

REQUESTED BY
Stewart Title of Douglas County
IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

2004 JUL 16 PM 4:07

WERNER CHRISTEN
RECORDER

\$29.00 PAID *CS* DEPUTY

Assessor's Parcel No. 1320-04-001-039

Recording Requested By,
And After Recording, Return To:
**WELLS FARGO BANK, NATIONAL
ASSOCIATION**
Business Lending
Boise Service Center Building 3033 Elder Street
Boise, ID 83705

Mail tax notices to:
UNITED PROPERTIES II, LLC
200 Woody's Place
Gardnerville, NV 89410

State of Nevada

Space Above This Line For Recording Data

040801995



100008711316418450

**DEED OF TRUST, ASSIGNMENT OF RENTS,
AND FIXTURE FILING
(With Future Advance Clause)**

Notice to County Recorder: This Security Instrument is a "Fixture Filing" and should be indexed as such in your records.

DATE AND PARTIES. The date of this Deed of Trust ("Security Instrument") is July 15, 2004 and the parties are as follows:

GRANTOR: UNITED PROPERTIES II, LLC, a Nevada Limited Liability Company
whose address is: 200 Woody's Place
Gardnerville, NV 89410

TRUSTEE: AMERICAN SECURITIES COMPANY OF NEVADA, A NEVADA CORPORATION
Business Lending
Boise Service Center Building 3033 Elder Street
Boise, ID 83705

BENEFICIARY ("Lender"): **WELLS FARGO BANK, NATIONAL ASSOCIATION**
211 N. Stewart Street
Carson City, NV 89701

- 1. CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Grantor's performance under this Security Instrument, Grantor irrevocably grants, conveys and sells to Trustee, in trust for the benefit of Lender, with power of sale, all of that certain real property (the "Real Property") located in the County of Douglas, State of Nevada, described as follows:

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See Exhibit A attached hereto and made a part hereof.

with the address of 2528 Business Parkway Unit A, Minden, NV 89423, Assessor's Parcel No. 1320-04-001-039, together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water, waste water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be attached to or placed upon the Real Property, and all utility rights, connections, permits, licenses, deposits, plans, specifications, certificates, privileges and other interests relating to the Real Property, and all proceeds, revenues, rents, leases, insurance proceeds and other rights arising from or relating to any of the foregoing (the Real Property and all other property collectively referred to as the "Property"). Grantor absolutely and irrevocably assigns Lender all Rents (defined below), such assignment being a present and unconditional assignment subject to conditional license granted to Grantor to collect the Rents (as described below) so long as there is no default as provided in Paragraph 23.

Grantor grants Lender a Uniform Commercial Code security interest in the Rents and the personal property described above (other than Rents). Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

2. **MAXIMUM OBLIGATION LIMIT; TERMS.** The total maximum principal amount secured by this Security Instrument at any one time shall not exceed \$338,300.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.
3. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
 - A. Debt incurred under the terms of the promissory note, credit agreement, confirmation letter and disclosure or other evidence of debt (the "Note") dated July 15, 2004 in the maximum principal amount of \$338,300.00 executed by **United Properties II, LLC** (the "Borrower"), together with all extensions, renewals, modifications or substitutions.
 - B. All future advances from Lender to Borrower under the Note. All future advances are secured by this Security Instrument even though all or part may not yet be advanced. All future advances are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances which exceed the amount shown in Section 2. Any such commitment must be agreed to in a separate writing.
 - C. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value or Lender's liens and interests, and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.
 - D. Additional loans and advances made by Lender to Grantor and/or Borrower with interest thereon, late charges, prepayment penalties, attorneys fees, and any other fees and charges according to the terms of any additional promissory notes, credit agreements, and extension, modification or revision agreement, provided that such notes and/or agreements specifically recite that they are secured by this Deed of Trust.
 - E. This Security Instrument is governed by N.R.S. Section(s) 106.300 to 106.400, inclusive, and secures future advances in the maximum principal amount stated above, and all other future advances provided for herein.
4. **PAYMENTS.** Borrower shall pay the Secured Debt as it becomes due, and Borrower and Grantor shall strictly perform all of their respective obligations under the Note and this Security Instrument.
5. **WARRANTY OF TITLE.** Grantor warrants that Grantor holds good and marketable title to the Property in fee simple, and has the right to irrevocably grant, sell and convey the Property to

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Trustee, in trust, with power of sale. Grantor also warrants that the Property is unencumbered, except for encumbrances of record.

6. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Grantor agrees:
 - A. To make all payments when due and to perform or comply with all covenants.
 - B. To promptly deliver to Lender any notices that Grantor receives from the holder of such prior liens.
 - C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

7. **TAXES AND OTHER CHARGES; CLAIMS AGAINST TITLE; SUBROGATION.** Grantor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property, or any part thereof or interest therein, whether senior or subordinate hereto, when due. Lender may require Grantor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Grantor's payment. Grantor agrees to preserve the priority of the lien and security interest created hereunder as a first priority lien and first priority perfected security interest, as applicable. Grantor will defend title to the Property against any claims that would impair the liens of this Security Instrument. Grantor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Grantor may have against parties who supply labor or materials to maintain or improve the Property. In the event any portion of the Secured Debt is advanced to pay amounts secured by any prior lien or security interest (the "Prior Liens") on the Property, Lender shall be subrogated to all of the liens, security interests, rights, powers and equities of the owners and holders of said indebtedness and Prior Liens, and it is agreed that the Prior Liens are hereby renewed, extended and carried forward by this Security Instrument in full force and effect to secure payment of the Secured Debt. In the event any portion of the Secured Debt is not secured by the Property, it is agreed that payments shall reduce such unsecured amounts before being applied to reduce secured amounts of the Secured Debt.

8. **DUE ON SALE OR ENCUMBRANCE.** Grantor promises not to sell, lease, rent or otherwise convey any portion of the Property without Lender's prior written consent until all Secured Debt has been fully paid and satisfied. Upon sale, transfer, hypothecation, assignment or encumbrance, whether voluntary, involuntary, or by operation of law, of all or any part of the Property or any interest therein without Lender's prior written consent, then at its option Lender may declare the Secured Debt immediately due and payable, except to the extent such action may be prohibited by law.

9. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Grantor will keep the Property in good condition and make all repairs that are reasonably necessary. Grantor shall not commit or allow any waste, impairment, or deterioration of the Property. Grantor will not remove or demolish the Property, or any part thereof. Grantor will keep the Property free of noxious weeds and grasses. Grantor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Grantor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Grantor will notify Lender of all demands, proceedings, claims, and actions against Grantor, and of any loss or damage to the Property.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Grantor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit, and Grantor will not rely on Lender's inspections in any manner whatsoever.

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10. **AUTHORITY TO PERFORM.** If Grantor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Grantor appoints Lender as attorney in fact to sign Grantor's name or pay any amount necessary for performance. Lender's right to perform for Grantor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.
11. **LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** Grantor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the property is a unit in a Condominium Project or is part of a Planned Unit Development ("PUD"), Grantor agrees to the following:
- A. Obligations.** Grantor shall perform all of Grantor's obligations under the Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Projects or PUD and any homeowners association or equivalent entity ("Owners Association"); (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Grantor shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.
- B. Hazard Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project or PUD which is satisfactory to Lender and which provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and hazards included within the term "extended coverage," then Grantor's obligation under Section 19 to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Grantor shall give Lender prompt notice of any lapse in required hazard insurance coverage. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to Property, whether to the unit or to common elements, any proceeds payable to Grantor are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to Grantor.
- C. Public Liability Insurance.** Grantor shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.
- D. Lender's Prior Consent.** Grantor shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project or PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management by the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.
- E. Remedies.** If Grantor does not pay condominium or PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this section shall become additional debt of Grantor secured by this Security Instrument. Unless Grantor and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement as specified herein and shall be payable, with interest, upon notice from Lender to Grantor requesting payment.
12. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** Except when prohibited by law, Grantor agrees to pay (i) all of Lender's expenses if Grantor breaches or fails to perform any covenant, obligation or agreement of Grantor in this Security Instrument, (ii) any amounts incurred by Lender for insuring, inspecting, preserving or otherwise

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protecting the Property, and (iii) all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's liens, security interests, and other rights under this Security Instrument. These amounts may include, but are not limited to, attorneys' fees, court costs, and other legal expenses, including (without limitation) reasonable attorneys' fees (outside counsel fees as well as allocated costs of Lender's in-house counsel, to the extent legally permitted) incurred in connection with enforcing Lender's rights, collecting any amounts due, protecting Lender's interests in any bankruptcy proceeding relating to Grantor or this Security Instrument (including without limitation, cash collateral, valuation, stay, transfer and preference actions, and general monitoring), and prosecuting or defending any actions relating to this Security Instrument or the Secured Debt, including actions for declaratory relief. These amounts, costs and expenses shall bear interest from the date paid or incurred until paid in full at the highest interest rate in effect with respect to any Secured Debt, and shall be paid by Grantor to Lender immediately upon Lender's request, to the extent allowed by applicable law. This Security Instrument shall remain in effect until released.

13. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environment Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material", "toxic substances", "hazardous waste", "hazardous substance", or "regulated substances" under any Environmental Law.
- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property used in compliance with all Environmental Laws.
 - B. Except as previously disclosed and acknowledged in writing to Lender, Grantor and every tenant have been, are, and shall remain in full compliance with all applicable Environmental Laws.
 - C. Grantor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Grantor shall take all necessary remedial action in accordance with any Environmental Law.
 - D. Grantor shall immediately notify Lender in writing as soon as Grantor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.
14. **CONDEMNATION.** Grantor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Grantor authorizes Lender to intervene in Grantor's name in any of the above described actions or claims. Grantor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.
15. **INSURANCE.** Grantor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires or is

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required by applicable law. The insurance carrier providing the insurance shall be chosen by Grantor subject to Lender's approval, which shall not be unreasonably withheld. If Grantor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

If Lender determines at any time during the term of the Secured Debt that the Property securing the Secured Debt is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required by law, Lender will notify Grantor that Grantor should obtain flood insurance at Grantor's expense. If Grantor fails to obtain adequate flood insurance which is acceptable to Lender, Lender shall purchase flood insurance on Grantor's behalf at Grantor's expense.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgagee clause", with losses payable to Lender where applicable. Grantor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Grantor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Grantor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Grantor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to Grantor. If the Property is acquired by Lender, Grantor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- 16. ESCROW FOR TAXES AND INSURANCE.** At Lender's option and upon its demand, Grantor shall, until all Secured Obligations have been paid in full, pay to Lender monthly, annually or as otherwise directed by Lender an amount estimated by Lender to be equal to: (a) 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 Subject Property and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, other hazard and mortgage insurance next due. All amounts so paid shall not bear interest, except to the extent and in the amount required by law. So long as there is no Default, Lender shall apply said amounts to the payment of, or at Lender's sole option release said funds to Grantor for application to and payment of, such taxes, assessments, levies, charges and insurance premiums. If a Default exists, Lender at its sole option may apply all or any part of said amounts to any portion of the Secured Debt and/or to cure such Default, in which event Grantor shall be required to restore all amounts so applied, as well as to cure any Default not cured by such application. Grantor hereby pledges, transfers and grants to Lender a security interest in all amounts so paid and held in Lender's possession, and all proceeds thereof, to secure the payment and performance of the Secured Debt. Upon assignment of this Security Instrument, Lender shall have the right to assign all amounts collected and in its possession to its assignee, whereupon Lender and Trustee shall be released from all liability with respect thereto. The existence of said impounds shall not limit Lender's rights under any other provision of this Security Instrument or any other agreement, statute or rule of law. Within ninety-five (95) days following full repayment of all Secured Obligations (other than as a consequence of foreclosure), the balance of such amounts in Lender's possession shall be paid to Grantor, and no other party shall have any right or claim thereto.
- 17. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Grantor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Grantor

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agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Grantor's obligations under this Security Instrument and Lender's lien status on the Property.

- 18. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and several. If Grantor signs this Security Instrument but does not sign an evidence of debt, Grantor does so only to mortgage Grantor's interest in the Property to secure payment of the Secured Debt. If this Security Instrument secures a guaranty between Lender and Grantor, Grantor agrees to waive any rights that may prevent Lender from bringing any action or claim against Grantor or any party indebted under the obligation. These rights include, but are not limited to, any anti-deficiency or one-action laws that may arise under NRS § 40.430.

Grantor agrees that Lender may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Grantor's consent. Such a change will not release Grantor from the terms of this Security Instrument. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Grantor and Lender.

- 19. NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or as shown in Lender's records, or to any other address designated in writing. Notice to one Grantor will be deemed to be notice to all Grantors. Address for Tax Notices: Grantor requests that notices regarding property taxes be mailed to the address appearing for that purpose at the top of the first page of this Deed of Trust.

20. ARBITRATION PROGRAM; AGREEMENT FOR BINDING ARBITRATION.

(a) Arbitration. The parties hereto agree, upon demand by any party, to submit to binding arbitration all claims, disputes and controversies between or among them (and their respective employees, officers, directors, attorneys, and other agents), whether in tort, contract or otherwise arising out of or relating to in any way (i) the loan and related loan and security documents which are the subject of this Deed of Trust and its negotiation, execution, collateralization, administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination; or (ii) requests for additional credit.

(b) Governing Rules. Any arbitration proceeding will (i) proceed in a location in Nevada selected by the American Arbitration Association ("AAA"); (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (iii) be conducted by the AAA, or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least \$1,000,000.00 exclusive of claimed interest, arbitration fees and costs in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes to be referred to, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any dispute. Nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under 12 U.S.C. Section 91 or any similar applicable state law.

(c) No Waiver of Provisional Remedies, Self-Help and Foreclosure. The arbitration requirement does not limit the right of any party to (i) foreclose against real or personal property collateral; (ii) exercise self-help remedies relating to collateral or proceeds of collateral such as setoff or

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repossession; or (iii) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment or the appointment of a receiver, before during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of any party to submit any dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in sections (i), (ii) and (iii) of this paragraph.

(d) Arbitrator Qualifications and Powers. Any arbitration proceeding in which the amount in controversy is \$5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than \$5,000,000.00. Any dispute in which the amount in controversy exceeds \$5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. The arbitrator will be a neutral attorney licensed in the State of Nevada or a neutral retired judge of the state or federal judiciary of Nevada, in either case with a minimum of ten years experience in the substantive law applicable to the subject matter of the dispute to be arbitrated. The arbitrator will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all disputes in accordance with the substantive law of Nevada and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Nevada Rules of Civil Procedure or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

(e) Discovery. In any arbitration proceeding discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the dispute being arbitrated and must be completed no later than 20 days before the hearing date and within 180 days of the filing of the dispute with the AAA. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.

(f) Class Proceedings and Consolidations. The resolution of any dispute arising pursuant to the terms of this Deed of Trust shall be determined by a separate arbitration proceeding and such dispute shall not be consolidated with other disputes or included in any class proceeding.

(g) Payment Of Arbitration Costs And Fees. The arbitrator shall award all costs and expenses of the arbitration proceeding.

(h) Real Property Collateral. Notwithstanding anything herein to the contrary, no dispute shall be submitted to arbitration if the dispute concerns indebtedness secured directly or indirectly, in whole or in part, by any real property unless (i) the holder of the mortgage, lien or security interest specifically elects in writing to proceed with the arbitration, or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of Nevada, thereby agreeing that all indebtedness and obligations of the parties, and all mortgages, liens and security interests securing such indebtedness and obligations, shall remain fully valid and enforceable.

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(i) Miscellaneous. To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within 180 days of the filing of the dispute with the AAA. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business or by applicable law or regulation. If more than one agreement for arbitration by or between the parties potentially applies to a dispute, the arbitration provision most directly related to the documents between the parties or the subject matter of the dispute shall control. This arbitration provision shall survive termination, amendment or expiration of any of the documents or any relationship between the parties.

21. **THIRD PARTY GRANTOR.** Trustor Different From Obligor ("Third Party Trustor"). As used in this Section 21, the term "Obligor" shall mean each person or entity obligated in any manner under any of the Secured Obligations; and the term "Third Party Trustor" shall mean (1) each person or entity included in the definition of Trustor herein and which is not an Obligor under all of the Secured Obligations, and (2) each person or entity included in the definition of Trustor herein if any Obligor is not included in said definition.

(a) Representations and Warranties. Each Third Party Trustor represents and warrants to Beneficiary that: (i) this Deed of Trust is executed at an Obligor's request; (ii) this Deed of Trust complies with all agreements between each Third Party Trustor and any Obligor regarding such Third Party Trustor's execution hereof; (iii) Beneficiary has made no representation to any Third Party Trustor as to the creditworthiness of any Obligor; and (iv) each Third Party Trustor has established adequate means of obtaining from each Obligor on a continuing basis financial and other information pertaining to such Obligor's financial condition. Each Third Party Trustor agrees to keep adequately informed from such means of any facts, events or circumstances which might in any way affect such Third Party Trustor's risks hereunder. Each Third Party Trustor further agrees that Beneficiary shall have no obligation to disclose to any Third Party Trustor any information or material about any Obligor which is acquired by Beneficiary in any manner. The liability of each Third Party Trustor hereunder shall be reinstated and revived, and the rights of Beneficiary shall continue if and to the extent that for any reason any amount at any time paid on account of any Secured Obligation is rescinded or must otherwise be restored by Beneficiary, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, all as though such amount had not been paid. The determination as to whether any amount so paid must be rescinded or restored shall be made by Beneficiary in its sole discretion; provided however, that if Beneficiary chooses to contest any such matter at the request of any Third Party Trustor, each Third Party Trustor agrees to indemnify and hold Beneficiary harmless from and against all costs and expenses, including reasonable attorneys' fees, expended or incurred by Beneficiary in connection therewith, including without limitation, in any litigation with respect thereto.

(b) Waivers.

(i) Each Third Party Trustor waives any right to require Beneficiary to: (A) proceed against any Obligor or any other person; (B) marshal assets or proceed against or exhaust any security held from any Obligor or any other person; (C) give notice of the terms, time and place of any public or private sale of personal property security held from any Obligor or any other person, or otherwise comply with any other provisions of Section 9504 of the Nevada Uniform Commercial Code; (D) take any action or pursue any other remedy in Beneficiary's power; or (E) make any presentment or demand for performance, or give any notice of nonperformance, protest, notice of protest or notice of dishonor hereunder or in connection with any obligations or evidences of indebtedness held by Beneficiary as security for or which constitute in whole or in part the Secured Obligations, or in connection with the creation of new or additional obligations.

(ii) Each Third Party Trustor waives any defense to its obligations hereunder based upon or arising by reason of: (A) any disability or other defense of any Obligor or any other person; (B) the

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cessation or limitation from any cause whatsoever, other than payment in full, of any Secured Obligation; (C) any lack of authority of any officer, director, partner, agent or any other person acting or purporting to act on behalf of any Obligor which is a corporation, partnership or other type of entity, or any defect in the formation of any such Obligor; (D) the application by any Obligor of the proceeds of any Secured Obligation for purposes other than the purposes represented by any Obligor to, or intended or understood by, Beneficiary or any Third Party Trustor; (E) any act or omission by Beneficiary which directly or indirectly results in or aids the discharge of any Obligor or any portion of any Secured Obligation by operation of law or otherwise, or which in any way impairs or suspends any rights or remedies of Beneficiary against any Obligor; (F) any impairment of the value of any interest in any security for the Secured Obligations or any portion thereof, including without limitation, the failure to obtain or maintain perfection or recordation of any interest in any such security, the release of any such security without substitution, and/or the failure to preserve the value of, or to comply with applicable law in disposing of, any such security; (G) any modification of any Secured Obligation, in any form whatsoever, including without limitation the renewal, extension, acceleration or other change in time for payment of, or other change in the terms of, any Secured Obligation or any portion thereof, including increase or decrease of the rate of interest thereon; or (H) any requirement that Beneficiary give any notice of acceptance of this Deed of Trust. Until all Secured Obligations shall have been paid in full, no Third Party Trustor shall have any right of subrogation, and each Third Party Trustor waives any right to enforce any remedy which Beneficiary now has or may hereafter have against any Obligor or any other person, and waives any benefit of, or any right to participate in, any security now or hereafter held by Beneficiary. Each Third Party Trustor further waives all rights and defenses it may have arising out of: (1) any election of remedies by Beneficiary, even though that election of remedies, such as a non-judicial foreclosure with respect to any security for any portion of the Secured Obligations, destroys such Third Party Trustor's rights of subrogation or such Third Party Trustor's rights to proceed against any Obligor for reimbursement; or (2) any loss of rights any Third Party Trustor may suffer by reason of any rights, powers or remedies of any Obligor in connection with any anti-deficiency laws or any other laws limiting, qualifying or discharging any Obligor's obligations, whether by operation of law or otherwise, including any rights any Third Party Trustor may have to a fair market value hearing to determine the size of a deficiency following any trustee's foreclosure sale or other disposition of any security for any portion of the Secured Obligations, and each Third Party Trustor waives any rights such Third Party Trustor may have under Nevada Revised Statutes Section 40.430 (the Nevada "one-action" rule).

(iii) If any of said waivers is determined to be contrary to any applicable law or public policy, such waiver shall be effective to the extent permitted by applicable law or public policy.

22. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Security Instrument is governed by the laws of the State of Nevada and applicable federal law. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
23. **COLLECTION OF RENTS.** Lender confers on Grantor the authority to collect and retain rents, issues and profits of the Property ("Rents") as they become due and payable, subject, however, to the right of Lender to revoke said authority at any time in its sole discretion and without notice to Grantor. Lender may revoke said authority and collect and retain the Rents, whether or not Grantor is in default, and without taking possession of all or any of the Property. At Lender's

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request, Grantor will promptly provide Lender with true and correct copies of all existing and future leases. Grantor irrevocably designates Lender as Grantor's attorney-in-fact to receive, endorse, negotiate and collect payments, checks and instruments. The right to collect Rents shall not grant to Lender or Trustee the right to possession, except as otherwise expressly provided; nor impose upon Lender or Trustee the duty to collect or produce Rents or maintain the Property in whole or in part.

Grantor agrees that this conferral of authority is immediately effective between the parties, and is effective as to third parties on Grantor's default when Lender takes actual possession of the Property, when a receiver is appointed, or as the law otherwise provides. Grantor agrees that Lender or Trustee may take actual possession of the property without the necessity of commencing legal action and that actual possession is deemed to occur when Lender, or its agent, notifies Grantor of default and demands that any tenant pay all future Rents directly to Lender. On receiving notice of default, Grantor will endorse and deliver to Lender any Rents in Grantor's possession and any Rents subsequently coming into Grantor's possession and will not be commingled with any other funds. All such Rents will be held in trust for and delivered to Lender, and any amounts collected will be applied as provided in this Security Instrument. Grantor warrants that no default exists under the leases or any applicable law. Grantor agrees to require tenants to comply with the terms of the leases and applicable law.

- 24. DEFAULT.** Grantor will be in default if any party obligated on the Secured Debt fails to make payment when due, or if a breach occurs under the terms of this Security Instrument or any other document executed for the purpose of creating, securing or guarantying the Secured Debt. A good faith belief by Lender that Lender at any time is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment or the value of the Property is impaired shall also constitute an event of default.
- 25. REMEDIES ON DEFAULT.** Upon the occurrence of any Default, and at any time thereafter, Beneficiary and Trustee shall have all the following rights and remedies:
- (a) To the extent allowed by applicable law, with or without notice, to declare all Secured Obligations immediately due and payable in full.
 - (b) With or without notice, without releasing Trustor from any Secured Obligation and without becoming a mortgagee in possession, to cure any Default of Trustor and, in connection therewith:
 - (i) to enter upon the Subject Property and to do such acts and things as Beneficiary or Trustee deems necessary or desirable to protect the security of this Deed of Trust, including without limitation, to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee hereunder; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the judgment of either Beneficiary or Trustee, is senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain, and to pay any premiums or charges with respect to, any insurance required to be carried hereunder; and to employ counsel, accountants, contractors; and (iv) other appropriate persons to assist them.
 - (c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Deed of Trust as a mortgage or to obtain specific enforcement of the covenants of Trustor under this Deed of Trust, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy. For the purposes of any suit brought under this subsection, Trustor waives the defenses of laches and any applicable statute of limitations.
 - (d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property as a matter of strict right, without the necessity of making any of the showings

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otherwise required by Nevada Revised Statutes Section 107.100, and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; or (iii) the filing of a notice of default; and Trustor consents to such appointment.

(e) To take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Subject Property; to make or modify Leases of, and other agreements with respect to, the Subject Property upon such terms and conditions as Beneficiary deems proper; and to make repairs, alterations and improvements to the Subject Property deemed necessary, in Trustee's or Beneficiary's judgment, to protect or enhance the security hereof.

(f) To execute or cause Trustee to execute a written notice of such Default and of its election to cause the Subject Property to be sold to satisfy the Secured Obligations. 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 Subject Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as directed by Beneficiary in its sole discretion, at public auction to the highest bidder for cash, in lawful money of the United States, payable at the time of sale. Except as required by law, neither Trustor nor any other person or entity shall have the right to direct the order in which the Subject Property is sold. Subject to requirements and limits imposed by law, Trustee may postpone any sale of the Subject Property by public announcement at such time and place of sale, and from time to time may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to the purchaser at such sale a deed conveying the Subject Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in said 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.

(g) To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received in accordance herewith, all in such order and manner as Beneficiary shall determine in its sole discretion.

(h) Upon sale of the Subject Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Beneficiary in its sole underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g., commissions, attorneys' fees, and taxes), Hazardous Materials clean-up and monitoring, deferred maintenance, repair, refurbishment and retrofit, and costs of defending or settling litigation affecting the Subject Property; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the existence of additional collateral, if any, for the Secured Obligations; and (vii) such other factors or matters that Beneficiary deems appropriate. Trustor acknowledges and agrees that: (A) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (B) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (C) the amount of Beneficiary's credit bid need not have any relation to any

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loan-to-value ratios specified in any agreement between Trustor and Beneficiary or previously discussed by Trustor and Beneficiary; and (D) Beneficiary's credit bid may be, at Beneficiary's sole discretion, higher or lower than any appraised value of the Subject Property.

26. **SUCCESSOR TRUSTEE.** Lender, at Lender's option, may from time to time remove the Trustee (or any successor trustee) and appoint a successor trustee by an instrument in writing. The successor trustee, without conveyance of the Property, shall succeed to all the title, power and duties conferred upon the Trustee by this Deed of Trust and applicable law.
27. **STATEMENT OF CONDITION.** From time to time, as required by law, Lender shall furnish to Grantor or its agent such statements as may be required concerning the condition of the Secured Debt. Lender will charge a fee for such statement equal to \$60 or such other fee as may be permitted by law.
28. **STATUTORY COVENANTS.** The following Statutory Covenants are hereby added and made part of this Security Instrument: Covenants Nos. 1, 3, 4, 5, 6, 7, 8 and 9 of NRS Section(s) 107.030. The rate of interest default for Covenant No. 4 shall be the rate set forth in the obligations secured by this Security Instrument. The percent of counsel fees under Covenant No. 7 shall be 10%. Except for Covenants Nos. 6, 7 and 8, to the extent any terms of this Security Instrument are inconsistent with the said Statutory Covenants, the terms of this Security Instrument shall control. Covenants 6, 7 and 8 shall control over the express terms of any inconsistent terms of this Security Instrument.
29. **RECONVEYANCE.** Upon payment of all sums and performance of all obligations secured by this Security Instrument, and termination of any line of credit or commitment secured hereby, at Grantor's request, Lender shall request Trustee to reconvey the Property and shall surrender his Security Interest and any note or instrument evidencing the Secured Debt to the Trustee. Trustee shall reconvey, without warranty, the Property or that portion secured by this Security Instrument. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto". Neither Lender nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. Lender will charge a fee for such reconveyance equal to \$99 or such other fee as may be permitted by law.
30. **FIXTURE FILING.** This Security Instrument is a Fixture Filing for purposes of Article 9 of the Uniform Commercial Code and should be indexed as such by the County Recorder.
31. **AGREEMENT FOR BINDING ARBITRATION.** Lender and Grantor agree to the terms of the Arbitration Program set forth in paragraph 20 above concerning the resolution of Disputes.
32. **FINAL AGREEMENT.** To the extent allowed by law, the parties hereto agree to be bound by the terms of the following notice:

NOTICE: THIS DOCUMENT AND ALL OTHER DOCUMENTS RELATING TO THIS LOAN CONSTITUTE A WRITTEN LOAN AGREEMENT WHICH REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES RELATING TO THIS LOAN.

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SIGNATURES: By signing below, Grantor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Grantor also acknowledges receipt of a copy of this Security Instrument.

GRANTOR:

United Properties II LLC

By: 

Name: Robert W. Fass

Title: Managing Member

By: 

Name: Dennis L. Long

Title: Managing Member

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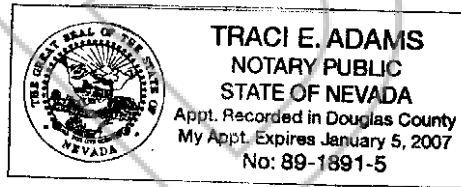
STATE OF NEVADA }
 } SS.
COUNTY OF DOUGLAS }

This instrument was acknowledged before me on July 15, 2004, by
ROBERT M. FAISS, MANAGING MEMBER and DENNIS L.
LONG, MANAGING MEMBER

WITNESS my hand and official seal.

Signature

Traci E. Adams



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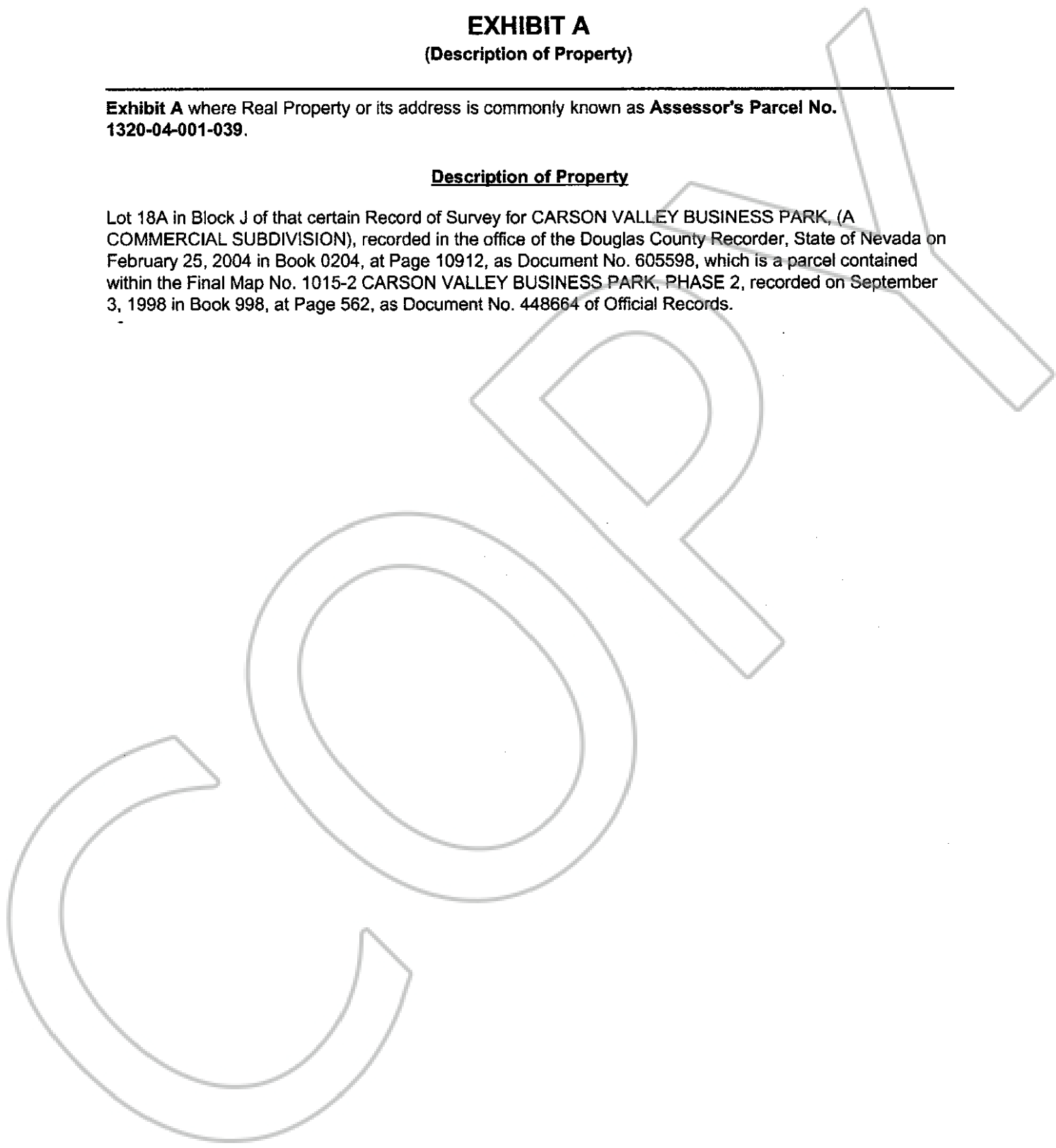
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EXHIBIT A
(Description of Property)

Exhibit A where Real Property or its address is commonly known as **Assessor's Parcel No. 1320-04-001-039.**

Description of Property

Lot 18A in Block J of that certain Record of Survey for CARSON VALLEY BUSINESS PARK, (A COMMERCIAL SUBDIVISION), recorded in the office of the Douglas County Recorder, State of Nevada on February 25, 2004 in Book 0204, at Page 10912, as Document No. 605598, which is a parcel contained within the Final Map No. 1015-2 CARSON VALLEY BUSINESS PARK, PHASE 2, recorded on September 3, 1998 in Book 998, at Page 562, as Document No. 448664 of Official Records.



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