

APN 1320-04-001-022  
See pg 293 of Exh A  
for further APN's

000701782-LH

RECORDING REQUESTED  
BY AND WHEN RECORDED  
RETURNED TO:

NV Carson Ranch, Inc.  
a Nevada corporation  
c/o Sterling Pacific Assets  
2260 Douglas Boulevard, Suite 240  
Roseville, CA 95661  
Attention: Duane Grimsman

(Space above this line for use of the County Recorder)

DOUGLAS COUNTY

**DEED OF TRUST WITH ASSIGNMENT OF RENTS**

**THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS** (this "Deed of Trust"),  
is made as of October 16, 2000, by **THE BENTLY FAMILY LIMITED PARTNERSHIP**, a  
Nevada limited partnership, as trustor ("Trustor"), to **STEWART TITLE COMPANY**, as  
trustee ("Trustee"), for the benefit of **NV CARSON RANCH, INC.** a Nevada corporation, as  
beneficiary ("Beneficiary").

**TRUSTOR:**

**THE BENTLY FAMILY LIMITED PARTNERSHIP,  
A NEVADA LIMITED PARTNERSHIP**  
Post Office Box B  
Minden, Nevada 89423  
Attention: Donald E. Bently

**TRUSTEE:**

**STEWART TITLE COMPANY**  
1650 North Lucerne  
Minden, NV 89423

**BENEFICIARY:**

**NV CARSON RANCH, INC.,  
A NEVADA CORPORATION**  
c/o Sterling Pacific Assets  
2260 Douglas Boulevard, Suite 240  
Roseville, CA 95661  
Attention: Duane Grimsman

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## GRANT IN TRUST

Trustor hereby grants and assigns to Trustee, in trust, with power of sale and right of entry and possession, all of that certain real property located in the County of Douglas, State of Nevada, described on Exhibit A attached hereto and by this reference incorporated herein, together with all easements and other rights now or hereafter made appurtenant thereto, all improvements and fixtures now or hereafter located thereon including, but not limited to existing improvements, all leases thereof, and all additions and accretions thereto, and all water rights, including, without limitation, those water rights represented by the permits, certificates, proofs and applications filed with the Office of the State Engineer, State of Nevada, Division of Water Resources, with respect to the real property. Said real property, appurtenances, improvements, fixtures, leases, water rights, additions and accretions are hereinafter called the "Property." "Fixtures" shall include all articles of personal property now or hereafter attached to said real property, appurtenances and improvements. Trustor makes the foregoing grant to Trustee to hold the Property in trust for the benefit of Beneficiary, and for the purpose and upon the terms and conditions hereinafter set forth.

## ASSIGNMENT OF RENTS

Trustor absolutely and irrevocably assigns to Beneficiary the rents, issues and profits of the Property upon the terms and conditions hereinafter set forth. The foregoing assignment shall not impose upon Beneficiary any duty to produce rents from the Property, and said assignment shall not cause Beneficiary to be a "mortgagee in possession" for any purpose. This assignment of the rents, issues and profits of the Property is intended to be an absolute assignment from Trustor to Beneficiary and not merely the passing of a security interest. Beneficiary is hereby authorized to collect and receive the foregoing rents, issues, profits, royalties, production and other payments and proceeds, to give proper receipts and acquittances therefor and to apply the same to the payment of the obligations secured hereby. However, Beneficiary hereby grants Trustor a revocable license to collect and receive, and to use such rents, issues, profits, royalties, production and other payments and proceeds until and during the continuance of an Event of Default (as hereinafter defined).

## OBLIGATIONS SECURED

Trustor makes the foregoing grant for the purpose of securing:

1. Payment to Beneficiary of (i) all indebtedness evidenced by and arising under that certain promissory note dated as of the date hereof, payable to Beneficiary or its order, in the principal amount of FOUR MILLION FIVE HUNDRED THOUSAND AND 00/100THS DOLLARS (\$4,500,000.00) (the "Note"), together with interest thereon, and (ii) any modifications, extensions or renewals thereof (including, without limitation, modifications of the required principal and/or interest payment dates, deferring or accelerating said payment dates in whole or in part, and/or modifications, extensions, renewals or reborrowings at a different rate of interest or interest periods), whether or not any such modification, extension or renewal is

evidenced by a new or additional promissory note or notes, and (iii) any advances, fundings or payments made by Beneficiary hereunder or under the Note;

2. Payment of such further sums and/or performance of such further obligations as the then record owner of the Property may undertake to pay and/or perform (whether as principal, surety or guarantor), for the benefit of Beneficiary, its successors or assigns, when said borrowing and/or obligation is evidenced by a writing or writings reciting that it or they are so secured;

3. The observance and performance of each covenant and obligation of Trustor herein contained or incorporated herein by reference and payment of each fee, cost and expense by Trustor as herein set forth;

4. The observance and performance by Trustor of each covenant and obligation on the part of Trustor to be observed or performed pursuant to the Note, which Note is incorporated herein by this reference;

5. The advances, expenses and costs incurred or paid by Beneficiary or Trustee in connection with the preservation and protection of the Property; or in the preservation, protection or enforcement of the lien created hereby; or the enforcement of the rights and remedies of Beneficiary hereunder; or enforcement or performance of the duties and liabilities of Trustor hereunder; or in performance for Trustor's account of any obligation of Trustor howsoever arising; or in collection of rents or prevention of waste; or in performance of the covenants set forth in Nevada Revised Statutes §107.030 incorporated herein in Paragraph A.2 hereof, including, but not limited to, attorneys' fees, court costs, witness fees, expert witness fees and collection costs.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, THE PARTIES AGREE AS FOLLOWS:

**A. RIGHTS AND DUTIES OF THE PARTIES**

1. **Title.** Trustor warrants that it holds marketable and indefeasible fee simple absolute title to the Property, and that it has the right and is lawfully authorized to encumber the Property. Trustor covenants to warrant and forever defend Beneficiary and Trustee from and against all persons claiming any interest in the Property.

2. **N.R.S. Covenants.** The following covenants, Nos. 1, 2 (full replacement value), 3, 4(interest 8 ½ %), 5, 6, 7 (counsel fees shall be in an amount equal to the actual and reasonable attorneys' fees incurred by Trustees and Beneficiaries), 8 and 9 of Nevada Revised Statutes §107.030, when not inconsistent with covenants and provisions contained herein, are hereby adopted and made a part of this Deed of Trust.

3. **Taxes and Assessments.** Trustor shall pay, not later than five (5) days prior to delinquency, all taxes, assessments, levies and charges imposed by any public or quasi-public

authority or utility company which are or may become a lien upon the Property, any part thereof or interest therein. Trustor shall also pay, after notice and at least five (5) days prior to delinquency, all taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in the Property created hereby or by reason of any payment, or portion thereof, made to Beneficiary hereunder or pursuant to any obligation hereby secured; provided, however, that Trustor shall have no obligation to pay or discharge Beneficiary's business or franchise taxes, federal or state income taxes or other taxes and which are measured by and imposed upon Beneficiary's net or gross income or receipts. If, by virtue of any statute, regulation, ordinance or judicial decision, Trustor is prohibited from paying or released from the obligation to pay any such taxes to Beneficiary, or Beneficiary is prohibited or precluded from enforcing any such obligation, then, at Beneficiary's sole option, all sums and obligations secured hereby, together with accrued interest, and without deduction or offset, shall become immediately due and payable, notwithstanding anything contained herein or in any law heretofore or hereinafter enacted. In the event of the passage, after the date of this Deed of Trust, of any law deducting from the value of the Property for the purpose of taxation, any lien thereon, or changing in any way the laws now in force for the taxation of deeds of trust or debts secured by deeds of trust or similar instruments, or the manner of the collection of any such taxes, so as to affect this Deed of Trust, or imposing payment of the whole or any portion of any taxes, assessments or other similar charges against the Property upon Beneficiary, Trustor shall pay such tax or increased portion and shall agree with Beneficiary in writing to pay, or reimburse Beneficiary for the payment of, any such tax or increased portion thereof when thereafter levied or assessed against the Property or any portion thereof. The obligations of Trustor under such agreement shall be secured by this Deed of Trust. If Trustor is not permitted by applicable law to pay such tax, or if such payment would violate any usury law of the State of Nevada, or if Trustor may lawfully pay such taxes but fails to do so when the same is due and payable, then, in such event, the whole of the principal sum secured by this Deed of Trust, together with accrued interest thereon, at the option of the Beneficiary, without demand or notice, shall immediately become due and payable. Trustor, at its own expense, may oppose such tax provided, however, that in the event Trustor elects to contest or oppose such tax, Beneficiary shall have the right to appoint counsel of Beneficiary's choice to monitor such opposition or contest and the reasonable attorneys' fees of Beneficiary in connection therewith shall be paid by Trustor.

#### **4. Insurance.**

(a) Upon written request by Beneficiary, Trustor shall provide, maintain and deliver to Beneficiary an "all risk" property damage insurance policy (including earthquake insurance and insurance to cover the risks of subsidence, earth movement and slippage, and excessive water damage, if Beneficiary so requires) and any other type or form of hazard or property damage insurance required by Beneficiary or governmental law or regulation from time to time, covering the Property and all such improvements, if any, located thereon in an amount not less than the full replacement cost of the Property and such improvements (without regard to depreciation), naming Beneficiary as an additional insured and with loss payable to Beneficiary. At Beneficiary's request, Trustor shall deliver to Beneficiary such evidence as Beneficiary deems reasonably satisfactory that sufficient insurance (both in amount and coverage) is in force. The amount collected under any such insurance policy may be applied by Beneficiary to any

indebtedness secured hereby and in such order as Beneficiary may determine in its sole discretion, or Beneficiary, at its sole option, may release all or any portion of the amount so collected to Trustor. Such application or release shall not cure or waive default or notice of default hereunder or invalidate any act done pursuant to such notice.

(b) Trustor shall also provide, maintain and deliver to Beneficiary, at its sole cost and expense, with companies acceptable to Beneficiary, the following insurance: (1) Workers Compensation Insurance (at a minimum limit of \$1,000,000) for all persons whom it employs in carrying out its activities on the Property; and (2) Comprehensive or Commercial General Liability Insurance on an "occurrence" basis, with deductibles reasonably acceptable to Beneficiary, with a combined single limit for bodily injury and property damage of \$1,000,000 or an amount equal to the limit from time to time carried by Trustor, if greater; and (3) Such other policies of insurance as Beneficiary shall reasonably require or any governmental authority having jurisdiction over the Property or the Trustor shall from time to time require;

(c) Each insurance policy required under this section shall: (1) except as otherwise provided in writing by Beneficiary, be issued by insurance carriers licensed and approved to do business in Nevada, having a general policyholders rating of not less than an "A-" and financial rating of not less than "V" in the most current Best's Insurance Report; (2) contain a provision that the policy shall not be subject to material alteration or cancellation without at least thirty (30) days' prior written notice given to Beneficiary by registered mail; (3) provide that such policy or policies and the coverage evidenced thereby are primary and any insurance maintained by the additional insureds is noncontributing with such primary coverage; and (4) contain severability of interest and cross liability clauses;

(d) As evidence of specified insurance coverage, Purchaser shall deliver copies of such insurance policies to Seller. Seller has the right to review certified policies as reasonably necessary. Such evidence shall be delivered to Seller promptly upon execution of this Agreement and annually thereafter, or upon request of Beneficiary;

(e) Trustor shall maintain all required insurance in companies, amounts, coverages and forms satisfactory to Beneficiary. Neither Beneficiary nor Trustee shall, by reason of accepting, rejecting, approving or obtaining insurance incur any liability for (i) the existence, nonexistence, form or legal sufficiency thereof, (ii) the solvency of any insurer, or (iii) the payment of losses. All such policies or certificates of insurance shall name Beneficiary and Trustor, as their interests may appear, as the loss payees; shall stipulate that Beneficiary is to receive written notice thirty (30) days prior to any modification or cancellation; shall contain a waiver of subrogation against Beneficiary; and shall be primary and non-contributory to any other insurance Beneficiary may process. Trustor shall deliver the original of all such policies or certificates to Beneficiary and all receipts or other evidence, evidencing payment of the premiums therefor.

(f) Nothing herein shall excuse Trustor from repairing or maintaining the Property or restoring all damage or destruction to the Property regardless of the existence, payment, or adequacy of insurance proceeds.

**5. Security Account.** Upon the occurrence and continuance of an Event of Default (as hereinafter defined), at Beneficiary's option and upon its demand and except where and to the degree prohibited by law, Trustor shall, until every indebtedness secured hereby has been paid in full or until such Event of Default is cured, pay to Beneficiary each month an amount estimated by Beneficiary to be equal to (i) the taxes, assessments, levies, and charges referred to in Paragraph A.3 above, and (ii) premiums for fire, other hazard and other insurance referred to in Paragraph A.4 above next due. Said tax and insurance estimate shall be calculated by dividing the amount next due by, in each instance, the number of months to lapse preceding the month in which the same, respectively, will become due. All sums so paid shall not bear interest, except to the extent and in the minimum amount required by law, and Beneficiary shall, unless Trustor is otherwise in default hereunder or under any obligation secured hereby, apply said funds to the payment of, or at the sole option of Beneficiary release said funds to Trustor for application to and payment of, such taxes, assessments, levies, charges and insurance premiums. However, upon the occurrence of an Event of Default by Trustor hereunder or under any obligation secured hereby, Beneficiary may, at its sole option, apply all or any part of said sums to any indebtedness secured hereby or to cure such default.

**6. Liens and Encumbrances.** Trustor shall pay, at or prior to maturity, all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber the Property or any part thereof or interest therein, whether senior or subordinate hereto, including without limitation all claims for work or labor performed, or materials or suppliers furnished, in connection with any work of demolition, alteration, improvement of or construction upon the Property. Trustor shall have the right to contest in good faith any such obligation or claim provided such contest shall be prosecuted diligently and in a manner not prejudicial to Beneficiary, and if a judgment adverse to Trustor is obtained, such judgment shall be fully paid or discharged within ten (10) days after the entry of such judgment. Upon demand by Beneficiary, Trustor shall defend, indemnify and hold Beneficiary harmless against any such obligation or claim, so contested by Trustor, and upon demand by Beneficiary, Trustor shall make suitable provision by payment to Beneficiary or by posting a bond or other security satisfactory to Beneficiary for the possibility that the contest will be unsuccessful, including, if Beneficiary requests, a one-and-one half times bond with respect to mechanics' or materialmen's liens, if available. Such provision shall be made within ten (10) days after demand therefor and, if made by payment of funds to Beneficiary, the amount so deposited shall be disbursed in accordance with the resolution of the contest either to Trustor or the adverse claimant. If Trustor fails to post a suitable bond or other acceptable security as provided, Beneficiary may remove or pay such lien or encumbrance at Trustor's expense. Notwithstanding anything in the foregoing to the contrary, if the lien or encumbrance to be contested is senior to the lien of this Deed of Trust, Trustor shall, within ten (10) days after Beneficiary's demand, remove or pay such lien or encumbrance, and, if Trustor shall fail to do so, Beneficiary may do so at Trustor's expense, and any amount so advanced by Beneficiary will be secured by this Deed of Trust.

**7. Disposition of Insurance and Condemnation Proceeds.** Trustor assigns to Beneficiary (i) all awards for damages suffered or compensation paid by reason of a taking for public use of, or an action in eminent domain affecting all or any part of, the Property or any

interest therein, and (ii) all proceeds of any insurance policies paid by reason of loss sustained to the Property or any part thereof, whether or not required by Beneficiary or obtained voluntarily by Trustor. If an Event of Default (as hereinafter defined) shall have occurred and be continuing, or if in Beneficiary's reasonable determination Beneficiary's security shall be impaired by such loss or taking, Beneficiary may apply any such sum to any indebtedness or obligation secured hereby and in such order as Beneficiary may, at its sole option, determine. Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided hereunder. Subject to Beneficiary's rights to apply such proceeds to repayment of any indebtedness or obligation secured hereby, Beneficiary shall make all insurance proceeds received by it (if any) available to Trustor for repair and reconstruction of the Property, with such reasonable construction controls as Beneficiary determines are applicable or at Beneficiary's sole discretion, Beneficiary shall release to Trustor all of the entire amount so collected and Trustor shall be entitled to settle and adjust all such claims. Application of all or any portion of said funds, or the release thereof, shall not cure or waive any default or notice of default hereunder or invalidate any acts done pursuant to such notice.

**8. Maintenance and Preservation of the Property.** Trustor covenants: (i) to keep the Property in good condition and repair; (ii) to pay when due all claims for work performed and for materials furnished on or to the Property, and to pay any and all liens or encumbrances arising out of or resulting from work performed or materials supplied on or to the Property; (iii) to comply with and not suffer violations of, (a) any and all laws, ordinances, regulations and standards, (b) any and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character, and (c) all requirements of insurance companies and any bureau or agency which establishes standards of insurability, which laws, covenants or requirements affect the Property and pertain to acts committed or conditions existing thereon, including without limitation such work of alteration, improvement or demolition as such laws, covenants or requirements mandate; (iv) not to commit or permit waste of the Property or any part thereof; (v) to do all other acts which from the character or use of the Property may be reasonably necessary to maintain, preserve and enhance its value; (vi) to perform all obligations required to be performed in leases, conditional sales contracts or like agreements affecting the Property or the operation, occupation or use thereof (and upon the occurrence and continuance of an Event of Default all right, title and interest of Trustor under any such leases, conditional sales contracts or like agreements shall be automatically assigned to Beneficiary hereunder, together with any deposits made in connection therewith); (vii) not to create any deed of trust or encumbrance upon the Property; (viii) to make no further assignment of rents of the Property; and (ix) to execute and, where appropriate, acknowledge and deliver such further instruments as Beneficiary or Trustee deems necessary or appropriate to preserve, continue, perfect and enjoy the security provided for herein, including without limitation assignments of Trustor's interest in leases of the Property.

**9. Defense and Notice of Actions.** Trustor shall, without liability, cost or expense to Beneficiary or Trustee, protect, preserve and defend (by counsel satisfactory to Beneficiary) title to the Property, the security hereof and the rights or powers of Beneficiary or Trustee hereunder. Said protection, preservation and defense shall include protection, preservation and defense against all adverse claimants to title or any possessory or non-possessory interest therein,

whether or not such claimants or encumbrances assert title paramount to that of Trustor or claim their interest on the basis of events or conditions arising subsequent to the date hereof. Trustor shall give Beneficiary and Trustee prompt notice in writing of the filing of any such action or proceeding.

**10. Statement of Indebtedness.** Without limiting the obligations of Trustor under the Note, and as an additional covenant obligation to the right of Beneficiary to request information from Trustor under the Note, within ten (10) days after a request by Beneficiary, Trustor shall furnish an acknowledged written statement in form satisfactory to Beneficiary (i) setting forth the amount of the debt secured by this Deed of Trust, (ii) stating either that no offsets or defenses exist against such indebtedness, or if any offsets or defenses are alleged to exist, their nature and extent, (iii) whether any default then exists under the Note or this Deed of Trust or any event has occurred and is continuing, which, with the lapse of time, the giving of notice, or both, would constitute such a default, and (iv) any other matters as Beneficiary may reasonably request. If Trustor does not furnish an estoppel certificate within the 10-day period, Trustor appoints Beneficiary as its attorney-in-fact to execute and deliver the certificate on its behalf, which power of attorney shall be coupled with an interest and shall be irrevocable.

**11. Collection of Rents, Issues and Profits.** Beneficiary confers upon Trustor the authority to collect and retain rents, issues and profits of the Property as they become due and payable; provided, however, that Beneficiary may revoke said authority and collect and retain the rents, issues and profits of the Property assigned herein to Beneficiary upon the occurrence and continuance of an Event of Default (as hereinafter defined) by Trustor upon giving notice to Trustor, and without regard to the adequacy of any security for the indebtedness hereby secured, and without taking possession of all or any part of the Property or becoming a "mortgagee in possession." The right to collect rents and profits as herein provided shall not grant to Beneficiary or Trustee the right to possession, except as expressly herein provided; nor shall said right impose upon Beneficiary or Trustee the duty to produce rents or profits or maintain the Property in whole or in part. Trustor hereby agrees that it will do nothing to impair Beneficiary's ability to collect and retain the rents, issues, profits and interests herein assigned and that any tenant or subtenant occupying the Property or any part thereof may pay any and all rents or other charges directly to Beneficiary upon notice from Beneficiary without the necessity of any notice from Trustor. Beneficiary may apply, in its sole discretion, any rents, issues and profits so collected by Beneficiary against any indebtedness secured hereby or any obligations of Trustor arising hereunder or any other obligations of Trustor to Beneficiary, whether existing on the date hereof or hereafter arising. Collection of any rents, issues and profits by Beneficiary shall not cure or waive any default or notice of default hereunder or invalidate any acts done pursuant to such notice.

**12. Right of Inspection.** Beneficiary, its agents, contractors and employees, may enter the Property at any reasonable time upon prior written notice to Trustor for the purpose of inspecting the Property and ascertaining Trustor's compliance with the terms hereof.

**13. Acceptance of Trust; Notice of Indemnification.** Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, becomes a public record as provided



by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless Trustee brings such action. Trustee shall not be obligated to perform any act required of it hereunder unless the performance of such act is requested in writing and Trustee is reasonably indemnified against loss, cost, liability and expense.

**14. Powers of Trustee.** From time to time upon the written request of Beneficiary and presentation of this Deed of Trust for endorsement, and without affecting the personal liability of any person for payment of any indebtedness or performance of the obligation secured hereby, Trustee may, without liability therefor and without notice, (i) reconvey all or any part of the Property, (ii) consent to the making of any map or plat thereof, (iii) join in granting any easement thereon, (iv) join in any declaration of covenants and restrictions, or (v) join in any extension agreement or any agreement subordinating the lien or charge hereof. Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trusts hereunder and the enforcement of the rights and remedies available hereunder, and Trustee or Beneficiary may obtain orders or decrees directing or confirming or approving acts in the execution of said trusts and the enforcement of said remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding unless held or commenced and maintained by Trustee under this Deed of Trust. Trustor shall pay to Trustee reasonable compensation and reimbursement for services and expenses in the administration of the trusts created hereunder upon the occurrence of an Event of Default, including reasonable attorneys' fees. Except for gross negligence and willful misconduct, Trustee shall not be liable for any act or omission or error of judgment. Trustee may rely on any document believed by it in good faith to be genuine. All money received by Trustee shall be held in trust, but need not be segregated (except to the extent required by law), until used or applied as provided in this Deed of Trust. Trustee shall not be liable for interest on the money. Trustor indemnifies Trustee and Beneficiary against all losses, claims, demands and liabilities (except losses, claims, demands or liabilities arising from the "sole" gross negligence or willful misconduct of the indemnified party) which either may incur, suffer, or sustain in the execution of the trusts created hereunder or in the performance of any act required or permitted hereunder or by law.

**15. Substitution of Trustees.** From time to time, by a writing signed and acknowledged by Beneficiary and recorded in the office of the Recorder of the County in which the Property is situated, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall refer to this Deed of Trust and set forth the date, book and page of its recordation. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this paragraph shall be conclusive proof of the proper substitution of such new trustee.

**16. Sale or Other Transfer.**

(a) Upon the sale, lease, transfer, hypothecation, assignment or encumbrance, whether voluntary, involuntary or by operation of law (a "Transfer"), of all or any part of the Property, or any interest therein, without the prior written consent of Beneficiary, Beneficiary may, at its sole option, by written notice to Trustor, declare the entire unpaid principal balance of the Note, together with all accrued interest thereon, immediately due and payable, except to the extent prohibited by law. The sale, transfer, conveyance, hypothecation or other disposition, or the contracting for the sale, transfer, conveyance, hypothecation or other disposition of any interest in Trustor, the amendment, modification or termination of Trustor's constituent documents, any withdrawal or termination of any member, partner or shareholder or any other change whatsoever in the structure or composition of Trustor whether by reorganization, conversion, merger or other action and whether voluntary, involuntary or by operation of law (and notwithstanding any statutory provision to the effect that the entity comprising Borrower continues unaffected by such conversion, merger or other action, the benefits of which Trustor waives), shall be deemed a Transfer.

(b) Trustor agrees to submit or cause to be submitted to Beneficiary within thirty (30) days after December 31st of each calendar year during the term of this Deed of Trust and ten (10) days after any written request by Beneficiary, a sworn, notarized certificate, signed by an authorized partner of Trustor, stating whether (x) any part of the Property, or any interest in the Property, has been conveyed, transferred, assigned, encumbered, or sold, and if so, to whom; (y) any conveyance, transfer, pledge or encumbrance of any interest in Trustor has been made by Trustor and if so, to whom; or (z) there has been any change in the structure or composition of Trustor or any change in the individual(s) comprising Trustor or in the partners of Trustor from those on the date hereof, and if so, a description of such change or changes.

**17. Prohibition On Subordinate Financing.** Trustor shall not incur or permit the incurring of: (i) any financing in addition to the Note that is secured by a lien, security interest or other encumbrance of any part of the Property; or (ii) any pledge or encumbrance of a partnership or beneficial interest in Trustor.

**18. Subordinate Leases.** Each and every lease affecting the Property and to which Beneficiary has consented, entered into by Trustor after the date of execution hereof, shall be absolutely subordinate to the lien of this Deed of Trust and shall also contain a provision, satisfactory to Beneficiary, to the effect that in the event of the judicial or non-judicial foreclosure of the Property, at the election of the acquiring foreclosure purchaser, the particular lease shall not be terminated and the tenant shall attorn to the purchaser. If requested to do so, the tenant shall agree to enter into a new lease for the balance of the term upon the same terms and conditions. If Beneficiary requests, Trustor shall cause a tenant or tenants to enter into subordination and attornment agreements or nondisturbance agreement with Beneficiary on forms which have been approved by Beneficiary.

**19. Reconveyance.** Upon Beneficiary's written request, and upon surrender to Trustee for cancellation of this Deed of Trust and any note, instrument or instruments, including

without limitation the Note, setting forth all obligations secured hereby, Trustee shall reconvey, without warranty, the Property or that portion thereof then held hereunder. The recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto." Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto, unless such reconveyance expressly provides to the contrary.

## 20. Environmental Matters.

(a) Definitions. The following definitions apply to the provisions of this Paragraph 20:

(1) The term "Responsible Person" shall mean Trustor, and any other person who owns or acquires any interest in any part of the Property so long as Trustor continues to own the Property, including but not limited to any tenants, easement holders, licensees and other persons using or occupying the Property or any portion thereof and all persons in transit across any part of the Property.

(2) The term "Environmental Law" shall include, but shall not be limited to, each statute named or referred to in (2) below, and all rules and regulations thereunder, and any other local, state and/or federal laws, rules, regulations and ordinances, whether currently in existence or hereafter enacted, which govern:

(i) the existence, cleanup and/or remedy of Hazardous Materials or other contamination on property;

(ii) the protection of the environment from soil, air or water pollution, or from spilled, deposited or otherwise emplaced Hazardous Materials or other contamination;

(iii) any Release of Hazardous Materials;

(iv) the control of Hazardous Materials; or

(v) the use, generation, manufacture, production, storage, disposal, transport, treatment, removal or recovery of Hazardous Materials.

(3) The term "Hazardous Materials" shall mean (a) flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which (i)

pose a hazard to the Property or to persons on or about the Property or (ii) cause the Property to be in violation of any Environmental Law; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, infectious materials or radon gas; (c) raw materials, building components, the products of any manufacturing or other activities on the Property; (d) any chemical, material or substance defined as or included in the definition of "hazardous materials," "hazardous wastes," "hazardous substances," "extremely hazardous waste," "restricted hazardous waste," or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq.; the United States Department of Transportation Table, 49 C.F.R. 172.101; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right to know Act, 42 U.S.C. §§ 1101, et seq.; (e) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or under Environmental Law, or which may or could pose a hazard to the health and safety of the occupants of the Property or the owners and/or occupants of property adjacent to or surrounding the Property, or any other person coming upon the Property or adjacent property; (f) any oil or petroleum; and (g) any other chemical, materials or substance which may or could pose a hazard to the environment.

(4) The term "Indemnified Parties" means and includes Beneficiary, assignees of Beneficiary's interest in the Note, owners or holders of participation or other interests in the Note, purchasers of the Property at foreclosure sale or from Beneficiary, and the officers, directors, employees and agents of each of the foregoing.

(5) The term "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Materials into the environment (including, without limitation, the continuing migration of Hazardous Materials into, onto or through the soil, surface water, or groundwater, and the abandonment or discarding of barrels, containers, and other receptacles containing any Hazardous Materials), whether caused by, contributed to, permitted by, acquiesced to or known to Trustor.

(b) Covenants and Representations.

(1) Neither Trustor nor any other Responsible Person shall allow any Hazardous Materials to be brought onto, installed, used, stored, treated or disposed or transported over the Property in violation of Environmental Law. Without limiting the generality of the foregoing, neither Trustor nor any Responsible Person shall install, use or permit to be installed or used any product or substance containing asbestos, urea formaldehyde foam insulation or polychlorobiphenyls (pcb's) on the Property in violation of Environmental Law. Upon receipt of a request to take any actions described in this paragraph (b) Beneficiary may, at its sole option, assert, withhold, consent, or condition its consent upon the provisions by Trustor of insurance adequate in the reasonable discretion of Beneficiary to cover fully and protect the Beneficiary's interest under this Deed of Trust.

(2) So long as Trustor shall own the Property, Trustor covenants and agrees that all activities on the Property, whether conducted by any Responsible Person or by any other person, shall at all times comply with Environmental Law.

(3) Within five (5) days after receipt or completion of any report, citation, order, manifest or other written or oral communication from any local, state or federal agency or authority empowered to enforce, investigate or oversee compliance with Environmental Law, concerning the Property, any condition thereon, or the activities of any person on or near the Property, Trustor shall notify Beneficiary in writing of the contents of such communication, and shall provide Beneficiary with a copy of all relevant documents.

(4) Notwithstanding any other provision of this Deed of Trust, upon discovery of any Hazardous Materials on or in the Property in violation of Environmental Law, including, without limitation, substances that have leached onto the Property from neighboring property, substances that were deposited prior to Trustor's ownership of the Property, and all substances spilled, discharged or otherwise emitted or deposited on the Property during Trustor's ownership, Trustor shall immediately notify Beneficiary thereof. Trustor shall immediately take all actions necessary to comply with laws requiring notification of government agencies concerning such Hazardous Materials and to remedy or correct the violation. Trustor shall handle and dispose of such Hazardous Materials in accordance with Environmental Law. Trustor shall take any and all actions, including institution of legal action against third parties, necessary to obtain reimbursement or compensation from such persons as were responsible for the presence of any Hazardous Materials on the Property or otherwise obligated by law to bear the cost of such remedy. Beneficiary shall be subrogated to Trustor's rights in all such claims.

(5) Trustor shall be solely responsible for and agrees to indemnify the Indemnified Parties, protect and defend with counsel acceptable to the

Indemnified Parties, and hold the Indemnified Parties harmless from and against, any claims (including without limitation third party claims for personal injury or real or personal property damage), demands, actions, administrative and judicial proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims), remedial action, compliance requirements, enforcement and clean-up actions of any kind, interest or losses, attorneys' fees (including any fees and expenses incurred in enforcing this indemnity), consultant fees, and expert fees (collectively, the "Indemnified Costs") that arise directly or indirectly, in whole or in part, from or in connection with: (i) the presence, suspected presence, Release or suspected Release of any Hazardous Materials whether into the air, soil, surface water or groundwater of or at the Property, or any other violation of Environmental Law, occurring while or prior to the period that Trustor held title to the Property; (ii) any claim that any Indemnified Party is liable as an "owner" or "operator" of the Property under any Environmental Law; (iii) any breach or alleged breach of the foregoing representations and covenants; (iv) all residual contamination and contamination affecting any natural resources; (v) all consequential damages; (vi) the costs of any required remediation or removal work on the Property, including, without limitation: (A) costs of remediation or removal incurred by the federal, state or local government or any instrumentality or agency thereof, or any other person; and (B) fines or penalties which arise from the provisions of any statute, state or federal; and (vii) liability for personal injury or property damage arising under any statutory or common-law tort theory, including damages assessed for the maintenance of a public or private nuisance, response costs or for the carrying on of any abnormally dangerous activity.

(c) **Right of Entry.** In addition to all rights of entry contained in this Deed of Trust, Beneficiary shall have the right, upon prior written notice to Trustor, to enter and inspect the condition of the Property at any time and to conduct, or to designate a representative to conduct such inspection, testing, environmental audit or other procedures that Beneficiary reasonably believes are necessary or desirable to determine current compliance with the covenants and representations contained herein.

(d) **Beneficiary's Obligations.** Nothing contained in this Paragraph A.20 shall obligate Beneficiary to take any action with respect to the Property, any Hazardous Materials thereon, or any condition or activity that is in violation of Environmental Law, or to take any action against any person with respect to such substances, condition or activity.

## **B. DEFAULT PROVISIONS**

1. **Events of Default.** Any of the following shall be deemed to be a material breach of Trustor's covenants in this Deed of Trust and shall constitute an event of default ("Event of Default"):

(a) The failure of Trustor to pay any installment of principal, interest or principal and interest, any required escrow deposit or any other sum required to be paid under this Deed of Trust or the Note, whether to Beneficiary or otherwise, when due;

(b) The failure of Trustor to perform or observe any other term, provision, covenant, condition or agreement under this Deed of Trust or the Note for a period of more than thirty (30) days after receipt of notice of such failure;

(c) The filing by Trustor of a voluntary petition or application for relief in bankruptcy, the filing against Trustor of an involuntary petition or application for relief in bankruptcy which is not dismissed within sixty (60) days, or Trustor's adjudication as a bankrupt or insolvent, or the filing by Trustor of any petition, application for relief or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law, code or regulation relating to bankruptcy, insolvency or other relief for debtors, or Trustor's seeking or consenting to or acquiescing in the appointment of any trustee, custodian, conservator, receiver or liquidator of Trustor or of all or any substantial part of the Property or of any or all of the rents and profits, or the making of any general assignment for the benefit of creditors, or the admission in writing of its inability to pay its debts generally as they become due;

(d) If any warranty, representation, certification, financial statement or other information made or furnished at any time pursuant to the terms of this Deed of Trust or the Note by Trustor, or by any person or entity otherwise liable under this Deed of Trust or the Note shall be false or misleading;

(e) If Trustor shall suffer or permit the Property, or any part of the Property, to be used in a manner that might (i) impair Trustor's title to the Property, (ii) create rights of adverse use or possession, or (iii) constitute an implied dedication of any part of the Property;

(f) Any other event (whether termed default, event of default or similar term) which under the terms of the Note shall entitle Beneficiary to exercise any of its rights or remedies thereunder; or

(g) A Transfer in violation of Paragraph A.16 above.

**2. Rights and Remedies.** At any time after the occurrence and during the continuance of an Event of Default, Beneficiary and Trustee shall each have the following rights and remedies:

(a) Subject to N.R.S. §107.080, to declare all obligations secured hereby immediately due and payable;

(b) With or without notice, and without releasing Trustor from any obligation hereunder, to cure any default of Trustor and, in connection therewith, to enter upon the Property and to perform such acts and things as Beneficiary or Trustee deem necessary or desirable to

inspect, investigate, assess and protect the security hereof, including without limitation of any of its other rights: to obtain a court order to enforce Beneficiary's right to enter and inspect the Property, to have a receiver appointed to enforce Beneficiary's right to enter and inspect the Property; to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee hereunder; to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the judgment of either Beneficiary or Trustee, is prior or superior hereto, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; to pay any premiums or charges with respect to insurance required to be carried hereunder; and to employ counsel, accountants, contractors and other appropriate persons to assist them;

(c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations;

(d) Have a receiver appointed to enter into possession of the Property, lease the Property, collect the rents and profits and apply them as the appropriate court may direct. Beneficiary shall be entitled to the appointment of a receiver without the necessity of proving either the inadequacy of the security or the insolvency of Trustor. Trustor shall be deemed to have consented to the appointment of the receiver. Beneficiary or its employees, acting by themselves or through a court-appointed receiver may enter upon, possess, manage and operate the Property or any part thereof; make, terminate, enforce or modify leases of the Property upon such terms and conditions as Beneficiary deems proper; and/or make repairs, alterations and improvements to the Property necessary, in Trustee's or Beneficiary's judgment, to protect or enhance the security hereof. All sums realized by Beneficiary or a receiver under this subparagraph, less all costs and expenses incurred by it under this subparagraph, including attorneys' fees, and less such sums as Beneficiary deems appropriate as a reserve to meet future expenses under the subparagraph, shall be applied on any indebtedness secured hereby in such order as Beneficiary shall determine. Neither application of said sums to said indebtedness nor any other action taken by Beneficiary or a receiver under this subparagraph shall cure or waive any Event of Default or notice of default hereunder or nullify the effect of any such notice of default. Beneficiary or Trustee, or any employee or agent of Beneficiary or Trustee, or a receiver appointed by a court, may take any action or proceeding hereunder without regard to (i) the adequacy of the security for the indebtedness secured hereunder, (ii) the existence of a declaration that the indebtedness secured hereby has been declared immediately due and payable, or (iii) the filing of a notice of default;

(e) To execute a written notice of such Event of Default and of its election to cause the Property to be sold to satisfy the obligations secured hereby. Trustee shall give and record such notice as the law then requires as a condition precedent to a Trustee's sale. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as otherwise required by law, shall sell the Property at



the time and place of sale fixed by it in the notice of sale and in such order as it or Beneficiary may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale (the obligations hereby secured being the equivalent of cash for purposes of said sale). If the Property consists of several lots, parcels, or items of property, Beneficiary may: (i) designate the order in which such lots, parcels, or items shall be offered for sale or sold, or (ii) elect to sell such lots, parcels or items through a single sale, through two or more successive sales, or in any other manner Beneficiary deems in its best interest. Trustor shall have no right to direct the order in which the Property is sold. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at such time fixed by the preceding postponement. Trustee shall deliver to the purchaser at such sale a deed conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Trustor or Beneficiary, may purchase at such sale.

In connection with any sale or sales hereunder, Beneficiary may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the real property covered hereby or any improvements thereon without causing structural damage thereto as if the same were personal property or a fixture, as the case may be, and dispose of the same accordance with applicable law, separate and apart from the sale of real property. Any sale of any personal property or fixtures hereunder shall be conducted in any manner permitted by the Nevada Uniform Commercial Code.

After deducting all costs, fees and expenses of Trustee and of this trust, including all costs of evidence of title and attorneys' fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums so expended under the terms hereof not then repaid, the payment of all other sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto;

(f) To resort to and realize upon the security hereunder and any other security now or hereafter held by Beneficiary in such order and manner as Trustee and Beneficiary or either of them may, in their sole discretion, determine and resort to any or all such security may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both.

**3. Payment of Costs, Expenses and Attorneys' Fees.** All costs and expenses incurred by Trustee and Beneficiary pursuant to subparagraphs (a) through (f) inclusive of Paragraph B.2 (including without limitation court costs, environmental audits, tests, inspections, laboratory fees, consultants' fees, engineers' fees, expert's fees and attorneys' fees and costs, whether incurred in litigation or not and whether before or after judgment) shall bear interest at the rate set forth in the Note as the Default Rate from the date of expenditure until said sums have been paid. Beneficiary shall be entitled to bid, at the sale of the Property held pursuant to subparagraph (e) above, the amount of said costs, expenses and interest in addition to the amount of the other obligations hereby secured as a credit bid, the equivalent of cash.

4. **Remedies Cumulative.** All rights and remedies of Beneficiary and Trustee hereunder are cumulative and in addition to all rights and remedies provided by law.

5. **Releases, Extensions, Modifications and Additional Security.** Without affecting the liability of any person for payment of any indebtedness secured hereby, or the lien or priority of this Deed of Trust upon the Property, Beneficiary may, from time to time, with or without notice, do one or more of the following: release any person's liability for the payment of an indebtedness secured hereby, make any agreement or take any action extending the maturity or otherwise altering the terms or increasing the amount of any indebtedness secured hereby, and accept additional security or release all or a portion of the Property and/or other security held to secure the indebtedness secured hereby.

6. **Marshalling.** Trustor hereby waives any right to require that any security given hereunder or under any other agreement securing the obligation secured hereby be marshalled and further waives any right otherwise available in respect to marshalling of assets which secure any obligation secured or imposed hereby or to require Beneficiary to pursue its remedies against any such assets.

### C. MISCELLANEOUS PROVISIONS

1. **Non-Waiver.** By accepting payment of any sum secured hereby after its due date or late performance of any obligation secured hereby, Beneficiary shall not waive its right against any person obligated directly or indirectly hereunder or on any obligation hereby secured, either to require prompt payment or performance when due of all other sums and obligations so secured or to declare default for failure to make such prompt payment or performance. No exercise of any right or remedy by Beneficiary or Trustee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law.

2. **Further Assurances.** Trustor shall, without expense to Beneficiary and/or Trustee, execute, acknowledge and deliver all further acts, deeds, conveyances, mortgages, deeds of trust, assignments, security agreements, and financing statements as Beneficiary and/or Trustee shall from time-to-time reasonably require, to assure, convey, assign, transfer and confirm unto Beneficiary and/or Trustee the Property and rights conveyed or assigned by this Deed of Trust or which Trustor may become bound to convey or assign to Beneficiary and/or Trustee, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust or the Note, or for filing, re-filing, registering, re-registering, recording or re-recording this Deed of Trust. If Trustor fails to comply with the terms of this paragraph, Beneficiary may, at Trustor's expense, perform Trustor's obligations for and in the name of Trustor, and Trustor hereby irrevocably appoints Beneficiary as its attorney-in-fact to do so. The appointment of Beneficiary as attorney-in-fact is coupled with an interest and is irrevocable.

3. **Statements of Condition.** From time to time as required by law, Beneficiary shall furnish to Trustor such statement as may be required concerning the condition of the obligations secured hereby. Upon demand by Beneficiary, Trustor covenants and agrees to pay

Beneficiary's reasonable costs incurred in furnishing such statement, but not in excess of the maximum amount allowed by law.

**4. Beneficiary Reimbursement.** All payments made, or funds expended or advanced by Beneficiary pursuant to the provisions of this Deed of Trust or the Note, shall (i) become a part of the indebtedness secured hereby, (2) bear interest at the Interest Rate (as defined in the Note) from the date such payments are made or funds expended or advanced, (3) become due and payable by Trustor upon demand by Beneficiary, and (4) bear interest at the Default Rate (as defined in the Note) from the date of such demand. Trustor shall reimburse Beneficiary within ten (10) days after receipt of written demand for such amounts.

**5. Usury Savings Clause.** Nothing contained herein or in the Note shall be deemed to require the payment of interest or other charges by Trustor in excess of the amount Beneficiary may lawfully charge under the applicable usury laws. In the event Beneficiary shall collect monies which are deemed to constitute interest which would increase the effective interest rate to a rate in excess of that permitted to be charged by applicable law, all such sums deemed to constitute interest in excess of the legal rate shall, upon such determination, at the option of Beneficiary, be returned to Trustor or credited against the principal balance of any obligation secured hereby then outstanding.

**6. Attorneys' Fees.** In the event legal action, suit or any proceeding is commenced between Trustor and Beneficiary regarding their respective rights and obligations under this Deed of Trust or the Note, the prevailing party shall be entitled to recover, in addition to damages or other relief, costs and expenses, attorneys' fees, costs and expenses incurred by such attorneys on behalf of Beneficiary, and court costs. As used herein the term "prevailing party" shall mean the party which obtains the principal relief it has sought, whether by compromise, settlement or judgment. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party. If Beneficiary becomes a party (by intervention or otherwise) to any action or proceeding affecting, directly or indirectly, Trustor, the Property or the title thereto or Beneficiary's interest under this Deed of Trust, or employs an attorney to collect any of the indebtedness secured hereby or to enforce performance of the obligations, covenants and agreements of this Deed of Trust or the Note, Trustor shall reimburse Beneficiary in accordance with paragraph D.4 for all expenses, costs, charges and legal fees incurred by Beneficiary (including, without limitation, the fees, costs and expenses of experts, attorneys and consultants), whether or not suit is commenced.

**7. Obligations of Trustor Joint and Several.** If more than one person has executed this Deed of Trust as "Trustor," the obligations of all such persons hereunder shall be joint and several.

**8. Trustor and Beneficiary Defined.** The term "Trustor" herein includes both the original Trustor and any subsequent owner or owners of any of the Property, and the term "Beneficiary" includes the original Beneficiary and also any future owner or holder, including pledges and participants, of the Note or any interest therein.

**9. No Joint Venture.** The relationship of Trustor and Beneficiary under this Deed of Trust and the Note is, and shall at all times remain, solely that of Trustor and lender; and Beneficiary neither undertakes nor assumes any responsibility or duty to Trustor or to any third party with respect to the Property. Notwithstanding any other provisions of this Deed of Trust and the Note: (a) Beneficiary is not, and shall not be construed as, a partner, joint venturer, alter-ego, manager, controlling person or other business associate or participant of any kind of Trustor and Beneficiary does not intend to ever assume such status; (b) Beneficiary does not intend to ever assume any responsibility to any person for the quality, suitability, safety or condition of the Property; and (c) Beneficiary shall not be deemed responsible for or a participant in any acts, omissions or decisions of Trustor. Beneficiary shall not be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any person or property arising from any construction on, or occupancy or use of, any of the Property, whether caused by or arising from: (i) any defect in any building, structure, grading, fill, landscaping or other improvements thereon or in any on-site or off-site improvement or other facility therein or thereon; (ii) any act or omission of Trustor or any of Trustor's agents, employees, independent contractors, licensees or invitees; (iii) any accident in or on any of the Property or any fire, flood or other casualty or hazard thereon; (iv) the failure of Trustor, any of Trustor's licensees, employees, invitees, agents, independent contractors or other representatives to maintain the Property in a safe condition; and (v) any nuisance made or suffered on any part of the Property.

**10. Rules of Construction.** When the identity of the parties hereto or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. Specific enumeration of rights, powers and remedies of Trustee and Beneficiary and of acts which they may do and acts Trustor must or must not do shall not exclude or limit the general. The headings of each paragraph are for information and convenience and do not limit or construe the contents of any provision hereof.

**11. Severability.** If any term of this Deed of Trust, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Deed of Trust, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Deed of Trust shall be valid and enforceable to the fullest extent permitted by law.

**12. Successors in Interest.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

**13. Notices.** Any notice, request, demand or other communication required or permitted hereunder shall be in writing and shall be deemed duly served and given when personally delivered to or actually received by the party to whom it is directed or, in lieu of such personal service or receipt: (i) the next business day (Monday through Friday, other than a State of Nevada holiday) after being deposited with an overnight air courier such as Federal Express or DHL, or (ii) forty-eight (48) hours after being deposited in the United States mail, duly registered or certified, return

receipt requested, with postage prepaid, or (iii) upon the sender's confirmation of good delivery if sent by telecopier or facsimile transmission on a business day between the hours of 9:00 a.m. and 5:00 p.m., the recipient's time, otherwise, at 9:00 a.m., the recipient's time, on the next following business day, in each case sent to the addresses set forth on the first page of this Deed of Trust. A party hereto may, from time to time, by written notice to the other parties, designate a different address which shall be substituted for the one specified above.

14. **Headings.** The headings of the articles of this Deed of Trust are for convenience only and do not limit its provisions.

15. **Trust.** The trusts created hereby are, to the maximum extent permitted by law, irrevocable.

16. **Jury Trial Waiver. BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BROUGHT BY ANY PARTY HEREON, ARISING OUT OF, UNDER OR IN CONJUNCTION WITH THIS DEED OF TRUST, ANY OBLIGATION SECURED HEREBY, OR ANY DOCUMENT EXECUTED IN CONJUNCTION HEREWITH.**

17. **Replacement of Note.** Upon notice to Trustor of the loss, theft, destruction or mutilation of the Note, Trustor will execute and deliver, in lieu of the original Note, a replacement note, identical in form and substance to the Note and dated as of the date of the original Note. Upon the execution and delivery of the replacement note, all references in this Deed of Trust to the Note shall refer to the replacement note.

**IN WITNESS WHEREOF,** Trustor has executed this Deed of Trust on the day and year set forth above.

**TRUSTOR PLEASE NOTE: IN THE EVENT OF YOUR DEFAULT, THE TRUSTEE MAY SELL THE SUBJECT PROPERTY AT A SALE HELD WITHOUT SUPERVISION BY ANY COURT AFTER EXPIRATION OF A PERIOD PRESCRIBED BY LAW. SEE PROVISION B.2.(e) ABOVE FOR A DESCRIPTION OF THIS PROCEDURE. UNLESS YOU PROVIDE AN ADDRESS FOR THE GIVING OF NOTICE, YOU MAY NOT BE ENTITLED TO OTHER NOTICE OF THE COMMENCEMENT OF SALE PROCEEDINGS. BY EXECUTION OF THIS DEED OF TRUST, YOU CONSENT TO SUCH PROCEDURE. IF YOU HAVE ANY QUESTIONS CONCERNING IT, YOU SHOULD CONSULT YOUR**

LEGAL ADVISOR. BENEFICIARY URGES YOU TO GIVE IT PROMPT NOTICE OF ANY CHANGE IN YOUR ADDRESS SO THAT YOU MAY RECEIVE PROMPTLY ANY NOTICE GIVEN PURSUANT TO THIS DEED OF TRUST.

**TRUSTOR:**

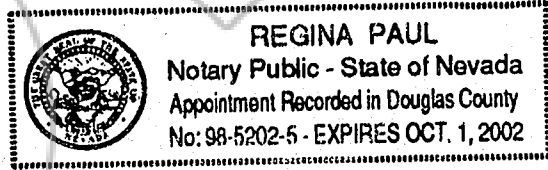
THE BENTLY FAMILY LIMITED PARTNERSHIP,  
A Nevada limited partnership

By: *Donald E Bently*  
Donald E. Bently, its general partner

STATE OF NEVADA            )  
                                      : ss  
COUNTY OF DOUGLAS        )

On this *16<sup>th</sup>* day of October, 2000, before me **DONALD E. BENTLY** personally appeared, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed on the within document and acknowledged to me that he executed the same in his capacity authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which that person acted, executed the document.

*Regina Paul*  
NOTARY PUBLIC



## WATER RIGHTS

1. All permits 58842, 58843, 58844 and 58845 issued by the Nevada State Engineer on August 8, 1995 and having a total combined duty of 469.6 acre-feet annually.

Along with portions of abrogated Permit 27614, Certificate 10840 and abrogated permit 28629, Certificate 10841 with a total combined duty of 397.6 acre-feet annually and also abrogated permits 45569 and 45570 with a total combined duty of 72 acre-feet annually. These four permits having been abrogated by Permits 58842, 58843, 58844 and 58845.

And also including all of applications 65596, 65597, 65598 and 65599 filed on October 14, 1999.

And further including all of applications 57894, 57895, 57896 and 57897 filed on July 24, 1992 and having a total combined duty of 3000 acre-feet.

2. All springs, wells, water and water rights applied for, adjudicated, appropriated, decreed, vested or appurtenant to the real property identified in Exhibit B attached hereto, and/or appurtenant to or historically utilized on or in connection with said real property, whether surface water or underground water of any kind, or riparian, adjudicated, appropriated, or vested or claimed water rights of any kind; and including all permits, applications, proofs, certificates and maps therefore, and all dams, ditches, diversions, licenses, easements, structures, measuring devices, headgates, culverts, ponds reservoirs, canals, pipelines, well casings, well pumping equipment, troughs and all other means, methods, systems of using and transporting water and water rights and applying them to beneficial use on such real property, and for the repair, clearing, replacement and maintenance of such facilities, and including but not limited to all stockwater and stockwater rights for use on the described real property.

# EXHIBIT "A"

## LEGAL DESCRIPTION

ESCROW NO.: 000701782

All that certain lot, piece or parcel of land situate in the County of Douglas, State of Nevada, described as follows:

All that certain property situate in Sections 2, 3, 4, 9, 10, 11, 12, 14, 15, and 16, Township 13 North, Range 20 East, M.D.B.&M., Douglas County, State of Nevada, more particularly described as follows:

### PARCEL A

Parcels 1 through 5, inclusive, 10 through 18, inclusive, 23 through 55, inclusive, 59 through 63, inclusive, and 65 through 68, inclusive, as shown on Record of Survey for Bernard Furlan and Angelo Giusti, recorded January 27, 1983, in Book 183, Page 1298, Document No. 75477.

TOGETHER WITH a non-exclusive road easement over and across the Parcels of land here-in-above mentioned as set forth on the Land Division Map, Document No. 19092, being a portion of Parcel 2 Land Division Map, Document No. 19092, being portions of Sections 2, 3, 4, 5, 9, 10, 11, 12, 15, 16, 21 and 22, Township 13 North, Range 20 East, M.D.B.&M. filed for record in the Office of the County Recorder of Douglas County, Nevada, on November 2, 1978, as Document No. 27700, excepting therefrom all those certain road easements traversing the here-in-above first mentioned parcels of land.

### EXCEPTION PARCEL

EXCEPT THEREFROM Parcel A, above all that certain parcel of land conveyed to THOMAS E. NEVIS, a married man and SAMUEL A. NEVIS, a married man in Quit Claim Deed recorded November 2, 1983, in Book 1183, Page 222, Document No. 90384, of Official Records, described as follows:

COMMENCING at the NE corner of Section 14, Township 13 North, Range 20 East, M.D.B.&M.; thence along a line as shown on Record of Survey, File No. 51917, of Douglas County Records as the North line of the Nevis property, South 88°21'09" West, a distance of 5319.56 feet to the point of beginning of the Parcel herein described, thence South 0°53'42" West 2,418.97 feet to a 5/8 Iron Pin with aluminum cap marked as the 1/4 corner between Section 15 and 14, Township 13 North, Range 20 East, M.D.B.&M.; thence North 89°22'25" West 78.80 feet to a 5/8" Iron Pin with a plastic cap marked R.L.S. 4045; thence along the line shown as the West line of the Nevis Property, on

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Record of Survey File No. 51917; North 0°32'46" West, 2416.07 feet to a 3/4" Iron Pipe Shown on said Record of Survey as the NW corner of the Nevis Property; thence along the North line as shown on said Record of Survey File No. 51917 North 88°21'09" East, 139.70 feet to the point of beginning.

This Parcel lies in Douglas County, Nevada, in Section 15, Township 13 North, Range 20 East, M.D.B.&M. The basis of bearing for this description is the Nevada West Zone Grid System. Delta Alpha angle for true North conversion is 0°42'40.1" at the described East 1/4 corner of Section 15, Township 13 North, Range 20 East, M.D.B.&M.

PARCEL B

All that certain property situate in Section 14, Township 13 North, Range 20 East, M.D.B.&M., Douglas County, State of Nevada, more particularly described as follows:

That portion of the following described property that lies directly South of Parcel 54 and 55 as shown on Record of Survey for Bernard Furland and Angelo Giusti, recorded January 27, 1983, in Book 183, Page 1298 as Document No. 75477.

Beginning at the Northeast corner of Section 14, Township 13 North, Range 20 East, M.D.B.&M., as shown on the Record of Survey File No. 51917, of Douglas County Records; thence along the North line of the property of Nevis Industries, Inc., as shown on said Survey South 88°21'09" West 5319.55 feet; thence North 0°53'42" East 228.24 feet to a 5/8" Iron Pin with an aluminum cap marked as the corner common to Sections 10, 11, 14 and 15, Township 13 North, Range 20 East, M.D.B.&M.; thence along the Section line South 89°11'18" East 5314.32 feet to the POINT OF BEGINNING.

APN NOS. 1320-04-001-022, 1320-04-001-023, 1320-04-001-028,  
1320-03-001-009, 1320-03-001-010, 1320-03-001-011,  
1320-03-001-026, 1320-03-001-027, 1320-04-001-027,  
1320-04-002-002, 1320-04-002-003, 1320-03-002-001,  
1320-03-002-007, 1320-04-002-004, 1320-04-002-005,  
1320-03-002-002, 1320-03-002-003, 1320-03-002-004,  
1320-03-002-005, 1320-03-002-006, 1320-09-000-003,  
1320-10-000-001, 1320-10-000-002, 1320-10-000-007,  
1320-10-000-008, 1320-09-000-004, 1320-10-000-003,  
1320-10-000-004, 1320-11-001-001, 1320-11-001-002,  
1320-10-000-005, 1320-10-000-006, 1320-09-000-007,

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ESCROW NO.: 000701782

1320-10-000-009, 1320-10-000-010, 1320-10-000-015,  
1320-10-000-016, 1320-09-000-008, 1320-10-000-011,  
1320-10-000-012, 1320-11-002-001, 1320-10-000-013,  
1320-10-000-014, 1320-11-002-008, 1320-11-002-002,  
1320-11-002-003, 1320-11-002-007, 1320-16-000-002,  
1320-15-000-001, 1320-15-000-002, 1320-15-000-007,  
1320-15-000-008, 1320-15-000-003, 1320-15-000-006,  
1320-15-000-004, 1320-15-000-005

COPY

- 3 -

REQUESTED BY  
**STEWART TITLE of DOUGLAS COUNTY**  
IN OFFICIAL RECORDS OF  
DOUGLAS CO., NEVADA

2000 OCT 20 AM 11:49

LINDA SLATER  
RECORDER

\$32<sup>00</sup> PAID *K2* DEPUTY

0501740  
BK 1000 PG 3806