

APN 1318-23-201-001

Recording requested by, and
after recording return to:

Katten Muchin Zavis Rosenman
2029 Century Park East, Suite 2600
Los Angeles, CA 90067
Attn: Benzion J. Westreich, Esq.

2023060

Space above this line for Recorder's use.

**CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

**NOTICE TO BORROWER: THIS DOCUMENT SECURES A PROMISSORY NOTE THAT
CONTAINS PROVISIONS FOR A VARIABLE INTEREST RATE AND/OR A BALLOON
PAYMENT**

PORTIONS OF THE COLLATERAL ARE GOODS THAT ARE OR ARE TO BECOME
FIXTURES OF THE LAND. THIS INSTRUMENT IS INTENDED TO SERVE AS A FIXTURE
FILING AND SHALL BE FILED IN THE REAL ESTATE RECORDS OF THE COUNTY IN WHICH
THE LAND IS LOCATED AND INDEXED AS BOTH A DEED OF TRUST AND A FIXTURE
FILING.

THIS CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY
AGREEMENT AND FIXTURE FILING ("**Deed of Trust**") is made as of the 12th day of August, 2002,
by and between ALFRED R. Villalobos, whose address is 20546 Chatsboro Drive, Woodland Hills,
California 91364 ("**Grantor**"), to FIRST AMERICAN TITLE COMPANY ("**Trustee**"), for the benefit
of HOLLYLANE HOLDINGS LLC whose address is c/o Katten Muchin Zavis Rosenman, 2029 Century
Park East, Suite 2600, Los Angeles, California 90067, attn: Benzion J. Westreich, Esq. ("**Beneficiary**").

RECITALS

A. Grantor has entered into a Loan and Security Agreement by and between Grantor and RGG
Enterprises, whose address is P.O. Box 1006, Zephyr Cove, Nevada 89448, for the amount of \$1,700,000
("**Senior Loan**") and related documents in connection therewith (collectively, "**Senior Loan
Documents**") granting a first priority lien ("**Senior Lien**") on the Property (as hereinafter defined).

B. Beneficiary has agreed to make and Grantor has agreed to accept a loan to Grantor in the
maximum amount of **SIX HUNDRED SEVENTY THOUSAND SIX HUNDRED SEVENTY AND
NO/100 DOLLARS (\$670,653)** ("**Loan**") subject to the terms and conditions contained herein. To
evidence the Loan, Grantor has executed and delivered to Beneficiary a Promissory Note secured by this
Deed of Trust dated of even date herewith in the maximum principal amount of Six Hundred Seventy
Thousand Six Hundred Fifty-Three and NO/100 Dollars (\$670,653) (which promissory note, together with
all notes issued in substitution or exchange therefor and/or as any of the foregoing may be amended,
modified or supplemented from time to time, is hereinafter referred to as the "**Note**"), providing for
payment of principal and interest and costs and expenses in connection with the loan pursuant to the terms
contained therein, with the balance thereof, if not sooner due or paid as set forth in the Note, due and
payable on the Maturity Date (as defined herein).

C. Beneficiary wishes to secure (i) the prompt payment of the Note, together with all interest
thereon in accordance with the terms of the Note, as well as the prompt payment of any additional
indebtedness accruing to Beneficiary on account of any future payments, advances or expenditures made
by Beneficiary pursuant to the Note or this Deed of Trust or any other agreement, document, or instrument
securing the payment of the indebtedness evidenced by the Note (the Note, this Deed of Trust, and any
other documents evidencing or securing the indebtedness evidenced by the Note or executed in connection
therewith, and any modification, renewal, extension thereof, are hereinafter collectively referred to as the
"**Loan Documents**"), and (ii) the prompt performance of each and every covenant, condition, and
agreement of Grantor now or hereafter arising contained in the Loan Documents. All payment obligations

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of Grantor are sometimes collectively referred to as the "**Indebtedness**" and all other obligations of Grantor or are hereinafter sometimes collectively referred to as the "**Obligations.**"

NOW, THEREFORE, to secure to Beneficiary the repayment of the Indebtedness and the performance of the Obligations, Grantor has executed this Deed of Trust and does hereby irrevocably mortgage, grant, assign and convey to Trustee, IN TRUST WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, under and subject to the terms and conditions hereof, for the benefit and security of Beneficiary, the following described property and all proceeds thereof (which property is hereinafter sometimes collectively referred to as the "**Property**"):

A. The real estate described on Exhibit "A" attached hereto and incorporated herein by this reference and commonly known as 1000 Holly Lane in the City of Zephyr Cove, Douglas County, Nevada (the "**Land**");

B. All improvements of every nature whatsoever now or hereafter situated or constructed on the Land (the "**Improvements**"), and all machinery, equipment, fixtures, lighting, mechanical systems and other personal property now or hereafter owned by Grantor and located at or otherwise used in connection with the use of the Improvements;

C. All sums deposited in the Construction Disbursement Account (as defined in **Section 6.2.3(A)** herein);

D. All easements and appurtenances now or hereafter in any way relating to the Land or Improvements or any part thereof;

E. All claims, demands, judgments, insurance proceeds, awards of damages and settlements hereafter made resulting from the taking of the Land and/or the Improvements or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking, by casualty or otherwise) to the Land or the Improvements or any part thereof;

F. All right, title and interest of Grantor in and to all drawings, plans, specifications and similar or related items relating to the Land or the Improvements and in and to any and all construction disbursement accounts established in connection with the Loan and in and to any and all funds located or on deposit therein; and

G. All now or hereafter existing construction or architect contracts and, to the extent assignable, all permits, certificates, licenses, agreements, approvals, entitlements and authorizations, however characterized, issued or in any way furnished for the acquisition, construction, operation and use of the Land and Improvements including, without limitation, all building permits, environmental certificates, licenses, certificates of operation, warranties and guaranties.

TO HAVE AND TO HOLD the Property and all parts thereof, together with the rents, issues, profits and proceeds thereof, unto Beneficiary to its own proper use, benefit, and advantage forever, subject, however, to the terms, covenants, and conditions herein.

Grantor covenants and agrees with Beneficiary as follows:

1. **Payment of Indebtedness; Performance of Obligations.** Grantor shall promptly pay when due the Indebtedness and shall promptly perform all Obligations as and when required under the Loan Documents.

2. **Payment of Taxes and Other Obligations.** Grantor shall pay, when due, and before any interest, collection fees or penalties shall accrue, all taxes, assessments, fines, impositions and other charges and obligations, including charges and obligations for any present or future repairs or improvements made on the Property, or for any other goods or services or utilities furnished to the Property, which may become a lien on or charge against the Property prior to this Deed of Trust, subject, however, to Grantor's right to contest such lien or charge upon the posting of security reasonably satisfactory to Beneficiary so long as such contest stays the enforcement or collection of such lien or charge. Should Grantor fail to make

such payments, Beneficiary may, at its option and at the expense of Grantor, pay the amounts due for the account of Grantor. Upon the request of Beneficiary, Grantor shall immediately furnish to Beneficiary all notices of amounts due and receipts evidencing payment. Grantor shall promptly notify Beneficiary of any lien on all or any part of the Property and shall promptly discharge any unpermitted lien or encumbrance.

3. **Preservation and Maintenance of Property.** Grantor (a) shall not commit waste or permit impairment or deterioration of the Property; (b) shall not abandon the Property; (c) shall keep the Property in good repair and restore or repair promptly, in a good and workmanlike manner, all or any part of the Property to the equivalent of its original condition, ordinary wear and tear excepted, or such other condition as Beneficiary may approve in writing, upon any damage or loss thereto; (d) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property; and (e) shall give notice in writing to Beneficiary of and, unless otherwise directed in writing by Beneficiary, appear in and defend any action or proceeding purporting to affect the Property, the security granted by the Loan Documents or the rights or powers of Beneficiary. Neither Grantor nor any other person shall remove, demolish or alter any Improvement in or on the Land except in connection with the Construction Project (as defined in Section 6 below) or otherwise in accordance with Lender's written approval.

4. **Acceleration on Transfer or Encumbrance of the Property.** If (a) Grantor sells, contracts to sell, gives an option to purchase, conveys, leases, encumbers or alienates the subject property, or any interest in the subject property, or suffers its title, or any interest in the subject property, to be divested, whether voluntarily or involuntarily, other than in connection with the Senior Loan; or (b) if title to the subject property becomes subject to any lien or charge other than those contested by Borrower in accordance with Section 6.7.2, voluntarily or involuntarily, contractual or statutory, without the written consent of Beneficiary first being had and obtained, then Beneficiary, at Beneficiary's option, shall have the right, without prior notice, to declare all sums secured by this Deed of Trust, irrespective of their stated due dates, to be immediately due and payable, and shall have the right to exercise all rights and remedies provided for herein, in any and all documents evidencing any obligation secured hereby, at law and/or in equity. Notwithstanding the requirements of this Section 5, (i) Grantor shall have the right to enter into one or more purchase and sale agreements (but not installment land sale contracts) concerning the Property so long as all of Grantor's Obligations have been met and each purchase and sale agreement provides that full payment of all Indebtedness under the Loan Documents will be received by Beneficiary prior to or concurrently with the closing under the purchase and sale agreement and (ii) Grantor shall have the right to transfer interests in the property in connection with Grantor's estate planning matters so long as Grantor remains the direct or indirect owner of the subject property.

5. **Construction Project.** Grantor has caused a work of improvement consisting of a single-family residence and related improvements (as more particularly described in the Plans and Specifications (as defined below)) to be commenced on the Land ("**Construction Project**"). "**Plans and Specifications**" shall mean the plans and specifications referenced in the Grantor's Closing Certificate and Agreement of even date herewith ("**Closing Certificate**") and any amendments thereto (including change orders or field orders) approved in writing by Beneficiary, and shall include amendments for appliances, equipment and fixtures. "**Project Budget**" shall mean the budget for the Construction Project referenced in the Closing Certificate and any amendments thereto or any other such budget approved in writing by Beneficiary. "**Project Costs**" shall mean costs incurred by Grantor in connection with the Construction Project. "**Project Schedule**" shall mean the schedule for completion of the Construction Project referenced in the Closing Certificate and any amendments thereto or any other such schedule approved in writing by Beneficiary. The proceeds of the Loan shall be used solely for payment of Project Costs in the categories and amounts set forth in the Project Budget. Except as provided in Section 6.4 below, the amount which Beneficiary shall be obligated to disburse for any line item of Project Cost shall not be in excess of the amount shown on the Project Budget for that item. Grantor shall pay from his own resources all Project Costs in excess of the amount Beneficiary is obligated to disburse under the Loan.

5.1 **Initial Disbursement.** On or about the date of recordation of this Deed of Trust, Beneficiary has made or will make an initial disbursement under the Loan, in reliance upon the covenants, representations and warranties of Grantor contained in the Loan Documents. It is agreed by Grantor that the maximum amount available for disbursement under the Loan is \$600,000 (a portion of which is being disbursed in the initial disbursement), the remainder of the Principal Amount under the Note being applied as set forth in Sections 1(b) and (c) of the Note.

5.2 Subsequent Disbursements. Subsequent disbursements of the Loan shall be made not more frequently than once a month for Project Costs incurred by Grantor, provided (a) no Event of Default, or any fact or circumstance which, with the giving of notice or lapse of time or both, would constitute an Event of Default, exists hereunder or any of the other Loan Documents, and (b) the conditions of this Section 6 have been fully satisfied (provided, however, that the requirements of Section 6.3 regarding the Final Disbursement need be satisfied only at such time as Grantor is requesting the Final Disbursement).

5.2.1 Draw Request Documents. Beneficiary shall receive, on forms reasonably satisfactory to Beneficiary ("**Draw Request Documents**"), at least fifteen (15) business days in advance of the contemplated date of disbursement, a draw request ("**Draw Request**"), which shall generally consist of the Draw Request Documents specified in the **Exhibit "C"**, the form of which shall be subject to Beneficiary's approval in its reasonable discretion.

5.2.2 Continuing Representations and Warranties. The representations and warranties contained in the Closing Certificate, together with any representations and warranties contained elsewhere in the Loan Documents (hereinafter collectively referred to as the "**Representations**"), shall be complete and accurate and there shall be no material omissions, and there have been no adverse changes in the information shown thereby, since the date said items were furnished to Beneficiary. The Representations will be true at the date of the first disbursement of the Loan, and on the dates of all subsequent disbursements of the Loan. Each additional disbursement hereunder shall be deemed a renewal by Grantor of the representations and warranties contained in this Deed of Trust and the other Loan Documents and shall be deemed an affirmative statement by Grantor that such representations and warranties are true and correct in all material respects, unless noted in writing to Beneficiary. All representations, warranties, covenants and agreements made herein or in the Closing Certificate or other document delivered to Beneficiary by or on behalf of Grantor shall be deemed to have been relied upon by Beneficiary, notwithstanding any investigation heretofore or hereafter made by Beneficiary or on its behalf, and shall survive the making of any or all of the disbursements contemplated hereby and shall continue in full force and effect as long as there remains unperformed any obligation of Grantor to the Beneficiary hereunder or under any of the other Loan Documents.

5.2.3 Loan Balancing; Unallocated Reserve. Beneficiary shall only be obligated to disburse the amounts requested in a Draw Request at such times as the Loan is "in balance". The Loan shall be deemed to be "in balance" only at such time, and from time to time, as Grantor has deposited sufficient funds in the Construction Disbursement Account (as defined below) for payment of Project Costs, so that the undisbursed portion of the Loan on an individual line item basis, together with any Unallocated Reserve (defined below), if any, is sufficient to complete the construction of the Construction Project after application of amounts in the Construction Disbursement Account. The required cost to complete construction shall be certified to Grantor or Beneficiary in writing by the project architect.

A. "**Construction Disbursement Account**" shall mean the depository account established and maintained by Grantor at Union Bank of California with the name "**HollyLane Holdings LLC**" and the account number 4780-026-818. Grantor represents, warrants and covenants that (i) the Construction Disbursement Account is and shall be maintained as a deposit account and shall be at all times under the sole dominion and control of Beneficiary, and (ii) Grantor has caused the depository bank to agree in writing, and shall continue to require depository bank, to comply with instructions originated by Beneficiary directing disposition of the funds in the Construction Disbursement Account without further consent by Grantor. Grantor's Social Security number is 572-58-7649.

B. "**Loan/Cost Percentage**" shall mean the fraction, expressed as a percentage, that (i) has as its numerator an amount equal to the then undisbursed portion of the Loan plus any additional amounts deposited by Grantor in the Construction Disbursement account and (ii) has as its denominator the then remaining cost required to complete the Construction Project, as determined by Beneficiary in its sole discretion. For example, if, at a given point in time on a \$1,000,000 loan, \$200,000 in Loan principal has been disbursed, and the cost remaining to complete the Construction Project is \$1,200,000, then the undisbursed portion of Loan principal would equal \$800,000, and the Loan/Cost Percentage would equal $\$800,000/\$1,200,000$, or 66.67%.

C. If at any time during the term of the Loan, the Loan is not "in balance", but the Loan/Cost Percentage (as defined below) is greater than or equal to ninety percent (90%), Grantor shall deposit into the Construction Disbursement Account an amount equal to the product of (i) 100% minus the Loan/Cost Percentage and (ii) the Draw Request Amount, and upon such deposit the funds so deposited shall be disbursed to pay the amounts in the Draw Request, and Beneficiary shall disburse a portion of the Draw Request amount equal to the Loan/Cost Percentage of the requested amount, but not more than 100% of the Draw Request amount. For example, if the Loan/Cost Percentage is 95%, and the Draw Request amount is \$100,000, Grantor shall be obligated to deposit \$5,000 into the Construction Disbursement Account as a condition precedent to Beneficiary funding the \$95,000, and upon such deposit, Beneficiary shall disburse 95% of \$100,000, or \$95,000 from the Loan.

D. If at any time during the term of the Loan, the Loan is not "in balance", and the Loan/Cost Percentage is less than ninety percent (90%), then Grantor shall, within seven (7) days of the date of receipt of written notice thereof from Beneficiary, deposit a sufficient amount with Beneficiary or, at Beneficiary's request, with the Title Company, or Grantor shall make such other arrangements as Beneficiary shall deem necessary or appropriate, to increase the Loan/Cost Percentage to at least ninety percent (90%). Such amounts, following deposit thereof, will be disbursed to pay Project Costs prior to any further disbursements of the Loan. Beneficiary shall not be obligated to make any disbursement if the Loan is not "in balance" and the Loan/Cost Percentage is less than 90%, until Grantor has complied with its obligations under this **Section 6.2.3D**. Notwithstanding the foregoing, Beneficiary's making a disbursement at any time while Grantor is not in compliance with this **Section 6.2.3** shall not relieve Grantor of its obligation to remain in strict compliance with the terms of this paragraph and to bring the loan "into balance" by advancing its own funds prior to any future disbursement.

E. Any undisbursed portion of the Loan funds allocated to any particular cost item in the Project Budget which remains unspent after full completion of that cost item in accordance with the Plans and Specifications shall be deemed transferred to an unallocated reserve (the "**Unallocated Reserve**") at the time such savings are realized, upon demonstrating the existence of such savings to Beneficiary's reasonable satisfaction, by change order or otherwise. The Unallocated Reserve can be transferred to other cost item categories with Beneficiary's prior written consent, which shall not be unreasonably withheld.

5.3 Final Construction Disbursement. A final disbursement ("**Final Disbursement**") for the payment of construction costs, which shall exclude a holdback for Punchlist Items (as defined in **Section 6.6.1(B)** below), shall be made upon Grantor's submission of all applicable Draw Request Documents and Grantor's submission of reasonable evidence of Substantial Completion (defined in **Section 6.6.1** below) of the Improvements.

5.4 Amendments and Change Orders. Any substantive changes in the Plans and Specifications, Project Budget, Project Schedule or scope of work shall require the prior written approval of Beneficiary. For the purposes of this Deed of Trust, a substantive change in the Plans and Specifications shall be deemed to include changes which materially affect the use or quality of construction of the Improvements and which result in a cost differential of \$1,000 or more, individually, and \$1,000 in the aggregate (except that change orders previously approved by Beneficiary shall not be counted in calculating the aggregate amount of change orders). Beneficiary shall receive written notice and copies of all change orders. All change orders must be signed by an authorized signatory of Grantor, project general contractor and the project architect. Change orders will be submitted to Beneficiary on AIA forms or their equivalent and Beneficiary will approve or reject change orders within five (5) business days after receipt thereof or said change orders shall be deemed approved. Beneficiary shall not be obligated to fund approved substantive changes unless Grantor deposits into the Construction Disbursement Account \$100,000 (or such additional amounts as shall be determined by Beneficiary) necessary to cover such changes approved by Beneficiary.

5.5 Right to Inspect. Beneficiary or its agent(s) shall have the right to inspect the Improvements at any reasonable time during construction and Grantor shall provide Beneficiary and those persons designated by Beneficiary full and free access thereto. The manner of completion of the Improvements and installation of all fixtures and furnishings shall be subject to the approval of Beneficiary; provided, however, that neither Beneficiary nor its agents shall have any liability for any failure by Beneficiary or its agents to detect or notify Grantor of any defects in the Improvements.

5.6 Grantor's Affirmative Covenants.

5.6.1 Covenant to Construct; Completion Date. Subject to a Force Majeure Extension (as defined hereinbelow), Substantial Completion of the Improvements contemplated by the Plans and Specifications shall occur not later than the October 1, 2002 (the "**Completion Date**").

A. Using proceeds of the Loan, deposits in the Construction Disbursement Account and its own funds, Grantor shall complete the construction of the Improvements substantially in accordance with the Plans and Specifications within the time allowed in the Project Schedule at Grantor's sole cost and expense. Grantor will cause construction to proceed with diligence and continuity, in accordance with the approved Project Schedule so that Substantial Completion will occur not later than the Completion Date, as the same may be extended pursuant to this Subsection 6.6.1A. The Completion Date may be extended for a reasonable period of time as necessitated by acts of God, accidents, strikes, floods, mudslides, earthquakes, inclement weather, fire or other casualty or unavailability of labor or necessary materials or other causes beyond Grantor's reasonable control, but in no event shall the Completion Date be extended by the provisions of this paragraph more than forty-five (45) days in the aggregate ("**Force Majeure Extension**"). Grantor shall give Beneficiary written notice of the occurrence of any event which Grantor believes constitutes commencement of a Force Majeure Extension within five (5) business days of occurrence, so Beneficiary may respond thereto.

B. For the purposes of this Deed of Trust, "**Substantial Completion**" shall be defined as sufficient completion of construction of the Improvements in accordance with the approved Plans and Specifications for Grantor to occupy and utilize the Improvements for the use for which they are intended, as expressed in the contract documents between Grantor and the project general contractor. Substantial Completion shall be evidenced by receipt of a temporary or partial certificate of occupancy or its equivalent from the County of Douglas and a Certificate of Substantial Completion from the project architect accompanied by a "punchlist" of items remaining to be completed (all of which punchlist items shall be completed as soon as possible, but not later than thirty (30) days after Substantial Completion) and an estimate of the cost thereof (the "**Punchlist Items**"). Beneficiary shall withhold a sum from the Final Disbursement equal to one hundred percent (100%) of the estimated cost of the Punchlist Items, which shall be disbursed only upon completion thereof. In no event may the estimated cost of the Punchlist Items exceed Ten Thousand Dollars (\$10,000), and if the estimated cost of the Punchlist Items does exceed Ten Thousand Dollars (\$10,000), then Substantial Completion shall not be deemed to have occurred.

5.6.2 Compliance with Laws and Deed of Trust. At all times during the term of the Loan, Grantor will comply with, and will cause the Improvements to be in compliance with, all applicable laws, ordinances, rules, regulations, orders, restrictive covenants, Legal Requirements or agreements to which Grantor or the Improvements are subject.

5.6.3 Compliance with Plans and Specifications; Correction of Defects. Grantor will cause the Improvements to be constructed substantially in accordance with the Plans and Specifications. Grantor shall, within a reasonable period after notice has been given by Beneficiary to Grantor, correct or cause to correct or commence to correct and pursue diligently to completion all material defects in the construction of the Improvements.

5.6.4 Books and Records. Grantor shall keep and maintain at all times at Grantor's address stated above, or such other place as Grantor shall designate within [Nevada], complete and accurate books of accounts and records adequate to correctly reflect the construction of the Improvements, together with copies of all written contracts and other instruments affecting the Property.

5.6.5 Updated Survey. Beneficiary shall have the right to obtain, at Beneficiary's sole cost and expense, an updated survey of the Land.

5.7 Grantor's Negative Covenants.

5.7.1 No Amendments. Grantor shall not materially amend, modify or terminate the Construction Contract, the Architect's Agreement, the Plans and Specifications or the Project Budget without Beneficiary's prior written consent. Change orders for amounts that do not exceed those set forth in Section 6.4 shall not constitute amendments or modifications requiring Beneficiary's consent.

5.7.2 No Additional Liens, Encumbrances or Indebtedness. Grantor covenants not to grant or permit the filing of any lien or encumbrance on the Improvements, other than the Senior Lien, without the prior written consent of Beneficiary; provided, however, Grantor may, by appropriate proceeding, contest the validity or amount of any asserted lien and, pending such contest, Grantor shall not be deemed to be in default hereunder if: (a) Grantor has given prior written notice to Beneficiary of Grantor's intent to so contest, (b) such contest stays the enforcement of the contested lien, (c) Grantor is not subject to criminal liability, and (d) the contested lien is bonded or insured over by the title insurance company or Grantor has posted security therefor in a manner acceptable to Beneficiary.

5.7.3 Use of Land; Improvements. Grantor shall not permit changes in the plat of subdivision, zoning classification or use of any part of the Improvements from its presently contemplated use without Beneficiary's prior written consent.

5.8 Indemnity. Grantor hereby agrees to indemnify, defend and hold harmless Beneficiary and Beneficiary's officers, directors, shareholders, affiliates, employees, successors, assigns and attorneys, and each of them (each, an "**Indemnified Party**") from and against all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other expenses which the Indemnified Parties, or any of them, may suffer or incur: (a) by reason of this Deed of Trust; (b) by reason of the execution of this trust or in performance of any act required or permitted hereunder or by law; (c) as a result of any failure of Grantor to perform Grantor's Obligations; (d) any action or non-action by Grantor including performance of the Construction Project or any portion thereof; (e) any injury or damage to a person or Project occurring at the Property or in connection with the Construction Project; (f) hazardous materials; or (g) by reason of any alleged obligation or undertaking on Beneficiary's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document relating to the Property. The above obligation of Grantor to indemnify, defend and hold harmless the Indemnified Parties shall survive the release and cancellation of the Indebtedness and the release and reconveyance of this Deed of Trust.

6. Insurance and Condemnation.

6.1 Insurance Coverage Required. Grantor shall keep the Property and Improvements insured, and shall maintain general liability coverage and such other coverages, as more fully set forth in **Exhibit "B"** attached hereto and incorporated by this reference, as are maintained by or for the benefit of Grantor as of the date of recordation of this Deed of Trust, which carrier(s), amounts and forms shall not be materially changed without the prior written consent of Beneficiary, not to be unreasonably withheld or delayed; provided, however, that upon completion of construction, Grantor shall substitute homeowners' "all risk" property damage coverage for the builder's risk coverage maintained by Grantor during the course of construction.

6.2 Notice of Loss; Settlement of Claims. In case of loss or damage by fire or other casualty, Grantor shall give immediate written notice thereof to the insurance carrier(s) and to Beneficiary. Beneficiary is authorized and empowered to make or file proofs of loss or damage (in each case only so long as such loss or damages is equal to or greater than \$25,000.00) and to settle and adjust any claim under insurance policies which insure against such risks, or to direct Grantor, in writing, to agree with the insurance carrier(s) on the amount to be paid in regard to such loss; provided, however, that any such settlement and adjustment shall be subject to the approval of the Grantor, not to be unreasonably withheld or delayed.

6.3 Condemnation Procedure. Grantor shall immediately notify Beneficiary of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Grantor shall appear in and prosecute any such action or proceeding unless otherwise

directed by Beneficiary in writing. Grantor authorizes Beneficiary, at Beneficiary's option, as attorney-in-fact for Grantor, to commence, appear in and prosecute, in Beneficiary's or Grantor's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and, upon Grantor's approval, which shall not be unreasonably withheld or delayed, to settle or compromise any claim in connection with such condemnation or other taking, provided such claim is for an amount equal to or greater than \$25,000.00. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Beneficiary as further security for the payment of the Indebtedness and performance of the Obligations.

6.4 Application of Insurance and Condemnation Proceeds. Provided no Event of Default then exists hereunder, the net insurance proceeds and net proceeds of any condemnation award (in each case after deduction only of Beneficiary's reasonable costs and expenses, if any, in collecting the same) shall be made available for the restoration or repair of the Property if, in Beneficiary's reasonable judgment (a) restoration or repair and the continued operation of the Property is economically feasible, (b) the value of Beneficiary's security would not be materially reduced following reconstruction and (c) the loss or condemnation, as applicable, does not occur in the six (6) month period preceding the stated Maturity Date and Beneficiary's independent consultant certifies that the restoration of the Property can be completed at least 90 days prior to the Maturity Date. Any excess proceeds remaining after completion of such repair shall be against the Indebtedness. Notwithstanding the foregoing, it shall be a condition precedent to any disbursement of insurance proceeds held by Beneficiary hereunder that Beneficiary shall have approved (x) all plans and specifications for any proposed repair or restoration, (y) the construction schedule and (z) the architect's and general contractor's contract for all restoration that exceeds \$25,000.00 in the aggregate. Beneficiary may establish other conditions it deems reasonably necessary to assure the work is fully completed in a good and workmanlike manner free of all liens or claims by reason thereof. Grantor's deposits made pursuant to this paragraph shall be used before the net insurance proceeds or net proceeds of any condemnation award, as applicable, for such restoration or repair. If the net insurance proceeds or net proceeds of any condemnation award, as applicable, are made available for restoration or repair, such work shall be completed by Grantor in an expeditious and diligent fashion, and in compliance with all applicable laws, rules and regulations. At Beneficiary's option, the net insurance proceeds or net proceeds of any condemnation award, as applicable, shall be disbursed pursuant to a construction escrow acceptable to Beneficiary. If following the final payments for the completion of such restoration or repair there are any net insurance proceeds or net proceeds of any condemnation award, as applicable, remaining, such proceeds shall be paid (i) to Beneficiary to be applied to the Indebtedness, whether or not due and payable until paid in full, and (ii) then to Grantor. If an Event of Default then exists, or any of the conditions set forth in subparagraphs (a) through (d) of this **Section 7.4** have not been met or satisfied, the net insurance proceeds or net proceeds of any condemnation award, as applicable, shall be applied to the Indebtedness, whether or not due and payable, with any excess paid to Grantor.

7. Protection of Beneficiary's Security. If Grantor fails to pay the Indebtedness or perform the Obligations, or if any action or proceeding is commenced which materially affects the Property or Beneficiary's interest therein, then Beneficiary, at Beneficiary's option, may make such appearances, disburse such sums and take such action as Beneficiary deems necessary, in its sole discretion, to protect the Property or Beneficiary's interest therein, including entry upon the Property to make repairs and perform environmental tests and studies. Any amounts disbursed by Beneficiary pursuant to this **Section 8** (including attorneys' costs and expenses), with interest thereon at the "Default Rate" (defined in the Note) from the date of disbursement, shall become additional Indebtedness of Grantor secured by the Loan Documents and shall be due and payable on demand. Until such time as any such amounts disbursed by Beneficiary under this **Section 8** shall be repaid, all such amounts shall be deemed disbursed under the Loan to the extent the Loan is not yet fully disbursed, and shall be deemed to have been drawn first under the particular cost item in the Project Budget to which such disbursement relates, second under the Unallocated Reserves, and third under any and all remaining cost items in the Project Budget on a pro rata basis. Any remaining amounts disbursed under this **Section 8** and not otherwise allocated shall become additional Indebtedness under the Note and shall be secured by the Loan Documents as described hereinabove. The repayment of any funds disbursed under this **Section 8** shall be applied first to satisfy the amount of such additional Indebtedness, if any, and then to restore funding availability under the various line items of the Project Budget in the reverse order to the order of the deemed drawing described

in this **Section 8**. Nothing contained in this **Section 8** shall require Beneficiary to incur any expense or take any action hereunder.

8. Uniform Commercial Code Security Agreement; Fixture Filing.

This Deed of Trust shall constitute a security agreement pursuant to the Uniform Commercial Code for any of the items specified herein as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Grantor hereby grants Beneficiary a security interest in said items. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Grantor agrees to execute and deliver to Beneficiary, and Grantor hereby authorizes Beneficiary to execute and file any and all financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Deed of Trust in such form as Beneficiary may require to perfect a security interest with respect to said items. Grantor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Beneficiary may reasonably require. Beneficiary shall have the remedies of a secured party under the Uniform Commercial Code. To the extent permitted by law, Grantor and Beneficiary agree that with respect to all items of Personal Property which are or will become fixtures on the Land, this Deed of Trust, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Section 104.9313 of the Nevada Revised Statutes. Grantor is the record owner of the Land.

9. Hazardous Materials.

9.1 Grantor's Covenants Regarding Use and Compliance. Grantor covenants and agrees that it (a) shall not use, generate, store, or allow to be generated, stored or used, any "Hazardous Materials" (hereinafter defined) on the Property, except in the ordinary course of Grantor's residential use or the construction of the residence on the Property and in accordance with all Legal Requirements (hereinafter defined), and (b) shall at all times maintain the Property in full compliance with all applicable Legal Requirements, including timely remediating the Property if and when required.

9.2 Duty to Notify; Definitions. Grantor shall promptly notify Beneficiary in writing of (i) any investigation, claim or other proceeding by any party caused or threatened in connection with any Hazardous Materials on the Property, or the failure or alleged failure of the Property to comply with any applicable Legal Requirements, or (ii) Grantor's discovery of any condition on or in the vicinity of the Property that could cause the Property to fail to comply with applicable Legal Requirements. For purposes of this Deed of Trust:

A. "**Hazardous Materials**" shall mean (1) any "**hazardous waste**" and/or "**hazardous substance**" defined pursuant to any Legal Requirements (hereinafter defined); (2) asbestos or any substance containing asbestos; (3) polychlorinated biphenyls; (4) lead; (5) radon; (6) pesticides; (7) petroleum or any other substance containing hydrocarbons; (8) underground storage tanks, whether empty, filled or partially filled with any substance; (9) any substance, the presence of which on the Premises is prohibited by any Legal Requirements; and (10) any other substance, material or waste which, (i) by any Legal Requirement requires special handling or notification of any "Governmental Authority" (hereafter defined) in its collection, storage, treatment, or disposal or (ii) is defined or classified as hazardous, dangerous or toxic pursuant to any Legal Requirement.

B. "**Legal Requirements**" shall mean any and all present and future judicial decisions, orders, decrees, laws, statutes, rules, rulings, regulations, permits, certificates, codes or ordinances of any Governmental Authority in any way applicable to Borrower, or the Premises, including the ownership, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, or regulating, relating to or imposing liability (including strict liability), or standards of conduct concerning any Hazardous Material, health, safety or protection of the environment, regardless of whether or not caused by, on behalf of, or within the control of Borrower, including, without limitation, 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 Toxic Substances Control Act ("TSCA"), 15 U.S.C. §2601 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. §1251 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the Atomic Energy Act, 42 U.S.C. §2011 et seq.; any so-called "Superfund" or "Superlien" law; and the rules, rulings, regulations, decisions and publications promulgated pursuant to said laws, all as may be amended from time to time.

- C. "**Governmental Authority**" shall mean any and all courts, boards, agencies, commissions, bodies, councils, 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.

9.3 Right to Enter and Inspect. Grantor hereby confirms the right of Beneficiary (or a receiver appointed by Beneficiary) upon not less than 48 hours' notice, during business hours, and in the least disruptive manner possible, to enter upon and inspect all or any portion of the Property for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Material into, onto, beneath, or from the Property. Such inspections and the tests and studies performed in connection therewith are collectively called the "**Tests and Studies**". All costs and expenses incurred by Beneficiary pursuant to this paragraph or pursuant to Nevada law, including, without limitation, costs of consultants and contractors, costs of repair or any physical injury of the Property normal and customary to the Tests and Studies, court costs and attorneys' fees, whether incurred in litigation or not and whether before or after judgment, shall be payable by Trustor and, to the extent advanced or incurred by Beneficiary, shall be reimbursed to Beneficiary by Trustor upon demand. Any and all of such costs and expenses advanced by Beneficiary, together with interest thereon at the rate then in effect under the Note, shall be deemed part of the Indebtedness, shall be secured by this Deed of Trust and shall enjoy the same priority as the original amount of the Note.

9.4 Certain Remedies. (a) As of the date of this Deed of Trust: (i) Beneficiary has asked Grantor whether Grantor or any affiliate or agent of Grantor or any related party of any of the foregoing has any actual knowledge or notice of the release or threatened release of any Hazardous Materials on, under or about the Property; and (ii) neither Grantor nor any affiliate or agent of Grantor nor any related party of any of the foregoing has any such actual knowledge or notice. In the event of a breach of any of the foregoing representations, Beneficiary shall have the right, without limitation, to pursue its remedies under Nevada law. Grantor's obligations to Beneficiary with respect to environmental matters shall not be reduced, excused or discharged as a result of a full credit bid by Beneficiary at a foreclosure sale of the Property in the amount of all other amounts due and payable by Grantor under the loans secure hereby. Any notice of sale issued with respect to any trustee's sale under the Deed of Trust shall be automatically deemed to include a reservation of Beneficiary's rights to proceed against Trustor after the trustee's sale with respect to claims arising out of a breach of the environmental representations set forth in the Loan Documents. Without limitation, Beneficiary may seek a judgment that Grantor has breached its covenants, representations and/or warranties with respect to the environmental matters contained herein (the "**Environmental Provisions**"), and may commence and maintain an action or actions in any court of competent jurisdiction for enforcement of the Environmental Provisions and/or recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses (including, without limitation, court costs, consultants' fees and attorneys' fees, whether incurred in litigation or not and whether before or after judgment), incurred or advanced by Beneficiary pursuant to the Environmental Provisions (collectively, the "**Environmental Costs**"). All Environmental Costs incurred by Beneficiary shall bear interest at the Default Rate. All Environmental Costs together with interest thereon at the Default Rate shall be secured by this Deed of Trust and shall enjoy the same priority as the original principal amount of the Note.

(b) Beneficiary may waive its lien against the Property or any portion thereof, together with fixtures or personal property thereon, to the extent such property is found to be environmentally impaired, and may exercise any and all rights and remedies of an unsecured creditor against Grantor and all of Grantor's assets and property for the recovery of any deficiency, including, without limitation, seeking an attachment order. No such waiver shall be final or binding on Beneficiary unless and until a final money judgment is obtained against Grantor.

9.5 Survival; Waiver. Grantor's obligations under this **Section 10** shall survive the foreclosure, deed in lieu of foreclosure, release, reconveyance or any other transfer of the Property or this Deed of Trust. For the purpose of any action brought under this **Section 10**, Grantor hereby waives the defense of laches and any applicable statute of limitations.

10. Events of Default; Acceleration of Indebtedness; Remedies; Waivers.

10.1 Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Deed of Trust:

A. failure of Grantor to pay when due (subject to any grace periods specifically provided in the Loan Documents) any of the Indebtedness, including any payment due under the Note or any other Loan Documents; or

B. a petition under any Chapter of Title 11 of the United States Code or any similar law or regulation is filed by or against Grantor (and in the case of an involuntary petition in bankruptcy, such petition is not discharged within 90 days of its filing), or a custodian, receiver or trustee for any of the Property is appointed, or Grantor makes an assignment for the benefit of creditors, or any of them are adjudged insolvent by any state or federal court of competent jurisdiction, or an attachment or execution is levied against any of the Property; or

C. the occurrence of an "Event of Default" under and as defined in any other Loan Document; or

D. the occurrence of an "Event of Default" under and as defined under the Senior Loan Documents; or

E. Grantor is in default in the payment of any indebtedness to Beneficiary (other than the Indebtedness) and such default is declared and is not cured within the time, if any, specified therefor in any agreement governing the same; or

F. any statement, report or certificate is made or delivered to Beneficiary by Grantor which is not materially true and complete; or

G. any lien, levy or assessment is filed or recorded with respect to the Property and such lien, levy or assessment is not stayed, vacated, paid, or discharged within five (5) days of the date on which Grantor first obtains knowledge or notice of its existence; or

H. breach of any covenant, representation or warranty, or failure of Grantor to satisfy each and every Obligation, other than those set forth in the subparagraphs above, within 10 days after notice and demand; provided, however, if such failure to satisfy such Obligation cannot by its nature be cured within 10 days, and if Grantor commences to cure such failure promptly after written notice thereof and thereafter diligently pursues the curing thereof (and then in all events cures such failure within 30 days after the original notice thereof), Grantor shall not be in default hereunder during such period of diligent curing.

10.2 Acceleration. Upon the occurrence of an Event of Default, the Indebtedness, at the option of the Beneficiary, shall become immediately due and payable without notice to Grantor, and Beneficiary shall be entitled to all of the rights and remedies provided in the Loan Documents or at law or in equity.

10.3 Remedies. When the Indebtedness or any part thereof shall become due, whether by acceleration or otherwise, Beneficiary may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy to (a) enforce payment of the Note or the performance of any term, covenant, condition or agreement of Grantor under any of the Loan Documents, (b) foreclose the lien hereof for the Indebtedness or part thereof and sell the Property as an entirety or otherwise, as Beneficiary may determine, and/or (c) pursue any other right or remedy available to it under or by the law and decisions of the State of Nevada. The failure to join any tenant or tenants of the Property as party defendant or defendants in any foreclosure action or the failure of any such order or judgment to foreclose their rights shall not be asserted by the

Grantor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof, any statute or rule of law at any time existing to the contrary notwithstanding. Trustee and Beneficiary shall have all powers, rights and remedies under applicable law whether or not specifically or generally granted or described in this Deed of Trust. Nothing contained herein shall be construed to impair or to restrict such powers, rights and remedies or to preclude any procedures or process otherwise available to trustees or beneficiaries under deeds of trust in the State of Nevada. Trustee and Beneficiary, and each of them, shall be entitled to enforce the payment and performance of the Indebtedness or the Obligations and to exercise all rights and powers under this Deed of Trust or under any other Loan Document or other agreement of any laws now or hereafter in force, notwithstanding the fact that some or all of the Indebtedness and the Obligations may now or hereafter be otherwise secured, whether by Deed of Trust, mortgage, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers contained herein, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other rights or security now or hereafter held by Trustee or Beneficiary. Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other rights or security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy contained herein or by law provided or permitted, but each shall to the extent permitted by law be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

10.4 Trustee's Sale. Should Beneficiary elect to foreclose by exercise of the power of sale contained herein, Beneficiary shall notify Trustee and shall, if required, deposit with Trustee the Note, the original or a certified copy of this Deed of Trust, and such other documents, receipts and evidences of expenditures made and secured hereby as Trustee may require.

- A. Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded and delivered to Grantor such notice of default as may then be required by law and by this Deed of Trust. Trustee shall, without demand on Grantor, after lapse of such time as may then be required by law and after recordation of such notice of default and after notice of sale has been given as required by law, sell the Property at the time and place of sale fixed by it in said notice of sale, either as whole or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to the purchaser or purchasers at such sale its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Grantor, Trustee or Beneficiary, may purchase at such sale, and Grantor hereby covenants to warrant and defend the title of such purchaser or purchasers. If Beneficiary purchases the Property at the foreclosure sale, Beneficiary shall be entitled to apply all of any part of the Indebtedness as a credit towards the purchase price.
- B. Trustee may postpone the sale of all or any portion of the Property from time to time in accordance with the laws of the State of Nevada.
- C. To the fullest extent allowed by law, Grantor hereby expressly waives any right which it may have to direct the order in which any of the Property shall be sold in the event of any sale or sales pursuant to this Deed of Trust.

10.5 Expenditures and Expenses. In any civil action to foreclose the lien hereof or otherwise enforce Beneficiary's rights, there shall be allowed and included as additional Indebtedness in the order or judgment for foreclosure and sale or other order all expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary including attorneys' fees, costs and expenses, receiver's fees, costs and expenses, appraiser's fees, engineers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimates as to items to be expended after entry of said order or judgment) of procuring all such abstracts of title, title searches and examination,

title insurance policies, Torrens' Certificates and similar data and assurances with respect to the title as Beneficiary may deem reasonably necessary either to prosecute such civil action or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition of the title to, or the value of, the Property (said expenditures and expenses are hereinafter collectively referred to as the "Reimbursable Expenses"). All Reimbursable Expenses, and such costs, expenses and fees as may be incurred by Beneficiary at any time or times hereafter in the protection of the Property, in enforcing the Obligations, and/or the maintenance of the lien established by any of the Loan Documents, including accountants' and attorneys' fees, costs and expenses in any advice, litigation, or proceeding affecting the Loan Documents or the Property, whether instituted by Beneficiary, Grantor or any other party, or in preparation for the commencement or defense of any action or proceeding or threatened action or proceeding, including costs and expenses in connection with obtaining any court order or the appointment of a receiver to enforce Beneficiary's rights shall be immediately due and payable to Beneficiary by Grantor, with interest thereon at the Default Rate set forth in the Note, and shall be secured by the Loan Documents. In addition to the foregoing award of attorneys' fees and costs, Beneficiary shall be entitled to its attorneys' fees and costs incurred in any post-judgment proceedings to collect or enforce any judgment or order relating to this Deed of Trust, the Note secured hereby or the other Loan Documents. This provision is separate and several and shall survive the merger of this provision into any judgment.

10.6 Appointment of Receiver. If an Event of Default is continuing or if Beneficiary shall have accelerated the Indebtedness, Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of any security for the Indebtedness or the insolvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Property, and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers to the fullest extent permitted by law. The receiver shall have the right to apply any rents to cleanup, remediation or other response actions concerning the release or threatened release of Hazardous Materials, whether or not such actions are pursuant to an order of any federal, state or local governmental agency.

10.7 Forbearance Not a Waiver. Any forbearance by Beneficiary in exercising any right or remedy under any of the Loan Documents, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. Beneficiary's acceptance of payment of any sum secured by any of the Loan Documents after the due date of such payment shall not be a waiver of Beneficiary's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Beneficiary shall not be a waiver of Beneficiary's right to accelerate the maturity of the Indebtedness, nor shall Beneficiary's receipt of any awards, proceeds or damages under **Section 7** hereof operate to cure or waive Grantor's default in payment or sums secured by any of the Loan Documents. With respect to all Loan Documents, only waivers made in writing by Beneficiary shall be effective against Beneficiary.

10.8 Waiver of Statute of Limitations. Grantor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Note or any other obligation secured by any of the Loan Documents.

10.9 Waiver of Right of Offset. No portion of Grantor's Liabilities shall be or be deemed to be offset or compensated by all or any part of any claim, cause of action, counterclaim or cross-claim, whether liquidated or unliquidated, which Grantor may have or claim to have against Beneficiary.

10.10 Jury Trial Waiver. GRANTOR HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THE LOAN DOCUMENTS. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY GRANTOR AND GRANTOR ACKNOWLEDGES THAT NEITHER BENEFICIARY NOR ANY PERSON ACTING ON BEHALF OF BENEFICIARY HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR HAS TAKEN ANY ACTIONS WHICH IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. GRANTOR ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT BENEFICIARY HAS RELIED AND WILL RELY ON THIS WAIVER IN ENTERING INTO THE LOAN DOCUMENTS AND MAKING ADVANCES UNDER THE LOAN AND THAT BENEFICIARY WILL CONTINUE TO RELY ON THIS WAIVER. GRANTOR FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THE LOAN DOCUMENTS AND IN THE MAKING OF THIS WAIVER BY

INDEPENDENT LEGAL COUNSEL. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, THIS WAIVER SHALL NOT APPLY TO PROCEEDINGS ARISING UNDER OR OUT OF THE EMPLOYMENT AGREEMENT OR THE BORROWER'S EMPLOYMENT RELATIONSHIP WITH THE LENDER.

11. Miscellaneous.

11.1 Grantor and Lien Not Released. Without affecting the liability of Grantor or any other person liable for the payment of the Indebtedness, and without affecting the lien or charge of this Deed of Trust as security for the payment of the Indebtedness, Beneficiary may, from time to time and without notice to any lien holder or holder of any right or other interest in and to the Property: (a) release any person so liable, (b) waive or modify any provision of this Deed of Trust or the other Loan Documents or grant other indulgences, (c) release all or any part of the Property, (d) take additional security for any obligation herein mentioned, (e) subordinate the lien or charge of this Deed of Trust, (f) consent to the granting of any easement, or (g) consent to any map or plan of the Property.

11.2 Estoppel Certificates. Grantor shall, within 10 days after Beneficiary's request from time to time, furnish Beneficiary with a written statement, duly acknowledged, setting forth inter alia, the sums evidenced and secured by the Loan Documents and any right of set-off, counterclaim or other defense which exists against such sums and the Obligations.

11.3 Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Grantor provided for in the Loan Documents shall be given by sending such notice by Federal Express or any other overnight carrier addressed to Grantor at Grantor's address stated above or at such other address as Grantor may designate by notice to Beneficiary as provided herein, and (b) any notice to Beneficiary shall be given by sending such notice by Federal Express or any other overnight carrier to Beneficiary's address stated above or to such other address as Beneficiary may designate by notice to Grantor as provided herein. Any notice provided for in the Loan Documents shall be deemed to have been given to Grantor or Beneficiary on the first business day following such transmission in the manner designated herein.

11.4 Successors and Assigns Bound; Joint and Several Liability; Agents; Captions. The covenants and agreements contained in the Loan Documents shall bind, and the rights thereunder shall inure to, the respective successors and assigns of Beneficiary and Grantor, subject to the provisions of **Section 5** hereof. All covenants and agreements of Grantor shall be joint and several. In exercising any rights under the Loan Documents or taking any actions provided for therein, Beneficiary may act through its employees, agents or independent contractors as authorized by Beneficiary. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

11.5 Governing Law; Severability. The Loan Documents shall be governed by the law of the State of Nevada. If any provision of the Loan Documents conflicts with applicable law, such conflict shall not affect other provisions of which can be given effect without the conflicting provisions, and to this end the provisions of the Loan Documents are declared to be severable.

11.6 Release of Lien Upon Full Payment and Satisfaction. Upon payment of all Indebtedness and the performance of all Obligations secured by this Deed of Trust, Beneficiary shall release this Deed of Trust. Grantor shall pay Beneficiary's reasonable costs incurred in releasing this Deed of Trust and any financing statements related hereto.

11.7 Terms. As used in the Loan Documents, (i) "business day" means a day when banks are not required or authorized to be closed in Nevada; and (ii) the words "include" and "including" shall mean "including but not limited to" unless specifically set forth to the contrary.

11.8 Trustee Provisions.

11.8.1 From time to time upon 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 the Indebtedness or performance of the Obligations, 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 in 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 such trusts and the enforcement of such 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. Grantor shall pay to Trustee reasonable compensation and reimbursement for services and expenses in the enforcement of the trusts created hereunder, including reasonable attorneys' fees. Grantor shall indemnify Trustee and Beneficiary against all losses, claims, demands and liabilities 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.

11.8.2 From time to time, by a writing signed by Beneficiary, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor, with the same effect as if originally named Trustee herein.

11.9 Senior Loan Compliance. Grantor will promptly and faithfully perform, observe, comply and fulfill all of its obligations, covenants and conditions contained in the Senior Loan Documents.

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust as of the date first above written.

"GRANTOR":



Alfred R. Villalobos

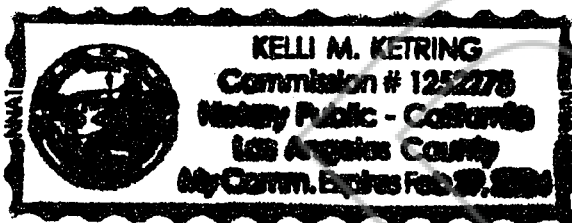
On August 9, 2002, before me, Kelli M. Ketring
(Name, Title of Officer, e.g., "Jane Doe, Notary Public")

personally appeared Alfred R. Villalobos
(Name(s) of Signer(s))

- personally known to me -OR-
- proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which person acted, executed the instrument.

Witness my hand and official seal.



Kelli M. Ketring
(Signature of Notary)

(SEAL)

My Commission expires:
2-29-04

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1

That certain real property situated in County of Douglas, State of Nevada, Being a portion of Section 23, T.13N, R.18E, M. D. B. described as follows:

Beginning at a point, being the Northwesterly corner of Lake Village Unit 2C, Douglas County Records. Thence along the Westerly boundary of Lake Village Unit 2C, S 13 degrees, 50'39" W for a distance of 83.17 ' plus or minus to a 1" iron pipe with cap "3090".

Thence continuing along the Westerly boundary of Lake Village Unit 2C, S 14 degrees 02'40" W (S 13 degrees 50'39" W recorded) for a distance of 71.99 ' to a non-legible tagged PK nail, being the True Point of Beginning.

Thence continuing along the Westerly boundary of Lake Village Unit 2C, S 14 degrees, 02'40" 40" (S 13 degrees 50'39" W recorded) for a distance of 52.12 feet to a PK nail with an un-legible tag.

Thence continuing along the Westerly boundary of Lake Village Unit 2C S 1 degree 16' 27" E (S 1 degree 09'21" R recorded) for a distance of 66.32 to a No. 5 rebar capped by PLS 2280, said point also being the Northeasterly corner of Lake Village Unit 2E.

Thence along the Northerly boundary of Lake Village Unit 2E, S 84 degrees 50' 33" W for a distance of 133.01 feet to a 1" iron pipe capped by PLS 3090, being the Northwesterly corner of Lake Village Unit 2E.

Thence N 05 degrees 00'00" W for a distance of 183.76 feet to a 1" iron pipe capped by PLS 3090.

Thence N 84 degrees 49'24" E for a distance of 62.39 feet to a No. 5 rebar capped by PLS 7880.

Thence S 05 degrees 51' 06" E for a distance of 38.55 feet to a No. 5 rebar capped by PLS 7880.

Thence N 84 degrees 08' 54" E for a distance of 6.31 feet to a No. 5 rebar capped by PLS 7880.

Thence S 05 degrees 26'20" E for a distance of 8.05 feet to a No. 5 rebar capped by PLS 7880.

Thence N 84 degrees 08' 54" E for a distance of 12.37 feet to a No. 5 rebar capped by PLS 7880.

Thence S 05 degrees 26' 20" E for a distance of 22.07 feet to a No. 5 rebar capped by PLS 7880.

Thence N 84 degrees 48' 23" E for a distance of 72.46 feet plus or minus to the true point of beginning.

Said land is further shown on that certain Record of Survey recorded December 7, 1999 in Book 1299, Page 1120, Document # 482101, and by Certificate of Amendment recorded July 17, 2001 in Book 0701, at Page 3933, as Document No. 518481.

APN 07-050-130

PARCEL 2

A NON-EXCLUSIVE ACCESS EASEMENT, described as follow:

Beginning at an iron pipe being the extreme Northeast corner of the Lake Village Unit 2E, thence along the Easterly boundary of Unit 2 E S 1degree 09'21" E 40.00 feet to a point; thence N. 65 degrees 20'39" E 55.00 feet to a point; thence N 24 degrees 39'24" W 113.38 feet to a point on the Westerly boundary line of Lake Village Unit 2C; thence along said boundary line S 13 degrees 50'39" W 20.20 feet to an iron pipe; thence along said boundary line S 1 degree 09'21" E 66.39 feet to the point of beginning.

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PARCEL 3

A NON-EXCLUSIVE UTILITY EASEMENT FOR SANITARY SEWER, described as follows:

Beginning at an iron pipe being the extreme Northeast corner of Lake Village Unit 2A, thence along the Northerly boundary line of Unit 2 A S 85 degrees 00'00" W 30.00 feet to an iron pipe; thence along said boundary line S 64 degrees 00'00" W 100.00 feet to a point; thence N. 26 degrees 00'00" W 20.00 feet to a point; thence N 64 degrees 00'00" E 139.81 feet to a point on the boundary line of that certain survey parcel map recorded October 17, 1974, in Book 1074, Page 323, as Document 75936, official Records Douglas County., Nevada, thence along said boundary line S 5 degrees 00'00" E 32.17 feet to a point of beginning.

"IN COMPLIANCE WITH NEVADA REVISED STATUE 111.312, THE HEREIN ABOVE LEGAL DESCRIPTION WAS TAKEN FROM INSTRUMENT RECORDED DECEMBER 7, 1999, AS FILE NO. 0482099, RECORDED IN THE OFFICIAL RECORDS OF DOUGLAS COUNTY, STATE OF NEVADA."

DRAFT

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EXHIBIT "B"

REQUIRED INSURANCE

Grantor shall at all times provide, maintain and keep in force, at no expense to Beneficiary, the following policies of insurance with respect to the Property:

(A) Property insurance on an "all risk" basis (special form cause of loss) for 100% of the replacement value of the Property with customary deductibles as approved by Beneficiary. The policy should contain the following endorsements: (a) Replacement Cost (without any deduction made for depreciation), (b) Agreed Amount (waiving co-insurance penalties), (c) Building Ordinance and Law coverage and (d) a standard mortgagee clause acceptable to Beneficiary. Such policy will also include the following coverage: (i) comprehensive boiler and machinery coverage; and (ii) earth movement for the full replacement cost of the Property or, the amount as would (in light of the risks insured and the cost of premiums for such insurance) be maintained by a prudent operator of property similar in use and locale.

COPY

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EXHIBIT "C"

DRAW REQUEST DOCUMENTS

Each Draw Request by Grantor shall include each of the following documents ("Draw Request Documents"):

1. A complete copy of the current conditional mechanics lien waiver in statutory form executed by each of the general contractor and all other subcontractors and suppliers concerning all of the Improvements work covered in the Draw Request, and such other evidence as Beneficiary may reasonably request to evidence that no liens can arise from the work done on the Improvements;
2. Copies of building permits for all of the work pertaining to the Draw Request with executed sign offs;
3. An affidavit by Grantor and/or an affidavit by the general contractor certifying that the portion of the Improvements work for which payment is sought has been substantially completed and has been performed in accordance with the approved plans and specifications;
4. An affidavit by Grantor's general contractor listing all subcontractors and suppliers with whom the general contractor has contracted in connection with the Improvements work for which payment is sought, together with the costs and each contract, and the dollar amount of work each subcontractor and supplier has theretofore performed;
5. Copies of invoices evidencing actual costs for that portion of the Improvements work for which payment is sought; and
6. An affidavit by Grantor that all labor, services, good and materials for which payment is being sought have been rendered in connection with the Improvements and delivered to or incorporated into the Property.

REQUESTED BY
FIRST AMERICAN TITLE CO.

IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

2002 AUG 16 PM 1:30

LINDA SLATER
RECORDER

\$ 33⁰⁰ PAID Bh DEPUTY

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