

DOC # 761524
04/02/2010 02:12PM Deputy: DW
OFFICIAL RECORD
Requested By:
LAWYERS TITLE INSURANCE
Douglas County - NV
Karen Ellison - Recorder
Page: 1 of 19 Fee: 32.00
BK-410 PG-570 RPTT: 0.00



APN NO. 1420-09-602-018

When recorded, return to:
GE Business Financial Services Inc.
c/o GE Capital Franchise Finance
8105 Irvine Center Drive, Suite 350
Irvine, CA 92618
Attention: Ana Ruiz

09-59074-KLB

SPACE ABOVE LINE FOR RECORDER'S USE

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

By

BLADOW PROPERTIES, LLC, a Nevada limited liability company, as Grantor and Trustor ("Trustor")

In favor of LAWYERS TITLE INSURANCE CORPORATION, a Nevada corporation, as Trustee

for the benefit of

GE BUSINESS FINANCIAL SERVICES INC., as Beneficiary

Made and dated as of April 1, 2010

**THE NOTES SECURED BY THIS DEED OF TRUST BEARS INTEREST AT A VARIABLE RATE
WHICH WILL FLUCTUATE DURING THE LOAN TERM.**



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

**THE NOTES SECURED BY THIS DEED OF TRUST BEARS INTEREST AT A VARIABLE RATE
WHICH WILL FLUCTUATE DURING THE LOAN TERM.**

**THIS DEED OF TRUST IS ALSO A FIXTURE FILING IN ACCORDANCE WITH NEVADA
REVISED STATUTES (“NRS”) SECTION 104.9502(3)**

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, FINANCING STATEMENT AND FIXTURE FILING (as it may be amended, supplemented, extended or renewed from time to time, the “*Deed of Trust*”) is made as of April 1, 2010 by **BLADOW PROPERTIES, LLC**, a Nevada limited liability company, as Grantor and Trustor (“*Trustor*”) whose mailing address is 5055 Avenida Encinas, Suite 200, Carlsbad, California 92008, **LAWYERS TITLE INSURANCE CORPORATION**, a Nevada corporation (“*Trustee*”), as trustee, whose mailing address is 2398 E. Camelback Rd., Ste 650, Phoenix, AZ 85016, and **GE BUSINESS FINANCIAL SERVICES INC.**, a Delaware corporation, in its capacity as Administrative Agent for the Secured Parties (as defined in the Credit Agreement, as defined below), including any successor agent under the Credit Agreement (“*Agent*”), as beneficiary, whose mailing address is 8377 East Hartford Drive, Suite 200, Scottsdale, Arizona 85255.

FOR VALUABLE CONSIDERATION, Trustor mortgages, grants, conveys, assigns, and transfers to Trustee, in trust, WITH POWER OF SALE AND RIGHT OF ENTRY, for the benefit and security of Agent, the real property described on *Exhibit A* (the “*Land*”), together with all rights and privileges appurtenant thereto and together with the following described property and property rights now owned or hereafter acquired by Trustor or hereafter used or useful in connection with the use or operation of the Land (all such property and property rights as described in subsections (a) through (e) below, together with the Land, being collectively referred to as the “*Trust Estate*,” with references in this Deed of Trust to the Trust Estate to mean and include all or any portion of or interest in any of the Trust Estate):

(a) Any and all buildings and other improvements now or hereafter located or erected on the Land, including any and all items of property now or hereafter attached or affixed to such buildings or other improvements (or any portion thereof), all of which are agreed to constitute fixtures and to be an integral part of the real property. All of the property described in this subsection (a) is intended and agreed to be an integral part of the real property and is collectively described as the “*Improvements*.” The Land and the Improvements are referred to in this Deed of Trust as the “*Premises*.”

(b) All now or hereafter existing leasehold estates in the Premises and all right, title, estate and interest of Trustor, as lessor or sublessor, in and to all leases or subleases covering any portion of the Premises now or hereafter existing or entered into, including all cash or security deposits, advance rentals, and deposits or payments of similar nature (collectively, the “*Leases*”); and all rents, issues, profits, damages, income and other benefits now or hereafter derived from any of the Premises (collectively the “*Rents*”).

(c) All of Trustor’s right, title, estate and interest now or hereafter existing in any and all (i) interest, estate or other claim, in law or in equity, in any of the Premises, including any greater estate in either the Land or the Improvements; (ii) easements, rights-of-way and other rights used in connection with the Premises, including all rights to the nonexclusive use of common drive entries; (iii) water rights, water stock, and claims or title to water; (iv) land lying within the right-of-way of any street, open or proposed, adjoining the Premises, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Premises; and (v) awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Premises (including awards for severance damages).

(d) All of the following described property, whether now owned or hereafter acquired and wherever located, used in connection with or otherwise relating to the operation of the business located at



the Trust Estate, together with all replacements and substitutions therefor and all cash and non-cash proceeds, including insurance proceeds and title insurance proceeds, and products thereof, and, in the case of tangible Collateral, together with all additions, attachments, accessions, parts, equipment and repairs now or hereafter attached or affixed thereto or used in connection therewith, excluding, however, any and all "consumer goods," as defined in the UCC: All of Trustor's right, title, and interest in: (i) all types of property included within the term "equipment" as defined by the UCC (except vehicles, boats and airplanes), including machinery, furniture, appliances, trade fixtures, tools, and office and record keeping equipment; (ii) all inventory, including all goods held for sale, raw materials, work in process and materials or supplies used or consumed in Trustor's business; (iii) all documents; general intangibles; accounts; contract rights; chattel paper and instruments; money; securities; investment properties; deposit accounts; supporting obligations; letters of credit and letter of credit rights; commercial tort claims; and records, software and information contained in computer media (such as databases, source and object codes and information therein), together with any equipment and software to create, utilize, maintain or process any such records or data on electronic media; (iv) any and all plans and specifications, designs, drawings and other matters prepared for any construction on any real property owned by or leased to Trustor at the location(s) described above or regarding any improvements to any of such real property; and (v) goodwill; **provided, however,** that the security interest in any franchise, license, or distributorship agreement is subject to the provisions of Section 9-408 of the UCC (all of the property described in this subsection (d) being referred to as the "**Personal Property**").

(e) All proceeds, both cash and non-cash, of any of the foregoing.

TO HAVE AND TO HOLD the Trust Estate hereby mortgaged and conveyed or so intended, together with all estate, right, title and interest of Trustor and anyone claiming by, through or under Trustor, in, to, under or derived from the Trust Estate and all rights and appurtenances relating thereto, unto Agent, its successors and assigns forever, upon the terms, provisions and conditions set forth in this Deed of Trust, subject only to the Permitted Exceptions. This Deed of Trust is being made pursuant to the terms and conditions of the Credit Agreement dated June 20, 2007, among Trustor, Emerald Cascade Restaurant Systems, Inc., Bladow California, LLC, and Rojo Caliente Restaurantes, Inc., collectively as Borrower, Agent, and others (as it as it may be amended, amended, restated, supplemented, extended or renewed from time to time, the "**Credit Agreement**"). Capitalized terms used in this Deed of Trust and not otherwise defined in this Deed of Trust have the meanings given to those terms in the Credit Agreement.

**ARTICLE I
OBLIGATIONS**

1.1 Obligations Secured. This Deed of Trust is given to secure payment and performance of the Obligations as defined in the Credit Agreement, including:

(a) Note Indebtedness. Payment of the indebtedness in the principal balance of (i) \$14,319,663.52, with interest thereon, evidenced by the New Initial Term Loan Note (as defined in the Credit Agreement); and (ii) \$13,808,339.84 with interest thereon, evidenced by the New Revolving Term Loan Note (as defined in the Credit Agreement), in each case together with all extensions, renewals, amendments, and modifications thereof, including increases or decreases in the interest rate, extensions of the maturity date, and payment modifications (including deferrals or accelerations of principal or interest);

(b) Other Indebtedness. Payment of all other Indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other Obligations contained in or arising under the Credit Agreement, the Notes, and any other Loan Document, as any such Loan Document may be amended, supplemented, extended or renewed from time to time, together with any other instrument given to evidence or further secure the payment and performance of any Obligation secured hereby or thereby;

(c) Payment and Performance of Related Agreements. Payment of all indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other Obligations contained in or arising under any Related Agreement, as any such Related Agreement may be amended, restated, supplemented, extended or renewed from time to time. "**Related Agreement**" means each



agreement, document, and instrument, other than the Loan Documents, now or hereafter existing between, among or by any Related Agreement Obligor and, or for the benefit of, Agent, any Secured Party or Affiliate thereof, or any predecessor in interest to any Secured Party or such Affiliate, as any such agreement, document, or instrument may be amended, restated, supplemented, extended or renewed from time to time. **“Related Agreement Obligor”** means and includes each of the Borrower Parties (as defined below), each predecessor in interest to any of these parties and each affiliate of any such predecessor in interest; and

(d) Obligations Generally. Payment and performance of all of the other Obligations owing to any of the Secured Parties (as defined in the Credit Agreement);

provided, however, that, any other provision of this Deed of Trust or the other Loan Documents to the contrary notwithstanding, this Deed of Trust does not secure any of the obligations of Trustor under the Environmental Indemnity Agreement, it being the intent and agreement of the parties that the obligations of Trustor under the Environmental Indemnity Agreement be and remain unsecured by any interest in the Trust Estate. It is the intent of the parties that the Trust Estate shall secure all of the Obligations presently or hereafter owed, and that the priority of the Lien created by this Deed of Trust for all such Obligations shall be as of the time of recording of this Deed of Trust. In addition, this Deed of Trust shall also secure the unpaid balances of all future advances (i) made with respect to the Trust Estate for the payment of taxes, assessments, insurance premiums, costs or any other advances incurred for the protection of the Trust Estate or (ii) otherwise made by Agent or any Secured Party as contemplated by this Deed of Trust or any of the other Loan Documents, together with interest thereon until paid at the Default Rate, all as contemplated in this Deed of Trust and the other Loan Documents, all of which shall constitute a part of the Obligations. **THIS SECTION SHALL SERVE AS NOTICE TO ALL PERSONS WHO MAY SEEK OR OBTAIN A LIEN ON THE TRUST ESTATE SUBSEQUENT TO THE DATE OF RECORDING OF THIS DEED OF TRUST, THAT UNTIL THIS DEED OF TRUST IS RELEASED, ANY DEBT OWED TO THE SECURED PARTIES BY TRUSTOR, INCLUDING ADVANCES MADE SUBSEQUENT TO THE RECORDING OF THIS DEED OF TRUST, SHALL BE SECURED WITH THE PRIORITY AFFORDED THIS DEED OF TRUST AS AND WHEN RECORDED.**

1.2 Duration of Deed of Trust. This Deed of Trust and all of the terms, conditions, and obligations contained in this Deed of Trust shall continue in full force and effect until such time as all indebtedness under the Notes and all other Obligations have been fully and finally paid and performed, at which time this Deed of Trust shall be void, and Agent agrees to execute an instrument evidencing the satisfaction of all obligations under this Deed of Trust and releasing this Deed of Trust. As a condition to such release, Trustor agrees to reimburse Agent for Agent’s reasonable out-of-pocket expenses incurred in connection with the release, and Trustor shall also pay Agent a reasonable processing fee in connection with such release.

**ARTICLE 2
TRUSTOR COVENANTS**

Trustor covenants and agrees as follows:

2.1 Use. The Trust Estate shall be used solely for the operation of a Permitted Concept in accordance with the Franchise Agreement and for no other purpose. Trustor shall not, without Agent’s prior written consent, (a) initiate or acquiesce in a change in the zoning classification (including any variance under any existing zoning ordinance applicable to the Trust Estate); (b) permit the use of the Trust Estate to become a non-conforming use under applicable zoning ordinances; (c) file any subdivision or parcel map affecting the Trust Estate; or (d) amend, modify or consent to any easement or covenants, conditions and restrictions pertaining to the Trust Estate.

2.2 Maintenance and Repair. Trustor shall: (a) maintain the Trust Estate and, to the extent allowed by law, abutting grounds, sidewalks, roads, parking, and landscape areas in good condition and repair, subject to reasonable and ordinary wear and tear, and free from actual or constructive waste; (b) operate, remodel, update and modernize the Trust Estate as required by the Franchise Agreement or as is otherwise prudent and reasonable; **subject, however,** to the provisions of the Section of this Deed of Trust entitled “Alterations and Improvements”; (c) pay all operating costs of the Trust Estate in the ordinary course of business, including utility costs; and (d) not do or allow any tenant or other user of the Trust Estate to do any act that materially increases the dangers to human



health or the environment, poses an unreasonable risk of harm to any Person (whether on or off the Premises), impairs or is reasonably likely to impair in any material respect the value of the Trust Estate, is contrary to any applicable law, or violates in any material respect any covenant, condition, agreement or easement applicable to the Trust Estate.

2.3 Alterations and Improvements. Trustor shall not make nor permit to be made any alterations to the Trust Estate without the prior written consent of Agent, which consent shall not be unreasonably withheld or conditioned, except that Trustor may make nonstructural alterations to the Trust Estate costing less than \$100,000 without Agent's consent. For purposes of this Deed of Trust, structural alterations include any alterations or additions to the Trust Estate that would (a) affect the foundation of the Improvements; (b) involve the structural elements of the Improvements, such as a load-bearing wall, structural beams, columns, supports or roof; or (c) materially affect any of the building systems, including the electrical systems, plumbing, HVAC and fire and safety systems. All alterations and additions shall be undertaken and completed at Trustor's sole expense and in accordance with plans and specifications approved by Agent and, except to the extent that Agent's consent to such alteration or addition is not otherwise required, subject to such other reasonable conditions as Agent shall require. All such work shall be undertaken using licensed contractors, shall be prosecuted diligently to completion, shall be of good workmanship and materials, and shall comply fully with all the terms of this Deed of Trust, the Franchise Agreement, and all applicable law. Upon completion of any alterations or additions to the Trust Estate, at Agent's request, Trustor shall promptly provide Agent with evidence of full payment to all laborers and materialmen contributing to the alterations, an architect's certificate certifying the alterations to have been completed in conformity with the plans and specifications, a certificate of occupancy (if the alterations are of such a nature as would require the issuance of a certificate of occupancy), and any other documents or information reasonably requested by Agent.

2.4 Condemnation.

(a) Takings; Continuation of Obligations. If there is a taking of all or any portion of the Trust Estate or the commencement of any proceedings or negotiations which might result in a taking, for any public or quasi-public purpose by any lawful authority by exercise of the right of condemnation or by agreement between Agent, Trustor and those authorized to exercise such right in lieu of condemnation (a "**Taking**"), Trustor will promptly give Agent written notice of the Taking, generally describing the nature and extent of such Taking. No Taking shall relieve Trustor of any of its Obligations, including its obligations to make the regularly scheduled payments of principal and interest under the Notes.

(b) Agent's Right to Participate. Trustor authorizes and empowers Agent, at Agent's option and in Agent's sole discretion, to settle, adjust, or compromise any claim for loss or damage in connection with any Taking or proposed Taking and, without regard to the adequacy of its security, to commence, appear in and prosecute in its own name or on behalf of Trustor any such action or proceeding arising out of or relating to a Taking or proposed Taking.

(c) Restoration Obligations. Promptly following the occurrence of a Taking, other than a Total Taking (defined below), Trustor shall, at Trustor's expense, commence and diligently complete the repair, restoration, replacement, and rebuilding of the Trust Estate as nearly as possible to its value, condition and character immediately prior to the Taking (a "**Restoration**"). Trustor shall not be excused from repairing or maintaining the Trust Estate or from the obligation to restore, replace and rebuild the Trust Estate, regardless of whether or not there are Condemnation Proceeds available to Trustor or whether any such Condemnation Proceeds are sufficient in amount, and the application or release by Agent of any Condemnation Proceeds shall not cure or waive any default or notice of default under this Deed of Trust or the other Loan Documents or invalidate any act done pursuant to such default or notice of default.

(d) Application of Condemnation Proceeds. All compensation, awards, damages, rights of action and proceeds awarded to Trustor by reason of any such Taking or damage or received by Trustor as the result of a transfer in lieu of a Taking (the "**Condemnation Proceeds**") are assigned to Agent, and Trustor agrees to execute such further assignments of the Condemnation Proceeds as Agent or Trustee may require. If Trustor receives any Condemnation Proceeds, Trustor shall promptly pay over such proceeds to Agent. All Condemnation Proceeds will be applied by Agent to payment of the Obligations in such order



as Agent shall determine; *provided, however*, that if no Default has occurred and is continuing, the Condemnation Proceeds, less the costs, fees and expenses incurred by Agent and Trustor in the collection thereof, including reasonable attorneys' fees and expenses (the "*Net Condemnation Proceeds*"), shall be made available to Trustor as follows:

(i) In case of a Taking of substantially all of the Trust Estate or of such a portion of the Trust Estate that the remaining Trust Estate cannot reasonably be used for the purposes for which used prior to the Taking, other than a Taking for a temporary use (a "*Total Taking*"), the Net Condemnation Proceeds shall be allocated and applied in the following order: *First*, to Agent, to pay any and all amounts owed to the Secured Parties pursuant to any of the Loan Documents, other than on account of principal, accrued interest, and any amounts due in connection with a prepayment of principal; *Second*, to Agent, to pay any and all amounts due in connection with a prepayment of principal, such as prepayment premiums and fees; *Third*, to Agent, to pay all accrued and unpaid interest as of the date of the payment; *Fourth*, to Agent, to pay the entire remaining unpaid principal balance of the Notes; and *Fifth*, to Trustor, any remaining Net Condemnation Proceeds. If the Net Condemnation Proceeds are not sufficient to fully satisfy priorities First through Fourth above, Trustor shall pay to Agent, simultaneously with the payment of such Net Condemnation Proceeds to Agent, the amount necessary such that, together with the Net Condemnation Proceeds, priorities First through Fourth are fully satisfied and paid; and

(ii) In the case of any Taking which is not a Total Taking, the condemnation proceeds shall be made available to Trustor to be used by Trustor to satisfy its Restoration obligations, substantially in the manner and according to the procedures, limitations, and requirements provided in the Credit Agreement.

2.5 Waiver. Trustor waives any and all right to claim or recover against Agent, any of the other Secured Parties, or Trustee for loss of or damage to Trustor, the Trust Estate, Trustor's property or the property of others under Trustor's control.

2.6 No Discharge. The obligations and liabilities of Trustor under this Deed of Trust or any of the other Loan Documents shall in no way be released, discharged or otherwise affected (except as otherwise expressly provided in the Loan Documents) by reason of: (a) any damage to or destruction of or any condemnation or similar taking of the Trust Estate; (b) any restriction or prevention of or interference by any Person with any use of any of the Trust Estate; (c) any title defect or encumbrance or any eviction from the Trust Estate by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to any Secured Party, or any action taken with respect to this Deed of Trust by any trustee or receiver of any Secured Party, or by any court, in any such proceeding; (e) any claim that Trustor has or might have against any Secured Party or Trustee; (f) any default or failure on the part of any Secured Party to perform or comply with any of the terms of the Loan Documents or of any Related Agreement; or (g) any other act or occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have notice or knowledge of any of the foregoing. Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor.

2.7 Actions Affecting Trust Estate. Trustor shall give notice in writing to Agent of and, unless otherwise directed in writing by Agent, Trustor shall appear in and contest any action or proceeding purporting to affect the security or priority of this Deed of Trust or the rights or powers of any Secured Party or Trustee and shall pay all reasonable costs and expenses (including costs of evidence of title, litigation, and reasonable attorneys' fees) in any such action or proceeding in which any Secured Party or Trustee may appear.

2.8 Actions by Agent or Trustee. If Trustor fails to make any payment or to do any act as and in the manner required by this Deed of Trust or any other Loan Documents, Agent or Trustee, each in its absolute and sole discretion, may, without obligation so to do, without releasing Trustor from any obligation, and with only such notice to or demand upon Trustor as may be reasonable under the then existing circumstances, but in no event exceeding five days' prior written notice, make or do the same in such manner and to such extent as Agent or Trustee may deem necessary or appropriate, including: (a) entering upon and taking possession of the Trust Estate and otherwise exercising its rights and remedies under this Deed of Trust and the other Loan Documents; (b) taking



such actions and making such additions, alterations, repairs and improvements to the Trust Estate as Agent or Trustee reasonably may consider necessary or appropriate to keep the Trust Estate in good condition and repair or otherwise to protect the value or security of any of the Trust Estate, including payment of impositions and insurance premiums; and (c) taking such actions as Agent or Trustee reasonably may consider necessary or appropriate to protect the priority, validity and enforceability of the lien of this Deed of Trust on the Trust Estate, such as appearing and participating in any action or proceeding affecting or which may affect the security or priority hereof or the rights or powers of the Secured Parties or Trustee or paying, purchasing, contesting or compromising any Lien or alleged Lien, whether superior or junior to this Deed of Trust. Trustor shall, immediately upon demand therefor by Agent or Trustee, as the case may be, pay to Agent or Trustee all amounts expended by Agent or Trustee, including all costs and expenses reasonably incurred by Agent or Trustee in connection with the exercise by Agent or Trustee of the foregoing rights (including costs of evidence of title, court costs, appraisals, surveys, fees of receivers, and reasonable attorneys' fees), *provided* that if in Agent's or Trustee's reasonable discretion, immediate action is necessary in order to preserve the value of the Trust Estate or the Secured Parties' Lien thereon or rights thereto, the above described notice shall not be required. All amounts expended by the Secured Parties or Trustee pursuant to this Section or any other provision of this Deed of Trust or the other Loan Documents, with interest thereon at the Default Rate from the date incurred until paid, constitute part of the Obligations and are secured by the Liens securing the Obligations, including the lien of this Deed of Trust.

2.9 Prohibited Transfers. In order to induce Agent to modify the Loans, Trustor agrees that, in the event of any Transfer (as defined below), without the prior written consent of Agent, Agent shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one Transfer shall not be deemed to be a waiver of the right to require consent to future or successive Transfers. Agent may grant or deny such consent in its sole discretion. In no event will Agent's consent to a Transfer be deemed to release Trustor or Borrower, Guarantor or each other Person (other than a Secured Party) that is or may become a party to this Agreement or any other Loan Document and their respective Affiliates ("**Borrower Party**") from any liability with respect to the Obligations without the prior written consent of Agent. As used in this Deed of Trust, "**Transfer**" means:

- (a) Any sale, transfer, conveyance, hypothecation, encumbrance, lease or vesting of the Trust Estate to or in any Person, whether voluntary, involuntary, by operation of law, or otherwise;
- (b) The occurrence of any Change of Control; or
- (c) The execution of any agreement to do, or which would result in, any of the foregoing, except as expressly permitted pursuant to the Loan Documents.

In connection with any request for consent, Trustor agrees to pay Agent such fees and other amounts that are required pursuant to the Credit Agreement. Any breach of any of the provisions of this Section will, at the election of Agent, constitute an immediate Event of Default without the necessity for any further notice.

2.10 No Liens and Encumbrances. As of the date hereof Trustor is, and as to any portion of the Trust Estate acquired hereafter will upon such acquisition be the owner in fee of all legal and beneficial interests in the Trust Estate, and shall remain the owner of the entire Trust Estate and all legal and beneficial interests therein free and clear of any Liens and Encumbrances. Trustor covenants not to grant or suffer to exist, and Trustor covenants to pay and promptly discharge, at Trustor's sole cost and expense, all Liens and Encumbrances upon the Trust Estate. Trustor covenants to notify Agent immediately in writing of any such Lien or Encumbrance. Except as otherwise provided in this Deed of Trust with respect to impositions, Trustor may contest in good faith the validity of any involuntary Lien or Encumbrance, *provided* Trustor shall first deposit with Agent a bond or other security satisfactory to Agent in such amount as Agent shall reasonably require, but not more than 150% of the amount of the claim, and *provided further* that if Trustor loses such contest, Trustor will thereafter diligently proceed to cause such Lien or Encumbrance to be removed and discharged, at Trustor's sole cost and expense. If Trustor fails to remove or discharge any Lien or Encumbrance, then, in addition to any other right or remedy of the Secured Parties or Trustee, any Secured Party or Trustee may, after only such notice to Trustor as may be reasonable under the then existing circumstances, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such Lien or Encumbrance by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be



prescribed by law. Trustor shall, immediately upon demand therefor by Agent or Trustee, pay to Agent or Trustee an amount equal to all amounts expended by such Secured Party or Trustee, including all costs and expenses incurred by Agent or Trustee in connection with the exercise by such Secured Party or Trustee of the foregoing right to discharge any Lien or Encumbrance or claim thereof, together with interest thereon from the date of each such expenditure at the Default Rate. Such costs and expenses shall be secured by the Liens in favor of the Secured Parties, including the lien of this Deed of Trust and are part of the Obligations. "**Lien or Encumbrance**" and "**Liens and Encumbrances**" mean, respectively, each and all of the following in respect of the Trust Estate: leases, other rights to occupy or use, mortgages, deeds of trust, pledges, security agreements, assignments, assignments as security, conditional sales, title retention arrangements or agreements, conditions, covenants, and restrictions, and other Liens or adverse interests, whether voluntarily or involuntarily created and regardless of whether prior or subordinate to any estate, right, title, or interest granted to Agent or Trustee in this Deed of Trust, excluding, however, the permitted exceptions and any easements granted in accordance with **Section 2.11**.

2.11 **Granting of Easements, Etc.** If no Default shall have occurred and be continuing, Trustor may, from time to time with respect to its interest in the Trust Estate and with Agent's prior written consent: (a) grant easements and other rights in the nature of easements; (b) release existing easements or other rights in the nature of easements which are for the benefit of the Trust Estate; (c) dedicate or transfer unimproved portions of the Trust Estate for road, highway or other public purposes; (d) execute petitions to have the Trust Estate annexed to any municipal corporation or utility district; and (e) execute and deliver to any person any instrument appropriate to confirm or effect such grants, releases, dedications and transfers. At any time, or from time to time, without liability therefor and without notice, upon written request of Agent and without affecting the personal liability of any Person for payment of the Obligations or the effect of this Deed of Trust upon the remainder of the Trust Estate, Trustee may reconvey any part of the Trust Estate or join in any of the foregoing actions.

2.12 **Agent's Power.** Without affecting the liability of any Person liable for the payment or performance of any of the Obligations and without affecting the lien of this Deed of Trust upon the Trust Estate not then or theretofore released as security for the Obligations, Agent may, from time to time and without notice: (a) release any Person so liable; (b) extend the Obligations; (c) grant other indulgences; (d) release or reconvey, or cause to be released or reconveyed, at any time at Agent's option any parcel, portion or all of the Trust Estate; (e) take or release any other or additional security or any guaranty for any of the Obligations; or (f) make adjustments or other arrangements with debtors in relation thereto.

2.13 **Recording; Further Assurances.** Trustor shall, from time to time, take such actions as Agent or Trustee may request to cause this Deed of Trust, each supplement and amendment to the Deed of Trust, and each instrument of further assurance (collectively, the "**Recordable Documents**") to be filed, registered and recorded as may be required by law to publish notice and maintain the first lien of the Deed of Trust upon the Trust Estate. Trustor shall, from time to time, perform or cause to be performed any other act and shall execute or cause to be executed any and all further instruments reasonably requested by Agent or Trustee for carrying out the intention of, or facilitating the performance of, this Deed of Trust. Agent is irrevocably appointed the agent and attorney-in-fact of Trustor to comply with the requirements of this Section, which appointment is coupled with an interest and is irrevocable; **provided, however**, Agent shall not exercise such power of attorney unless Trustor has first failed to comply with this Section, and **provided, further**, that this sentence shall not prevent any default in the observance of this Section from constituting an Event of Default.

2.14 **Subrogation.** To the extent that proceeds of the Notes are used to pay any outstanding Lien against the Trust Estate, such proceeds shall be deemed to have been advanced by the Secured Parties at Trustor's request, and the Secured Parties shall be subrogated to any and all rights and Liens held by any owner or holder of such outstanding Liens, irrespective of whether said Liens are released.

2.15 **Commercial Loan.** Trustor represents and warrants that the Loans included as Obligations secured by this Deed of Trust were obtained solely for the purpose of carrying on or acquiring a business or commercial investment and not for residential, consumer, household, personal, or family purposes.

2.16 **Leases.** If the Premises are subject to a Lease, Trustor shall cause the tenant under each such Lease to comply with Trustor's obligations contained in this **Article 2; provided, however**, this requirement shall not



relieve or release Trustor from any of its obligations under this *Article 2* or elsewhere in any of the Loan Documents.

ARTICLE 3 SECURITY AGREEMENT; FIXTURE FILING

3.1 Grant of Security Interest. As further security for the payment and performance of the Obligations, Trustor grants to Agent a lien on and security interest in and to all of the Personal Property (collectively, the "*UCC Collateral*"), and this Deed of Trust constitutes a security agreement with Trustor, as the debtor, and Agent, as the secured party. Agent confirms that, notwithstanding the inclusion of general intangibles as part of the UCC Collateral and the creation, attachment and perfection of Agent's lien on and security interest in general intangibles in accordance with the provision of Section 9-408(a) of the UCC, such creation, attachment and perfection is subject to the limitations imposed by Section 9-408(d) of the UCC which provide that such creation, attachment, and perfection (a) is not enforceable against the franchisor in the Franchise Agreements (the "*Franchisor*"); (b) does not impose a duty or obligation on Franchisor; (c) does not require Franchisor to recognize such lien and security interest, pay or render performance to Agent, or accept payment or performance from Agent; (d) does not entitle Agent to use or assign Trustor's rights under the Franchise Agreement; and (e) does not entitle Agent to use, assign, possess, or have access to any trade secrets or confidential information of Franchisor.

3.2 Fixture Filing. This Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Trust Estate and is to be filed for record in the real estate records of each county where any part of the Trust Estate (including said fixtures) is situated. The mailing address of Trustor is the address of Trustor set forth in the introductory paragraph in this Deed of Trust, and the address of Agent from which information concerning the Liens may be obtained is the address of Agent as set forth in the introductory paragraph of this Deed of Trust.

3.3 Covenants Concerning the UCC Collateral. Trustor will (a) keep all of the tangible UCC Collateral at the Premises; (b) use the UCC Collateral only in its trade or business; (c) maintain all of the tangible UCC Collateral in good operating order and repair, normal wear and tear excepted; (d) use and maintain the UCC Collateral only in compliance with manufacturers recommendations and all applicable law; (e) keep all of the UCC Collateral free and clear of any and all Liens, including purchase money Liens, other than those in favor of Agent; (f) remain the sole owner of the UCC Collateral; and (g) not sell, lease, mortgage, hypothecate, license, grant a Lien in or otherwise transfer or encumber any of the UCC Collateral except for (i) sales of inventory in the ordinary course of business and (ii) so long as no Default has occurred and is continuing, sales or other dispositions of obsolescent items of equipment consistent with past practices, so long as such items of obsolete equipment are replaced by items of equal or greater value and utility. Except as provided in the preceding sentence, Trustor will not part with possession of any of the UCC Collateral (except to Agent or for maintenance and repair).

3.4 Financing Statements and Further Assurances. Trustor agrees, on request of Agent, to furnish to Agent such further information, to execute and deliver to Agent such documents and instruments (including UCC financing statements) and to do such other acts and things as Agent may at any time reasonably request relating to the perfection or protection of the Lien in the UCC Collateral created by this Deed of Trust or for the purpose of carrying out the intent of this Deed of Trust. Without limiting the foregoing, Trustor shall cooperate and do all acts deemed necessary or advisable by Agent to continue in Agent a perfected first Lien in the UCC Collateral and shall obtain and furnish to Agent any subordinations, releases, landlord, lessor, bailee or mortgagee waivers, control agreements, and similar documents as may be from time to time requested by, and in form and substance satisfactory to, Agent. Trustor will warrant and defend the UCC Collateral and the Secured Parties against all claims by all persons in connection with the Obligations.

3.5 Agent's Authority. Trustor authorizes Agent to file financing statements, continuations, and amendments thereto describing the UCC Collateral and containing any other information required by the applicable UCC, in such form and substance as Agent, in its sole discretion, may determine. Trustor irrevocably grants to Agent the power to sign Trustor's name and generally to act on behalf of Trustor to execute and file applications for title, transfers of title, financing statements, notices of Liens, demands for terminations or other Liens in any of the UCC Collateral and other documents pertaining to any or all of the UCC Collateral. This power is coupled with an interest and is irrevocable during such time as any of the Obligations are outstanding. Trustor shall, if any certificate



of title be required or permitted by law for any of the UCC Collateral, obtain and promptly deliver to Agent such certificate showing the lien of this Deed of Trust with respect to the UCC Collateral. Trustor ratifies its prior authorization for Agent to file financing statements and amendments thereto describing the UCC Collateral and containing any other information required by the UCC, if filed prior to the date hereof.

3.6 Certain Rights and Remedies with Respect to the UCC Collateral. If an Event of Default shall have occurred and be continuing, Agent, without any other notice to or demand upon Trustor, shall have in any jurisdiction in which enforcement of this Deed of Trust is sought, in addition to all other rights and remedies, the rights and remedies of a secured party under the UCC and any additional rights and remedies that may be provided to a secured party in any jurisdiction in which any of the UCC Collateral is located, including the right to take possession of the UCC Collateral, and for that purpose Agent may, so far as Trustor can give authority therefor, enter upon the Premises and remove the same therefrom. Agent may in its discretion require Trustor to assemble all or any part of the UCC Collateral at such location or locations as Agent may reasonably designate. Unless the UCC Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Agent shall give to Trustor at least 10 calendar days' prior written notice of the time and place of any public sale of UCC Collateral or of the time after which any private sale or any other intended disposition is to be made. Trustor acknowledges that 10 calendar days' prior written notice of such sale or sales shall be reasonable notice. In addition, Trustor waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of Agent's rights and remedies hereunder, including, without limitation, Agent's right following an Event of Default to take immediate possession of the UCC Collateral and to exercise its rights and remedies with respect thereto.

3.7 Proceeds of Dispositions; Expenses. Trustor shall pay to Agent on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Agent in protecting, preserving or enforcing Agent's rights and remedies under or in respect of any of the Obligations or any of the UCC Collateral. After deducting all of the foregoing expenses, the residue of any proceeds of collection or sale or other disposition of the UCC Collateral shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as Agent may determine. Upon the final payment and satisfaction in full of all of the Obligations and after making any payments required by Sections 9-608(a)(1)(C) or 9-615(a)(3) of the UCC, any excess shall be returned to Trustor. In the absence of final payment and satisfaction in full of all of the Obligations, Trustor shall remain liable for any deficiency.

**ARTICLE 4
ASSIGNMENT OF LEASES AND RENTS**

4.1 Assignment of Leases and Rents. Trustor assigns, transfers, and conveys to Agent all of Trustor's estate, right, title and interest in and to the Leases and Rents and gives to and confers upon Agent the right, power and authority to collect the Rents; to give receipts, releases and satisfactions; to sue, in the name of Trustor or Agent, for all Rents; and to apply the Rents to the payment of the Obligations in such order as Agent shall determine. Trustor further irrevocably appoints Agent its true and lawful attorney-in-fact, at the option of Agent at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Trustor or Agent, for all Rents. Trustor authorizes and directs the lessees, tenants and occupants to make all payments under the Leases directly to Agent upon written demand by Agent, without further consent of Trustor; *provided, however*, that Trustor shall have the right to collect such Rents (but not more than one month in advance unless the written approval of Agent is first obtained), and to retain and enjoy same, so long as a Default shall not have occurred. **THE ASSIGNMENT OF THE RENTS MADE IN THIS SECTION IS INTENDED TO BE AN ABSOLUTE, PRESENT ASSIGNMENT FROM TRUSTOR TO AGENT AND NOT MERELY THE PASSING OF A SECURITY INTEREST.** Rents collected subsequent to any Event of Default shall be applied at the direction of, and in such order as determined by, Agent to the costs, if any, of taking possession and control of and managing the Trust Estate and collecting such amounts, including to reasonable attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Trust Estate, premiums on insurance policies, taxes, assessments and other charges on the Trust Estate, and the costs of discharging any obligation or liability of Trustor with respect to the Leases and to the sums secured by this Deed of Trust.

4.2 Rights of Agent. Upon the occurrence and during the continuance of an Event of Default, Agent may, at any time without notice (except if required by any applicable law), either in person, by agent or by a court-



appointed receiver, regardless of the adequacy of Agent's security, and at Agent's sole election (without any obligation to do so), enter upon and take possession and control of the Trust Estate to perform all acts necessary and appropriate to operate and maintain the Trust Estate, including to execute, cancel or modify the Leases, make repairs to the Trust Estate, execute or terminate contracts providing for the management or maintenance of the Trust Estate, all on such terms as are deemed best to protect the security of this assignment. Agent or the receiver shall have access to the books and records used in the operation and maintenance of the Trust Estate and shall be liable to account only for those Rents actually received. The Secured Parties shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Trust Estate by reason of anything done or left undone by Agent hereunder, except to the extent of Agent's gross negligence or willful misconduct. Any entering upon and taking possession and control of the Trust Estate by Agent or the receiver and any application of Rents as provided herein shall not cure or waive any Default or invalidate any other right or remedy of the Secured Parties.

4.3 Trustor's Affirmative Obligations. Trustor shall: (a) fulfill, perform and observe in all respects each and every condition and covenant of Trustor contained in any Lease; (b) give prompt notice to Agent of any claim or event of default under any Lease given to or by Trustor, together with a complete copy or statement of any information submitted or referenced in support of such claim or event of default; (c) at the sole cost and expense of Trustor, enforce the performance and observance of each and every covenant and condition of any Lease to be performed or observed by any other party thereto, unless such enforcement is waived in writing by Agent; and (d) appear in and defend any action challenging the validity, enforceability or priority of the Lien created hereby or the validity or enforceability of any Lease.

4.4 Negative Covenants. Trustor shall not, without Agent's consent, in Agent's sole and absolute discretion: (a) enter into any Lease; (b) modify or amend the terms of any Lease; (c) grant any consents under any Lease, including any consent to an assignment of any Lease, a mortgaging of the leasehold estate created by any Lease or a subletting by the tenant under any Lease; (d) terminate, cancel, surrender, or accept the surrender of, any Lease, or waive or release any person from the observance or performance of any obligation to be performed under the terms of any Lease or liability on account of any warranty given thereunder; or (e) assign, transfer, mortgage, pledge or hypothecate any Lease or any interest therein to any party other than Agent. Any lease, modification, amendment, grant, termination, cancellation, surrender, waiver or release in violation of the foregoing provision shall be null and void and of no force and effect.

4.5 No Merger. Unless Agent otherwise consents or elects, Trustor's title to the Trust Estate and the leasehold interest in the Trust Estate created by any Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Trustor, Agent or any other person by purchase, operation of law, foreclosure of this Deed of Trust, sale of the Trust Estate pursuant to this Deed of Trust or otherwise.

**ARTICLE 5
EVENTS OF DEFAULT AND REMEDIES**

5.1 Events of Default. Each Event of Default, as defined in the Credit Agreement, constitutes an "Event of Default" under this Deed of Trust.

5.2 Remedies. Upon the occurrence of an Event of Default, and subject to the limitations set forth in NRS 107.080, Agent may, at its option:

(a) Acceleration. Declare all or any part of the Obligations immediately due and payable without any presentment, demand, protest or notice of any kind.

(b) Right of Entry. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, either in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value, marketability or rentability of, to increase the income from, or to protect the security of this Deed of Trust with respect to, the Trust Estate and, with or without taking possession of the Trust Estate, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including reasonable attorneys' fees) to the Obligations, all in such order as Agent may determine. The entering upon



and taking possession of the Trust Estate, the collection of such Rents and the application thereof shall not cure or waive any default or notice of default or invalidate any act done in response to such default or pursuant to such notice of default. Notwithstanding the continuance in possession of the Trust Estate or the collection, receipt and application of Rents, the Secured Parties and Trustee shall be entitled to exercise every right and remedy provided for in any of the Loan Documents or by law upon occurrence of any Event of Default.

(c) Foreclosure. Commence an action to foreclose the Lien of this Deed of Trust as a mortgage in a single parcel or in several parcels, appoint a receiver, or specifically enforce any of the covenants of this Deed of Trust.

(d) Exercise of Power of Sale. Exercise the power of sale contained in this Deed of Trust and deliver to Trustee a written statement of breach, notice of default and election to cause Trustor's interest in the Trust Estate to be sold, all in accordance with applicable law.

(i) If Agent elects to exercise the power of sale contained in this Deed of Trust, Agent shall notify Trustee and shall deposit with Trustee copies of this Deed of Trust and the Notes and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(ii) Upon receipt of such notice from Agent and at the direction of Agent, Trustee shall cause to be recorded, published or delivered such notices of default and notices of sale as may then be required by law or this Deed of Trust. Trustee shall, only at the direction of Agent and without demand on Trustor, after such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell Trustor's interest in the Trust Estate at the time and place of sale fixed by it in such notice of sale, either as a whole, or in separate lots or parcels or items as Agent shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale, or as otherwise may then be required by law. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or any Secured Party, may purchase at such sale and Trustor covenants to warrant and defend the title of such purchaser or purchasers. Any Secured Party shall have the right to credit bid at any such sale.

(iii) Trustee or Agent may sell not only the real property but also the Personal Property and other interests which are a part of the Trust Estate, or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Trust Estate separately from the remainder of the Trust Estate. Neither Trustee nor Agent shall be required to take possession of any part of the Trust Estate or to have any of the Personal Property present at any sale of the Trust Estate. Trustee or Agent may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Trustee or Agent, including the posting of notices and the conduct of sale, but in the name and on behalf of Agent. If any sale hereunder is not completed or is defective in the opinion of Trustee or Agent, such sale shall not exhaust the power of sale hereunder, and Trustee or Agent shall have the right to cause a subsequent sale or sales to be made hereunder.

(iv) As may be permitted by law, after deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including costs of evidence of title in connection with sale, Trustee or Agent shall apply the proceeds of sale (A) first, to payment of all costs, fees and expenses, including attorneys' fees and expenses incurred by Agent in exercising the power of sale or foreclosing this Deed of Trust, (B) second, to the payment of the Obligations (including, without limitation, the principal, accrued interest and other sums due and owing under the Notes and the amounts due and owing to the Secured Parties under this Deed of Trust) in such manner



and order as Agent may elect, and (C) third, the remainder, if any, shall be paid to Trustor, or such other persons as may be legally entitled thereto.

(v) Trustee may, in the manner provided by law, postpone sale of all or any portion of the Trust Estate by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

(e) Receivers. As a matter of right and without notice to Trustor or anyone claiming under Trustor, and without regard to the then value of the Trust Estate or the interest of Trustor therein, or the solvency of Trustor or the occurrence of a bankruptcy event (as described in *Sections 8.1(g)* and *(h)* of the Credit Agreement), seek the appointment of a receiver for the Trust Estate and, to the maximum extent permitted by law, for all other assets of Trustor, all upon ex parte application to any court of the competent jurisdiction. Trustor waives any right to a hearing or notice of hearing prior to the appointment of a receiver and irrevocably consents to such appointment. Such receiver shall have all of the usual powers and duties of receivers in like or similar cases and all of the powers and duties of Agent in case of entry as provided above and shall continue as such and exercise all such powers until the later of the date of confirmation of sale of the Trust Estate or the date of expiration of any redemption period, unless such receivership is sooner terminated. All expenses incurred by the receiver or its agents, including obligations to repay funds borrowed by the receiver, shall constitute a part of the Obligations. Any revenues collected by the receiver shall be applied first to the expenses of the receivership, including reasonable attorneys' fees incurred by the receiver and Agent, together with interest thereon at the Default Rate from the date incurred until paid, and the balance shall be applied toward the Obligations or in such other manner as the court may direct.

(f) Other Rights and Remedies. Exercise all other rights and remedies provided in this Deed of Trust, in any of the other Loan Documents, or by law.

5.3 Personal Property. It is the express understanding and intent of the parties that as to any personal property interests subject to Article 9 of the UCC, Agent, upon an Event of Default, may proceed under the UCC or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect to real property, as specifically permitted under Section 9-604 of the UCC.

5.4 Remedies Not Exclusive. The Secured Parties and Trustee shall be entitled to enforce payment and performance of any Obligations and to exercise all rights and powers under this Deed of Trust or under any of the other Loan Documents or any laws now or hereafter in force, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers contained in this Deed of Trust, shall prejudice or in any manner affect the Secured Parties' or Trustee's right to realize upon or enforce any other security now or hereafter held by the Secured Parties or Trustee, it being agreed that Agent and Trustee shall be entitled to enforce this Deed of Trust and the Secured Parties shall be entitled to enforce any other security now or hereafter held by the Secured Parties or Trustee in such order and manner as they may in their absolute discretion determine. No remedy conferred in this Deed of Trust upon or reserved to any of the Secured Parties or Trustee is intended to be exclusive of any other remedy in this Deed of Trust or any of the other Loan Documents or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to any of the Secured Parties or Trustee, or to which any Secured Party or Trustee may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Secured Parties or Trustee, as the case may be. Any of the Secured Parties or Trustee may pursue alternative or inconsistent remedies.

5.5 Possession of Trust Estate. If, following the sale of the Trust Estate pursuant to the exercise of remedies under this Deed of Trust, Trustor continues to occupy any of the Trust Estate so sold, Trustor shall be deemed immediately and automatically to have become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Trust Estate so occupied, such rental to be due and payable daily to the



purchaser. An action of unlawful detainer shall lie if the tenant holds over after a demand in writing for possession of such Trust Estate. Nothing contained in this Deed of Trust shall be construed to constitute any Secured Party or Trustee as a "mortgagee in possession" in the absence of its taking actual possession of the Trust Estate pursuant to the powers granted herein.

5.6 Waiver of Rights. To the maximum extent permitted under applicable law, Trustor knowingly and voluntarily (a) waives the benefit of all laws now or hereafter existing that (i) provide for any appraisal or valuation before sale of any portion of the Trust Estate; or (ii) in any way extend the time for the enforcement of the collection of the Obligations or creating or extending a period of redemption from any sale made in collecting the Obligations; (b) waives the benefit of or any applicable law limiting Agent's right to pursue a deficiency judgment after a judicial or non-judicial foreclosure; and (c) agrees that Trustor will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any homestead exemption, and Trustor, for Trustor, Trustor's representatives, successors and assigns, and for any and all Persons ever claiming any interest in the Trust Estate, waives and releases all rights of homestead exemption. In addition, Trustor expressly waives and relinquishes any and all rights, remedies and defenses that Trustor may have or be able to assert by reason of any applicable law pertaining to the rights, remedies and defenses of sureties.

5.7 Marshaling. No Secured Party or Trustee shall be required to marshal any present or future collateral security (including but not limited to the Trust Estate) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of their rights and remedies hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, Trustor agrees that it will not invoke any law relating to the marshaling of collateral which might cause a delay in or impede the enforcement of any Secured Party's or Trustee's rights and remedies under this Deed of Trust or under any of the other Loan Documents, and, to the extent that it lawfully may, Trustor irrevocably waives the benefits of all such laws.

5.8 Multiple Security. If (a) the Trust Estate shall consist of one or more parcels, whether or not contiguous and whether or not located in the same county, or (b) in addition to this Deed of Trust, Agent shall now or hereafter hold or be the beneficiary of one or more additional mortgages, liens, deeds of trust or other security (directly or indirectly) for the Obligations upon other property in the state in which the Premises are located (whether or not such property is owned by Trustor or by others) or (c) both the circumstances described in clauses (a) and (b) shall be true, then to the fullest extent permitted by law, Agent may, at its election, commence or consolidate in a single trustee's sale or foreclosure action all of the trustee's sale or foreclosure proceedings against all such collateral securing the Obligations (including the Trust Estate), which action may be brought or consolidated in the courts of, or sale conducted in, any county in which any of such collateral is located. Trustor acknowledges that the right to maintain a consolidated trustee's sale or foreclosure action is a specific inducement to Agent to enter into certain agreements with Trustor, and for Agent to enter into the Credit Agreement and the other Loan Documents, and Trustor expressly and irrevocably waives any objections to the commencement or consolidation of the foreclosure proceedings in a single action and any objections to the laying of venue or based on the grounds of *forum non conveniens* which it may now or hereafter have. Trustor further agrees that if Agent shall be prosecuting one or more foreclosure or other proceedings against a portion of the Trust Estate or against any collateral other than the Trust Estate, which collateral directly or indirectly secures the Obligations, or if Agent shall have obtained a judgment of foreclosure and sale or similar judgment against such collateral (or, in the case of a trustee's sale, shall have met the statutory requirements therefor with respect to such collateral), then, whether or not such proceedings are being maintained or judgments were obtained in or outside the state in which the Premises are located, Agent may commence or continue any trustee's sale or foreclosure proceedings and exercise its other remedies granted in this Deed of Trust against all or any part of the Trust Estate and Trustor waives any objections to the commencement or continuation of a foreclosure of this Deed of Trust or exercise of any other remedies hereunder based on such other proceedings or judgments, and waives any right to seek to dismiss, stay the execution of, remove, transfer or consolidate either any action under this Deed of Trust or such other proceedings on such basis. Neither the commencement nor continuation of proceedings to sell the Trust Estate in a trustee's sale, to foreclose this Deed of Trust nor the exercise of any other rights hereunder nor the recovery of any judgment by any Secured Party nor the occurrence of any sale in any such proceedings shall prejudice, limit or preclude Agent's right to commence or continue one or more trustee's sales, foreclosure or other proceedings or obtain a judgment against (or, in the case of a trustee's sale, to meet the statutory requirements for, any such sale of) any other collateral (either



in or outside the state in which the Premises are located) which directly or indirectly secures the Obligations, and Trustor expressly waives any objections to the commencement of, continuation of, or entry of a judgment in such other sales or proceedings or exercise of any remedies in such sales or proceedings based upon any action or judgment connected to this Deed of Trust, and Trustor also waives any right to seek to dismiss, stay the execution of, remove, transfer or consolidate either such other sales or proceedings or any sale or action under this Deed of Trust on such basis. It is expressly understood and agreed that to the fullest extent permitted by applicable law, Agent may, at its election, cause the sale of all collateral which is the subject of a single trustee's sale or foreclosure action at either a single sale or at multiple sales conducted simultaneously and take such other measures as are appropriate in order to effect the agreement of the parties to dispose of and administer all collateral securing the Obligations (directly or indirectly) in the most economical and least time-consuming manner

5.9 Request for Notice. Trustor requests a copy of any notice of default and that any notice of sale under this Deed of Trust be mailed to it in accordance with the provisions below for the giving of notices.

ARTICLE 6 MISCELLANEOUS

6.1 Applicability of General Provisions. All of the provisions of the Article in the Credit Agreement entitled "Definitions" and all provisions of the Article in the Credit Agreement entitled "Miscellaneous" apply to this Deed of Trust, the same as if the provisions of such Article were set forth in full in this Deed of Trust.

6.2 The Trustee.

(a) Rights and Obligations of Trustee. Trustee accepts the trusts hereby created and agrees to perform its duties in this Deed of Trust for the benefit of Agent. To the extent permitted by and consistent with applicable law, Trustee will not exercise its rights under this Deed of Trust except upon written direction from Agent.

(b) Successor Trustee. Agent may, from time to time, by a written instrument executed and acknowledged by Agent, mailed to Trustor and recorded in the county in which the Trust Estate is located and by otherwise complying with the provisions of applicable law, substitute a successor or successors to any Trustee named herein or acting hereunder, and such successor(s) shall, without conveyance from the Trustee predecessor, succeed to all title, estate, rights, powers and duties of such predecessor.

(c) Payment of Trustee's Compensation. Trustor shall pay or cause to be paid the compensation to which Trustee is entitled hereunder and all proper disbursements and expenses incurred by Trustee hereunder.

6.3 Limitation of Rights of Others. Nothing in this Deed of Trust is intended or shall be construed to give to any person, other than Trustor, Trustee, and the Secured Parties, any legal or equitable right, remedy or claim under or in respect of this Deed of Trust or any covenant, condition or provision herein contained.

6.4 Statements by Trustor. Trustor shall, within 10 days after written request from Agent or Trustee, deliver to Agent and Trustee a written statement stating the unpaid principal of and interest on the Notes and any other amounts secured by this Deed of Trust and stating whether Trustor claims any offset or defense against such principal and interest or such other amounts.

6.5 Reconveyance by Trustee. Upon written request of Agent stating that all Obligations have been satisfied in full or otherwise upon the written request of Agent and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto." Trustor shall also pay Agent a reasonable processing fee in connection with such reconveyance.



6.6 Loan Statement Fees. Trustor shall pay the reasonable amount demanded by Agent, its authorized loan servicing agent, or Trustee for any statement regarding the Obligations, *provided, however*, that such amount may not exceed the maximum amount allowed by law at the time request for the statement is made.

6.7 Notices. All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Deed of Trust shall be given in accordance with Section 11.3 of the Credit Agreement, with notices to Agent and Trustee to be given at the address stated in the first paragraph of this Deed of Trust or to such other address as Trustee may specify to the other parties in writing..

6.8 Choice of Law. The creation of this Deed of Trust and the rights and remedies of Agent with respect to the Trust Estate, as provided in this Deed of Trust and by the laws of the state in which the Premises are located, shall be governed by and construed in accordance with the internal laws of the state in which the Premises are located, without regard to its conflicts of law principles. **WITH RESPECT TO OTHER PROVISIONS OF THIS DEED OF TRUST, THIS DEED OF TRUST SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO ITS CONFLICTS OF LAW PRINCIPLES. NOTHING IN THIS SECTION SHALL LIMIT OR RESTRICT THE RIGHT OF AGENT TO COMMENCE ANY PROCEEDING IN THE FEDERAL OR STATE COURTS LOCATED IN THE STATE IN WHICH THE PREMISES ARE LOCATED TO THE EXTENT AGENT DEEMS SUCH PROCEEDING NECESSARY OR ADVISABLE TO EXERCISE REMEDIES AVAILABLE UNDER THE DEED OF TRUST OR THE OTHER LOAN DOCUMENTS.**

6.9 Relation to Other Security Documents. The provisions of this Deed of Trust supplement the provisions of any security agreement from Trustor to a Secured Party which secures the payment or performance of any of the Obligations. Nothing contained in any such agreement shall derogate from any of the rights or remedies of Trustor hereunder.

6.10 Severability. If any provision of this Deed of Trust, or any paragraph, sentence, clause, phrase, or word, or their application, in any circumstance, is held invalid, the validity of the remainder of this Deed of Trust shall be construed as if such invalid part were never included.

6.11 Non-Waiver. Unless expressly provided in this Deed of Trust to the contrary, no consent or waiver, express or implied, by any party, to or of any breach or default by any other party shall be deemed a consent to or waiver of the performance by such defaulting party of any other obligations or the performance by any other party of the same, or of any other, obligations.

6.12 Counterparts. This Deed of Trust may be executed in any number of separate counterparts, each of which shall collectively and separately constitute one Deed of Trust.

6.13 Mortgagee in Possession. Nothing contained in this Deed of Trust shall be construed as constituting any Secured Party a mortgagee in possession in the absence of the actual taking of possession of the Trust Estate.

6.14 Incorporation of Credit Agreement; No Conflicts. The terms of the Credit Agreement are incorporated by reference herein as though set forth in full detail. In the event of a conflict between any other term or provision of this Deed of Trust and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

6.15 Modifications. This Deed of Trust may not be amended, supplemented or otherwise modified except in a writing executed by Trustor and Agent. Any agreement made by Trustor and Agent after the date of this Deed of Trust relating to this Deed of Trust or any of the Obligations shall be superior to the rights of the holder of any intervening or subordinate Lien. **THIS SECTION SHALL SERVE AS NOTICE TO ALL PERSONS WHO MAY SEEK OR OBTAIN A LIEN ON THE TRUST ESTATE SUBSEQUENT TO THE DATE OF RECORDING OF THIS DEED OF TRUST, THAT UNTIL THIS DEED OF TRUST IS RELEASED, ANY MODIFICATION TO THIS DEED OF TRUST OR THE OBLIGATIONS MADE SUBSEQUENT TO THE DATE OF RECORDING THIS DEED OF TRUST, INCLUDING INCREASES IN THE AMOUNT OF THE**



OBLIGATIONS SECURED, CHANGES IN INTEREST RATES WITH RESPECT TO ANY OBLIGATION, AND CHANGES TO THE MATURITY DATE OF ANY OBLIGATION, SHALL BE SECURED WITH THE PRIORITY AFFORDED THIS DEED OF TRUST AS AND WHEN RECORDED.

6.16 Last Dollars Secured; Priority. If at any time this Deed of Trust shall secure less than all of the principal amount of the Obligations, it is expressly agreed that any repayments of the principal amount of the Obligations shall not reduce the amount of the Lien of this Deed of Trust until the Lien amount shall equal the principal amount of the Obligations outstanding.

6.17 Binding Effect. This Deed of Trust is be binding upon and inure to the benefit of Trustor, Agent, the Secured Parties, and their respective successors and permitted assigns, including, any United States trustee, any debtor in possession or any trustee appointed from a private panel.

6.18 Trustor Notice. Trustor hereby requests a copy of any notice of default under this Deed of Trust, and that any notice of sale under this Deed of Trust be mailed to it at the address set forth in the first paragraph of this Deed of Trust.

[SIGNATURE PAGE FOLLOWS]



EXECUTED effective as of the date first set forth above.

TRUSTOR:

BLADOW PROPERTIES, LLC, a Nevada limited liability company

By: *Michael O. Bladow*
Name: Michael O. Bladow
Title: Member-Manager

State of California)
County of San Diego)

On 11-12-09, 2009, before me, Nancy E. Dobbins, Notary Public, personally appeared Michael O. Bladow who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Nancy E. Dobbins* (Seal)
Printed Name: NANCY E. DOBBINS

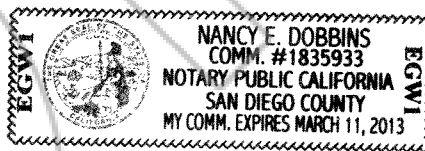




EXHIBIT A

LEGAL DESCRIPTION

Parcel 2 as shown on that certain Record of Survey in support of a Boundary Line Adjustment, Book 403, Page 1471 Dpci,emt Mp/ 572306, Official Records of Douglas County, Nevada.

A parcel of land situate within the South Half of the Northeast Quarter of Section 6, Township 14 North, Range 20 East, Douglas County, Nevada, more particularly described as follows: Beginning at a point from which the Center Section of said Section 6 bears South 43° 52' 48" West a distance of 1152.95 feet; thence North 89°16' 16" East a distance of 119.61 feet; thence South 00° 43' 44" East a distance of 127.50 feet; thence South 89° 16'16" West a distance of 119.61 feet; thence North 00°43'44" West a distance of 127.50 feet to the Point of Beginning.

