

DEED OF TRUST AND SECURITY AGREEMENT

This DEED OF TRUST AND SECURITY AGREEMENT (hereinafter this "Deed of Trust"), entered into as of May 16, 1984, by Saida of Nevada, Inc., a Nevada corporation (hereinafter referred to as "Grantor"), having its address for notice hereunder 4800 North Highway AIA, Vero Beach, Florida 32963, Attn: Frank A. Bailey, to Silver State Title Company, the Trustee (hereinafter referred to in such capacity as "Trustee"), for the benefit of the hereinbelow defined Beneficiary.

W I T N E S S E T H:

Article 1

DEFINITIONS

1.1 Definitions: As used herein, the following terms shall have the following meanings:

(a) Beneficiary: First Financial Capital Management Corporation, a Minnesota corporation, whose address for notice hereunder is 7900 West 78th Street, Suite 180, Edina, Minnesota 55435 and the subsequent holder or holders, from time to time, of the Developer Note.

(b) Buildings: Any and all structures, buildings, open parking areas and other improvements, and any and all additions, alterations, or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land or any part thereof.

(c) Developer Note or Note: The Promissory Note of even date herewith executed by the Grantor to the Beneficiary, the final maturity of which is no later than May 16, 1987.

(d) Event of Default: Any happening or occurrence described in Article 6 hereinbelow.

(e) Fixtures: All materials, supplies, equipment, apparatus and other items owned by Grantor and now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Buildings or the Land, including but not limited to any and all partitions, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, plumbing, laundry, incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and

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equipment, disposals, dishwashers, refrigerators and ranges, and recreational equipment and facilities of all kinds.

(f) Governmental Authority: Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

(g) Grantor: The above defined Grantor and any and all subsequent owners of the Mortgaged Property.

(h) Guarantors: Philip Schwab, Frank Bailey and Saida of Vero Beach, Incorporated.

(i) Guaranty: The Guaranty of even date herewith from the Guarantors to the Beneficiary.

(j) Impositions: All real estate and personal property taxes, water, gas, sewer, electricity and other utility rates and charges, charges for any easement, license or agreement maintained for the benefit of the Mortgaged Property, and all other taxes, charges and assessments and any interest, costs or penalties with respect thereto, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Indebtedness or the Mortgaged Property or the Rents or the ownership, use, occupancy or enjoyment thereof.

(k) Indebtedness: The principal of, interest on and all other amounts, payments and premiums due under or secured by the Developer Note and the other Security Documents.

(l) Land or Project: The real estate or interest therein described in Exhibit A attached hereto, all Buildings and Fixtures and all rights, titles and interest appurtenant thereto.

(m) Legal Requirements: As defined in the Loan Agreement (as defined in the definition of Security Documents).

(n) Loan: The loan made by the Beneficiary to the Grantor pursuant to the Loan Agreement and evidenced by the Note.

(o) Mortgaged Property: The Land, Buildings, Fixtures, Personalty and Rents together with:

(i) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances in anywise appertaining thereto, and all right, title and interest of Grantor in and to any streets, ways, alleys,

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strips or gores of land adjoining the Land or any part thereof; and

(ii) all additions, appurtenances, substitutions, replacements and revisions thereof and thereto and all reversions and remainders therein; and

(iii) all of Grantor's right, title and interest in and to any award, awards, remuneration, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority to the present or any subsequent owner of the Land, Buildings, Fixtures or Personalty, including those for any vacation of, or change of grade in, any streets affecting the Land or Buildings.

As used in this Deed of Trust, the term "Mortgaged Property" shall be expressly defined as meaning all, or where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

(p) Obligations: Any and all of the covenants, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Grantor, Guarantors or others to Beneficiary, Trustee or others as set forth in the Security Documents.

(q) Permitted Encumbrances: The outstanding liens, easements, restrictions and other matters (if any) as reflected in the title commitment or policy accepted by Beneficiary with respect to this Deed of Trust and the lien and security interests created by the Security Documents.

(r) Personalty: All of the right, title and interest of Grantor in and to all furniture, furnishings, equipment, machinery, goods, general intangibles, money, accounts, contract rights, inventory and all other personal property (other than the Fixtures) of any kind or character as defined in and subject to the provisions of the Uniform Commercial Code as in effect in Nevada, as amended, now or hereafter located upon, within or about the Land and the Buildings, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof.

(s) Rents: All of the rents, revenues, income, proceeds, profits and other benefits paid or payable by parties to any leases or other agreements ("Leases") other than Grantor for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property.

(t) Security Documents: The Loan Agreement ("Loan Agreement") of even date herewith by and between Grantor and Beneficiary, relating to the Land and the Buildings; the Developer Note; this Deed of Trust; the Guaranty; the mortgage of a parcel of real estate in Vero Beach, Florida, which secures payment of the Note and any and all other documents now or hereafter executed by Grantor, Guarantors or any other person or party to evidence or secure the payment of the Indebtedness or the performance and discharge of the Obligations.

## Article 2

### GRANTING CLAUSE

2.1 Grant: To secure the full and timely payment of the Developer Note and all other Indebtedness and the full and timely performance and discharge of the Obligations, Grantor has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY, unto Trustee the Mortgaged Property, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property unto Trustee, forever, and Grantor does hereby bind itself, its successors and assigns to warrant and forever defend the title to the Mortgaged Property unto the Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Grantor shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall perform and discharge (or cause to be performed and discharged) the Obligations on or before the date same are to be performed and discharged, then the liens, security interest, estates and rights granted by the Security Documents shall terminate; otherwise same shall remain in full force and effect.

## Article 3

### WARRANTIES AND REPRESENTATIONS

Grantor hereby unconditionally warrants and represents to Beneficiary as follows:

3.1 Validity of Loan Instruments: The execution, delivery and performance by Grantor of the Security Documents and the borrowing evidenced by the Developer Note, (a) are within Grantor's corporate powers and have been duly authorized by Grantor's Board of Directors, shareholders and all other requisite corporate action, (b) have received all (if any) requisite prior governmental approval in order to be legally binding and enforceable in accordance with the terms thereof, and (c) will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time, or both) a default under, any Legal Requirement or result in the creation or



imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Grantor's or Guarantors' property or assets, except as contemplated by the provisions of the Security Documents. The Security Documents constitute the legal, valid and binding obligations of Grantor and Guarantors under the terms of the Security Documents, enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally.

3.2 Title to Mortgaged Property and Lien of This Instrument: Grantor has good and marketable title to the Land (in fee simple) and Buildings, and good and marketable title to the Fixtures and Personalty, free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever except the Permitted Encumbrances. This Deed of Trust constitutes a valid, subsisting, first lien deed of trust on the Land, the Buildings and the Fixtures and a valid, subsisting, first security interest in and to the Personalty, Leases and Rents, all in accordance with the terms hereof.

#### Article 4

#### AFFIRMATIVE COVENANTS

Grantor hereby unconditionally covenants and agrees with Beneficiary as follows:

4.1 Payment and Performance: Grantor will pay the Indebtedness, as and when called for in the Security Documents and on or before the due dates thereof, and will perform all of the Obligations, in full and on or before the dates same are to be performed.

4.2 Compliance with Legal Requirements: Grantor will, in all material respects, promptly and faithfully comply with, conform to and obey all present and future Legal Requirements.

4.3 Payment of Impositions: Grantor will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the due date thereof, or the day any fine, penalty, interest or cost may be added thereto or imposed, or the day any lien may be filed, for the non-payment thereof (if any such day is used to determine the due date of the respective item); provided, however, that Grantor may, if permitted by law and if such installment payment would not create or permit the filing of a lien against the Mortgaged Property, pay the Impositions in installments whether or not interest shall accrue on the unpaid balance of such Impositions, and provided further that Grantor may, by appropriate proceedings conducted in good faith contest the validity or amount of any Imposition and defer the payment

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thereof during the continuance of such contest if Grantor establishes reserves deemed adequate by Beneficiary for the payment of such Imposition and if during the pendency of any such contest the Mortgaged Property shall not be in jeopardy of foreclosure, forfeiture, sale or loss.

Upon notice from Beneficiary given at any time after completion of the Project, Grantor shall immediately deposit with Beneficiary a sum which bears the same relation to the annual Impositions and insurance premiums for the year then in effect as the number of months elapsed since the last preceding installment of said Impositions and insurance premiums shall have become due and payable bears to 12. Thereafter, on the first day of each and every month during the term of this Deed of Trust, Grantor shall deposit with Beneficiary a sum equal to one-twelfth of such Impositions and insurance premiums for the then current year, so that as each installment of such Impositions and insurance premiums shall become due and payable, Grantor shall have deposited with Beneficiary a sum sufficient to pay the same. All such deposits shall be received and held by Beneficiary and applied to the payment of each installment of such Impositions as the same shall become due and payable, whether or not any subsequent owner of the Property may benefit thereby, and shall not bear interest. In the event that the amount of such Impositions and insurance premiums has not been definitely ascertained at the time when any such deposits are herein required to be made, Grantor shall make such deposits based upon the amount of such Impositions or insurance premiums for the preceding year, subject to adjustment as and when the amount thereof is ascertained. If at any time when any installment of such Impositions and insurance premiums becomes due and payable Grantor shall not have deposited a sum sufficient to pay the same, Grantor shall, within 5 days after demand, deposit with Beneficiary any deficiency, and if Grantor shall have deposited a sum more than sufficient to pay such installment, such excess shall be applied toward the deposits next required to be made hereunder. In the event Beneficiary at any time refunds any portion of the reserve fund, it may make the refund to whomever is represented to be the owner of the Property at the time. If Beneficiary at any time elects not to require payments which it may require pursuant to this Section, its election will be without prejudice to further exercise of its rights.

4.4 Repair: Grantor will keep the Mortgaged Property in first class order and condition and will make all repairs, replacements, additions, improvements and alterations thereof and thereto, interior and exterior, structural and nonstructural, which are necessary or reasonably appropriate to keep same in such order and condition.

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4.5 Required Casualty Insurance. Grantor shall obtain and at all times maintain in force an insurance policy covering the Buildings which shall include builder's risk coverage, on a replacement cost basis, in an amount no less than the full replacement cost thereof. Such insurance shall contain a mortgagee loss payable clause and an endorsement requiring the insurer to provide at least thirty (30) days written notice to Beneficiary prior to any cancellation or termination of coverage. Such mortgagee's clause shall assign to Beneficiary the entire proceeds of all insurance coverages for fire and extended coverages, with an all risk endorsement (if available). Such clause shall direct payment to Beneficiary of all monies received in the event of loss. The above-referenced fire and extended coverages shall include, but shall not be limited to, all interior walls, floors, ceilings, floor coverings, and all chattels, common area fixtures, or equipment thereon. The insurance carrier, and the form, substance and coverage of all such insurance policies shall be satisfactory to Beneficiary. In addition to the fire and extended coverage multi-peril policies referred to herein, it is agreed and understood that additional insurance coverage, in various forms, kinds and amounts may be required by Beneficiary from time to time in the reasonable exercise of its discretion, including but not limited to, fidelity coverage, comprehensive public liability coverage, a "blanket" policy of flood insurance on the Project if the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, and other similar items and requirements. Each hazard insurance policy shall be written by an insurance carrier which has a financial rating by Best's Insurance Reports of Class X or better. Each insurance carrier must be licensed or authorized to transact business within the State of Nevada. Policies will be unacceptable if (a) under the terms of the insurer's charter, bylaws of policy, contribution or assessments may be made against the Grantor or Beneficiary, (b) by the terms of the insurer's charter, bylaws or policy, loss payments are contingent upon action by the insurer's board of directors, policyholders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent Grantor or Beneficiary from collecting insurance proceeds.

4.6 Casualty; Reconstruction; Etc. In case of any material loss or damage to all or any part of the Project, Grantor shall forthwith notify Beneficiary of the same by telephone followed by written notice. Unless instructed in writing to the contrary by Beneficiary, Grantor shall then: (a) subject to Beneficiary's approval, proceed with diligence to make settlement with insurers and cause the proceeds of insurance to be deposited with Beneficiary; (b) in the event the proceeds of insurance and available proceeds of the Loan hereunder are insufficient so as to assure the Beneficiary that the Loan will be in balance, including any additional cost which Beneficiary

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may estimate will be incurred because of the Casualty, promptly deposit with Beneficiary any amount necessary to place the loan in balance; (c) if the proceeds of insurance are to be applied to the cost of repair and restoration, whether because the Beneficiary is required to or elects to permit such application, promptly commence construction of the Buildings, including the repair of all damage resulting from the fire or other cause. All proceeds of insurance and any condemnation awards shall be paid to Beneficiary and be applied to reduce the outstanding balance of the Indebtedness (whether or not then due, and in any order of priority) or held by Beneficiary in an interest bearing account to be applied to the Project, as provided in Section 4.8 below.

4.7 Other Casualty Provisions. In the event that following any Casualty Grantor fails to make any deposit required under Section 4.6 above, Beneficiary may, at its discretion, declare the balance remaining unpaid under the terms of this Deed of Trust or of the Developer Note due and payable forthwith, and Beneficiary may avail itself of any of the remedies afforded hereby or thereby as in the case of any Event of Default.

4.8 Application of Proceeds; Collection. Grantor will give to Beneficiary prompt notice of any damage to destruction or condemnation of the Mortgaged Property, and:

(i) In the event of any damage to or destruction of the Mortgaged Property or any part thereof (the "Casualty"), if, (i) in the reasonable judgment of the Grantor, the Mortgaged Property can be restored by no later than the earlier of (A) twelve months after the date of the Casualty, or (B) the "Maturity Date", as defined in the Note, to an economic value which is not less than the same was prior to the Casualty, and adequately secure the outstanding balance of the Note, and (ii) no Event of Default, as herein defined, shall have occurred and be then continuing, then the proceeds of insurance shall be applied to reimburse Grantor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to Casualty, as provided for below; and Grantor hereby covenants and agrees forthwith to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided, always, that Grantor shall deposit with Beneficiary at the time Beneficiary receives the net proceeds of insurance made available pursuant to the terms hereof and from time to time thereafter an amount sufficient to cover all costs of such restoring, repairing, replacing or rebuilding in excess of such net proceeds; provided, however, that Beneficiary shall be entitled to apply in any of the ways specified in paragraph (ii), below, any proceeds which it would otherwise be required to apply to restoration or repair if an Event of Default occurs or Grantor is not diligently proceeding with the repair or restoration.

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(ii) Except as provided in Subsection (i) above, any insurance proceeds consequent upon any Casualty and any condemnation awards received with respect to any portion of the Mortgaged Property shall be, at the option of Beneficiary, applied (without premiums) to the prepayment of the Indebtedness (whether or not then due and in any order of priority), or the restoration of the Mortgaged Property.

(iii) In the event that the proceeds, if any, shall be made available to Grantor for the restoring, repairing, replacing or rebuilding or the Mortgaged Property, Grantor hereby covenants to restore, repair, replace or rebuild the same, to be of at least equal value, and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with the Plans and Specifications as defined in the Loan Agreement.

In the event Grantor receives reimbursement out of proceeds of either insurance or condemnation held by Beneficiary, such proceeds shall be disbursed from time to time upon Beneficiary being furnished with (1) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (2) funds sufficient in addition to the proceeds, to complete the proposed restoration, repair, replacement and rebuilding, and (3) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and performance (including, but not limited to, any which could be required under the Loan Agreement with respect to the original construction) as Beneficiary may reasonably require and approve; and Beneficiary may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Beneficiary prior to commencement of work.

Beneficiary may settle or adjust any insurance proceeds or condemnation awards with the insurer or condemning authority without participation by Grantor if there is at the time an Event of Default.

**4.9 Inspection:** Grantor will permit Trustee and Beneficiary, and their agents, representatives and employees, to inspect the Mortgaged Property at all reasonable times.

**4.10 Hold Harmless:** Grantor will defend, at its own cost and expense, and hold Beneficiary harmless from, any action, proceeding or claim affecting the Mortgaged Property, and all costs and expenses incurred by Beneficiary in protecting its interest hereunder in such an event (including all court costs and attorneys' fees) shall be borne by Grantor.

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4.11 Commit Waste: Grantor will not commit or permit to be committed any waste with respect to the Mortgaged Property.

## Article 5

### NEGATIVE COVENANTS

Grantor hereby covenants and agrees with Beneficiary that, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged:

5.1 Use Violations: Grantor will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, the Mortgaged Property in any manner which (a) violates any Legal Requirement, (b) may be dangerous unless safeguarded as required by law, (c) constitutes a public or private nuisance or (d) makes void, voidable or cancellable, or increases the premiums of, any insurance then in force with respect thereto.

5.2 Alterations: Grantor will not commit or permit any waste of the Mortgaged Property and will not (subject to the provisions or Sections 4.4 and 4.6 hereinabove) without the prior written consent of the Beneficiary make or permit to be made any alterations or additions to the Mortgaged Property of a material nature.

5.3 Replacement of Fixtures and Personalty: Grantor will not, without the prior written consent of Beneficiary, permit any of the Fixtures or Personalty to be removed at any time from the Land or Buildings unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of equal suitability and value, owned by Grantor, free and clear of any lien or security interest except such as may be first approved in writing by Beneficiary.

5.4 No Further Encumbrances: Grantor will not, without the prior written consent of Beneficiary, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any mortgage, pledge, lien (statutory, constitutional or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, regardless of whether same are expressly subordinate to the liens of the Security Documents, with respect to the Mortgaged Property or the Rents or the property subject to the mortgages of property in Vero Beach, Florida and Buffalo, New York given to secure payment of the Note, other than the Permitted Encumbrances.

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5.5 No Sales, Leases or Other Transfers: Grantor will not, without the prior written consent of Beneficiary, sell, lease, exchange, assign, convey, transfer possession of or otherwise dispose of the Mortgaged Property or any controlling interest in Grantor.

## Article 6

### EVENTS OF DEFAULT

The term "Event of Default", as used herein shall mean any Default as defined in the Loan Agreement.

## Article 7

### DEFAULT AND FORECLOSURE

7.1 Remedies: If an Event of Default shall occur and be continuing, Beneficiary may, at Beneficiary's election and by or through Trustee or otherwise exercise any or all of the following rights, remedies and recourses:

(a) Acceleration: Declare the Principal Balance (defined hereby as meaning the then unpaid principal balance on the Developer Note), the accrued interest and any other accrued but unpaid portion of the Indebtedness to be immediately due and payable, without further notice, presentment, protest, demand or action of any nature whatsoever (each of which hereby is expressly waived by Grantor), whereupon the same shall become immediately due and payable.

(b) Entry on Mortgaged Property: Enter upon the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Grantor remains in possession of all or any part of the Mortgaged Property after an Event of Default and without Beneficiary's prior written consent thereto, Beneficiary may invoke any and all legal remedies to dispossess Grantor, including specifically one or more actions for forcible entry and detainer, trespass to try title and writ of restitution. Nothing contained in the foregoing sentence shall, however, be construed to impose any greater obligation or any prerequisites to acquiring possession of the Mortgaged Property after an Event of Default than would have existed in the absence of such sentence.

(c) Operation of Mortgaged Property: Hold, lease, manage, operate or otherwise use or permit the use of the Mortgaged Property, either itself or by other persons, firms or entities, in such manner, for such time and upon such other terms

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as Beneficiary may deem to be prudent and reasonable under the circumstances (making such repairs, alterations, additions, and improvements thereto and taking any and all other action with reference thereto, from time to time, as Beneficiary shall deem necessary or desirable), and apply all Rents and other amounts collected by Trustee in connection therewith in accordance with the provisions of Section 7.7 hereinbelow.

(d) Foreclosure and Sale: Sell or offer for sale the Mortgaged Property in such portions, order and parcels as Beneficiary may determine, with or without having first taken possession of same, to the highest bidder at public auction. Such sale shall be made at the courthouse door of the county wherein the land, or any portion thereof, to be sold is located after giving notice of time, place and terms of the sale as required by statute, or by accomplishing all or any of the aforesaid in such manner as permitted or required by applicable Nevada law relating to the sale of real estate and/or by Chapter 9 of the Uniform Commercial Code as in effect in Nevada relating to the sale of collateral after default by a debtor, or by any other present or subsequent articles or enactment, relating to same. Nothing contained in this paragraph 7.1(d) shall be construed to limit in any way Trustee's rights to sell the Mortgaged Property by private sale if, and to the extent that, such private sale is permitted under the laws of the State of Nevada or by public or private sale after entry of a judgment by any court of competent jurisdiction ordering same. At any such sale (i) whether made under the power herein contained, any other Legal Requirement or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for Trustee to be physically present, or to have constructive possession of, the Mortgaged Property or the Note (Grantor hereby covenanting and agreeing to deliver to Trustee any portion of the Mortgaged Property not actually or constructively possessed by Trustee immediately upon demand by Trustee) and the title to and right of possession of any such property shall pass to the purchaser thereof as completely as if the same had been actually present and delivered to purchaser at such sale; (ii) each and every recital contained in any instrument of conveyance made by Trustee shall conclusively establish the truth and accuracy of the matters recited therein, including, without limitation, nonpayment of the Indebtedness, advertisement and conduct of such sale in the manner provided herein and otherwise by law and appointment of any successor Trustee hereunder, (iv) any and all prerequisites to the validity thereof shall be conclusively presumed to have been performed, (v) the receipt of Trustee or of such other party or officer making the sale shall be a sufficient discharge to the purchaser or purchasers for his or their purchase money and no such purchaser or purchasers, or his or their assigns or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in any way

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answerable for any loss, misapplication or nonapplication thereof, (vi) to the fullest extent permitted by law, Grantor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Grantor, and against any and all other persons claiming or to claim the property sold or any part thereof, by, through or under Grantor, and (vii) Beneficiary may be a purchaser at any such sale and may apply the Indebtedness as a credit upon the purchase price.

(e) Trustee or Receiver: Upon, or at any time after, commencement of foreclosure of the lien and security interest provided for herein or any legal proceedings hereunder, make application to a court of competent jurisdiction without regard to the solvency of Grantor or the adequacy of the Mortgaged Property for the repayment of the Indebtedness, for appointment of a receiver of the Mortgaged Property. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 7.7 hereinbelow.

(f) Other: Exercise any and all other rights, remedies and recourses granted under the Security Documents or now or hereafter existing in equity, at law, by virtue of statute or otherwise.

7.2 Separate Sales: The Mortgaged Property may be sold in one or more parcels and in such manner and order as Beneficiary, in its sole discretion, may elect, it being expressly understood and agreed that the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales but other and successive sales may be made until all of the Mortgaged Property has been sold or until the Indebtedness has been fully satisfied.

7.3 Remedies Cumulative, Concurrent and Non-Exclusive: Beneficiary shall have all rights, remedies and recourses granted in the Security Documents and available at law or equity (including specifically those granted by the Uniform Commercial Code in effect and applicable to the Mortgaged Property, or any portion thereof), and same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Grantor, any Guarantor or others obligated under the Developer Note, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Beneficiary, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Grantor that the exercise or failure to exercise any of same shall in no event be construed as

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a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be and shall be, non-exclusive.

7.4 Release of and Resort to Collateral: Beneficiary may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Security Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Beneficiary may resort to any other security therefor held by Trustee in such order and manner as Beneficiary may elect.

7.5 Waiver of Redemption, Notice and Marshalling of Assets: To the fullest extent permitted by law, Grantor hereby irrevocably and unconditionally waives and releases (a) all benefits that might accrue to Grantor by virtue of any present or future law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of Trustee's election to exercise or his actual exercise of any right, remedy or recourse provided for under the Security Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

7.6 Discontinuance of Proceedings: In case Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted under the Security Documents and shall thereafter elect to discontinue or abandon same for any reason, Beneficiary shall have the unqualified right so to do and, in such an event, Grantor and Beneficiary shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Security Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary shall continue as if same had never been invoked.

7.7 Application of Proceeds: The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, operation or other use of, the Mortgaged Property shall be applied by Beneficiary (or the receiver, if one is appointed) to the extent that funds are so available therefrom in the following orders of priority:

(a) first, to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation, (i) trustees' and receivers' fees, (ii) court costs, (iii) attorneys' and accountants' fees, and (iv) costs of advertisement;

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(b) second, to the payment of all amounts, other than the principal balance and accrued but unpaid interest, which may be due to Beneficiary under the Security Documents, together with interest thereon as provided therein;

(c) third, to the payment of all accrued but unpaid interest due on the Developer Note;

(d) fourth, to the payment of the principal balance of the Developer Note; and

(e) fifth, to Grantor.

## Article 8

### SECURITY AGREEMENT

8.1 Security Interest: This Deed of Trust shall be construed as a deed of trust on real property and it shall also constitute and serve as a "Security Agreement" on personal property within the meaning of, and shall constitute until the grant of this Deed of Trust shall terminate as provided in Article 2 hereinabove a first and prior security interest under the Uniform Commercial Code as to property within the scope thereof with respect to the Personalty, Fixtures and Rents.

8.2 Financing Statements: Grantor hereby agrees with Beneficiary to execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such "Financing Statements" and such further assurances as Beneficiary may, from time to time, consider necessary to create, perfect and preserve Beneficiary's security interest herein granted, and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

8.3 Uniform Commercial Code Remedies: Beneficiary (or Trustee in Beneficiary's behalf) shall have all the rights, remedies and recourses with respect to the Personalty, Fixtures and Rents afforded a Secured Party by the aforesaid Uniform Commercial Code in addition to, and not in limitation of, the other rights, remedies and recourses afforded Beneficiary and/or Trustee by the Security Documents.

8.4 No Obligation of Trustee: The assignment and security interest herein granted shall not be deemed or construed to constitute Trustee or Beneficiary as a trustee in possession of the Mortgaged Property, to obligate Trustee or Beneficiary to lease the Mortgaged Property or attempt to do same, to collect any rents, or to take any action, incur any expenses or perform

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or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

## Article 9

### CONCERNING THE TRUSTEE

9.1 No Liability: Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's negligence or bad faith. Trustee shall not be personally liable in case of entry by him, or anyone entering by virtue of the powers herein granted him, upon the Mortgaged Property for debts contracted or liability or damages incurred in the management or operation of the Mortgaged Property. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by him in the performance of his duties hereunder and to reasonable compensation for such of his services hereunder as shall be rendered. Grantor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save him harmless against, any and all liability and expenses which may be incurred by him in the performance of his duties.

9.2 Retention of Moneys: All moneys 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 moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by him hereunder.

9.3 Successor Trustee: Trustee may resign by giving notice of such resignation in writing to Beneficiary. If Trustee shall die, resign or become disqualified from action in the execution of this trust or shall fail or refuse to execute the same when requested by Beneficiary so to do, or if, for any reason, Beneficiary shall prefer to appoint a substitute trustee to act instead of the forenamed 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.

9.4 Succession Instruments: 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 or his predecessor in the rights hereunder with like effect as if

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originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the successor Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the successor Trustee so appointed in its or his place.

#### Article 10

##### PARTIAL RELEASE

If (i) Grantor sells a time-share interval (as described in the Loan Agreement) in a unit in the Buildings, (ii) Grantor gives Beneficiary no less than five business days' notice that it desires a release of this Deed of Trust from such time-share interval, (iii) no Event of Default is occurring at the time of release, and (iv) Beneficiary receives for application upon the indebtedness evidenced by the Note an amount equal to 50 percent of the gross sales price for the time-share interval in question, then Beneficiary shall instruct the Trustee in writing to release said time-share interval from the lien of this Deed of Trust and Trustee shall release the same.

#### Article 11

##### MISCELLANEOUS

11.1 Survival of Obligations: Each and all of the Obligations shall survive the execution and delivery of the Security Documents, and the consummation of the loan called for therein, and shall continue in full force and effect until the Indebtedness shall have been paid in full.

11.2 Further Assurances: Grantor, upon the request of Trustee or Beneficiary, will execute, acknowledge, deliver and record and/or file such further instruments and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of the Security Documents and to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to the then Mortgaged Property.

11.3 Recording and Filing: Grantor will cause the Security Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and re-filed in such manner and in such places as Trustee or

Beneficiary shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

11.4 No Waiver: Any failure by Trustee or Beneficiary to insist, or any election by Trustee or Beneficiary not to insist, upon strict performance by Grantor of any of the terms, provisions or conditions of the Security Documents shall not be deemed to be a waiver of same or of any other term, provision or condition thereof, and Trustee or Beneficiary shall have the right at any time or times thereafter to insist upon strict performance by Grantor of any and all of such terms, provisions and conditions.

11.5 Beneficiary's Right to Perform the Obligations: If Grantor shall fail, refuse or neglect to make any payment or perform any act required by any Security Document, then at any time thereafter and without notice to or demand upon Grantor and without waiving or releasing any other right, remedy or recourse Beneficiary may have because of same, Beneficiary may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Grantor, and shall have the right to enter the Project for such purpose and to take all such action thereon and with respect to the Mortgaged Property as it may deem necessary or appropriate. Grantor shall indemnify Beneficiary for all losses, expenses, damage, claims and causes of action, including reasonable attorneys' fees, incurred or accruing by reason of any acts performed by Beneficiary pursuant to the provisions of this Section 11.5 or by reason of any other provision in this Deed of Trust. All sums paid by Beneficiary pursuant to this Section 11.5, and all other sums expended by Beneficiary to which it shall be entitled to be indemnified, together with interest thereon at the rate of 14 percent from the date of such payment or expenditure, shall constitute additions to the Indebtedness, shall be secured by the Security Documents and shall be paid by Grantor to Beneficiary upon demand.

11.6 Successors and Assigns: All of the terms of the Security Documents shall apply to, be binding upon and inure to the benefit of the parties thereto, their respective successors, assigns, heirs and legal representatives, and all other persons claiming by, through or under them.

11.7 Applicable Law: This Deed of Trust shall be governed by and construed according to the laws of Nevada.

11.8 Subrogation: If any or all of the proceeds of the Developer Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property, then, to the extent of such funds so used, the Indebtedness and this Deed of Trust shall be subrogated to all of the

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rights, claims, liens, titles and interest heretofore existing against the Mortgaged Property to secure the indebtedness so extinguished, extended or renewed and the former rights, claims, liens, titles and interest, if any, are not waived but rather are continued in full force and effect in favor of Beneficiary and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and the satisfaction of the Obligations.

11.9 Headings: The Article, Section and paragraph headings hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing the text of such Articles, Sections or paragraphs.

11.10 Conflicts in Documents: To the extent, if any, that the provisions of any other Security Documents conflict with any provision of the Loan Agreement, the provisions of the Loan Agreement shall control to the extent of such conflict, unless the applicable provisions of the other Security Documents increases the rights of Beneficiary, in which event the terms of the other Security Documents shall control.

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust as of May 16, 1984.

SAIDA OF NEVADA, INC.

By *Philip Schwab*  
Its President *Philip Schwab*

and *Frank A. Bailey*  
Its Vice President  
*Frank A. Bailey*

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STATE OF NEVADA )  
                  *Carson City* ) ss.  
COUNTY OF ~~CLARK~~ )

On May 16<sup>th</sup> 1984, personally appeared before me, a notary public, Philip Schwab and Frank A. Bailey, President and Vice President of Saida of Nevada, Inc., a Nevada corporation, who acknowledged to me that they executed the foregoing instrument on behalf of the corporation.

*Carol MacLeod*  
\_\_\_\_\_  
Notary Public



COPY



EXHIBIT "A"

Units 1 through 24 as set forth on the Condominium Map of Lot 50, Tahoe Village No. 1, filed as the Seventh Amended Map of Tahoe Village Unit No. 1, on April 14, 1982, as Document No. 66838, Official Records of Douglas County, State of Nevada.

TOGETHER WITH an undivided 24/24ths interest in and to those areas set forth as Common Areas as set forth on said Seventh Amended Map of Tahoe Village Unit No. 1 on April 14, 1982, Document No. 66838, Official Records of Douglas County, State of Nevada.

COPY

REQUESTED BY  
SILVER STATE TITLE CO.  
IN OFFICIAL RECORDS OF  
DOUGLAS CO. NEVADA

*\$25.00 pk*  
1984 MAY 25 PM 8:43

SUZANNE BEAUDREAU  
RECORDER

*Betty Herndon*  
*Dep*

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