade of any street or highway on or about the Trust Property. Except as may otherwise be provided by the Credit Agreement, Agent is hereby authorized, at its option, to commence, appear in and prosecute in its own or Grantor's name any action or proceeding relating to any such compensation, awards, damages, claims, rights of action and proceeds and to settle or compromise any claim in connection therewith. Grantor shall pay all out-of-pocket reasonable fees, costs and expenses, including reasonable and documented attorney's fees, incurred by the Agent in connection therewith and in seeking and obtaining any award or payment on account thereof. The entire amount of such proceeds, awards or compensation shall be applied in accordance with Section 2.3(b) of the Credit Agreement.

(d) **Obligation to Repair.** In the event the Grantor is permitted or required to perform any restoration in accordance with the provisions of Section 2.3(b) of the Credit Agreement, the Grantor shall perform such restoration in accordance with the provisions thereof.

SECTION 1.7. **Inspection.** The Grantor shall permit the Agent, and its agents, representatives and employees to inspect the Trust Property in accordance with Section 9.15 of the Credit Agreement.

SECTION 1.8. **Intentionally Omitted.**

SECTION 1.9. **Care of the Trust Property**

(i) Grantor shall preserve and maintain the Trust Property in the condition required by the Credit Agreement.

(ii) Grantor represents and warrants that no portion of the Land 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 Land is located within such area, the Grantor has obtained the flood insurance prescribed in the Credit Agreement.

SECTION 1.10. **Transfer or Encumbrance of the Trust Property.** Except as permitted by the Credit Agreement, Grantor shall not permit or suffer to occur any sale, assignment, conveyance, transfer, mortgage, lease or encumbrance of the Trust Property, any part thereof, or any interest therein, without the prior written consent of Agent not to be unreasonably withheld, conditioned or delayed.

**SECTION 1.11. Further Assurances.** At any time and from time to time, upon Trustee's or Agent's reasonable request, Grantor shall make, execute and deliver, or cause to be made, executed and delivered, to Agent, and where appropriate shall cause to be recorded, registered or filed, and from time to time thereafter to be re-recorded, re-registered and refiled at such time and in such offices and places as shall be deemed desirable by Agent, any and all such further mortgages or deeds of trust, security agreements, financing statements, instruments of further assurance, certificates and other documents as Agent may reasonably require in order to effectuate or perfect, or to continue and preserve the obligations under, this Deed of Trust.

**SECTION 1.12. Assignment of Rents.** Grantor absolutely and unconditionally grants, bargains, sells and conveys the Rents to Agent to provide a source of payment of the Secured Obligations (and, to the extent provided for in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations) subject to the license granted to Grantor below. Grantor and Agent intend that this conveyance be presently and immediately effective without any further action on the part of either party, and, specifically, Agent shall be entitled, at its option, upon the occurrence and during the continuance of an Event of Default, to all Rents, whether or not Agent takes possession of the Trust Property. Such assignment and grant shall continue in effect during the continuance of an Event of Default until the Secured Obligations (and, to the extent provided for in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations) are paid in full and this Deed of Trust has been released in whole pursuant to Section 4.11 hereof, the execution of this Deed of Trust constituting and evidencing the irrevocable consent of Grantor during the continuance of an Event of Default to the entry by Agent upon and taking possession of the Trust Property by Agent pursuant to such grant, whether or not foreclosure proceedings have been instituted. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Grantor shall have the right and authority to continue to collect the Rents as they become due and payable in accordance with the provisions of the applicable Lease; provided, however, that no prepayment of Rent shall in any event result, individually or in the aggregate, in a Material Adverse Effect on the value of the Trust Property.

**SECTION 1.13. After-Acquired Property.** To the extent permitted by, and subject to, applicable law, the lien of this Deed of Trust shall automatically attach, without further act, to all property hereafter acquired by Grantor and located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Trust Property or any part thereof.

**SECTION 1.14. Leases Affecting Trust Property.** Grantor shall comply with and perform in a complete and timely manner in all material respects all of its obligations as landlord under all Leases affecting the Trust Property or any part thereof. The assignment contained in Section 1.12 shall not be deemed to impose upon Agent any of the obligations or duties of the landlord or Grantor provided in any Lease.

**SECTION 1.15. Execution of Leases.** Except as permitted by the Credit Agreement, Grantor shall not permit any Leases to be made of the Trust Property, or to be modified, terminated, extended or renewed, without the prior written consent of Agent.

**SECTION 1.16. Security Agreement and Fixture Filing.** This Deed of Trust is both a real property deed of trust and a security agreement (as "security agreement" is



defined in the Uniform Commercial Code as enacted and in effect in the State (the “UCC”)). Grantor does hereby grant, and hereby confirms its continuing prior grant, to Trustee (for the benefit of Agent) and to the Agent for its benefit and for the benefit of the other Secured Parties (and, to the extent provided in Section 6.1 of this Deed of Trust, for the benefit of the 2037 ASC Debentures Holders) a security interest in and lien upon all goods, equipment, furniture and other tangible personal property of Grantor used in connection with the Trust Property. The information contained in this Section 1.16 is provided in order that this Deed of Trust shall comply with the requirements of the UCC for a deed of trust to be effective as a financing statement filed as a fixture filing. Capitalized terms not otherwise defined in this Section 1.16 shall have the meaning ascribed to them in the UCC. The Debtor is Grantor, the Secured Party is Agent, Grantor is the record owner of the Land, and the mailing addresses of Grantor/Debtor and Agent/Secured Party are as set forth in the preamble to this Deed of Trust. The types, or the items, of collateral covered hereby include goods that are or are to become fixtures with respect to the Land and Improvements located thereon. The filing of this Deed of Trust in the real estate records of the county in which the Land is located shall operate from the time of filing as a “fixture filing” within the meaning of Section 9.102(a)(40) and under Section 9.502(c) of the UCC with respect to all portions of the Trust Property that are or are to become fixtures related to the Land and Improvements located thereon.

**SECTION 1.17. Secured Obligations.** This Deed of Trust secures, and the Trust Property is collateral security for, the payment and performance in full when due of the Secured Obligations (and, to the extent provided for in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations).

Notwithstanding any of the other provisions set forth in this Section 1.17 or anything else contained in this Deed of Trust or any other Financing Agreement, for so long as the NAI Indenture (as defined in the Security Agreement) is in effect and includes any limitation on the amount of Indebtedness of the NAI Group (as defined in the Security Agreement) that may be secured by the NAI Restricted Collateral (as defined in the Security Agreement), the aggregate amount of all Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations) secured under the Collateral Documents by NAI Restricted Collateral shall not, at any time, exceed the lesser of (x) the Maximum NAI Credit Facility Amount (as defined in the Security Agreement) as calculated on the latest NAI Collateral Test Date (as defined in the Security Agreement) and (y) an amount as otherwise determined pursuant to any Intercreditor Agreement or another intercreditor agreement applicable to other indebtedness secured on a pari passu basis with the Term Loans entered into with the Agent in accordance with the Financing Documents.

## **ARTICLE II. DEFAULTS**

**SECTION 2.1. Event of Default.** The term “Event of Default,” wherever used in this Deed of Trust, shall mean the occurrence of an “Event of Default” under and as defined in the Credit Agreement.

## **ARTICLE III. REMEDIES**

**SECTION 3.1. Acceleration of Maturity.** If an Event of Default shall have occurred and be continuing, then the entire principal amount of the indebtedness secured hereby with interest accrued thereon in accordance with clause (b) of the definition of Interest Rate in the Credit Agreement, and all other Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations) (or such parts as Agent may elect) shall, at the option of Agent, become due and payable without notice or demand, time being of the essence.

**SECTION 3.2. Right of Agent to Enter and Take Possession.** If an Event of Default shall have occurred and be continuing, Grantor, upon demand of Agent, shall forthwith surrender to Agent the actual possession of the Trust Property, and if and to the extent permitted by law, Agent may enter and take possession of all the Trust Property, and may exclude Grantor and its agents and employees wholly therefrom. Upon every such entering upon or taking of possession, Agent may hold, store, use, operate, manage and control the Trust Property and conduct the business thereof, and Agent may collect and receive all the income, revenues, rents, issues and profits of the Trust Property, including those past due as well as those accruing thereafter, and, after deducting (i) all reasonable expenses of taking, holding, managing, and operating the Trust Property (including compensation for the services of all persons employed for such purposes); (ii) the cost of all maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions reasonably necessary; (iii) the cost of insurance; (iv) such taxes, assessments and other charges prior to the lien of this Deed of Trust as Agent may determine to pay; (v) other proper charges upon the Trust Property or any part thereof; and (vi) the reasonable compensation and documented out-of-pocket expenses and disbursements of the attorneys and agents of Agent, shall apply the remainder of the monies so received by Agent, in accordance with the provisions of the Credit Agreement.

**SECTION 3.3. Receiver.** If an Event of Default shall have occurred and be continuing, upon application to a court of competent jurisdiction, Agent shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Trust Property and to collect the rents, profits, issues, and revenues thereof. Grantor will pay to Agent upon demand all reasonable and documented out-of-pocket expenses incurred by Agent, including receiver's fees, attorneys' fees, costs and agents' compensation, incurred pursuant to the provisions contained in this Section 3.3, and all such expenses shall be secured by this Deed of Trust.

**SECTION 3.4. Agent's Power of Enforcement.** If an Event of Default shall have occurred and be continuing, Agent may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations); (b) to foreclose this Deed of Trust as a real property deed of trust or to instruct Trustee to foreclose this Deed of Trust under the power of sale, and to sell, as an entirety or in separate lots or parcels, the Trust Property, as provided by law; and (c) to pursue any other remedy available to it, all as Agent shall deem most effectual for such purposes.

**SECTION 3.5. Power of Sale.** If an Event of Default shall have occurred and be continuing, to the extent allowed by State law, Trustee or Agent may sell the Trust Property to the highest bidder at public auction in accordance with the laws of the State, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold all according to the laws of the State governing sales of land under the power of sale by virtue of this Deed of Trust, and, upon payment of the purchase price, Trustee or Agent or any person conducting the sale for Agent is authorized to execute to the purchaser at said sale a trustee's deed to the Trust Property so purchased, without covenant, representation or warranty, express or implied. Trustee or Agent (including a credit bid) may bid at said sale and purchase the Trust Property, or any part thereof, if Trustee or Agent is the highest bidder therefor. At the foreclosure sale, and subject to applicable laws, the Trust Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any manner Agent may elect.

**SECTION 3.6. Application of Foreclosure Proceeds.** (i) Subject to the terms of the ABL Intercreditor Agreement, the proceeds received by the Agent in respect of any sale of, collection from or other realization upon all or any part of the Trust Property pursuant to the exercise by the Agent of its remedies shall be applied, together with any other sums then held by the Agent pursuant to this Deed of Trust, first, to payment in full of that portion of the Secured Obligations (excluding the Other Liabilities) constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including costs and expenses payable under Section 12.6 of the Credit Agreement and amounts payable under Section 3.3 of the Credit Agreement and Section 6 of the Credit Agreement) payable to the Agent in its capacity as such, and second, to payment in full of all other Secured Obligations and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations, ratably as among the Secured Obligations, on the one hand, and the 2037 ASC Debentures Obligations, on the other hand, provided that any such proceeds and sums to be applied to the Secured Obligations shall be applied in accordance with and as set forth in Section 11.3 of the Credit Agreement and any such proceeds and sums to be applied to the 2037 ASC Debentures Obligations shall be applied in accordance with the documents governing the 2037 ASC Debentures (as defined in the Security Agreement).

(ii) All payments required to be made pursuant to the foregoing provisions in respect of the 2037 ASC Debentures Obligations shall be paid to or at the direction of the trustee under the ASC Indenture (as such term is defined in the Security Agreement). If at any time any moneys collected or received by the Agent are distributable to the 2037 ASC Debenture Trustee, and if such trustee shall notify the Agent in writing that no provision is made under the ASC Indenture for the application by the 2037 ASC Debenture Trustee of such moneys (whether because the ASC Indenture does not effectively provide that amounts are due and payable or otherwise) and that the ASC Indenture does not effectively provide for the receipt and the holding by the 2037 ASC Debenture Trustee of such moneys pending the application thereof, then the Agent, after receipt of such moneys pending the application thereof, and receipt of such notification, shall at the direction of the 2037 ASC Debenture Trustee, invest such amounts in Cash Equivalents maturing within 90 days after they are acquired by the Agent or, in the absence of such direction, hold such moneys uninvested and shall hold all such amounts so distributable and all such investments and the net proceeds thereof in trust solely for the 2037 ASC Debenture

Trustee (in its capacity as trustee) and for no other purpose until such time as the 2037 ASC Debenture Trustee shall request in writing the delivery thereof by the Agent for application pursuant to the 2037 ASC Debentures. The Agent shall not be responsible for any diminution in funds resulting from any such investment or any liquidation or any liquidation thereof prior to maturity.

(iii) In making the determination and allocations required by this Section 3.6, the Agent may conclusively rely upon information supplied by the 2037 ASC Debentures Trustee (as such term is defined in the Security Agreement) as to the amounts of unpaid principal and interest and other amounts outstanding with respect to the 2037 ASC Debentures Obligations and the Agent shall have no liability to any of the Secured Parties for actions taken in reliance on such information; provided that nothing in this sentence shall prevent Grantor from contesting any amounts claimed by any Secured Party in any information so supplied. All distributions made by the Agent pursuant to this Section 3.6 shall be (subject to any decree of any court of competent jurisdiction) final (absent manifest error), and the Agent shall have no duty to inquire as to the application by the 2037 ASC Debentures Trustee of any amounts distributed to the 2037 ASC Debentures Trustee.

(iv) If, despite the provisions of this Deed of Trust, any Secured Party shall receive any payment or other recovery in excess of its portion of payments on account of the Secured Obligations to which it is then entitled in accordance with this Deed of Trust, such Secured Party shall hold such payment or other recovery in trust for the benefit of all Secured Parties and 2037 ASC Debentures Holders hereunder for distribution in accordance with this Section 3.6.

**SECTION 3.7. Agent's Option on Judicial Foreclosure.** Upon the occurrence and during the continuance of an Event of Default, at the option of Agent, this Deed of Trust may be foreclosed as a real property deed of trust, as provided by law or in equity, in which event reasonable attorneys' fees shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Agent exercises its option to judicially foreclose this Deed of Trust in equity, Agent may at its option, foreclose this Deed of Trust subject to or prior to the rights of any tenants of the Trust Property, and the failure to make any such tenants parties to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by Grantor, a defense to any proceedings instituted by Agent to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Trust Property.

**SECTION 3.8. Waiver of Exemption and Redemption.** Upon the occurrence and during the continuance of an Event of Default, and subject to applicable laws, Grantor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Deed of Trust, and Grantor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Trust Property be set off against any part of the indebtedness secured hereby. Grantor hereby waives all rights of appraisal, sale and redemption allowed under any law or laws of the State, or the laws of any other state or jurisdiction.

**SECTION 3.9. Remedies Cumulative.** No right, power or remedy conferred upon or reserved to Trustee or Agent by the Credit Agreement, this Deed of Trust or any other instrument evidencing or securing the Secured Obligations (and, to the extent provided in

Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations) is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Credit Agreement or any instrument evidencing or securing the Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations), or now or hereafter existing at law, in equity or by statute.

#### **ARTICLE IV. MISCELLANEOUS PROVISIONS**

**SECTION 4.1. Successors and Assigns Included in Parties.** Whenever Trustee, Grantor or Agent is named or referred to herein, successors and assigns of such person or entity shall be included, and all covenants and agreements contained in this Deed of Trust shall bind the successors and assigns of Grantor, including any subsequent owner of all or any part of the Trust Property and inure to the benefit of the successors and assigns of Agent for the benefit of the Secured Parties (and, to the extent provided for in Section 6.1 of this Deed of Trust, for the benefit of the 2037 ASC Debentures Holders).

**SECTION 4.2. Notices.** Unless otherwise provided herein or in the Credit Agreement, any notice or other communication herein required or permitted to be given shall be given in the manner and become effective as set forth in the Credit Agreement, as to the Grantor, addressed to it at the address of the Parent Borrower set forth in the Credit Agreement and as to the Agent, addressed to it at the address set forth in the Credit Agreement, or in each case at such other address as shall be designated by such party in a written notice to the other parties hereto complying as to delivery with the terms of this Section 4.2; provided that (i) any notice to the 2037 ASC Debentures Trustee may be made to its address as set forth in the most recent copy of the ASC Indenture provided to the Agent by the Borrowers or in a written notice of such address provided to the Agent by the 2037 ASC Debentures Trustee and (ii) notice to any 2037 ASC Debentures Trustee shall be deemed sufficient notice to the 2037 ASC Debentures Holders for all purposes hereunder. All notices to the Trustee shall be addressed at its offices set forth in the preamble hereto.

**SECTION 4.3. Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Deed of Trust are for convenience only, are not to be considered a part hereof, and shall not limit, expand or otherwise affect any of the terms hereof.

**SECTION 4.4. Invalid Provisions.** In the event that any of the covenants, agreements, terms or provisions contained in this Deed of Trust shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein (or the application of the covenant, agreement, term or provision held to be invalid, illegal or unenforceable, to persons or circumstances other than those in respect of which it is invalid, illegal or unenforceable) shall be in no way affected, prejudiced or disturbed thereby.

**SECTION 4.5. Changes.** 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 made in accordance with the terms of the Credit Agreement; provided, however, that the requisite written consent of the 2037 ASC Debentures

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HOLDERS and/or the 2037 ASC Debentures Trustee under the 2037 ASC Debentures shall be required with respect to any release, waiver, amendment or other modification of this Deed of Trust that would materially and adversely affect the rights of the 2037 ASC Debentures Holders to equally and ratably share in the security provided for herein with respect to the Trust Property. Except as set forth in this Section 4.5, neither the 2037 ASC Debentures Holders nor any 2037 ASC Debentures Trustee shall have any rights to approve any release, waiver, amendment, modification, charge, discharge or termination with respect to this Deed of Trust. 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 in each case 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 document evidencing the Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations), no notice to or demand on the Grantor in any case shall entitle Grantor to any other or further notice or demand in similar or other circumstances.

**SECTION 4.6. Governing Law.** Except with respect to the creation, perfection, priority and enforcement of the lien and security interest created hereunder, all of which shall be construed, interpreted, enforced and governed by the laws of the State, the validity and interpretation of this Deed of Trust shall be governed by and in accordance with the internal laws of the State of New York, without giving effect to any conflict of law principles that would result in the application of the laws of any other state (but giving effect to federal laws relating to national banks).

**SECTION 4.7. Limitation of Interest.** The provisions of the Credit Agreement regarding the payment of lawful interest are hereby incorporated herein by reference.

**SECTION 4.8. Future Advances.** This Deed of Trust shall secure all of the Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations) including, without limitation, future advances whenever hereafter made with respect to or under the Credit Agreement (and, to the extent applicable pursuant to Section 6.1 of this Deed of Trust, the ASC Indenture) and shall secure not only Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations) with respect to presently existing indebtedness under the Credit Agreement (and, to the extent applicable pursuant to Section 6.1 of this Deed of Trust, the ASC Indenture), but also any and all other indebtedness which may hereafter be owing by the Grantor to the Secured Parties (and, to the extent provided for in Section 6.1 of this Deed of Trust, for the benefit of the 2037 ASC Debentures Holders) under the Credit Agreement (and, to the extent applicable pursuant to Section 6.1 of this Deed of Trust, the ASC Indenture) and other Collateral Documents, however incurred, whether interest, discount or otherwise, and whether the same shall be deferred, accrued or capitalized, including future advances and re-advances, pursuant to the Credit Agreement (and, to the extent applicable pursuant to Section 6.1 of this Deed of Trust, the ASC Indenture) or the other Collateral Documents, whether such advances are obligatory or to be made at the option of the Secured Parties (and, to the extent provided for in Section 6.1 of this Deed of Trust, for the benefit of the 2037 ASC Debentures Holders), or otherwise, and any extensions, refinancings, modifications or renewals of all such Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures 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.

**SECTION 4.9. Maximum Amount of Indebtedness.** The maximum aggregate amount of all indebtedness that is, or under any contingency may be secured at the date hereof or at any time hereafter by this Deed of Trust is \$13,050,000,000, plus, to the extent permitted by applicable law, collection costs, sums advanced for the payment of taxes, assessments, maintenance and repair charges, insurance premiums and any other costs incurred to protect the security encumbered hereby or the lien hereof, expenses incurred by the Agent by reason of any default by the Grantor under the terms hereof, together with interest thereon, all of which amount shall be secured hereby.

**SECTION 4.10. Last Dollar.** The lien of this Deed of Trust shall remain in effect until the last dollar of the Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations) is paid in full and this Deed of Trust has been released in whole pursuant to Section 4.11 hereof.

**SECTION 4.11. Release; Reconveyance by Trustee.**

(a) This Deed of Trust, the security interest and lien in favor of the Trustee (for the benefit of Agent and the other Secured Parties (and, to the extent applicable in Section 6.1 of this Deed of Trust, any 2037 ASC Debentures Holders)) and all other security interests granted hereby shall terminate with respect to all Secured Obligations (other than contingent obligations not yet due) when (i) the Commitments shall have expired or been terminated and (ii) the principal of and interest on each Loan and all fees and other Secured Obligations shall have been paid in full in cash, provided, however, that in connection with the termination of this Deed of Trust, the Agent may require such indemnities as it shall reasonably deem necessary or appropriate to protect the Secured Parties against (x) loss on account of credits previously applied to the Secured Obligations that may subsequently be reversed or revoked, (y) any obligations that may thereafter arise with respect to the Cash Management Obligations or Bank Products, and (z) any Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations) that may thereafter arise under Sections 12.5 or 12.6 of the Credit Agreement, provided, further, that the 2037 ASC Debentures Obligations shall no longer be secured hereby and this Deed of Trust shall be deemed terminated in the event the Secured Obligations are no longer required to be secured hereby as a result of the release of the Trust Property by the Agent as permitted hereunder and under the Credit Agreement. Upon termination of this Deed of Trust the Trust Property shall be released from the Lien of this Deed of Trust. Upon such release or any release of Trust Property or any part thereof in accordance with the provisions of the Credit Agreement, the Agent shall, upon the request and at the sole cost and expense of the Grantor, assign, transfer and deliver to the Grantor, against receipt and without recourse to or warranty by the Agent except as to the fact that the Agent has not encumbered the released assets, such of the Trust Property or any part thereof to be released (in the case of a release) as may be in possession of the Agent and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Trust Property, proper documents and instruments acknowledging the termination hereof or the release of such Trust Property, as the case may be.

(b) Provided that no Event of Default is then occurring, the Grantor shall automatically be released from its obligations hereunder and the lien and security interest in favor of Trustee and Agent on the Trust Property shall be automatically released if (i) the Grantor ceases to be a Restricted Subsidiary as a result of a transaction permitted under the Credit Agreement or becomes an Excluded Subsidiary or (ii) is the parent holding company of a Real Estate Subsidiary party to a Qualified Real Estate Financing Facility if such Deed of Trust is prohibited by the terms of such Qualified Real Estate Financing Facility; provided that no such release shall occur if the Grantor continues to be a guarantor in respect of any ABL Facility Indebtedness or any Additional Pari Term Debt (as defined in the ABL Intercreditor Agreement) or any Permitted Refinancing thereof (as defined in and incurred in compliance with the terms of the ABL Credit Agreement as in effect on the date hereof).

(c) The Trust Property shall be released from the lien of this Deed of Trust in accordance with the provisions of this Deed of Trust, the ABL Intercreditor Agreement and the Credit Agreement. Upon termination hereof or any release of Trust Property in accordance with the provisions of this Deed of Trust, the ABL Intercreditor Agreement or the Credit Agreement, the Agent shall, upon the request and at the sole cost and expense of the Grantor, assign, transfer and deliver to the Grantor, against receipt and without recourse to or warranty by the Agent, such portion of the Trust Property to be released (in the case of a release) or all of the Trust Property (in the case of termination of this Deed of Trust) as may be in possession of the Agent and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Trust Property to be released, proper documents and instruments (including UCC-3 termination statements or releases) acknowledging the termination hereof or the release of such Trust Property, as the case may be.

(d) At any time that the Grantor desires that the Agent take any action described in clause (c) of this Section 4.11, the Grantor shall, upon request of the Agent, deliver to the Agent an officer's certificate certifying that the release of the respective Trust Property is permitted pursuant to this Section 4.11. The Agent shall have no liability whatsoever to any other Secured Party (or any 2037 ASC Debentures Holders) as the result of any release of the Trust Property by it as permitted (or which the Agent in good faith believes to be permitted) by this Section 4.11.

The Trustee shall, upon request by the Agent, release and reconvey (or, as the case may be, assign) all or any portion of the Trust Property whenever requested to do so by the Agent and shall not require as a condition to any such release, reconveyance or assignment, that the Agent certify or demonstrate that all or any portion of the Secured Obligations shall have been paid in full.

**SECTION 4.12. Agent May Perform; Agent Appointed Attorney in Fact.** If the Grantor shall fail to perform any covenants contained in this Deed of Trust after giving effect to applicable notice and cure periods (including, without limitation, the Grantor's covenants to (i) pay the premiums in respect of all required insurance policies, (ii) pay charges, (iii) make repairs, (iv) discharge Liens or (v) pay or perform any obligations of the Grantor under any Trust Property) or if any representation or warranty on the part of the Grantor contained herein shall be breached, the Agent may (but shall not be obligated to), during the continuance of such breach,



do the same or cause it to be done or remedy any such breach, and may expend funds for such purpose; provided, however, that the Agent 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 the provisions of the Credit Agreement. Any and all amounts so expended by the Agent shall be paid by the Grantor in accordance with the provisions of the Credit Agreement and repayment shall be secured by this Deed of Trust. Neither the provisions of this Section 4.12 nor any action taken by the Agent pursuant to the provisions of this Section 4.12 shall prevent any such failure to observe any covenant contained in this Deed of Trust nor any breach of warranty from constituting an Event of Default. Upon the occurrence and during the continuance of an Event of Default, the Grantor hereby appoints the Agent 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 Agent's discretion to take any action and to execute any instrument consistent with the terms hereof and the terms of the other Collateral Documents which the Agent may deem necessary or advisable to accomplish the purposes hereof (but the Agent 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 in accordance with the terms hereof. The Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

**SECTION 4.13. Credit Agreement.** In the event of any conflict between the terms of this Deed of Trust and the terms of the Credit Agreement, the terms of the Credit Agreement shall control.

**SECTION 4.14. Intercreditor Agreement.** Notwithstanding anything to the contrary herein, this Deed of Trust and each other Financing Agreement are subject to the terms and conditions set forth in the ABL Intercreditor Agreement in all respects and, in the event of any conflict between the terms of the ABL Intercreditor Agreement and this Deed of Trust, the terms of the ABL Intercreditor Agreement shall govern. Notwithstanding anything herein to the contrary, the priority of the Lien and security interest granted to the Agent pursuant to any Financing Agreement and the exercise of any right or remedy in respect of the Trust Property by the Agent hereunder or under any other Financing Agreement is subject to the provisions of the ABL Intercreditor Agreement.

**SECTION 4.15. Confirmation and Restatement.**

(a) Grantor, to induce Agent to enter into this Deed of Trust, hereby confirms and restates: (i) the conveyance pursuant to the Existing Deed of Trust to Trustee for the benefit of Agent of the Trust Property (as defined in the Existing Deed of Trust), (ii) the grant pursuant to the Existing Deed of Trust to Agent of the security interest in and lien on the Trust Property (as defined in the Existing Deed of Trust), and (iii) that the lien of the Existing Deed of Trust, as amended and restated by this Deed of Trust, continues to secure the payment and performance of the Secured Obligations (as defined in the Existing Deed of Trust). Nothing contained in this Deed of Trust shall be construed as (i) a novation of the Secured Obligations (as defined in the Existing Deed of Trust) or (ii) a release or waiver of all or any portion of the grant or conveyance to the Trustee or Agent of Trust Property or the grant to Agent of the security interest in and lien on the Trust Property pursuant to the Existing Deed of Trust.

(b) This Deed of Trust amends and restates the Existing Deed of Trust. The obligations under the Existing Deed of Trust of Grantor and the grant of lien on and security interest in the Trust Property under the Existing Deed of Trust by Grantor shall continue under this Deed of Trust, and shall not in any event be terminated, extinguished, annulled or otherwise affected in any manner hereby, but shall hereafter be governed by this Deed of Trust. It is understood and agreed that the Existing Deed of Trust is being amended and restated in its entirety by entry into this Deed of Trust on the date hereof.

**SECTION 4.16. No Change in Deed of Trust Priority.**

(a) No Change (as hereinafter defined) shall impair, reduce or subordinate, in whole or in part, the priority of the lien of the Deed of Trust as against the liens of Junior Lien Claimants (as hereinafter defined), and the Deed of Trust shall continue to secure the Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations), with the same priority of lien as the Existing Deed of Trust regardless of any Changes, whether or not (i) any notice is recorded with respect to such Change, (ii) such Change increases the principal amount (subject to any express limitations thereon set forth in the Deed of Trust) or the interest rate of the Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations) or otherwise adversely affects Junior Lien Claimants, or (iii) Grantor executes or delivers new or additional note(s) to evidence or confirm such Change.

(b) All actual and potential Junior Lien Claimants are hereby placed on notice that (i) the Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations) are subject to Change(s) and (ii) the Existing Deed of Trust provided and gave notice that it secured the Secured Obligations arising both under the Financing Agreements as originally executed and delivered and under the Financing Agreements as affected by one or more Changes. Junior Lien Claimants should not assume that they will be notified of any amendment of the Financing Agreements or of the Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations) that occurs before or after the recording of their lien. By taking or accepting an interest in the Trust Property subject to the Deed of Trust, each Junior Lien Claimant acknowledges and agrees to the provisions of this Section 4.16.

(c) Interaction with Financing Agreements. Nothing in this Section 4.16 shall be deemed to limit or waive any restrictions or prohibitions on transfers and/or junior liens set forth in the Financing Agreements.

(d) Definitions.

A “Junior Lien Claimant” means any holder of any interest or claim that affects any Trust Property or estate or interest therein, which interest or claim is recorded after the date the Existing Deed of Trust was originally recorded or that is otherwise, or is intended to be, junior and subordinate to the lien of the Deed of Trust.

“Change” means (i) any amendment, modification, extension, renewal, restatement, increase, re-pledge, supplement, or other change, from time to time, to the Secured Obliga-

tions (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations); (ii) the execution and delivery of this Deed of Trust or of any subsequent or prior amendments, amendments and restatements, restatements, supplements, or other modifications of the Deed of Trust and (iii) any amendments, amendments and restatements, restatements, supplements, or other modifications of the Credit Agreement or the other Financing Agreements, in each case including, without limitation, all or any of the following: (A) complete or partial amendment and restatement of any or all terms and conditions of the Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations); (B) modifications of the required principal and/or interest payment dates, deferring or accelerating such payment dates in whole or in part; (C) modifications, extensions or renewals at a different rate of interest; (D) increases in any amount in the principal or interest rate of the Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations); and/or (E) modifications or additional amounts advanced with respect to the Secured Obligations (and, to the extent provided in Section 6.1 of this Deed of Trust, the 2037 ASC Debentures Obligations).

**SECTION 4.17. Counterparts.** This Deed of Trust may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

## **ARTICLE V.**

**[Intentionally Omitted]**

## **ARTICLE VI.**

**SECTION 6.1 (a) Equal and Ratable Security.** This Deed of Trust and the other Collateral Documents (i) shall secure the 2037 ASC Debenture Obligations to the extent required by Section 3.7 of the ASC Indenture and (ii) shall be construed and enforced accordingly.

**(b) Limitation on Agent's Responsibilities with Respect to 2037 ASC Debentures Holders.** The obligations of the Agent to the 2037 ASC Debentures Holders and the 2037 ASC Debentures Trustee hereunder shall be limited solely to (i) holding the Trust Property for the ratable benefit of the 2037 ASC Debentures Holders and the 2037 ASC Debentures Trustee for so long as (A) any Secured Obligations remain outstanding and (B) any 2037 ASC Debentures Obligations are secured by the Trust Property pursuant to Section 6.1, (ii) subject to the instructions of the Required Lenders, enforcing the rights of the 2037 ASC Debentures Holders in their capacities as secured parties and (iii) distributing any proceeds received by the Agent from the sale, collection or realization of the Trust Property to the 2037 ASC Debentures Holders and the 2037 ASC Debentures Trustee in respect of the 2037 ASC Debentures Obligations in accordance with Section 11.3 of the Credit Agreement. Neither the 2037 ASC Debentures Holders nor any 2037 ASC Debentures Trustee shall be entitled to exercise (or direct the Agent to exercise) any rights or remedies hereunder with respect to the 2037 ASC Debentures Obligations, in-

cluding without limitation the right to receive any payments, enforce the Lien on Trust Property, request any action, institute proceedings, give any instructions, make any election, make collections, sell or otherwise foreclose on any portion of the Trust Property or execute any amendment, supplement, or acknowledgment hereof. This Deed of Trust shall not create any liability of the Agent or the Secured Parties to any 2037 ASC Debentures Holders or to the 2037 ASC Debentures Trustee by reason of actions taken with respect to the creation, perfection or continuation of the Lien on Trust Property, actions with respect to the occurrence of an Event of Default (under, and as defined in, the Credit Agreement or the ASC Indenture), actions with respect to the foreclosure upon, sale, release, or depreciation of, or failure to realize upon, any of the Trust Property or action with respect to the collection of any claim for all or any part of the 2037 ASC Debentures Obligations, guarantor or any other party or the valuation, use or protection of the Trust Property. By acceptance of the benefits under this Deed of Trust and the other Financing Agreements, the 2037 ASC Debentures Holders and the 2037 ASC Debentures Trustee will be deemed to have acknowledged and agreed that the provisions of the preceding sentence are intended to induce the Lenders to permit such Persons to be secured parties under this Deed of Trust and certain of the other Financing Agreements and are being relied upon by the Lenders as consideration therefor.

(c) Notwithstanding anything to the contrary herein, nothing in this Deed of Trust shall or shall be construed to (i) result in the security interest in the collateral securing the 2037 ASC Debentures Obligations less than equally and ratably with the Secured Obligations pursuant to the 2037 ASC Debentures to the extent required or (ii) modify or affect the rights of the 2037 ASC Debentures Holders to receive the pro rata share specified in Section 3.6 hereof of any proceeds of any collection or sale of Trust Property.

(d) The parties hereto agree that the 2037 ASC Debentures Obligations and the Secured Obligations are, and will be, equally and ratably secured with each other by the Liens on the Trust Property, and that it is their intention to give full effect to the equal and ratable provisions of the 2037 ASC Debentures, as in effect on the date hereof. To the extent that the rights and benefits herein or in any other Collateral Document conferred on the 2037 ASC Debentures Holders shall be held to exceed the rights and benefits required so to be conferred by such provisions, such rights and benefits shall be limited so as to provide such 2037 ASC Debentures Holders only those rights and benefits that are required by such provisions. Any and all rights not herein expressly given to the 2037 ASC Debentures Trustee are expressly reserved to the Agent and the Secured Parties other than the 2037 ASC Debentures Holders.

(e) **Termination.** This Article VI shall cease to apply if and when (i) all of the 2037 ASC Debentures Obligations have been fully satisfied and discharged (including in accordance with Article Ten of the ASC Indenture) or (ii) the ASC Indenture shall have been amended such that the 2037 ASC Debentures Obligations are no longer required to be secured equally and ratably with the Secured Obligations.

## **ARTICLE VII. THE TRUSTEE**

**SECTION 7.1. Acceptance by Trustee.** The Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

**SECTION 7.2. Compensation.** The Trustee waives any statutory fee and shall accept reasonable compensation from the Agent in lieu thereof for any services rendered by it in accordance with the terms hereof.

**SECTION 7.3. Action in Accordance With Instructions.** Upon receipt by the Trustee of lawful instructions from the Agent at any time or from time to time, the Trustee shall (a) give any notice or direction or exercise any right, remedy or power hereunder or in respect of any part or all of the Trust Property as shall be specified in such instructions and (b) approve as satisfactory all matters required by the terms hereof to be satisfactory to the Trustee or to the Agent. The Trustee may, but need not, take any of such actions in the absence of such instructions. In addition, at any time or from time to time, upon request of the Agent, and without affecting the liability of any person for payment of the Secured Obligations, the Trustee may, upon such request, reconvey all or any part of the Trust Property, consent to the making of any map or plat thereof, join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien and estate hereof.

**SECTION 7.4. Resignation.** The Trustee may resign at any time upon giving not less than 60 days' prior notice to the Agent but shall continue to act as trustee until its successor shall have been qualified and appointed pursuant to Section 7.5.

**SECTION 7.5. Successor Trustee.** In the event of the death, removal, resignation or refusal or inability of the Trustee to act, for any reason, at any time, the Agent shall have the irrevocable power, with or without cause, without notice of any kind and without applying to any court, to select and appoint a successor trustee. Each such appointment and substitution shall be made by notice to the Grantor, the Trustee and successor trustee and by recording notice of such in each office in which this Deed of Trust is recorded. Such notice shall be executed and acknowledged by the Agent and shall contain reference to this Deed of Trust and when so recorded shall be conclusive proof of proper appointment of the successor trustee. Such successor shall not be required to give bond for the faithful performance of its duties unless required by the Agent.

## **ARTICLE VIII.**

**SECTION 8.1. Use of Property.** The Trust Property is not used principally for agricultural purposes and is not Grantor's residence.

**SECTION 8.2. Use of Loan Proceeds.** The proceeds of credit evidenced by the Financing Agreements will not be used for personal, family or household purposes.

**SECTION 8.3. Statute of Frauds Notice (Washington).** 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.

*THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK*

IN WITNESS WHEREOF, each of Grantor and Agent has caused this instrument to be executed by its duly authorized officer as of the day and year first above written.

**GRANTOR:**

SAFEWAY INC., a Delaware corporation

By: Laura A. Donald  
Name: Laura A. Donald  
Its: AUTHORIZED SIGNATORY

**ACKNOWLEDGMENT**

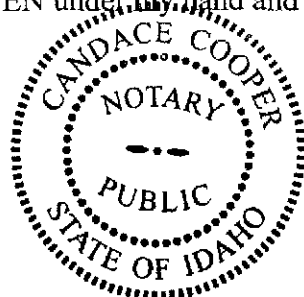
STATE OF IDAHO

) SS

COUNTY OF ADA

I, Candace Cooper, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Laura A. Donald, the AUTHORIZED SIGNATORY of SAFEWAY INC., a Delaware corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 29 day of Dec, 2017.



Candace Cooper  
Notary Public

My Commission Expires:

12-14-22

**AGENT:**

CREDIT SUISSE AG, CAYMAN ISLANDS  
BRANCH, as Agent

By:   
Name: William O'Daly  
Its: AUTHORIZED SIGNATORY

**ACKNOWLEDGEMENT**

STATE OF NEW YORK )  
                                  ) SS  
COUNTY OF NEW YORK )

I, Marjorie E. Bull, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT William O'Daly, the AUTHORIZED SIGNATORY of CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 6<sup>th</sup> day of December, 2017.

Marjorie E. Bull  
Notary Public, State of New York  
No. 01BU6055282  
Qualified in New York County  
Commission Expires February 20, 2019

  
Notary Public

My Commission Expires.

2/20/2019



**AGENT:**

CREDIT SUISSE AG, CAYMAN ISLANDS  
BRANCH, as Agent

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

Name: D. Andrew Maletta

Its: AUTHORIZED SIGNATORY

**ACKNOWLEDGEMENT**

STATE OF NEW YORK    )  
                                  ) SS  
COUNTY OF NEW YORK )

I, Marjorie E. Bull, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT D. Andrew Maletta, the AUTHORIZED SIGNATORY of CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 6<sup>th</sup> day of December, 2017.

**Marjorie E. Bull**  
Notary Public, State of New York  
No. 01BU005282  
Qualified in New York County  
Commission Expires February 20, 2019

\_\_\_\_\_  
Notary Public

My Commission Expires:

2/20/2019

**EXHIBIT A**

**Legal Description**

LOTS 1 AND 1C OF CITY OF MOUNT VERNON BINDING SITE PLAT NO. MV 1-94 BSP,  
AS APPROVED MAY 31, 1994, AND RECORDED MAY 31, 1994, UNDER AUDITOR'S  
FILE NO. 9405310129, RECORDS OF SKAGIT COUNTY, WASHINGTON; BEING A  
PORTION OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 34 NORTH,  
RANGE 4 EAST OF THE WILLAMETTE MERIDIAN;

SITUATED IN SKAGIT COUNTY, WASHINGTON.

Site: WA 1472