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ADAMS COUNTY, NE  
FILED  
**INST NO 20141300**  
Date Apr 04, 2014 Time 12:57 PM  
*Janice D. Johnson*  
REGISTER OF DEEDS  
ELECTRONICALLY RECORDED

From: *First American Title*

**NO  
CORP.  
SEAL**

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**THIS INSTRUMENT WAS PREPARED BY AND, WHEN RECORDED, SHOULD BE RETURNED TO:**

Morris, Manning & Martin, LLP  
1600 Atlanta Financial Center  
3343 Peachtree Road, N.E.  
Atlanta, GA 30326  
Attn: Frederick C. C. Boyd, III, Esq.

**Cross-Reference:**

Leasehold Deed of Trust, Assignment of Leases and Rents and Fixture Filing recorded on January 3, 2013, as instrument no. 20130023, Adams County, Nebraska records.

**Unit:**

Store No. 77010  
2303 Osborne Drive W.  
Hastings, Nebraska 68901  
Adams County

**FIRST MODIFICATION OF LEASEHOLD DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING**

THIS FIRST MODIFICATION OF LEASEHOLD DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (hereinafter referred to as this "Agreement"), made and entered into as of the 20 day of December, 2013, by and between **RMH FRANCHISE CORPORATION**, a Kansas corporation (herein, together with its successors and assigns, called "Trustor"), with a mailing address at 2021 Pine Lake Road, #100, Lincoln, NE 68512, Attention: Jeff Neumann, for the benefit of **BANK OF AMERICA, N.A.**, a national banking association, individually and in its capacity as Administrative Agent (as defined in the Credit Agreement referred to below) for its benefit and the ratable benefit of the Lenders which are parties from time to time to the Credit Agreement, as the Beneficiary (herein, together with its successors and assigns, called "Beneficiary"), with a mailing address at 101 South Tryon Street, Bank of America Plaza, Mail Code: NC1-002-15-36, Charlotte, North Carolina 28255-0001, Attn: Erik M. Truette (the Lenders, the Beneficiary, and certain other Persons parties to Related Credit Arrangements as more particularly described in the Deed of Trust referred to below, collectively referred to as the "Secured Parties").

**RECITALS**

A. Trustor and RMH Franchise Holdings, Inc., a Delaware corporation (individually and collectively, the "Borrower"), as borrower, the lenders that are a party thereto from time to time (the

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“Existing Lenders”), and Beneficiary, as administrative agent for the Lenders, previously entered into that certain Credit Agreement dated as of December 27, 2012, as amended by that certain First Amendment to Credit Agreement dated as of April 24, 2013, and as further amended by that certain Second Amendment to Credit Agreement dated as of June 28, 2013 (as further amended from time to time prior to the date hereof, the “Existing Credit Agreement”), pursuant to which the Existing Lenders made certain loans to the Borrower (the “Existing Loans”) and Borrower executed and delivered to the Existing Lenders certain promissory note or notes, evidencing Borrower’s obligation to repay the Existing Loans (the “Existing Notes”).

B. As collateral for the Existing Loans, Trustor executed and delivered to First American Title Insurance Company, as trustee, in favor of Beneficiary, among other mortgages, deeds to secure debt, deeds of trust and other security documents, that certain Leasehold Deed of Trust, Assignment of Leases and Rents and Fixture Filing dated December 27, 2012 and recorded in the real estate records of Adams County, Nebraska on January 3, 2013, as instrument no. 20130023 (together with all amendments and modifications prior to the date hereof, the “Deed of Trust”).

C. Borrower, the Lenders and Beneficiary have entered into that certain Amended and Restated Credit Agreement dated as of the date hereof (as may be amended, restated, amended and restated, supplemented, consolidated, replaced, renewed, extended or otherwise modified from time to time, the “Credit Agreement”), pursuant to which the Beneficiary and the Lenders agreed to amend and restate the Existing Credit Agreement. Pursuant to the Credit Agreement, the Beneficiary and/or the Lenders have agreed to loan certain funds to Borrower (collectively, the “Loan”) and Borrower has executed and delivered to the Lenders certain promissory note or notes, evidencing Borrower’s obligation to repay the Loan (collectively, the “Note”).

D. Trustor and Beneficiary wish to modify the Deed of Trust to reflect the amendment and restatement of the Existing Credit Agreement by the execution and delivery of the Credit Agreement.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that in consideration of the sum of Ten and No/100 Dollars (\$10.00), the foregoing recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustor and Beneficiary do hereby agree as follows effective as of the date hereof:

1. Amendment.

a. Recital (A) of the Deed of Trust is hereby deleted in its entirety and the following provision is substituted in lieu thereof:

“A. Existing Credit Agreement. Trustor and RMH Franchise Holdings, Inc., a Delaware corporation (individually and collectively, the “Borrower”), as borrower, the lenders that are a party thereto from time to time (the “Existing Lenders”), and Beneficiary, as administrative agent for the ratable benefit of the Lenders (the “Administrative Agent”), previously entered into that certain Credit Agreement dated as of December 27, 2012, as amended by that certain First Amendment to Credit

Agreement dated as of April 24, 2013, and as further amended by that certain Second Amendment to Credit Agreement dated as of June 28, 2013 (as further amended from time to time prior to the date hereof, the "Existing Credit Agreement"), pursuant to which the Beneficiary and/or the Existing Lenders made certain loans to the Borrower (the "Existing Loans") and Borrower executed and delivered to the Existing Lenders certain promissory note or notes, evidencing Borrower's obligation to repay the Existing Loans."

b. Recital (B) of the Deed of Trust is hereby deleted in its entirety and the following provision is substituted in lieu thereof:

"B. Existing Deed of Trust. As collateral for the Existing Loans, Trustor executed and delivered in favor of Beneficiary, among other mortgages, deeds to secure debt, deeds of trust and other security documents, that certain Leasehold Deed of Trust, Assignment of Leases and Rents and Fixture Filing dated December 27, 2012 and recorded in the real estate records of Adams County, Nebraska on January 3, 2013, as instrument no. 20130023."

c. The Deed of Trust is hereby modified and amended by inserting the following paragraphs as new Recital (C) and Recital (D) after Recital (B) of the Deed of Trust:

"C. Credit Agreement. Borrower, the Lenders and Beneficiary have entered into that certain Amended and Restated Credit Agreement dated as of December 20, 2013 (as may be amended, restated, amended and restated, supplemented, consolidated, replaced, renewed, extended or otherwise modified from time to time, the "Credit Agreement"), pursuant to which the Beneficiary and the Lenders agreed to amend and restate the Existing Credit Agreement. Pursuant to the Credit Agreement, the Beneficiary and/or the Lenders have agreed to loan certain funds to Borrower (collectively, the "Loan") and Borrower has executed and delivered to the Lenders certain promissory note or notes, evidencing Borrower's obligation to repay the Loan (collectively, the "Note").

D. Secured Obligations. The obligations secured by this Deed of Trust (the "Obligations") are comprised at any time of the following:

(i) the full and punctual payment by Borrower when due of (a) all principal of and interest on the Loan and the Note; and (b) all other amounts payable by Trustor pursuant to the Credit Agreement, the Note or any other document or instrument evidencing or securing the Loan (together with the Credit Agreement, the Note and this Deed of Trust, the "Loan Documents" or individually a "Loan Document");

(ii) the full and punctual payment when due of all amounts payable by Trustor under this Deed of Trust, including, without limitation, indemnification obligations and advances made pursuant to the Loan Documents, including any and all future advances (whether or not obligatory) in an amount equal to the greater of (i) One

Million Dollars (\$1,000,000.00); or (ii) a sum equal to half of the amount of the Loan;

(iii) the performance and observance by Borrower and/or Trustor of each other term, covenant, agreement, requirement, condition and other provision to be performed or observed by Borrower and/or Trustor under any Loan Document;

(iv) the performance and observance by Borrower and/or Trustor of each other term, covenant, agreement, requirement, condition and other provision to be performed or observed by Borrower and/or Trustor under all amendments, supplements, consolidations, replacements, renewals, extensions or other modifications of the foregoing Loan Documents, in each case whether now existing or hereafter arising;

(v) all obligations of the Borrower and/or Trustor under any Related Credit Arrangements; and

(vi) any and all other indebtedness, liabilities and obligations of every nature whatsoever (whether or not otherwise secured or to be secured) of Borrower and/or Trustor (whether as maker, endorser, surety, guarantor or otherwise) to the Secured Parties and/or the Secured Parties' affiliates, whether now existing or hereafter created or arising or now owned or howsoever hereafter acquired by the Secured Parties and/or the Secured Parties' affiliates, whether such indebtedness, liabilities and obligations are or will be joint or several, direct or indirect, absolute or contingent, liquidated or unliquidated, matured or unmatured, including, but not limited to, any letter of credit issued by Beneficiary for the account of Borrower and/or Trustor; together with all expenses, attorneys' fees, paralegals' fees and legal assistants' fees incurred by the Secured Parties and/or the Secured Parties' affiliates in the preparation, execution, perfection or enforcement of any document relating to any of the foregoing.

The Obligations shall include, without limitation, any interest, costs, fees and expenses which accrue on or with respect to any of the foregoing, whether before or after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of Trustor."

2. Additional Advances. The Note evidences additional advances by, and obligations in favor of, the Lenders. It is agreed that these additional advances and obligations shall be equally secured with the original indebtedness evidenced by the Existing Notes and are subject to all of the terms and provisions of the Deed of Trust and the Credit Agreement.

3. Definitions. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Credit Agreement.

4. Ratification. Trustor and Beneficiary intend and agree that the Deed of Trust shall continue in full force and effect as valid and effective liens on all of the Mortgaged Property (as

defined in the Deed of Trust). The Deed of Trust is hereby ratified and confirmed, shall continue to constitute the binding obligation and agreement of Trustor in favor of Beneficiary, and shall secure the Note and all other obligations under the Credit Agreement as fully as if the Deed of Trust had been executed and delivered concurrently with the execution and delivery of this Agreement. All representations and warranties set forth in the Deed of Trust are restated as of the date of this Agreement and are true and correct as of the date of this Agreement, as if made on the date of this Agreement. Except as herein expressly modified or amended, all the terms and conditions of the Deed of Trust remain in full force and effect and are hereby ratified, affirmed, and approved. Nothing herein shall be deemed to constitute a novation of the Deed of Trust or any of the Obligations.

5. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Trustor and Beneficiary and the Lenders and their respective successors and assigns, whether voluntary by act of the parties or involuntary by operation of law.

6. Cross Reference. All references in the Credit Agreement to the "Deed of Trust" shall hereafter include the modifications to the Deed of Trust set forth herein.

7. Counterparts. This Agreement may be executed in multiple counterparts each of which shall be deemed to be an original and all such counterparts together shall constitute one and the same instrument.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, Trustor and Beneficiary have duly executed and delivered this Agreement as of the date first written above.

**TRUSTOR:**

**RMH FRANCHISE CORPORATION, a  
Kansas corporation**

By: [Signature]  
Name: Jeffrey Neumann  
Title: President

[NO CORPORATE SEAL]

**ACKNOWLEDGEMENT**

STATE OF Nebraska )  
COUNTY OF Lancaster ) ss.

BE IT REMEMBERED, that on this 14<sup>th</sup> day of December, 2013, before me the undersigned, a Notary Public in and for the county and state aforesaid, came Jeffrey Neumann, President of RMH Franchise Corporation, a Kansas corporation, who is personally known to me to be the same person who executed the within instrument of writing in such capacity and on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

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

[Signature]  
Notary Public, State of Nebraska  
Printed Name: Kelly S. Roberts

My commission expires:  
Oct. 13, 2014



[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]



**Exhibit "A"**

**Legal Description**

Real property in the City of Hastings, County of Adams, State of Nebraska, described as follows:

Parcel 1:

Lot 3, Block 1, Allen Second Subdivision, in the City of Hastings, Adams County, Nebraska.

Parcel 2:

Non-Exclusive Easement contained in the Reciprocal Agreement filed November 18, 2011 as Inst. No. 20114595, Official Records, Adams County, Nebraska.

Parcel 3:

Non-Exclusive Easement contained in the Reciprocal Agreement filed November 18, 2011 as Inst. No. 20114596, Official Records, Adams County, Nebraska.

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