

The undersigned hereby affirms that this document, including any exhibits, hereby submitted for recording DOES NOT contain the social security number of a person or persons as required by law.

Tax Parcel No. 1220-04-501-012

Prepared by, recording requested by,  
and after recording return to:

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**AMENDED AND RESTATED COMMERCIAL DEED OF TRUST, SECURITY AGREEMENT,  
ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING**

GRANTOR: **BLADOW PROPERTIES, LLC**, a Nevada limited liability company

TRUSTEE: **FIRST AMERICAN TITLE INSURANCE COMPANY**, a Nebraska corporation

BENEFICIARY: **LAKE FOREST BANK & TRUST COMPANY**, a subsidiary of Wintrust Financial Corporation, as administrative agent, for the Lenders and each other Secured Party (each as defined in the hereafter described Credit Agreement)

PROPERTY: 1345 Highway 395, Gardenville, Nevada

Dated: Effective as of December 15, 2016

**NOTICE: THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE COLLATERAL HEREIN CONVEYED.**

**DO NOT DESTROY THIS DEED OF TRUST OR THE NOTE WHICH IT SECURES AS THESE MUST BE PRESENTED TO THE TRUSTEE FOR CANCELLATION IN ORDER TO OBTAIN A RECONVEYANCE. THE RECONVEYANCE MUST BE RECORDED IN THE OFFICE OF THE COUNTY RECORDER.**

**THIS INSTRUMENT COVERS REAL PROPERTY AND PERSONAL PROPERTY AND GOODS WHICH ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE DEEDS OF TRUST ON REAL ESTATE ARE RECORDED. IN ADDITION, THIS INSTRUMENT SHOULD BE APPROPRIATELY INDEXED NOT ONLY AS A DEED OF TRUST, BUT ALSO AS A FINANCING STATEMENT COVERING PERSONAL PROPERTY AND GOODS THAT ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED THEREIN. THE MAILING ADDRESS OF THE GRANTOR (DEBTOR) AND THE BENEFICIARY (SECURED PARTY) ARE SET FORTH IN THIS INSTRUMENT.**

THIS AMENDED AND RESTATED COMMERCIAL DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING, dated as of December 15, 2016 (this "Instrument"), made by **BLADOW PROPERTIES, LLC**, a Nevada limited liability company, (together with its successors and assigns, "Grantor"), having an address at 5055 Avenida Encinas, Suite 200, Carlsbad, California 92008, in favor of **FIRST AMERICAN TITLE INSURANCE COMPANY**, a Nebraska corporation (together with its successors and assigns, "Trustee"), having an address at 2500 Paseo Verde Pkwy., Suite 120, Henderson, Nevada 89074, for the benefit of **LAKE FOREST BANK & TRUST COMPANY**, a subsidiary of Wintrust Financial Corporation, having an address at 727 North Bank Lane, Lake Forest, Illinois 60045, Attention: Wintrust Franchise Finance ("Wintrust"), in its capacity as administrative agent, for the Lenders and the other Secured Parties (as defined in the Credit Agreement defined below), including any successor agent under the Credit Agreement (hereinafter referred to as "Beneficiary");

WITNESSETH THAT:

WHEREAS, Grantor is on the date of delivery hereof the holder of a fee simple estate in the parcel or parcels of land described in Schedule 1 hereto (the "Land") and of the Improvements (as defined below); and

WHEREAS, Beneficiary is the holder of that certain deed(s) of trust from Grantor described on the Schedule attached hereto as *Schedule 2* (as previously amended, restated, supplemented, extended or renewed, the "Existing Deed of Trust"). Pursuant to the Credit Agreement (defined below) Grantor and Beneficiary desire to amend, and restate the terms and conditions of the Existing Deed of Trust as provided herein. This Instrument is being delivered in connection with the Credit Agreement amends, restates, and replaces the Existing Deed of Trust; *provided, however*, that the execution, delivery or recordation of this Instrument shall not constitute a novation of the obligations evidenced by the Existing Deed of Trust, which obligations remain outstanding and shall be governed by the provisions of this Instrument; and

WHEREAS, Grantor and its Affiliates, as borrower, Beneficiary, as administrative agent, and lenders from time to time a party thereto (the "Lenders") have executed that certain Amended and Restated Credit Agreement of even date herewith (as amended, restated, supplemented or otherwise modified, the "Credit Agreement") whereby Grantor is or will be indebted to Lenders for the Loans (as defined in the Credit Agreement) and the other Obligations (as defined in the Credit Agreement), such Loans may be evidenced by one or more Notes (as defined in the Credit Agreement); and

WHEREAS, this Instrument is given by Grantor to secure to Beneficiary, on behalf of the Secured Parties: (a) the Loans as maybe evidenced by one or more Notes in the original principal amount of up to \$29,500,000; (b) the payment and performance of all other Obligations, whether now existing or hereafter arising, including, without limitation, any renewal, extension or modification thereof and all future advances and readvances that may subsequently be made to Grantor and its Affiliates by the Secured Parties under the Loan Documents (as defined in the Credit Agreement), other than any Loan Document with respect to state and federal environmental laws, rules, regulations and permits, hazardous materials and other environmental conditions, environmental investigations, the release or threatened release of any hazardous materials, and all material remediation requirements; and (c) the payment and performance of all obligations under any other document or instrument that recites that it is secured hereby, whether now existing or hereafter arising, including, without limitation, any renewal, extension or modification thereof ((a) through (c) are referred to herein as the "Secured Obligations"); and

WHEREAS, as a condition precedent to Lenders making the Loans and Beneficiary and Lenders entering into the Credit Agreement and other Loan Documents, Grantor is required to execute and deliver

this Instrument for the benefit of the Secured Parties to secure the payment and performance of the Secured Obligations; and

WHEREAS, Grantor has duly authorized the execution, delivery and performance of this Instrument.

G R A N T:

NOW, THEREFORE, for and in consideration of the premises, and of the mutual covenants herein contained, and in order to induce Lenders to make the Loans and Beneficiary and Lenders to enter into the Credit Agreement and other Loan Documents, and in order to secure the full, timely and proper payment and performance of and compliance with each and every one of the Secured Obligations, Grantor hereby irrevocably grants, bargains, sells, mortgages, warrants, aliens, demises, releases, hypothecates, pledges, assigns, transfers, conveys and grants a security interest in and to Trustee, in trust, WITH THE POWER OF SALE, for the benefit of the Secured Parties, all of Grantor's estate, right, title and interest, if any, now or hereafter arising, in and to the following (collectively, the "Collateral"):

(a) **Premises.** The Land, together with all tenements, rights, easements, hereditaments, rights of way, privileges, liberties, appendages and appurtenances now or hereafter belonging or in anywise pertaining to the Land (including, without limitation, all rights relating to storm and sanitary sewer, water, gas, electric, railway and telephone services); all development rights, air rights, riparian rights, water, water rights, water stock, all rights in, to and with respect to any and all oil, gas, coal, minerals and other substances of any kind or character underlying or relating to the Land and any interest therein; any street, road, highway or alley, vacated or other, adjoining the Land or any part thereof; all strips and gores belonging, adjacent or pertaining to the Land; and any after-acquired title to any of the foregoing (collectively, the "Premises");

(b) **Improvements.** All buildings, structures and other improvements and any additions and alterations thereto or replacements thereof, now or hereafter built, constructed or located upon the Premises; and all furnishings, fixtures, fittings, appliances, apparatus, equipment, machinery, building and construction materials and other articles of property of every kind and nature whatsoever, now or hereafter affixed or attached to, erected on or used in connection with the operation of the Premises or such buildings, structures and other improvements, including, without limitation, all partitions, furnaces, boilers, oil burners, radiators and piping, plumbing and bathroom fixtures, refrigeration, heating, ventilating, air conditioning and sprinkler systems, other fire prevention and extinguishing apparatus and materials, vacuum cleaning systems, gas and electric fixtures, incinerators, compactors, elevators, engines, motors, generators and all other articles of property that are considered fixtures under applicable law (collectively together with all additions and accessions thereto and all replacements and substitutions thereof, the "Improvements"; the Premises and the Improvements are collectively referred to herein as the "Property");

(c) **Leases.** All leases, licenses, occupancy agreements, concessions and other arrangements, oral or written, now existing or hereafter entered into, whereby any Person agrees to pay money or any other consideration for the use, possession or occupancy of, or any estate in, the Property or any portion thereof or interest therein (collectively, the "Leases");

(d) **Permits and Approvals.** To the extent assignable under applicable law, all permits, franchises, licenses, approvals and other authorizations respecting the use, occupation or operation of the Property or any part thereof and respecting any business or other activity conducted on or from the Property, and any product or proceed thereof or therefrom, including,

without limitation, all building permits, certificates of occupancy and other licenses, permits and approvals issued by governmental authorities having jurisdiction;

(e) **Rents.** All rents, issues, profits, royalties, avails, income, proceeds and other benefits derived or owned, directly or indirectly, by Grantor from the Collateral, including, without limitation, all rents and other consideration payable by Tenants, claims against guarantors, any guaranties with respect to any Tenant's obligations under any Lease and any cash or other securities deposited to secure performance by Tenants, under the Leases (collectively, "Rents");

(f) **Plans.** To the extent assignable under applicable law, all plans, specifications, contracts and agreements relating to the design or construction of the Improvements, any payment, performance, or other bond provided in connection with the design or construction of the Improvements, all contracts, agreements and purchase orders with contractors, subcontractors, suppliers and materialmen incidental to the design or construction of the Improvements, all other contracts and agreements pertaining to or affecting the Property, including, without limitation, all options or contracts to acquire other property for use in connection with operation or development of the Property and management contracts, service or supply contracts with respect to the Property;

(g) **Trademarks and Trade Names.** All trademarks, trade names, symbols, assumed names, and other rights and interest in and to the name and marks owned and used by Grantor in connection with the Property, together with the goodwill associated therewith;

(h) **Deposits.** Any moneys on deposit with or for the benefit of Beneficiary or any Lender in connection with any of the Collateral, including deposits for the payment of real estate taxes, public assessments and repairs;

(i) **Claims.** All claims, demands, judgments, insurance proceeds, awards of damages and settlements hereafter made resulting from the taking of the Property or any portion thereof under the power of eminent domain, or for any damage (whether caused by such taking, by casualty or otherwise) to the Property or any portion thereof;

(j) **Other Rights.** All other property and rights of Grantor relating to any of the foregoing; and

(k) **Addition; Replacements; Proceeds.** All additions, accessions, replacements, substitutions, proceeds and products of the property, tangible and intangible, described herein.

AND, without limiting any of the other provisions of this Instrument, Grantor expressly grants to Beneficiary, on behalf of the Secured Parties, as secured party, a security interest in all of those portions of the Collateral that are or may be subject to the UCC provisions applicable to secured transactions; and

TO HAVE AND TO HOLD the Collateral unto Trustee for the benefit of Beneficiary, on behalf of the Secured Parties, forever.

PROVIDED, HOWEVER, that nothing contained herein shall create an obligation on the part of Beneficiary or any Lender to make future advances or readvances to Borrower; and

PROVIDED, FURTHER, that if Borrower shall pay, in full, the principal of and premium, if any, and interest on the Secured Obligations in accordance with the terms of the Loan Documents and hereof

and all other sums payable hereunder by Grantor then on such date, this Instrument shall be (except as provided herein) null and void and of no further force and effect and the Collateral shall thereupon be, and be deemed to have been, reconveyed, released and discharged from this Instrument without further notice on the part of either Grantor or Beneficiary, but upon the request of Grantor or Beneficiary, at Grantor's sole cost and expense, shall instruct and authorize Trustee to execute a satisfactory reconveyance of this Instrument.

FURTHER to secure the full, timely and proper payment and performance of the Secured Obligations, Grantor hereby covenants and agrees with and warrants to Trustee for the benefit of Beneficiary, on behalf of the Secured Parties, as follows:

## ARTICLE I

### DEFINITIONS

The following terms shall have the following meanings for all purposes of this Instrument, and capitalized terms used herein but not defined herein shall have the meanings ascribed to such terms in the Credit Agreement:

“Event of Default” has the meaning set forth in Section 4.01.

“Impositions” has the meaning set forth in Section 2.04.

“Indemnified Liabilities” has the meaning set forth in Section 2.12.

“Indemnified Parties” has the meaning set forth in Section 2.12.

“Property” has the meaning set forth in the granting clause.

“Premises” has the meaning set forth in the granting clause.

“Release” means a “release” or “threatened release” as such terms are defined in CERCLA of a Hazardous Material.

“Rents” has the meaning set forth in the granting clause.

“State” means the State of Nevada.

“Taking” has the meaning set forth in Section 3.02.

“Tenant” means any tenant of the Property, and its successors and assigns.

“Tenant Guarantor” means any guarantor of any Tenant's obligations under any Lease, and its successors and assigns.

“UCC” means the Uniform Commercial Code as enacted in the State.

## ARTICLE II

### COVENANTS AND AGREEMENTS OF GRANTOR

**Section 2.01. Payment and Performance of Obligations.** Grantor agrees that it will duly and punctually pay and perform or cause to be paid and performed each of the Secured Obligations at the time and in accordance with the terms specified in the Loan Documents.

**Section 2.02. Title to Collateral.** Grantor represents and warrants that:

(a) as of the date hereof and at all times hereafter while this Instrument is outstanding, Grantor is and shall be the sole, absolute owner and holder of the fee simple estate in the Property and the absolute owner of the legal and beneficial title to all other property as and to the extent included in the Collateral, subject in each case only to this Instrument and Permitted Liens;

(b) Grantor has good and lawful right, power and authority to execute this Instrument and to convey, transfer, assign, mortgage and grant a security interest in the Collateral, all as provided herein;

(c) this Instrument has been duly executed, acknowledged and delivered on behalf of Grantor, all consents and other actions required to be taken by the officers, directors, shareholders and partners, as the case may be, of Grantor have been duly and fully given and performed and this Instrument constitutes the legal, valid and binding obligation of Grantor, enforceable against Grantor in accordance with its terms; and

(d) Grantor, at its expense, will and hereby does warrant and defend to Beneficiary and Secured Parties and any purchaser under the power of sale herein or at any foreclosure sale such title to the Collateral (as described in subsection (a) of this Section) and the first mortgage lien and first priority perfected security interest of this Instrument thereon and therein against all claims and demands and will maintain, preserve and protect such Lien and will keep this Instrument a valid, first mortgage lien of record on and a first priority perfected security interest in the Collateral, subject only to the Permitted Liens.

(e) Grantor has duly paid in full all fees, premiums and other charges due in connection with (i) the recording of this Instrument and the issuance of a loan policy or policies of title insurance in form and amount satisfactory to Beneficiary naming Beneficiary as the insured, insuring the title to and the first Instrument lien of this Instrument on the Property with endorsements reasonably requested by Beneficiary and (ii) a survey of the Property in form and substance acceptable to Beneficiary and title insurer.

**Section 2.03. Title Insurance.** All proceeds received by and payable to Beneficiary for any loss under any loan policy or policies of title insurance delivered to Beneficiary shall be the property of Beneficiary, for the benefit of the Secured Parties, and shall, except as expressly provided to the contrary in the Credit Agreement, be applied by Beneficiary in accordance with the provisions of Sections 3.03 or 3.04, as applicable.

**Section 2.04. Impositions.** Grantor will pay or cause to be paid all taxes, insurance premiums, assessments, water and sewer rates, ground rents, fees and other charges (collectively, the "Impositions") that at any time may be assessed, levied, confirmed or imposed or that may become a Lien upon the Collateral, or any portion thereof, or that are payable with respect thereto, prior to delinquency, before

any fine, penalty or interest may be added for non-payment and before the commencement of any action to foreclose any Lien against all or any portion of the Collateral with respect thereto. Grantor will deliver to Beneficiary, upon request, copies of official receipts or other satisfactory proof evidencing such payments. Grantor shall not be entitled to any credit against the Secured Obligations by reason of the payment of any Imposition.

Upon the occurrence of an Event of Default (hereinafter defined), after the expiration of any applicable grace or cure period, and at Beneficiary's sole option at any time thereafter, Grantor shall pay in addition to each monthly payment under the Credit Agreement, one-twelfth of the Impositions payable during each year (as estimated by Beneficiary in its sole discretion), to be held by Beneficiary without interest to Grantor, for the payment of such obligations. If the amount of such additional payments held by Beneficiary (the "Funds") at the time of the annual accounting thereof shall exceed the amount deemed necessary by Beneficiary to provide for the payment of Impositions as they fall due, such excess shall be at Grantor's option, either repaid to Grantor or credited to Grantor on the next monthly installment or installments of Funds due. If at any time the amount of the Funds held by Beneficiary shall be less than the amount deemed necessary by Beneficiary to pay Impositions as they fall due, Grantor shall pay to Beneficiary any amount necessary to make up the deficiency within 30 days after notice from Beneficiary to Grantor requesting payment thereof. Beneficiary may apply, in any amount and in any order as Beneficiary shall determine in Beneficiary's sole discretion, any Funds held by Beneficiary at the time of application (i) to pay Impositions which are now or will hereafter become due, or (ii) as a credit against the Secured Obligations. Upon payment in full of the Secured Obligations, Beneficiary shall refund to Grantor any Funds held by Beneficiary.

**Section 2.05. Liens.** Grantor will not directly or indirectly create or permit or suffer to be created or to remain, and will promptly discharge or cause to be discharged, any deed of trust, mortgage, encumbrance or charge on, pledge of, security interest in or conditional sale or other title retention agreement with respect to or any other Lien on or in the Collateral or any part thereof or the interest of Grantor or Beneficiary therein, or any proceeds or Rents or other sums arising therefrom other than Permitted Liens.

**Section 2.06. Compliance with Instruments.** Grantor, at its expense, will promptly comply with all rights of way or use, privileges, franchises, servitudes, licenses, easements, tenements, hereditaments and appurtenances forming a part of the Collateral and all instruments creating or evidencing the same, in each case, to the extent compliance therewith is required of Grantor under the terms thereof. Grantor will not terminate, forfeit or materially amend rights afforded to Grantor under any such instruments, without the prior written consent of Beneficiary.

**Section 2.07. Maintenance and Repair.** Subject to ordinary wear and tear, Grantor will keep or cause to be kept all presently and subsequently erected or acquired Improvements and the sidewalks, curbs, vaults and vault space, if any, located on or adjoining the same, and the streets and the ways adjoining the same, in good and substantial order and repair and in such a fashion that the value and utility of the Collateral will not be materially diminished, and, at its sole cost and expense, will promptly make or cause to be made all necessary and appropriate repairs, replacements and renewals thereof, whether interior or exterior, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, so that its business carried on in connection therewith may be properly conducted at all times. All repairs, replacements and renewals shall be equal or greater in quality and class to the original Improvements. Grantor, at its expense, will do or cause to be done all shoring of foundations and walls of any building or other Improvements on the Premises and (to the extent permitted by law) of the ground adjacent thereto, and every other act necessary or appropriate for the preservation and safety of the Property by reason of or in connection with any excavation or other building operation upon the Premises and upon any

adjoining property, whether or not Grantor shall be required to take such action or be liable for failure to do so.

**Section 2.08. Alterations, Additions.** Except as provided in the Credit Agreement, Grantor shall not make or cause to be made any alterations of and additions to the Property or any part thereof without prior written consent of Beneficiary; *provided, however*, Grantor may make nonstructural additions to the Property costing less than \$250,000 in the aggregate without Beneficiary's consent. If Beneficiary consents to any alterations or additions to the Property, such alterations or additions shall be made at Grantor's sole expense by a licensed contractor and according to the plans and specifications approved by Beneficiary and subject to any other conditions required by Beneficiary. Any work commenced on the Property shall be diligently completed, shall be of good workmanship and materials and shall comply with the terms of this Instrument. Upon the completion of any alterations or additions, Grantor shall promptly provide Beneficiary with (a) evidence of full payment to all laborers, materialmen contributing to the alterations or additions, (b) an architect's certificate certifying the alterations conform to the plans and specification approved by Beneficiary, (c) a certificate of occupancy (if such alterations or additions require the issuance thereof) and (d) any other documents or information reasonably requested by Beneficiary.

**Section 2.09. Acquired Property Subject to Lien.** All right, title and interest of Grantor in and to all alterations, improvements, substitutions, restorations and replacements of, and all additions and appurtenances to, the Property hereafter acquired by Grantor, whether such property is acquired by exchange, purchase, construction or otherwise, shall forthwith become subject to the Lien of this Instrument without further action on the part of Grantor or Beneficiary. Upon the request of Beneficiary, Grantor, at its expense, will execute and deliver (and will record and file as provided herein) an instrument or document supplemental to this Instrument satisfactory in substance and form to Beneficiary, whenever such an instrument or document is necessary under applicable law to subject to the Lien of this Instrument all right, title and interest of Grantor in and to all property provided or required by this Instrument to be subject to the Lien hereof.

**Section 2.10. Assignment of Rents and Leases.**

(a) The assignment, grant and conveyance of the Leases, Rents and all other rents, income, proceeds and benefits of the Collateral contained in the granting clause of this Instrument shall constitute an absolute, present and irrevocable assignment, grant and conveyance, provided that, until an Event of Default has occurred, a license is hereby given to Grantor to collect, receive and apply Rents, as they become due and payable, but not more than one (1) month in advance thereof, and in accordance with all of the other terms, conditions and provisions hereof and of the Leases, contracts, agreements and other instruments with respect to which such payments are made. Upon and during the continuance of an Event of Default, such license shall be revoked and shall terminate, immediately and automatically without notice to Grantor or any other Person (to the extent permitted by law), and shall be reinstated only upon a cure of such Event of Default or otherwise only with the express written consent of Beneficiary. Such assignment shall be fully effective without any further action on the part of Grantor or Beneficiary, and Beneficiary shall be entitled, at its option, upon the occurrence of an Event of Default hereunder, to collect, receive and apply all Rents and all other rents, income, proceeds and benefits from the Collateral, including all right, title and interest of Grantor in any escrowed sums or deposits or any portion thereof or interest therein, whether or not Beneficiary takes possession of the Collateral or any part thereof. The collection of such amounts by Beneficiary shall in no way waive the right of Beneficiary to foreclose this Instrument in the event of any Event of Default. Nothing contained herein and no exercise of any right or privilege hereunder by Beneficiary shall be construed to constitute Beneficiary as a mortgagee-in-possession. All



Rents and all other rents, income, proceeds and benefits of the Collateral received by Grantor from or related to the Collateral or any part thereof, from and after the occurrence of an Event of Default, shall be deemed received in trust and shall be turned over to Beneficiary within one Business Day after Grantor's receipt thereof. Grantor further grants to Beneficiary the right, at Beneficiary's option, to:

(i) enter upon and take possession of the Property for the purpose of collecting Rents and all other rents, income, proceeds and other benefits;

(ii) dispossess by the customary summary proceedings any Tenant, purchaser or other Person defaulting in the payment of any amount when and as due and payable, or in the performance of any other obligation, under the Leases, contract or other instrument to which said Rents or other rents, income, proceeds or benefits relate;

(iii) let or convey the Collateral or any portion thereof or any interest therein;  
and

(iv) apply Rents and such other rents, income, proceeds and benefits, after the payment of all necessary fees, charges and expenses, on account of the Secured Obligations in accordance with Section 3.03.

(v) Beneficiary shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Grantor in the Leases. It is further understood that the assignment granted hereunder shall not operate to place responsibility for the control, care, management or repair of the Property, or parts thereof, upon Beneficiary, nor shall it operate to make Beneficiary liable for the performance of any of the terms and conditions of any of the Leases, or for any waste of the Property by any Tenant under any of the Leases or any other Person, or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee or stranger.

(b) Grantor represents, warrants, covenants and agrees as follows:

(i) Grantor will not enter into any other Lease without the prior written consent of Beneficiary. Grantor has delivered to Beneficiary true, correct and complete copies of all existing Leases and all amendments and modifications thereto. The Leases are and shall be valid and enforceable in accordance with their terms. The Leases shall not be altered, modified, amended, terminated, canceled, renewed or surrendered, nor shall any of the terms and conditions thereof be waived in any manner whatsoever except with the prior written consent of Beneficiary.

(ii) There are no defaults now existing under any of the Leases, and no event has occurred or circumstance exists that, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases.

(iii) Grantor shall give prompt notice to Beneficiary of any notice received by Grantor claiming that a default has occurred under any of the Leases on the part of Grantor, together with a complete copy of any such notice.

(iv) Each of the Leases shall remain in full force and effect irrespective of any merger of the interest of Grantor and any Tenant under any of the Leases.

(v) Grantor will not permit any Lease to become subordinate to any Lien other than the Lien of this Instrument.

(vi) Grantor shall not permit or consent to the assignment by any Tenant of its rights under its Lease. Without limitation of the foregoing, Grantor shall not permit or consent to the filing of any encumbrance against the Tenant's interest under any Lease, including, without limitation, any leasehold mortgage.

(c) Grantor hereby irrevocably appoints Beneficiary its true and lawful attorney-in-fact with power of substitution and with full power for Beneficiary in its own name and capacity or in the name and capacity of Grantor, from and after the occurrence of a Default or an Event of Default, to demand, collect, receive and give complete acquittances for any and all Rents accruing from the Property that Beneficiary may deem necessary or desirable in order to collect and enforce the payment of the Rents and to demand, correct, receive, endorse, and deposit all checks, drafts, money orders or notes given in payment of such Rents. Such appointment is coupled with an interest and is irrevocable. Beneficiary shall not be liable for or prejudiced by any loss of any note, checks, drafts, etc., unless such loss shall have been found by a court of competent jurisdiction to have been due to the gross negligence or willful misconduct of Beneficiary. Grantor also hereby irrevocably appoints Beneficiary as its true and lawful attorney-in-fact to appear in any state or federal bankruptcy, insolvency, or reorganization proceeding in any state or federal court involving any of the Tenants of the Leases. Lessees of the Property are hereby expressly authorized and directed, from and after service of a notice by Beneficiary to pay any and all amounts due Grantor pursuant to the Leases to Beneficiary or such nominee as Beneficiary may designate in writing delivered to and received by such Tenants, and such Tenants are expressly relieved of any and all duty, liability or obligation to Grantor in respect of all payments so made.

(d) The assignment of rents and leases by Grantor pursuant to this Section 2.10 is subject to the Uniform Assignment of Rents Act (the "*Act*") codified as NRS Chapter 107A, as amended or recodified from time to time, and in the event of any conflict or inconsistency between the provisions of this Section 2.10 and the provisions of the Act, the provisions of the Act shall control.

**Section 2.11. No Claims Against Beneficiary or Secured Parties.** Nothing contained in this Instrument shall constitute any consent or request by Beneficiary, express or implied, for the performance of any labor or the furnishing of any materials or other property in respect of the Property or any part thereof, or be construed to permit the making of any claim against Beneficiary or the other Secured Parties in respect of labor or services or the furnishing of any materials or other property or any claim that any Lien based on the performance of such labor or the furnishing of any such materials or other property is prior to the Lien of this Instrument. Grantor shall make all contractors, subcontractors, vendors and other persons dealing with the Property, or with any persons interested therein, take notice of the provisions of this Section.

**Section 2.12. Indemnification.**

(a) Whether or not covered by insurance, Grantor hereby assumes responsibility for and agrees to reimburse Beneficiary, Lenders, and the other Secured Parties, their respective affiliates and their respective officers, directors, employees and agents (individually and

collectively, the “Indemnified Parties”) for and will indemnify, defend and hold the Indemnified Parties harmless from and against any and all liabilities, obligations, losses, damages, penalties, claims, suits, actions, proceedings, judgments, awards, amounts paid in settlements, debts, diminutions in value, fines, penalties, charges, fees, costs and expenses (including reasonable attorneys’ fees and expenses) of whatsoever kind and nature, imposed on, incurred by or asserted against any Indemnified Party that in any way relate to or arise out of any of the Loan Documents, the transactions contemplated thereby and the Collateral, including, without limitation, (i) the selection, manufacture, construction, acquisition, acceptance or rejection of the Collateral, (ii) the ownership of the Collateral, (iii) the delivery, installation, lease, possession, maintenance, use, condition, return or operation of the Collateral, (iv) the condition of the Collateral sold or otherwise disposed of after possession by Grantor, (v) any patent or copyright infringement, (vi) any act or omission on the part of Grantor, Guarantor or any of its or their officers, employees, agents, contractors, lessees, licensees or invitees, (vii) any material misrepresentation or inaccuracy in any representation or warranty of Grantor or any Guarantor, or a breach of Grantor or any Guarantor of any of its covenants or obligations under any of the Loan Documents, (viii) any claim, loss, cost or expense involving alleged damage to the environment relating to the Collateral, including, without limitation, investigation, removal, cleanup and remedial costs, (ix) any personal injury, wrongful death or property damage arising under any statutory or common law or tort law theory, including, without limitation, damages assessed for the maintenance of a private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Collateral, (x) any past, present or threatened injury to, or destruction of, the Collateral, including, without limitation, costs to investigate and assess such injury or damage, (xi) any administrative process or proceeding or judicial or other similar proceeding (including, without limitation, any alternative dispute resolution process and any bankruptcy proceeding) in any way connected with any matter addressed in any of the Loan Documents, (xii) any use, non-use or condition of the Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (xiii) performance of any labor or services or the furnishing of any materials or other property in respect of the Collateral or any part thereof made or suffered to be made by or on behalf of Grantor or any Tenant, (xiv) any work in connection with any alterations, changes, new construction or demolition of or additions to the Property or (xv)(A) any Hazardous Materials on, in, under or affecting all or any portion of the Property, the groundwater, or any surrounding areas, (B) any violation or claim of violation by Grantor or any Tenant of any Environmental Laws or (C) the imposition of any Lien for damages caused by or the recovery of any costs for the cleanup of Hazardous Materials or any Release.

(b) If any action or proceeding be commenced, to which action or proceeding the Indemnified Parties are made a party by reason of the execution of this Instrument or the Loan Documents, or in which it becomes necessary to defend or uphold the Lien of this Instrument, all sums paid by the Indemnified Parties, for the expense of any litigation to prosecute or defend the rights and Lien created hereby or otherwise, shall be paid by Grantor to such Indemnified Parties, as the case may be, as hereinafter provided. Grantor will pay and save the Indemnified Parties harmless against any and all liability with respect to any intangible personal property tax or similar imposition of the State or any subdivision or authority thereof now or hereafter in effect, to the extent that the same may be payable by the Indemnified Parties in respect of this Instrument or any Secured Obligation.

(c) All amounts payable to the Indemnified Parties under this Section shall be deemed indebtedness secured by this Instrument, and any such amounts that are not paid within 30 days after written demand therefor by any Indemnified Party shall bear interest at the Default Rate from the date of such demand. In case any action, suit or proceeding is brought against the

Indemnified Parties by reason of any such occurrence, Grantor, upon request of such Indemnified Parties, will, at Grantor's expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel designated by Beneficiary. The obligations of Grantor under this Section shall survive any satisfaction, discharge or reconveyance of this Instrument and payment in full of the Obligations. If and to the extent that the foregoing undertaking may be unenforceable for any reason, Grantor hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities that is permissible under applicable law.

**Section 2.13. Hazardous Materials.** Grantor covenants and agrees that (a) the Collateral shall be kept free of Hazardous Materials, except for those Hazardous Materials reasonably necessary for the operation of the Property and customarily employed in the ordinary course of businesses similar to the business conducted at the Property and that are used, stored, transported and disposed of in accordance with all applicable Environmental Laws, (b) Grantor shall comply with, and ensure compliance by all Persons on the Property with, all Environmental Laws relating to all or any part of the Collateral, (c) Grantor shall keep the Collateral free and clear of any liens imposed pursuant to such Environmental Laws, (d) Grantor shall conduct and complete all investigations, studies, sampling and testing, and all remedial actions necessary to clean up and remove any Hazardous Materials from the Property in accordance with the recommendations contained in any reports issued in connection with such investigations, studies, sampling and testing and in accordance with all applicable Environmental Laws and (e) Grantor shall cause compliance by all Tenants and sub-tenants on the Property with Grantor's covenants and agreements contained in this Section. Grantor shall immediately notify Beneficiary of any investigation, demand, or claim affecting the Property made by any third party.

**Section 2.14. Right of Beneficiary To Require Appraisal.** Following the occurrence of an Event of Default, Beneficiary shall have the right, from time to time during the term of this Instrument, to obtain one or more fair market value appraisals of the Property from one or more MAI certified appraisers in such form as is satisfactory to Beneficiary. The cost of any such appraisal(s) shall be paid by Grantor. So long as no Event of Default has occurred and is continuing, Beneficiary shall not require any such appraisal more frequently than once in any two-year period unless otherwise required by Law.

**Section 2.15. Instrument as UCC Security Agreement and Fixture Filing.** This Instrument shall constitute a security agreement, a financing statement and a fixture filing pursuant to the UCC for any of the items specified herein as part of the Collateral that, under applicable law, may be subject to a security interest pursuant to the UCC. The Collateral includes goods that are or are to become fixtures. Grantor agrees that Beneficiary may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index as a fixture filing or other financing statement for any of the items specified above as part of the Collateral. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement.

### ARTICLE III

#### INSURANCE; DAMAGE, DESTRUCTION OR TAKING

##### Section 3.01. Insurance.

(a) Grantor will, at its expense, maintain or cause to be maintained with insurance carriers approved by Beneficiary insurance with respect to the Collateral in such amounts and against such insurable hazards as Beneficiary from time to time may require, including, without limitation the following: (i) "all risk" property and fire insurance in an amount not less than the full replacement value of the Property (with a deductible not to exceed \$10,000), naming

Beneficiary under a lender's loss payable endorsement as mortgagee and loss payee and including agreed amount, inflation guard, replacement cost and waiver of subrogation endorsements; (ii) general liability insurance in an amount not less than \$1,000,000 per occurrence and on an occurrence basis, insuring against personal injury, death and property damage and naming Beneficiary as additional insured; (iii) flood hazard insurance if the Property is located in an area designated by the Federal Emergency Management Act if and to the extent that the Property is located within an area that has been or is hereafter designated or identified as an area having special flood hazards by the Department of Housing and Urban Development or such other official as shall from time to time be authorized by federal or state law to make such designation pursuant to any national or state program of flood insurance, Grantor shall carry flood insurance with respect to the Property in amounts not less than the maximum limit of coverage then available with respect to the Property or the amount of the Obligations, whichever is less; (iv) worker's compensation insurance to the full extent required by applicable law for all employees of Grantor engaged in any work on or about the Property and employer's liability insurance with a limit of not less than \$1,000,000 for each occurrence; (v) environmental liability insurance in the amount of \$1,000,000; and (ix) such other types of insurance or endorsements to existing insurance as may be required from time to time by Beneficiary in accordance with its standard commercial lending practices.

(b) All insurance maintained by Grantor pursuant to Section 3.01(a) shall (i) (except for worker's compensation insurance) name Beneficiary as additional insured and/or loss payee, as applicable, (ii) (except for worker's compensation and public liability insurance) provide that the proceeds for any losses shall be adjusted by Grantor subject to the approval of Beneficiary and shall be payable to Beneficiary, to be held and applied as provided in Section 3.03, (iii) include effective waivers by the insurer of all rights of subrogation against any named insured, the indebtedness secured by this Instrument and the Collateral and all claims for insurance premiums against Beneficiary, (iv) provide that any losses shall be payable notwithstanding (A) any act, failure to act or negligence of or breach of warranties, declarations or conditions contained in such policy by any named insured, (B) the occupation or use of the Property for purposes more hazardous than permitted by the terms thereof, (C) any foreclosure or other action or proceeding taken by Trustee or Beneficiary pursuant to any provision of this Instrument or (D) any change in title or ownership of the Property, (v) provide that no cancellation, reduction in amount or material change in coverage thereof or any portion thereof shall be effective until at least 30 days after receipt by Beneficiary of written notice thereof, (vi) provide that any notice under such policies shall be simultaneously delivered to Beneficiary and (vii) be satisfactory in all other respects to Beneficiary. Any insurance maintained pursuant to Section 3.01 may be evidenced by blanket insurance policies covering the Property and other properties or assets of Grantor, provided that any such policy shall specify the portion, if less than all, of the total coverage of such policy that is allocated to the Property and shall in all other respects comply with the requirements of Section 3.01.

(c) Grantor will deliver to Beneficiary, promptly upon request, (i) the originals of all policies evidencing all insurance required to be maintained under Section 3.01(a) (or, in the case of blanket policies, certificates thereof by the insurers together with a counterpart of each blanket policy), and (ii) evidence as to the payment of all premiums due thereon (with respect to insurance policies payable other than by a single lump sum, all installments for the current year due thereon to such date), provided that Beneficiary shall not be deemed by reason of its custody of such policies to have knowledge of the contents thereof. Grantor will also deliver to Beneficiary not later than 30 days prior to the expiration of any policy a binder or certificate of the insurer evidencing the replacement thereof.

(d) Grantor will not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained pursuant to Section 3.01.

**Section 3.02. Damage, Destruction or Taking; Notice; Assignment of Awards.** In case of any damage to or destruction of the Collateral or any material part thereof or any taking, whether for permanent or temporary use, of all or any part of the Collateral or any interest therein or right accruing thereto, as the result of or in anticipation of the exercise of the right of condemnation or eminent domain (a “Taking”), or the commencement of any proceedings or negotiations that may result in a Taking, Grantor will promptly give written notice thereof to Beneficiary, generally describing the nature and extent of such damage, destruction or Taking and Grantor’s best estimate of the cost of restoring the Collateral, or the nature of such proceedings or negotiations and the nature and extent of the Taking that might result therefrom, as the case may be. To the extent permitted by applicable law and except as otherwise expressly provided herein, Grantor hereby specifically, unconditionally and irrevocably waives all rights of a property owner granted under applicable law which provide for allocation of condemnation proceeds between a property owner and a lienholder, including the provisions of NRS Section 37.115. Beneficiary, for the benefit of the Secured Parties, shall be entitled to all insurance proceeds payable on account of such damage or destruction and to all awards or payments allocable to the Collateral on account of such Taking, and Grantor hereby irrevocably assigns, transfers and sets over to Beneficiary, for the benefit of the Secured Parties, all rights of Grantor to any such proceeds, awards or payments and irrevocably authorizes and, in the event Grantor has not filed for such proceeds by the first to occur of (i) 10 Business Days prior to the expiration of the applicable time for such filing or (ii) 30 days after damage to the Collateral or any Taking, empowers Beneficiary, at its option, in the name of Grantor or otherwise, to file and prosecute what would otherwise be Grantor’s claim for any such proceeds, award or payment and to collect, receipt for and retain the same for disposition in accordance with Section 3.03 or Section 3.04, as applicable. Grantor will pay all reasonable costs and expenses, if any, incurred by Beneficiary or any Secured Party in connection with any such damage, destruction or Taking and seeking and obtaining any insurance proceeds, awards or payments in respect thereof.

**Section 3.03. Application of Insurance Proceeds.**

(a) Subject to Sections 3.03(b) and 3.04, Beneficiary may, in its sole discretion, apply all amounts recovered under any insurance policy required to be maintained by Grantor hereunder in any one or more of the following ways:

(i) to the payment of the reasonable costs and expenses incurred by Trustee, Beneficiary, or any Secured Party in obtaining any such insurance proceeds or awards, including the fees and expenses of attorneys and insurance and other experts and consultants, the costs of litigation, arbitration, mediation, investigations and other judicial, administrative or other proceedings and all other out-of-pocket expenses;

(ii) to the payment of any Secured Obligation;

(iii) to fulfill any of the other covenants contained herein or in any other Loan Document, in accordance therewith as Beneficiary may determine after the occurrence of a Default or an Event of Default;

(iv) to Grantor for application to the cost of restoring or replacing the Collateral destroyed, damaged or taken; or

(v) to Grantor.

(b) Notwithstanding the provisions of subsection (a) of this Section to the contrary (but subject to the provisions of the Credit Agreement and the provisions of Section 3.04), if each of the following conditions is satisfied, Beneficiary, upon request of Grantor, shall apply insurance proceeds received by it to the restoration or replacement of the Collateral, to the extent necessary for the restoration or replacement thereof:

(i) there shall then exist no uncured Default or Event of Default; and

(ii) Grantor shall furnish to Beneficiary a certificate of an architect or engineer acceptable to Beneficiary stating (A) that the Collateral is capable of being restored, prior to the maturity of the Notes, to substantially the same condition as existed prior to the casualty, (B) the the insurance proceeds are sufficient for such restoration (or if not, then Grantor provides such additional funds as are necessary to accomplish such restoration), and (C) the restoration or replacement is reasonably capable of being fully completed by no later than six months prior to the latest Stated Maturity Date for any Note.

(c) In the event that such insurance proceeds are to be utilized in the restoration or replacement of the Collateral, Beneficiary shall disburse such amounts for such restoration or replacement after receipt of a written request for disbursement, on not fewer than 10 Business Days' notice and, to the extent applicable, in accordance with customary construction loan procedures and conditions. In the event that, after the restoration or replacement of the Collateral, any insurance proceeds shall remain, such amount shall be paid to Grantor.

(d) If, prior to the receipt by Beneficiary of such insurance proceeds, the Collateral shall have been sold on foreclosure, Beneficiary shall have the right to receive said insurance proceeds to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment shall have been sought or recovered or denied, and the reasonable attorneys' fees, costs and disbursements incurred by Beneficiary or any Secured Party in connection with the collection of such proceeds.

**Section 3.04. Taking and Total Destruction.** If all or any part of the Property is lost, stolen, destroyed or damaged beyond repair (and the Property is not fully replaced to Beneficiary's satisfaction) or a Taking shall occur, Beneficiary shall apply all amounts recovered under any insurance policy referred to in Section 3.01(a) and all awards received by it on account of any such Taking as follows:

(a) first, to the payment of the reasonable costs and expenses incurred by Beneficiary or any Secured Party in obtaining any such insurance proceeds or awards, including the fees and expenses of attorneys and insurance and other experts and consultants, the costs of litigation, arbitration, mediation, investigations and other judicial, administrative or other proceedings and all other out-of-pocket expenses;

(b) second, to the payment of any Secured Obligation;

(c) third, to fulfill any of the other covenants contained herein or in the Loan Documents in accordance with such Loan Documents as Beneficiary may determine after the occurrence of a Default or an Event of Default; and

(d) fourth, the balance, if any, to Grantor.

## ARTICLE IV

### EVENTS OF DEFAULT; REMEDIES

**Section 4.01. Events of Default.** The occurrence of an “Event of Default” as defined in the Credit Agreement (after the expiration of any applicable grace or cure period) shall constitute an “Event of Default” under this Instrument.

**Section 4.02. Acceleration.** Following the occurrence of an Event of Default described in subsection (f) of Section 8.01 of the Credit Agreement, all of the outstanding principal amount of the Secured Obligations shall be due and payable, whereupon the full unpaid amount of such Secured Obligations which shall be so declared due and payable shall be and become immediately due and payable, without presentment, notice of dishonor, protest or further notice of any kind, all of which are hereby expressly waived by Grantor. Following the occurrence of any other Event of Default, Beneficiary may by notice to Grantor, declare all or any portion of the outstanding principal amount of the Secured Obligations to be due and payable, whereupon the full unpaid amount of such Loans and other Secured Obligations which shall be so declared due and payable shall be and become immediately due and payable, without presentment, notice of dishonor, protest or further notice of any kind, all of which are hereby expressly waived by Grantor. Grantor will pay on demand all costs and expenses, including, without limitation, reasonable attorneys’ fees and expenses, incurred by or on behalf of Beneficiary or any Secured Party in enforcing this Instrument, the Secured Obligations or the Loan Documents or occasioned by any Event of Default hereunder or thereunder.

**Section 4.03. Legal Proceedings; Foreclosure.** If an Event of Default shall have occurred (after the expiration of any applicable grace or cure period), Beneficiary at any time may, at Beneficiary’s sole discretion, proceed at law or in equity or otherwise to enforce the payment of the Obligations and the Trustee shall have the right to foreclose the Lien of this Instrument as against all or any part of the Collateral and to have the same sold under the judgment or decree of a court of competent jurisdiction. Beneficiary and/or Trustee shall be entitled to recover in such proceedings all costs incident thereto, including, without limitation, reasonable attorneys’ fees and expenses in such amounts as may be fixed by the court. Any Person, including Beneficiary, may bid at any sale or auction.

**Section 4.04. Power of Sale.**

(a) If an Event of Default shall have occurred, Beneficiary may (as permitted by Law), at Beneficiary’s sole discretion, direct Trustee to sell the Collateral, after the lapse of such time as may then be required by Law, and notice of default and notice of sale having been given as then required by Law, sell the Collateral on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels and in such order as Trustee may determine, but subject to any statutory right of Borrower to direct the order in which such property, if consisting of several known lots, parcels or interests, shall be sold, at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. Trustee may, in the manner provided by law, postpone sale of all or any portion of the Collateral 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; provided, however, that no more than three postponements of any one noticed sale shall be permitted, and each such sale that is postponed must be postponed to a later date at the same time and location as the original time and location of sale set forth in the original notice of sale. Trustee shall execute and deliver to the purchaser at any such sale a deed conveying the property so sold, but 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 Beneficiary, may bid at the sale.

(b) In the event of any foreclosure, to the extent permitted by applicable law, Beneficiary will be entitled to a judgment which will provide that if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for any amount by which the unpaid balance of the Secured Obligations exceeds the net sale proceeds payable to Beneficiary.

(c) 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.

**Section 4.05. UCC Remedies.** If an Event of Default shall have occurred, Beneficiary may exercise from time to time and at any time any rights and remedies available to it under applicable Law upon default in the payment of indebtedness, including, without limitation, any right or remedy available to it as a secured party under the UCC. Grantor shall, promptly upon request by Beneficiary, assemble the Collateral, or any portion thereof generally described in such request, and make it available to Beneficiary at such place or places designated by Beneficiary and reasonably convenient to Beneficiary. If Beneficiary elects to proceed under the UCC to dispose of portions of the Collateral, Beneficiary, at its option, may give Grantor notice of the time and place of any public sale of any such property, or of the date after which any private sale or other disposition thereof is to be made, by sending notice by registered or certified first class mail, postage prepaid, to Grantor at least 10 days before the time of the sale or other disposition. If any notice of any proposed sale, assignment or transfer by Beneficiary of any portion of the Collateral or any interest therein is required by Law, Grantor conclusively agrees that 10 days' notice to Grantor of the date, time and place thereof is reasonable.

**Section 4.06. Intentionally left blank.**

**Section 4.07. Purchase of Collateral by Beneficiary.** Beneficiary may be a purchaser of the Collateral or of any part thereof or of any interest therein at any sale thereof, whether pursuant to power of sale, foreclosure or otherwise, and Beneficiary may apply the purchase price thereof to the Secured Obligations.

**Section 4.08. Receipt a Sufficient Discharge to Purchaser.** Upon any sale of the Collateral or any part thereof or any interest therein, whether pursuant to power of sale, foreclosure or otherwise, the receipt of Trustee or the officer making the sale under judicial proceedings shall be a sufficient discharge to the purchaser for the purchase money, and such purchaser shall not be obliged to see to the application thereof.

**Section 4.09. Waivers.** To the fullest extent Borrower may lawfully do so, Borrower hereby agrees as follows:

(a) Borrower will not at any time, insist on, plead, claim or take the benefit or advantage of any statute or rule of law now or hereafter in force providing for any appraisalment, valuation, stay, extension, moratorium or redemption, or of any statute of limitations, and Borrower, for itself and its heirs, devisees, representatives, successors and assigns, and for any and all Persons ever claiming an interest in the Property (other than Beneficiary) hereby, to the extent permitted by applicable law, waives and releases all rights of redemption, valuation, appraisalment, notice of intention to mature or declare due the whole of the Indebtedness, and all rights to a marshaling of the assets of Borrower, including the Property, or to a sale in inverse

order of alienation, in the event of foreclosure of the liens and security interests created hereunder. To the extent that it lawfully may, Grantor agrees that it will not invoke any law relating to the marshaling of assets which might cause a delay in or impede the enforcement of Beneficiary's or Trustee's rights and remedies under this Instrument or under any of the other Loan Documents, and, to the extent that it lawfully may, Grantor irrevocably waives the benefits of all such laws, including any rights provided under NRS Sections 100.040 and 100.050. In the event of foreclosure pursuant to the provisions hereof, Beneficiary may, at Beneficiary's option, obtain an appraisal of the Property and any funds expended by Beneficiary or any Secured Party for such purpose shall become indebtedness of Borrower to Beneficiary secured by this Instrument and shall be paid by Borrower to Beneficiary within 10 days of demand.

(b) Borrower shall not have or assert any right under any statute or rule of law pertaining to any of the matters set forth in this Section 4.09, to the administration of estates of decedents or to any other matters whatsoever to defeat, reduce or affect any of the rights or remedies of Trustee and Beneficiary hereunder, including the rights of Trustee and/or Beneficiary hereunder to a sale of the Property for the collection of the Secured Obligations without any prior or different resort for collection, or to the payment of the Indebtedness out of the proceeds of sale of the Property in preference to any other Person.

(c) If any statute or rule of law referred to in this Section 4.09 and now in force, of which Borrower or any of its representatives, successors or assigns and such other Persons claiming any interest in the Property might take advantage despite this Section 4.09, shall hereafter be repealed or cease to be in force, such statute or rule of law shall not thereafter be deemed to preclude the application of this Section 4.09.

(d) Borrower shall not be relieved of its obligation to pay the Secured Obligations at the time and in the manner provided herein and in the other Loan Documents, nor shall the lien or priority of this Instrument or any other Loan Documents be impaired by any of the following actions, non-actions or indulgences by Trustee or Beneficiary:

(i) any failure or refusal by Trustee, Beneficiary, or any Secured Party to comply with any request by Borrower (X) to consent to any action by Borrower or (Y) to take any action to foreclose this Instrument or otherwise enforce any of the provisions hereof or of the other Loan Documents;

(ii) any release, regardless of consideration, of the whole or any part of the Property or any other security for the Indebtedness or any Person liable for payment of the Indebtedness;

(iii) any waiver by Beneficiary of compliance by Borrower with any provision of this Instrument or the other Loan Documents, or consent by Beneficiary to the performance by Borrower of any action which would otherwise be prohibited thereunder, or to the failure by Borrower to take any action which would otherwise be required hereunder or thereunder; and

(iv) any agreement or stipulation between Trustee, Beneficiary, or any Secured Party and Borrower, or, with or without Borrower's consent, between Trustee, Beneficiary, or any Secured Party and any subsequent owner or owners of the Property or any other security for the Secured Obligations, renewing, extending or modifying the time of payment or the terms of this Instrument or any of the other Loan Documents (including a modification of any interest rate), and in any such event Borrower shall

continue to be obligated to pay the Indebtedness at the time and in the manner provided herein and in the other Loan Documents, as so renewed, extended or modified, unless expressly released and discharged by Beneficiary.

(e) Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Property, Beneficiary may release any Person at any time liable for the payment of the Indebtedness or any portion thereof or any part of the security held for the Indebtedness and may extend the time of payment or otherwise modify the terms of this Instrument or of any of the Loan Documents, including a modification of the interest rate payable on the principal balance of the Note, without in any manner impairing or affecting this Instrument, as so extended and modified, as security for the Secured Obligations under any such subordinate lien, encumbrance, right, title or interest. Beneficiary may resort for the payment of the Secured Obligations to any other security held by Beneficiary (or any trustee for the benefit of Beneficiary) in such order and manner as Beneficiary in its discretion, may elect. Beneficiary may take or cause to be taken action to recover the Indebtedness, or any portion thereof, or to enforce any provision hereof or of the other Loan Documents without prejudice to the right of Beneficiary thereafter to foreclose or cause to be foreclosed this Instrument. Beneficiary shall not be limited exclusively to the right and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by law or equity. The rights of Trustee and Beneficiary under this Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Trustee, Beneficiary and/or any Secured Party shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

**Section 4.10. Obligations to Become Due on Sale.** Upon any sale of the Collateral or any portion thereof or interest therein by virtue of the exercise of any remedy by Beneficiary or Trustee under or by virtue of this Instrument, whether pursuant to power of sale, foreclosure or otherwise in accordance with this Instrument or by virtue of any other remedy available at law or in equity or by statute or otherwise, at the option of Beneficiary, all Secured Obligations shall, if not previously declared due and payable, immediately become due and payable, together with interest accrued thereon and all other indebtedness secured by this Instrument.

**Section 4.11. Application of Proceeds of Sale and Other Moneys.** The proceeds of any sale of the Collateral or any part thereof or any interest therein under or by virtue of this Instrument, whether pursuant to power of sale, foreclosure or otherwise, and all other moneys at any time held by Beneficiary or Trustee as part of the Collateral, shall be applied as follows:

FIRST, to pay fees, expenses or indemnities to enforce this Instrument or then due to Beneficiary, any Lender, any Secured Party, or Trustee;

SECOND, to pay Secured Obligations in respect of any other fees, expenses or indemnities then due to Beneficiary, any Lender, or any Secured Party;

THIRD, to pay interest due in respect of the Loans;

FOURTH, to pay the principal outstanding with respect to the Loans; and

FIFTH, to the payment of all other Secured Obligations.

**Section 4.12. Appointment of Receiver.** If an Event of Default shall have occurred (after the expiration of any applicable grace or cure period), Beneficiary shall, as a matter of right and without

regard to the adequacy of any security for the Secured Obligations secured hereby or the solvency of Grantor, be entitled to the appointment of a receiver for all or any part of the Collateral, whether such receivership be incidental to a proposed sale of the Collateral or otherwise, and Grantor hereby consents to the appointment of such a receiver and will not oppose any such appointment. Without limiting the generality of the foregoing, the receiver shall have the power to (i) enter on and take immediate possession of the Premises; (ii) protect and preserve the Collateral; (iii) operate the Premises prior to and during any foreclosure proceedings; (iv) collect the Rents and apply the proceeds, over and above the costs of the receivership, to the indebtedness secured hereby; (v) in its own name or in the name of Grantor sue for or otherwise collect any and all Rents, including those that are past due; (vi) enter into, enforce, modify or cancel leases on such terms and conditions as Beneficiary may consider proper; (vii) obtain and evict tenants; (viii) fix or modify Rents; (ix) complete any unfinished construction and contract for and make repairs and alterations; (x) perform such acts of cultivation or irrigation as necessary to conserve the value of the Premises; (xi) advance funds to keep current any liens, if any, taxes and assessments encumbering the Premises which are senior to any lien arising under this Instrument; (xii) apply, obtain and pay any reasonable fees for any lawful license, permit or other governmental approval relating to the Premises or the operation thereof; (xiii) take possession and control of all the records, correspondence, insurance policies, books and accounts of Grantor and the Collateral; (xiv) open all mail and other correspondence received in connection with the Premises whether addressed to Grantor or otherwise; (xv) access all office equipment used by Grantor in connection with the development, construction, improvement, leasing, sales, marketing and/or conveyance of the Premises, including all computer equipment, all software programs and passwords, and any other information, data, equipment or items necessary for the operation of Grantor's business with respect to the Premises, whether in the possession and control of Grantor or its agents, servants or employees; (xvi) hire, employ, pay and terminate servants, agents, employees, clerks and accountants, purchase materials, supplies advertising and other services at ordinary and usual rates and prices; (xvii) market, sell and/or convey the Premises, including the right and power to execute and deliver any and all necessary documents to consummate any sale of the Premises including, but not limited to, any contracts, deeds and, if the Premises is sold with the Loan in place to a party assuming the Loan on terms satisfactory to Beneficiary, Loan assumption and modification documents; and (xviii) engage one or more third parties or affiliates to act as broker in marketing or selling the Premises with the costs of such broker(s) being paid on a commercially reasonable leasing commission basis as may be approved by the sole discretion of Beneficiary. Any proposed sale of the Premises in connection with (xvii) and (xviii) above which would provide to Beneficiary and the other Secured Parties less than the full amount of the indebtedness owed by Grantor shall be subject to Beneficiary's prior written approval in its sole and absolute discretion.

**Section 4.13. Possession, Management and Income.** If an Event of Default shall have occurred (after the expiration of any applicable grace or cure period), in addition to, not in limitation of, the rights and remedies provided in Section 2.10, Beneficiary, upon five days' notice to Grantor, may enter upon and take possession of the Collateral or any part thereof by force, summary proceeding, ejectment or otherwise and may remove Grantor and all other Persons and any and all property therefrom and may hold, operate, maintain, repair, preserve and manage the same and receive all earnings, income, Rents, issues and proceeds accruing with respect thereto or any part thereof. Notwithstanding the foregoing, if in Beneficiary's or Trustee's reasonable discretion, immediate action is necessary in order to preserve the value of the Collateral or Beneficiary's Lien thereon or rights thereto, the above described notice shall not be required. All amounts expended by Beneficiary or Trustee pursuant to this Section or any other provision of this Instrument or the other Loan Documents, with interest thereon at the Default Rate from the date incurred until paid, shall be deemed to be obligatory advances and constitute part of the Obligations and are secured by the Liens securing the Obligations, including the lien of this Instrument. Beneficiary shall be under no liability for or by reason of any such taking of possession, entry, removal or holding, operation or management.

**Section 4.14. Right of Beneficiary to Perform Grantor's Covenants.** During the continuance of an Event of Default (after the expiration of any applicable grace or cure period), Beneficiary, without notice to or demand upon Grantor and without waiving or releasing any obligation or Event of Default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Grantor, and may enter upon the Collateral for such purpose and take all such action thereon as, in Beneficiary's opinion, may be necessary or appropriate therefor. No such entry and no such action shall be deemed an eviction of any Tenant or other person with the right to use or occupy all or any portion of the Property or any part thereof. After the occurrence of an Event of Default, all sums so paid by Beneficiary or any Secured Party and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred, together with interest thereon at the highest rate provided for in the Credit Agreement from the date of payment or incurring, shall constitute additional indebtedness secured by this Instrument and shall be paid by Grantor to Beneficiary within 10 days of demand.

**Section 4.15. Subrogation.** To the extent that proceeds of any Loan are used to, on or after the date hereof, pay any sum due under any provision of any legal requirement or any instrument creating any Lien prior or superior to the Lien of this Instrument, or Grantor or any other Person pays any such sum with the proceeds of the Loans evidenced by the Note, Beneficiary shall have and be entitled to a Lien on the Collateral equal in priority to the Lien discharged, and Beneficiary, on behalf of Lenders, shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such Lien, that shall remain in existence and benefit Beneficiary in securing the Obligations.

**Section 4.16. Remedies Cumulative.** To the fullest extent permitted by applicable law, Beneficiary and Trustee shall be entitled to enforce payment and performance of any Obligations and to exercise all rights and powers under this Instrument 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 Instrument nor its enforcement, whether by court action or pursuant to the power of sale or other powers contained in this Instrument, shall prejudice or in any manner affect Beneficiary's or Trustee's right to realize upon or enforce any other security now or hereafter held by Beneficiary or Trustee, it being agreed that Beneficiary and Trustee shall be entitled to enforce this Instrument and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as it may in its absolute discretion determine. No remedy conferred in this Instrument upon or reserved to Beneficiary or Trustee is intended to be exclusive of any other remedy in this Instrument 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 Beneficiary or Trustee, or to which Beneficiary 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 Beneficiary or Trustee. Beneficiary or Trustee may pursue alternative or inconsistent remedies.

**Section 4.17.** Each right, power and remedy of Beneficiary and Trustee provided for in this Instrument or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Instrument or the other Loan Documents, or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Beneficiary or Trustee of any one or more of the rights, powers or remedies provided for in this Instrument, or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Beneficiary or Trustee of any or all such other rights, powers or remedies.

**Section 4.18. Provisions Subject to Applicable Law.** All rights, powers and remedies provided in this Instrument may be exercised only to the extent that the exercise thereof does not violate any

applicable provisions of Law and are intended to be limited to the extent necessary so that they will not render this Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Instrument and any other application of such term shall not be affected thereby.

**Section 4.19. No Waiver, Compromise of Actions.** No failure by Beneficiary to insist upon the strict performance of any term hereof or of any other Loan Documents, or to exercise any right, power or remedy consequent upon a breach hereof or thereof, shall constitute a waiver of any such term or of any such breach. No waiver of any breach shall affect or alter this Instrument, which shall continue in full force and effect with respect to any other then existing or subsequent breach. By accepting payment or performance of any amount or other Secured Obligation before or after its due date, neither Beneficiary nor any Lender shall be deemed to have waived its right either to require prompt payment or performance when due of all other amounts payable hereunder and the Secured Obligations or to declare a default for failure to effect such prompt payment. Any action, suit or proceeding brought by Beneficiary pursuant to any of the terms of this Instrument, any Loan Document or otherwise, and any claim made by Beneficiary hereunder or thereunder may be compromised, withdrawn or otherwise dealt with by Beneficiary without any notice to or approval of Grantor.

**Section 4.20. Additional Provisions as to Remedies.**

(a) Neither Trustee nor Beneficiary shall have any obligation to pursue any rights or remedies they may have under any other agreement prior to pursuing their rights or remedies hereunder or under the other Loan Documents.

(b) No recovery of any judgment by Trustee or Beneficiary and no levy of an execution upon the Property or any other property of Borrower shall affect, in any manner or to any extent, the lien of this Instrument upon the Property, or any liens, rights, powers or remedies of Trustee or Beneficiary hereunder, and such liens, rights, powers and remedies shall continue unimpaired as before.

(c) Beneficiary may resort or cause Trustee to resort to any security given by this Instrument or any other security now given or hereafter existing to secure the Secured Obligations, in whole or in part, in such portions and in such order as Beneficiary may deem advisable, and no such action shall be construed as a waiver of any of the liens, rights or benefits granted hereunder.

(d) Acceptance of any payment after the occurrence of any Event of Default shall not be deemed a waiver or a cure of such Event of Default, and acceptance of any payment less than any amount then due shall be deemed an acceptance on account only.

(e) In the event that Trustee or Beneficiary shall have proceeded to enforce any right or remedy hereunder by foreclosure, sale, entry or otherwise, and such proceeding shall be discontinued, abandoned or determined adversely for any reason, then Borrower, Trustee and Beneficiary shall be restored to their former positions and rights hereunder with respect to the Property, subject to the lien hereof.

## ARTICLE V

### MISCELLANEOUS

#### **Section 5.01. Further Assurances; Financing Statements; Recordation.**

(a) Grantor, at its expense, will execute, acknowledge and deliver all such instruments and take all such other action as Beneficiary from time to time may reasonably request in order to further effectuate the purposes of this Instrument and to carry out the terms hereof and to better assure and confirm to Beneficiary its rights, powers and remedies hereunder.

(b) Notwithstanding any other provision of this Instrument, Grantor hereby agrees that, without notice to or the consent of Grantor, Beneficiary may file with the appropriate public officials such financing statements, continuation statements, amendments and similar documents as are or may become necessary to perfect, preserve or protect the security interest granted by this Instrument.

(c) Grantor, at its expense, will at all times cause this Instrument and any document, agreement or instrument amendatory hereof or supplemental hereto or thereof (and any appropriate financing statements or other instruments and continuations thereof), and each other document, agreement and instrument delivered in connection with the Loan Documents and intended thereunder to be recorded, registered and filed, to be kept recorded, registered and filed, in such manner and in such places, and will pay all such recording, registration, filing fees, taxes and other charges, and will comply with all such statutes and regulations as may be required by Law in order to establish, preserve, perfect and protect the Lien of this Instrument as a valid, first mortgage lien and first priority perfected security interest in the Collateral, subject only to the Permitted Liens. Grantor will pay or cause to be paid, and will indemnify Beneficiary in respect of, all taxes and other fees and charges (including interest and penalties) at any time payable in connection with the filing and recording of this Instrument and any and all supplements and amendments hereto.

**Section 5.02. Additional Security.** Without notice to or consent of Grantor, and without impairment of the Lien and rights created by this Instrument, Beneficiary may, for the benefit of the Secured Parties, accept from Grantor or any other Person additional security for the Secured Obligations. Neither the giving of this Instrument nor the acceptance of any such additional security shall prevent Beneficiary from resorting, first, to such additional security, or, first, to the security created by this Instrument, or concurrently to both, in any case without affecting Beneficiary's Lien and rights under this Instrument.

**Section 5.03. Provisions Regarding Trustee.** Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever. Trustee shall not be personally liable in case of entry by it or anyone acting by virtue of the powers herein granted it upon the Collateral for debts contracted or liability or damages incurred in the management or operation of the Collateral. All monies received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other monies (except to the extent required by Law) and Trustee shall be under no liability for interest on any monies received by it hereunder. Trustee may resign by giving 30 days' prior written notice of such resignation to Beneficiary. If Trustee shall die, resign or become disqualified from acting, or shall fail or refuse to exercise its powers hereunder when requested by Beneficiary so to do, or if for any reason and without cause Beneficiary shall prefer to appoint a substitute trustee to act instead of the original Trustee named herein, or any prior successor or substitute trustee, Beneficiary shall

have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the aforementioned Trustee. Upon appointment by Beneficiary and upon recording of the substitution in the land records of the county of recordation of this Instrument, any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the rights hereunder with the same effect as if originally named as Trustee herein.

**Section 5.04. Notices.** Except as otherwise provided herein, all notices, certificates, requests, demands and other communications provided for hereunder shall be in writing and shall be given and deemed delivered as provided in Section 10.02 of the Credit Agreement.

**Section 5.05. Waivers, Amendments.** The provisions of this Instrument may be amended, discharged or terminated only by an instrument in writing executed by Grantor and Beneficiary, and the observance or performance of any provision of this Instrument may be waived, either generally or in a particular instance and either retroactively or prospectively, only by an instrument in writing executed by Beneficiary.

**Section 5.06. Governing Law.** THIS INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE LAWS OF THE STATE OF THE STATE WHERE THE PREMISES IS LOCATED, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

**Section 5.07. Successors and Assigns.** This Instrument shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; *provided, however*, that Grantor may not assign or transfer its rights or obligations hereunder without the prior written consent of Beneficiary.

**Section 5.08. Waiver of Jury Trial.** GRANTOR HEREBY WAIVE GRANTOR'S RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS INSTRUMENT, ANY OF THE LOAN DOCUMENTS, ANY DEALINGS BETWEEN BENEFICIARY AND GRANTOR RELATING TO THE SUBJECT MATTER OF THE TRANSACTIONS CONTEMPLATED BY THIS INSTRUMENT OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN BENEFICIARY AND GRANTOR. GRANTOR ACKNOWLEDGES AND AGREES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR BENEFICIARY AND LENDERS ENTERING INTO THIS INSTRUMENT AND THE OTHER LOAN DOCUMENTS. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS INSTRUMENT, ANY LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED BY THIS INSTRUMENT OR ANY RELATED TRANSACTIONS. IN THE EVENT OF LITIGATION, THIS INSTRUMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**Section 5.09. Time of Essence.** Time is of the essence with respect to Grantor's obligations under this Instrument.



**Section 5.10. No Offset.** Grantor's obligation to make payments and perform all obligations, covenants and warranties under this Instrument and under the other Loan Documents shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or other right that Grantor or any guarantor may have or claim against Beneficiary, any Lender, or any Secured Party. The foregoing provisions of this section, however, do not constitute a waiver of any claim or demand which Grantor or any guarantor may have in damages or otherwise against Lender or any other person, or preclude Grantor from maintaining a separate action thereon; provided, however, that Grantor waives any right it may have at law or in equity to consolidate such separate action with any action or proceeding brought by Beneficiary, any Lender, or any Secured Party.

**Section 5.11. Severability.** Any provision of this Instrument or other Loan Documents that is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Instrument or such Loan Documents or affecting the validity or unenforceability of such provision in any other jurisdiction.

**Section 5.12. The Trustee.** Trustee accepts the trusts hereby created and agrees to perform its duties in this Deed of Trust for the benefit of Beneficiary, on behalf of the Secured Parties. To the extent permitted by and consistent with applicable law, Trustee will not exercise its rights under this Instrument except upon written direction from Beneficiary. From time to time, by a writing signed and acknowledged by Beneficiary and recorded in the Office of the Recorder of the County in which the Premises is situated, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named trustee herein. A writing recorded pursuant to the provisions of this paragraph shall be conclusive proof of the proper substitution of such new trustee and no further documentation, including any corporate resolution or other authorization shall be required, and such successor(s) shall, without conveyance from the Trustee predecessor, succeed to all title, estate, rights, powers and duties of such predecessor. 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.

**Section 5.13. Statutory Covenants.** Where not inconsistent with the provisions of this Instrument, the following covenants, Nos. 1; 2 (full replacement value); 3; 4 (Default Rate, as defined in the Credit Agreement); 5; 6; 7 (a reasonable percentage); 8 and 9 of NRS Section 107.030 are hereby adopted and made a part of this Instrument; provided, that with respect to covenant Nos. 3, 4 and 9, in the event of any conflict between such covenants and the provisions of any other Loan Document, the provisions of such Loan Document shall prevail.


[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK; EXECUTION PAGE FOLLOWS]

**IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS INSTRUMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS INSTRUMENT ONLY BY ANOTHER WRITTEN AGREEMENT.**

IN WITNESS WHEREOF, Grantor has caused this Instrument to be duly executed as of the day and year first above written.

GRANTOR:

**BLADOW PROPERTIES, LLC**, a Nevada limited liability company

By   
Printed Name: Oliver Ham Martin  
Its: Non-Member Manager

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2016 by Oliver Ham Martin as Non-Member Manager of **BLADOW PROPERTIES, LLC**, a Nevada limited liability company.

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

Printed Name: \_\_\_\_\_

(Seal)

My Commission Expires:  
\_\_\_\_\_

[EXECUTION PAGE OF AMENDED AND RESTATED COMMERCIAL DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING – HIGHWAY 395, GARDENVILLE, NV]

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of San Diego )

On 12-12-2010 before me, Crystal Marie Gonzales, Notary Public,  
Date Here Insert Name and Title of the Officer

personally appeared Oliver Ham Martin  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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 Crystal Marie Gonzales  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_  
Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

SCHEDULE 1

DESCRIPTION OF LAND

A PARCEL OF LAND LOCATED WITHIN A PORTION OF THE NORTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER (NW¼ NW¼) OF SECTION 4, TOWNSHIP 12 NORTH, RANGE 20 EAST, MOUNT DIABLO MERIDIAN, DOUGLAS COUNTY, NEVADA, DESCRIBED AS FOLLOWS:

COMMENCING AT CENTERLINE STATION "A" 370+44.51 OF U.S. HIGHWAY 395 PER FOUND NEVADA DEPARTMENT OF TRANSPORTATION HIGHWAY RIGHT-OF-WAY BRASS CAP MONUMENTS;

THENCE ALONG SAID CENTERLINE SOUTH 51°04'00" EAST, PER DOCUMENT NO. 28058, 1403.69 FEET;

THENCE NORTH 38°56'00" EAST, A RIGHT ANGLE TO THE PRECEDING COURSE A DISTANCE OF 40.00 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF U.S. 395, SAID POINT FURTHER DESCRIBED AS THE SOUTHWESTERLY MOST CORNER OF THE PROPERTY CONVEYED TO WAYNE C. MATLEY ET UX RECORDED MAY 19, 1971 IN BOOK 87 OF OFFICIAL RECORDS AT PAGE 109, IN DOUGLAS COUNTY, NEVADA;

THENCE ALONG SAID RIGHT-OF-WAY LINE SOUTH 51°04'00" EAST, 50.00 FEET TO THE TRUE POINT OF BEGINNING.

THENCE NORTH 38°54'53" EAST, 190.00 FEET;  
THENCE SOUTH 51°04'00" EAST, 166.85 FEET;  
THENCE SOUTH 38°54'53" WEST, 190.00 FEET, TO THE NORTHEASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY 395;  
THENCE ALONG SAID RIGHT-OF-WAY LINE NORTH 51°04'00" WEST, 166.85 FEET TO THE POINT OF BEGINNING.

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION APPEARED PREVIOUSLY IN THAT CERTAIN DOCUMENT RECORDED NOVEMBER 25, 2003 IN BOOK 1103, PAGE 11073 AS INSTRUMENT NO. 597781 OF OFFICIAL RECORDS.

SCHEDULE 2

EXISTING DEED OF TRUST

1. Deed of Trust, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing dated December 26, 2013 and recorded in the Douglas County real estate records on December 30, 2013 as Document Id. Number 836096, at Book 1213, Page 5158.

