

AFTER RECORDING MAIL TO:
First American Title Insurance Company
ATTN: Kimberly Walters
7370 College Parkway, Ste 104
Fort Myers, FL 33907



200708160005

Skagit County Auditor

8/16/2007 Page 1 of 20 9:21AM

After Filing, Return To:

First American Title Insurance Co.
Attn: Kimberly Walters
7370 College Parkway, Suite 104
Fort Myers, FL 33907

Document Title(s) (or transactions contained therein):

GUARDIAN NORTHWEST TITLE CO. 01953-1

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

Reference Number(s) of Documents assigned or released: N/A

Grantor(s) (Last Name first, then First Name and initials):

1. DWO, LLC, an Alaska limited liability company

Grantee(s) (Last Name first, then First Name and initials):

1. MERRILL LYNCH CAPITAL, A DIVISION OF MERRILL LYNCH
BUSINESS FINANCIAL SERVICES INC., a Delaware corporation
2. FIRST AMERICAN TITLE INSURANCE COMPANY

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

Section 18, Township 34, Range 4; Ptn. NE SE

Assessor's Property Tax Parcel/Account Number:

8006-000-006-0005 (P26285)

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

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

THIS LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT, FINANCING STATEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING (this "Deed of Trust") is made as of 10-27, 2007 by **DWO, LLC**, a limited liability company organized and existing under the laws of the State of Alaska, having its principal office at One Centerpoint Drive, Suite 315, La Palma, California 90623 ("Grantor") to **FIRST AMERICAN TITLE INSURANCE COMPANY** whose address is 7370 College Parkway, Suite 104, Ft. Myers, Florida 33907, as Trustee ("Trustee") for the benefit of **MERRILL LYNCH CAPITAL, A DIVISION OF MERRILL LYNCH BUSINESS FINANCIAL SERVICES INC.**, a Delaware corporation having its principal office at 222 North LaSalle Street, 16th Floor, Chicago, Illinois 60601 ("Beneficiary").

I. DEFINITIONS

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement or the Uniform Commercial Code (the "UCC"), as enacted in the state in which the Real Property is located, as applicable. In addition to terms defined elsewhere in this Deed of Trust, when used herein the following terms shall have the following meanings:

- (a) "Credit Agreement" shall mean that certain Credit Agreement dated as of an even date herewith between Borrower and Beneficiary, as the same may from time to time be or have been amended, renewed, restated, extended or supplemented.
- (b) "Fee Owner" shall mean the Person(s) described on Exhibit "B".
- (c) "Notes" shall have the meaning ascribed to it in the Credit Agreement. The Loans (evidenced by the Notes) have an aggregate principal amount of \$19,400,000.
- (d) "Obligations" means all obligations, liabilities and indebtedness (monetary (including post-petition interest, whether or not allowed) or otherwise) of each Grantor and any Affiliate thereof under any Financing Document and any other document, agreement or instrument entered into with or in favor of Beneficiary or any Affiliate thereof, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due. In addition to, but without duplication of, the foregoing, the Obligations shall include, without limitation, all obligations, liabilities and indebtedness arising from or in connection with all Swap Contracts entered into with any Eligible Swap Counterparty.
- (e) "Real Property" shall mean the real property commonly known as described on Exhibit "A" and more fully described in Exhibit "A" attached hereto and made a part hereof, and all buildings, fixtures and other improvements thereon.
- (f) "Lease" shall mean, collectively, (a) that certain sublease agreement of the Real Property (the "Sublease") by and between Denny's, Inc. or its predecessor in interest, as sublessor ("Sublessor")



and Grantor or its predecessor in interest, as sublessee, dated on or about the date hereof, and (b) that certain prime lease agreement of the Real Property (the "Prime Lease") by and between Fee Owner or its predecessor in interest, as lessor, and Sublessor or its predecessor in interest, as lessee, dated as of the date set forth on Exhibit "B".

II. THE GRANT; ASSIGNMENT OF RENTS AND LEASES

2.01 **Grant.** In order to induce Beneficiary and its Affiliates to extend or continue to extend credit to Borrower under the Credit Agreement or otherwise, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to secure the payment and performance of the Financing Documents and the other agreements, documents or instruments evidencing the Obligations and the covenants and agreements therein contained, Grantor does hereby grant, bargain, sell, convey and mortgage to Beneficiary and its successors and assigns, for its benefit and for the benefit of each of its Affiliates, WITH POWER OF SALE, all of Grantor's estate, right, title and interest therein, together with the following described property (the "Property"):

- (a) Grantor's leasehold interest in the Real Property pursuant to the Lease, and all materials intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included as part of the Property immediately upon the delivery thereof to the Real Property;
- (b) All right, title, and interest of Grantor, including any after-acquired title or reversion, in and to the rights-of-ways, streets, avenues, sidewalks, and alleys adjoining the Property;
- (c) Each and all of the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, other rights, liberties and privileges of the Property in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity, as well as any after-acquired title, franchise or license and the reversions and remainders thereof; all royalties and revenue of every kind, nature and description whatsoever that Grantor may be entitled to receive from any person, company or corporation owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the Property;
- (d) All rents, issues, deposits and profits accruing and to accrue from the Property and the avails thereof;
- (e) All of Grantor's rights and claims, in and to all Accounts, Chattel Paper, Documents, General Intangibles, accounts receivable, security deposits, insurance premium rebates, writings evidencing a monetary obligation, contract rights and other creditor's interests existing in favor of, owned or acquired by Grantor with respect to the Property; including without limitation, all contracts relating to the use, operation, occupation, maintenance, repair or construction of the Real Property; all permits, licenses, franchises benefiting the Property, together with the benefit of any deposits or payments now or hereafter made by Grantor or on its behalf in connection with the foregoing; and all books and records, including but not limited to all lease documents, relating to the Property;



(f) All Goods, Equipment and Inventory located at or used in connection with any of the Property, including, without limitation, all machinery, fittings, apparatus, appliances, furniture, furnishings, tools, fixtures (including, without limitation, all heating, air conditioning, ventilating, waste disposal, sprinkler and fire and theft protection equipment, and all plumbing, lighting, communications and elevator fixtures) and other property of every kind and description now or hereafter owned by Grantor and located upon or in, and used or useful in connection with, the operation, maintenance or occupancy of the Property, and all Accessions, renewals or replacements thereof or articles in substitution therefor, whether or not the same are attached to such improvements (collectively, the "Personal Property"); and

(g) All judgments, awards of damages or settlements related to and all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including but not limited to proceeds of insurance and/or condemnation, and all products, proceeds, additions, accessions, attachments, parts, replacements and substitutes therefor.

THIS DOCUMENT CONSTITUTES A FIXTURE FILING UNDER WASHINGTON LAW.

This security interest granted by Grantor to Beneficiary includes a security interest in all goods of Grantor that are to become fixtures to the Real Property and this Deed of Trust is intended to be a fixture filing.

In addition, this Deed of Trust secures all amounts advanced by Beneficiary to protect and preserve the lien of this Deed of Trust, as aforesaid including without limitation, any payment made by Beneficiary for taxes, assessments insurance premiums and other amounts as provided in the Financing Documents.

To have and to hold the Property, together with all and singular the rights, hereditaments, and appurtenances in anywise appertaining or belonging thereto, unto Trustee and Trustee's successors or substitutes in this trust, and Trustee's successors and assigns, for the uses and purposes hereinafter set forth forever.

2.02 Special Terms Concerning This Deed of Trust. This Deed of Trust is given as equal security for all of the Obligations without preference or priority of any part of the Obligations for any reason whatsoever. The Loans secured by this Deed of Trust contemplate a variable rate of interest.

2.03 UCC. Grantor acknowledges and agrees that all of the Property now and hereafter owned by Grantor and placed by Grantor on the Real Property or used in connection with the operation or maintenance thereof shall, so far as permitted by law, be deemed for the purposes of this Deed of Trust to be part of the Property and covered by this Deed of Trust, and as to any of the Property which is not part of the Real Property or does not constitute a Fixture, this Deed of Trust shall be deemed to be, as well, a security agreement under the UCC for the purpose of creating hereby a security interest in such property, which Grantor hereby grants to Beneficiary as "secured party," as such term is defined in the UCC. All Property acquired by Grantor after the date hereof which is required or intended by the terms of this Deed of Trust to be subjected to the lien and security



interest of this Deed of Trust shall, immediately upon the acquisition thereof by Grantor, and without any further Deed of Trust, conveyance, assignment or transfer, become subject to the lien and security interest of this Deed of Trust. This Deed of Trust constitutes a security agreement under the Uniform Commercial Code in fixtures and may be filed as a fixture filing pursuant to RCW 62A.9A-502. Grantor agrees that Lender may file any financing statement, amendment, renewal, continuation statement or other document as Lender deems necessary to perfect, reserve, continue, extend or maintain the security interest granted by Grantor under this Deed of Trust.

2.04 Assignments of Rents and Leases. Grantor hereby assigns, transfers and sets over unto Beneficiary all the rents, fees or payments now or hereafter due, under or by virtue of any lease or other agreement, whether oral or written, for the use or occupancy of any part of the Property and to all amendments and guarantees thereof, whether heretofore, now or hereafter agreed to; together with the right to let and relet the Property or any part thereof, in Beneficiary's sole discretion, and to do anything with respect to the Property as Grantor might do. Any proceeds received hereunder may be applied by Beneficiary as otherwise provided in Section 4.09 of this Deed of Trust. Grantor hereby directs all tenants, lessees and occupants of the Property to pay all rental, payments or fees for use and occupancy of the Property in accordance herewith. Beneficiary agrees not to exercise its rights granted in this Section unless and until an Event of Default, as hereafter defined, shall have occurred and is continuing, provided that this assignment shall nevertheless be deemed a present assignment. The foregoing assignment is intended to be specific, perfected and choate upon the recording of this Deed of Trust as provided in RCW 7.28.230(3).

III. GENERAL AGREEMENTS

3.01 Right to Perform Obligations. If Grantor shall fail to do any act or thing which it has covenanted to do under this Deed of Trust or any representation or warranty on the part of Grantor contained in this Deed of Trust shall be breached, Beneficiary may, in its sole discretion, after 5 Business Days written notice is sent to Grantor (or such lesser notice, including no notice, as is reasonable under the circumstances), do the same or cause it to be done or remedy any such breach, and may expend its funds for such purpose. The payment or performance by Beneficiary of any of Grantor's obligations hereunder shall not relieve Grantor of said obligations or of the consequences of having failed to pay or perform the same, and shall not waive or be deemed a cure of any Event of Default.

3.02 Use and Alterations. (a) Grantor shall use the Property as a Permitted Concept and shall not otherwise desert or abandon the Property or, without the prior written consent of Beneficiary.

The Property is not used principally for agricultural purposes. The loan made pursuant to the Credit Agreement and secured by this Deed of Trust constitutes a commercial loan within the meaning of RCW 61.24.005(7). Grantor warrants that this Deed of Trust is and will at all times constitute a commercial mortgage, as defined under appropriate state law.

(b) Grantor shall not, without the prior written consent of Beneficiary, cause or permit the demolition, removal, construction, restoration, addition or material alteration to the Property or any



portion thereof, except that without such consent: (i) Grantor may in the ordinary course of its business or operations replace any worn, broken, unfit or obsolete Property with like property which is new or substantially new and free of all liens other than the lien of the Deed of Trust, and (ii) Grantor may make non-structural interior alterations having an aggregate cost in any calendar year of not in excess of \$100,000.00 per Property; provided, however in the event that the franchisor of the Property requires any non-structural interior alterations having an aggregate cost less than \$250,000.00, the making of such alterations by Grantor shall not be an Event of Default so long as Grantor provides 60 days prior written notice to Beneficiary.

3.03 Stamp Taxes. If at any time the United States government, or any federal, state, county or municipal governmental subdivision, requires or imposes documentary stamps, levies, or any tax on this Deed of Trust or on the Obligations, then Grantor shall pay the same on or before the applicable due date, or to the extent Beneficiary has or will make any payment related thereto, then to the greatest extent permitted by law such indebtedness shall be and become due and payable by Grantor to Beneficiary within 5 Business Days after the receipt by Grantor of written notice of such indebtedness from Beneficiary.

IV. EVENTS OF DEFAULT AND REMEDIES

4.01 Remedies Upon Default. Upon the occurrence of an Event of Default (including any right to cure provided in accordance with the Credit Agreement), Beneficiary may, at Beneficiary's option, in addition to any remedies available at law or in equity or otherwise provided for in any of the other Financing Documents, do any one or more of the following:

(a) Beneficiary may request Trustee to sell the Property, and in such event Trustee is hereby authorized and empowered, and it shall be Trustee's special duty, upon such request of Beneficiary, to sell the Property or any part thereof in accordance with the Deed of Trust Act of the State of Washington (RCW 61.24 as now existing or hereafter amended), at public auction to the highest bidder or bidders for cash or credit, as directed by Beneficiary, at the location, at such time or times and in such manner as may be permitted by applicable law. Any person except Trustee may bid at the sale. It is intended that Trustee may, after any request or direction by Beneficiary, sell any portion of Property, or any part thereof, all as a unit and as a part of a single sale, or may sell any part of the Property separately from the remainder of the Property. The sale or sales by Trustee of less than the whole of the Property shall not exhaust the power of sale herein granted and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Property shall be sold; and if the proceeds of such sale or sales of less than the whole of such Property shall be less than the aggregate of the Obligations and the expense of executing this Deed of Trust and the assignments, liens, and security interests hereof shall remain in full force and effect as to the unsold portion of the Property just as though no sale or sales of less than the whole of the Property had occurred.

(b) Grantor and Beneficiary agree that, in any assignments, deeds, bills of sale, notices of sale, or postings, given by Trustee or Beneficiary, any and all statements of fact or other recitals therein made as to the identity of Beneficiary, or as to the occurrence or existence of any Event of Default, or as to the acceleration of the maturity of the Obligations, or as to the request to sell,



posting of notice of sale, notice of sale, time, place, terms, and manner of sale and receipt, distribution, and application of the money realized therefrom, or as to the due and proper appointment of substitute trustee and without being limited by the foregoing, as to any other act or thing having been duly done by Beneficiary or by Trustee, shall be taken by all courts of law and equity as *prima facie* evidence that the said statements or recitals state facts and are without further questions to be so accepted, and Grantor does hereby ratify and confirm any and all acts that Trustee may lawfully do in the premises by virtue hereof.

(c) The power of sale conferred by this Deed of Trust is not an exclusive remedy. Beneficiary may, or Trustee may upon written request of Beneficiary, proceed by suit or suits, at law or in equity, to enforce the payment and performance of the Obligations in accordance with the terms hereof or of the other Financing Documents, to foreclose or otherwise enforce the assignments, liens, and security interests created or evidenced by the other Financing Documents or this Deed of Trust as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction. If a foreclosure hereunder is commenced by Trustee, Beneficiary may, at any time before the sale, direct Trustee, to abandon the sale, and may then institute suit for the collection of the Loans, and for the foreclosure or enforcement of the assignments, liens, and security interests hereof. If Beneficiary should institute a suit for the collection of the Loans, and for a foreclosure or enforcement of the assignments, liens, and security interests hereof, it may, at any time before entry of a final judgment in said suit, dismiss the same and require Trustee to sell the Property, or any part thereof, in accordance with the provisions of this Deed of Trust.

(d) To the extent permitted by law, Beneficiary, as a matter of right without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Property, or any thereof, and of the income, rents, issues, and profits thereof, if applicable, and Grantor hereby expressly consents to any such appointment. Such appointment may be made before or after sale, without notice; without regard to the solvency or insolvency at the time of application for such receiver of the person or persons, if any, liable for the payment of the Obligations; without regard to the value of the Property at such time, whether or not the same is then occupied as a homestead, and without bond being required of the applicant. Such receiver shall have the power to take possession, control and care of the Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit or sale pursuant to the power of sale and, in the event of a sale and a deficiency where Grantor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Grantor or its devisees, legatees, heirs, executors, administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Property during the whole of any such period. To the extent permitted by law, such receiver may be authorized by the court to extend or modify any then existing leases and to make new leases of the Property or any part thereof, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Obligations it being understood and agreed that any such



leases, and the options or other such provisions to be contained therein, shall be binding upon Grantor and all persons whose interests in the Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale or sale pursuant to the power of sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree, or issuance of certificate of sale or deed to any purchaser.

(e) To the extent permitted by law, Beneficiary may enter upon the Property, take possession of the Property, and remove the Personal Property or any part thereof, with or without judicial process, and, in connection therewith, without any responsibility or liability on the part of Beneficiary, including, without limitation, any liability for consequential damages of any kind, and Beneficiary may take possession of any property located on or in the Property which is not a part of the Property and hold or store such property at Grantor's expense.

(f) Beneficiary may surrender the insurance policies maintained pursuant to the terms hereof, or any part thereof, and receive and apply the unearned premiums as a credit to the Obligations, and, in connection therewith, Grantor hereby irrevocably appoints Beneficiary (or any officer of Beneficiary), as the true and lawful agent and attorney-in-fact for Grantor (with full powers of substitution), which power of attorney shall be deemed to be a power coupled with an interest and therefore irrevocable, to collect such premiums.

(g) Beneficiary may buy the Property, or any part thereof, at any public sale or judicial sale and, if the Property being sold is of a type customarily sold in a recognized market or a type which is the subject of widely distributed standard price quotations, Beneficiary may also buy the Property, or any part thereof, at any private sale.

(h) Beneficiary shall have and may exercise any and all other rights and remedies which Beneficiary may have at law or in equity, or by virtue of any other security instrument, or under the UCC or otherwise.

4.02 Purchase by Beneficiary. If Beneficiary is the purchaser of the Property, or any part thereof, at any sale thereof (including any sale of the Personal Property), whether such sale be under the power of sale hereinabove vested in Trustee, or upon any other foreclosure or enforcement of the assignments, liens, and security interest hereof, or otherwise, Beneficiary shall, upon any such purchase, acquire good and marketable title to the Property so purchased, free of the assignments, liens, and security interests created hereby.

4.03 Care of Property by Beneficiary. Should any part of the Property come into the possession of Beneficiary, Beneficiary may (without any liability therefor) use, operate, and/or make repairs, alterations, additions, and improvements to the Property for the purpose of preserving it or its value, pursuant to the order of a court of appropriate jurisdiction, or in accordance with any other rights held by Beneficiary with respect to the Property. Grantor covenants to promptly reimburse and pay to Beneficiary, at the place where the Notes are payable, or at such other place as may be designated by Beneficiary in writing, the amount of all reasonable expenses (including the cost of any insurance, taxes, or other charges) incurred by Beneficiary in connection with its custody, preservation, use, or operation of the Property,



together with interest thereon from the date incurred by Beneficiary at the Default Rate, and all such expenses, cost, taxes, interest, and other charges shall be a part of the Obligations.

4.04 Right of Possession. If the assignments, liens, or security interest hereof shall be foreclosed or otherwise enforced by a Trustee's sale, or by any other judicial or non-judicial action, then the purchaser at any such sale shall receive, as an incident to his ownership, immediate possession of that portion of the Property purchased, and if Grantor or Grantor's successors or lessees shall hold possession of any of said portion of the Property subsequent to such foreclosure, Grantor and Grantor's successors or lessees in possession shall be considered as tenants at sufferance of the purchaser at such foreclosure sale, and anyone occupying the Property (or any part thereof) after demand made of possession thereof shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages which might be alleged by Grantor or Grantor's successors or lessees by reason thereof are hereby expressly waived.

In any case in which, under the provisions of this Deed of Trust, Beneficiary has a right to exercise any remedy, whether or not the Obligations have become immediately due and payable as aforesaid, or whether before or after the institution of proceedings to foreclose the lien hereof or before or after sale under any foreclosure or power of sale, Grantor shall, forthwith upon demand of Beneficiary, surrender to Beneficiary, and Beneficiary shall be entitled to take actual possession of, the Property or any part thereof, personally or by its agent or attorneys, and Beneficiary, in its discretion, may enter upon and take and maintain possession of all or any part of the Property, together with all documents, books (or copies thereof), records (or copies thereof), papers, and accounts of Grantor or the then owner of the Property relating thereto, and may exclude Grantor, such owner, and any agents and servants thereof wholly therefrom and may, as attorney-in-fact or agent of Grantor or such owner, or in its own name as Beneficiary and under the powers herein granted:

(a) hold, operate, manage, and control all or any part of the Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its sole and arbitrary discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Grantor;

(b) cancel or terminate any lease or sublease of all or any part of the Property for any cause or on any ground that would entitle Grantor to cancel the same;

(c) elect to disaffirm any lease or sublease of all or any part of the Property made subsequent to this Deed of Trust or subordinated to the lien hereof;

(d) extend or modify any then existing leases and make new leases of all or any part of the Property, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loans and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale or sale pursuant



to the power of sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Grantor, all persons whose interests in the Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale or sale pursuant to the power of sale, notwithstanding any redemption from sale, discharge of the Obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser; and

(e) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements in connection with the Property as may reasonably necessary, to insure and reinsure the Property and all risks incidental to Beneficiary's possession, operation, and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom.

4.05 Application of Deposits. Beneficiary may, at its option, without being required to do so, apply any money or securities that constitute deposits made to or held by Beneficiary or any depository pursuant to any of the provisions of this Deed of Trust toward payment of any of the Obligations in such order and manner as Beneficiary may elect. When the Obligations have been fully paid, any remaining deposits shall be paid to Grantor or its successors or assigns, or to the then owner or owners of the Property, or to whoever else may then be adjudged entitled thereto.

4.06 Exercise Rights of Secured Party. To the extent that this Deed of Trust may operate as a security agreement under the UCC, Beneficiary may exercise any or all of the remedies of a secured party under said UCC.

4.07 Continuing Remedies. The failure of Beneficiary to exercise any remedy granted to Beneficiary hereunder or under applicable law in any one or more instances, or the acceptance by Beneficiary of partial payments of the Obligations, shall neither constitute a waiver of any such Event of Default or of Beneficiary's remedies hereunder or under applicable law nor establish, extend or affect any grace period for payments due under the Loans, but such remedies shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Beneficiary, may at Beneficiary's option be rescinded by written acknowledgment to that effect by Beneficiary and shall not affect Beneficiary's right to accelerate maturity upon or after any future Event of Default.

4.09 Priority of Payments. Any rents, issues, deposits, profits, and avails of the Property received by Beneficiary after taking possession of all or any part of the Property, or pursuant to any assignment thereof to Beneficiary under the provisions of this Deed of Trust, shall be applied in payment of or on account of any the following, and in such order as determined by Beneficiary:

(a) operating expenses of the Property (including reasonable compensation to Beneficiary, any receiver of the Property, any agent or agents to whom management of the Property has been delegated, and also including lease commissions and other compensation for and expenses of seeking and procuring tenants and entering into leases, establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized);

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(b) taxes, special assessments, and water and sewer charges now due or that may hereafter become a lien thereon prior to the lien of this Deed of Trust;

(c) any and all reasonable repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Property (including, without limitation, the cost of placing the Property in such condition as will, in the judgment of Beneficiary or any receiver, make it readily rentable or salable); and

(d) the Obligations, including, without limitation, any deficiency that may result from any foreclosure sale or sale pursuant to the power of sale pursuant hereto.

4.10 Rent. During the continuance of any Event of Default and if Beneficiary or any judicially appointed representative has a right to exclude Grantor from all or any part of the Property, Grantor agrees to pay the fair and reasonable rental value for the use and occupancy of the Property, or any portion thereof which are in its possession and being occupied for such period and, upon default of any such payment, will vacate and surrender possession of the Property to Beneficiary or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery or possession of premises for non-payment of rent, however designated.

4.11 Remedies are Severable and Cumulative. All rights and remedies of Beneficiary herein are severable and cumulative and in addition to all other rights and remedies available in the other Financing Documents, at law or in equity, and any one or more of such rights and remedies may be exercised simultaneously or successively.

4.12 Litigation Expenses. In any proceeding to foreclose the lien of this Deed of Trust or enforce any other right or remedy of Beneficiary under this Deed of Trust or any of the other Financing Documents, or in any other proceeding whatsoever in connection with any of the Property in which Beneficiary is named as a party, there shall be allowed and included, as Obligations in the judgment or decree resulting therefrom, all expenses paid or incurred in connection with such proceeding by or on behalf of Beneficiary, including, but not limited to, reasonable attorneys' fees and expenses.

4.13 Waiver of Statutory Rights. To the greatest extent permitted by law: (a) Grantor hereby waives the benefit of, and agrees that it will not apply for or avail itself of, any appraisal, valuation, redemption, stay, extension or exemption laws, or any so-called "moratorium laws," now existing or hereafter enacted, in order to prevent or hinder the exercise of the power of sale, or the enforcement or foreclosure of this Deed of Trust; and (b) Grantor, for itself, any and all persons or entities who may claim through or under it and each and every person or entity acquiring any interest in the Property or title to the Real Property subsequent to the date of this Deed of Trust, hereby also waives (i) any and all rights to have the Property and estates comprising the Property marshaled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Property sold in its entirety; and (ii) any and all rights of (A) redemption from sale under any order or decree of foreclosure of the



lien hereof pursuant to the rights herein granted; and (B) homestead in the Real Property which Grantor may now or hereafter have under the laws of the State in which the Property is located; and (iii) all rights to void liens under Section 506 of the United States Bankruptcy Code (11 U.S.C. §506), or any amendment or successor thereto.

V. MISCELLANEOUS

5.01 Appointment; Substitution of Trustee. (a) If at the time of execution hereof by Grantor, the name and/or address of Trustee is not filled in, Grantor irrevocably authorizes and empowers Beneficiary or any authorized agent of Beneficiary to appoint Trustee and fill in the name and address of such Trustee at all appropriate places on this Deed of Trust at any time prior to the recording hereof.

(b) Trustee may resign by an instrument in writing addressed to Beneficiary, or Trustee may be removed at any time with or without cause by Beneficiary. In case of the death, resignation, removal or disqualification of Trustee or if for any reason Beneficiary shall deem it desirable to appoint a substitute or successor trustee to act instead of the herein named Trustee or any substitute or successor trustee, then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor trustee, or a substitute trustee, without other formality than appointment and designation in writing executed by Beneficiary and the recordation of same in the County in which the Property is located, and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the indebtedness secured hereby has been paid in full or until the Property is sold hereunder. Any reference in this instrument to Trustee shall include, as appropriate, any successor or substitute trustee. Such appointment may be executed by any authorized agent of Beneficiary; and if Beneficiary be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Grantor hereby ratifies and confirms any and all acts which the herein named Trustee, or his successor or successors in this Trust, shall do lawfully by virtue hereof. Grantor hereby agrees, on behalf of itself and its successors and assigns, that the recitals contained in any deed or deeds executed in due form by Trustee or any substitute trustee, acting under the provisions of this instrument, shall be prima facie evidence of the facts recited, and that it shall not be necessary to prove in any court, otherwise than by such recitals, the existence of the facts essential to authorize the execution and delivery of such deed or deeds and the passing of title thereby.

5.02 Corrections. Grantor will, upon request of Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in the execution or acknowledgments hereof, and will execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Trustee or by Beneficiary to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Grantor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain the lien and security interest.



5.03 Further Assurances. Grantor will execute and deliver to Beneficiary, within 5 Business Days after any request by Beneficiary, any additional instruments or security documents necessary to secure to Beneficiary or to Trustee any right or interest granted by this Deed of Trust. If any rights, easements or other hereditaments shall hereafter become appurtenant to the Property, or any part thereof, Grantor shall deliver to Beneficiary, upon demand, a supplemental Deed of Trust in the form approved by Beneficiary covering such rights and interests. Grantor further agrees to pay to Beneficiary all reasonable costs and expenses incurred by Beneficiary in connection with the preparation, execution and recording of any such documents.

5.04 Notices. All notices hereunder shall be given and become effective in accordance with the provisions of the Credit Agreement. Neither any waiver of any provision of this Deed of Trust or any of the other Financing Documents, nor any consent to any departure by Grantor therefrom, shall be effective unless the same shall be in writing and signed by Beneficiary. Any waiver of any provision of this Deed of Trust or any of the other Financing Documents and any consent to any departure by Grantor from the terms of this Deed of Trust or any of the other Financing Documents shall be effective only in the specific instance and for the specific purpose for which given.

5.05 Covenants Run with Land. All of the covenants of this Deed of Trust shall run with the land constituting the Real Property.

5.06 Governing Law. The validity and interpretation of this Deed of Trust shall be governed and construed in accordance with the laws of the State in which the Property is located.

5.07 Release. Beneficiary shall release this Deed of Trust and the lien thereof by proper instrument upon presentation of satisfactory evidence that all Obligations have been satisfied.

5.08 Performance by Beneficiary. Beneficiary may, but need not, make any payment or perform any act herein required of Grantor in any form and manner deemed expedient by Beneficiary, and Beneficiary may, but need not, make full or partial payments of principal or interest on encumbrances, if any; purchase, discharge, compromise, or settle any tax lien or other prior or junior lien or title or claim thereof; redeem from any tax sale or forfeiture affecting the Property; or contest any tax or assessment thereon. All moneys paid for any of the purposes authorized herein and all expenses paid or incurred in connection therewith, including attorney's fees, and any other moneys advanced by Beneficiary to protect the Property and the lien of this Deed of Trust, shall be payable to Beneficiary by Grantor on demand, together with interest thereon at the Default Rate and all such amounts shall be deemed to be additional Obligations.

5.09 Washington State Notice. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.



VI. LEASEHOLD DEED OF TRUST PROVISIONS

6.01 **Leasehold Representations, Warranties and Covenants.** Grantor hereby represents, warrants and covenants as follows:

(a) Grantor's interest in the Real Property is a subleasehold interest created pursuant to the Sublease. Other than the Lease, there are no other leases, agreements, deeds, or other instruments or understandings related to the Real Property.

(b) Grantor enjoys the quiet and peaceful possession of its subleasehold estate;

(c) Grantor shall do all things necessary to preserve and to keep unimpaired its rights under the Lease, shall not waive, excuse or discharge any of the obligations of the lessor(s) under the Lease without Beneficiary's prior written consent in each instance, and shall diligently and continuously enforce the obligations of lessor(s) under the Lease;

(d) Grantor shall not do, permit or suffer any event or omission as a result of which there could occur a default under the Lease or any event which, with the giving of notice or the passage of time, or both, would constitute a default under the Lease which could permit any party to the Lease validly to terminate the Lease (including, without limitation, a default in any payment obligation);

(e) Grantor shall deliver to Beneficiary copies of any notice of default by any party under the Lease, or of any notice from lessor(s) under the Lease of its intention to terminate the Lease or to re-enter and take possession of the Property, immediately upon delivery or receipt of such notice, as the case may be;

(f) Grantor shall promptly furnish to Beneficiary copies of such information and evidence as Beneficiary may request concerning Grantor's due observance, performance and compliance with the terms, covenants and conditions of the Lease;

(g) Grantor knows of no adverse claim to the title or possession of Grantor, Sublessor or Fee Owner; and

(h) Grantor shall not consent to the subordination of the Lease to any mortgage, deed of trust or other lease of the fee interest in the Property.

6.02 **Options to Renew or Extend the Lease.** Grantor shall give Beneficiary written notice of its intention to exercise each and every option, if any, to renew or extend the term of the Lease, at least thirty (30) days prior to the expiration of the time to exercise such option under the terms thereof. If Grantor intends to renew or extend the term of the Lease, it shall deliver to Beneficiary, with the notice of such decision, a copy of the notice of renewal or extension delivered to the lessor, together with the terms and conditions of such renewal or extension. If Grantor does not renew or extend the term of the Lease, Beneficiary may, at its option, exercise the option to renew or extend on behalf of Grantor. Grantor hereby irrevocably appoints Beneficiary as its attorney-in-fact, coupled with an



interest, to execute and deliver, for and in the name of Grantor, all instruments and agreements necessary under the Lease or otherwise to cause any renewal or extension of the Lease.

Provided no Event of Default (as defined in the Credit Agreement) has occurred and is continuing, if Grantor wishes to close a restaurant located at the Real Property, Grantor may request a release of all liens granted in favor of Beneficiary with respect to such site and related collateral by the following means (i) providing a substitute collateral for such site and related collateral, or (ii) paying down of the Loan (as defined in the Credit Agreement) in an amount satisfactory to Beneficiary in its sole discretion, including any applicable prepayment premiums or prepayment fees. Such request shall be delivered to Beneficiary in writing and shall be subject to the consent of Beneficiary in its sole discretion. Such request shall be provided at least 60 days prior to the expiration of any Lease with respect to the Real Property. Borrower shall pay all legal fees associated with such request.

6.03 Additional Lease Covenants.

(a) In the event the Lease shall be terminated by reason of a default thereunder by Grantor and Beneficiary shall require from lessor(s) under the Lease a new Lease, Grantor hereby waives any rights, title and interest in and to such new Lease or the leasehold estate created thereby, waiving all rights of redemption now or hereafter operable under any law.

(b) Upon the filing of any action under the Bankruptcy Code, Grantor shall not elect to treat the Lease as terminated, canceled or surrendered pursuant to the applicable provisions of the Bankruptcy Code (including, without limitation, Section 365(h)(1) thereof) without Beneficiary's prior written consent. In addition, Grantor shall, in the event of termination of the Lease, remain in possession of the Real Property, notwithstanding any rejection thereof by lessor(s) under the Lease or any trustee, custodian or receiver. Beneficiary shall have the right, but not the obligation, to proceed in respect of any claim, suit, action or proceeding relating to the rejection of the Lease by lessor(s) under the Lease as a result of a bankruptcy of similar filing against ground lessor(s) under the Lease, including, without limitation, the right to file and prosecute any and all proofs of claims, complaint, notices and other documents in any case in respect of lessor(s) under the Lease and pursuant to the Bankruptcy Code. Grantor shall give Beneficiary not less than thirty (30) days prior written notice of the date on which Grantor shall apply to any court or other governmental authority for authority and permission to reject the Lease in the event that there shall be filed by or against Grantor any petition, action or proceeding under the Bankruptcy Code or under any other similar federal or state law now or hereafter in effect and if Grantor determines to reject the Lease. Beneficiary shall have the right, but not the obligation, to serve upon Grantor within such thirty (30) day period a notice stating that (i) Beneficiary demands that Grantor assume and assign the Lease to Beneficiary subject to and in accordance with the Bankruptcy Code, and (ii) Beneficiary covenants to cure or provide reasonably adequate assurance thereof with respect to all defaults reasonably susceptible of being cured by Beneficiary and of future performance under the Lease. If Beneficiary serves upon Grantor the notice described above, Grantor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) above within fifteen (15) days after the notice shall have been given by Beneficiary.



(c) During the continuance of an Event of Default, Beneficiary shall have the right, but not the obligation, (i) to perform and comply with all obligations of Grantor under the Lease without relying on any grace period provided therein, (ii) to do and take, without any obligation to do so, such action as Beneficiary deems necessary or desirable to prevent or cure any default by Grantor under the Lease, including, without limitation, any act, deed, matter or thing whatsoever that Grantor may do in order to cure a default under the Lease and (iii) to enter in and upon the Real Property or any part thereof to such extent and as often as Beneficiary deems necessary or desirable in order to prevent or cure any default of Grantor under the Lease.

(d) In the event of any arbitration under of pursuant to the Lease in which Beneficiary elects to participate, Grantor hereby irrevocably appoints Beneficiary as its true and lawful attorney-in-fact (which appointment shall be deemed coupled with an interest) to exercise, during the continuance of an Event of Default, all right, title and interest of Grantor in connection with such arbitration, including, without limitation, the right to appoint arbitrators and to conduct arbitration proceedings on behalf of Grantor and Beneficiary. All costs and expenses incurred by Beneficiary in connection with such arbitration and the settlement thereof shall be borne solely by Grantor, including, without limitation, attorneys' fees and disbursements. Nothing contained in this Section shall obligate Beneficiary to participate in any such arbitration.

6.04 Estoppel Certificates. Grantor shall obtain and deliver to Beneficiary within twenty (20) days after written demand by Beneficiary, an estoppel certificate from lessor(s) under the Lease setting forth (i) the name of the lessee and the lessor thereunder, (ii) that the Lease is in full force and effect and has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification), (iii) the basic rent payable under the Lease, (iv) the date to which all rental charges have been paid by the lessee under the Lease, (v) whether a notice of default has been received by lessor(s) under the Lease which has not been cured, and if such notice has been received, the date it was received and the nature of the default, (vi) whether there are any alleged defaults of the lessee under the Lease and, if there are, setting forth the nature thereof in reasonable detail, and (vii) if the lessee under the Lease shall be in default, the default.

6.05 No Liability. Beneficiary shall be liable for the obligations of Grantor arising under the Lease for only that period of time which Beneficiary is in possession of the Property and exercising the rights of Grantor as lessee under the Space or has acquired, by foreclosure or otherwise, and is holding all of Grantor's right, title and interest therein.

6.06 No Merger. It is hereby agreed that the fee simple interest and the leasehold interest in the Real Property shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates with lessor(s) under the Lease, Grantor or a third party, whether by purchase or otherwise. If Grantor shall acquire fee title to the Real Property or any other estate, title or interest in the Real Property or any portion thereof, then, immediately upon Grantor's acquisition thereof, this Deed of Trust automatically shall spread to cover Grantor's interest in such previously leased property on the same terms, covenants and condition as set forth herein. Upon such acquisition, Grantor, as it's sole cost and expense, shall deliver to Beneficiary an ALTA Form Beneficiary's Title Insurance Policy issued by a title insurance company acceptable to Beneficiary insuring that this Deed of Trust as so spread to cover Grantor's interest in such previously leased property, that no



documents, instruments or agreements shall be necessary to confirm the foregoing spread of this Deed of Trust to cover Grantor's interest in such previously leased property, is a valid first lien on Grantor's interest therein. It is the intention of Grantor and Beneficiary that no documents, instruments or agreements shall be necessary to confirm the foregoing spread of this Deed of Trust to cover Grantors interest in such leased property, as aforesaid, and that such spreading shall occur automatically upon the consummation of Grantor's acquisition of such estate, title or interest to such leased property.

4851-5105-7665.1
Skagit County/Leasehold

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Skagit County Auditor

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IN WITNESS WHEREOF, Grantor has caused this Deed of Trust to be executed as of the date hereinabove first written.

DWO, LLC, an Alaska limited liability company

By [Signature]
Harshad Dharod
Manager

State of California

County of Orange

On this 20 day of June, 2007, before me personally appeared Harshad Dharod to me known to be the Manager of DWO, LLC, an Alaska limited liability company, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first written above.

[Signature]
[Signature of Notary]

Van Tran, Notary Public
[Print name and include title]

Notary Public in and for the State of California, residing at

Orange County

My Commission Expires: April 24, 2009

(Affix seal or stamp)



EXHIBIT A

LEGAL DESCRIPTION:

LOT 6, BINDING SITE PLAN NO. MV-1-93 ENTITLED SKAGIT VALLEY SQUARE, APPROVED SEPTEMBER 29, 1993, RECORDED SEPTEMBER 30, 1993 IN BOOK 10 OF SHORT PLATS, PAGES 240-246, INCLUSIVE, UNDER AUDITOR'S FILE NO. 9309300143 AND BEING A PORTION OF THE NORTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 18, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M.



200708160005
Skagit County Auditor

EXHIBIT B

PRIME LEASE, SUB LEASE AND FEE OWNER DESCRIPTIONS

Unit #2049; 100 East College Way, Mt. Vernon, WA 98273

Fee Owner is Skagit Captial, LLC; Lessor of Prime Lease is Skagit Mall 90 Associates

Prime Lease dated on or about January, 1991

Sub Lease dated June 21, 2007

