

OFFICIAL RECORD

Requested By:

STEWART TITLE OF DOUGLAS  
COUNTY

Douglas County - NV  
Werner Christen - Recorder

Page: 1 of 10 Fee: 23.00  
BK-0805 PG-11459 RPTT: 0.00



APN: 1320-04-001-079

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Nevada State Development Corp.  
6572 S. McCarran Blvd.  
Reno, Nevada 89509

MAIL TAX STATEMENTS TO:

*A.J. Max, LLC, a Nevada limited liability company*  
*2566 Business Parkway, Unit 2C*  
*Minden, NV, 89423*

Title - 050501660  
Escrow - 500405-06  
SBA Loan No. CDC 757 685 4008

Space Above This Line For Recorder's Use Only

**DEED OF TRUST**  
**(Participation)**

THIS DEED OF TRUST (the "Deed of Trust") is made as of this 11<sup>th</sup>  
day of August, 2005 by and between *A.J. Max, LLC, a Nevada limited*  
*liability company* ("Trustor"), whose address is *2566 Business Parkway, Unit 2C,*  
*Minden, Nevada 89423* to *Stewart Title of Northern Nevada* ("Trustee"), whose address  
is *1663 US Highway 395 N., Ste. 101, Minden, Nevada 89423*, for the benefit of  
**NEVADA STATE DEVELOPMENT CORPORATION** (together with its successors and  
assigns, "Beneficiary"), who maintains an office and place of business at *6572 South*  
*McCarran Blvd., Reno, Nevada 89509* in participation with the Small Business  
Administration, an agency of the United States.

FOR VALUABLE CONSIDERATION, Trustor hereby irrevocably grants, transfers  
and assigns to Trustee, in trust, with power of sale and right of entry and possession, all  
right, title, and interest of Trustor in and to that certain real property situated in the County  
of *Douglas*, State of Nevada, particularly described as follows ("Property"):

Lot 2 in Block C, Official Records, as shown on the official map of Carson Valley  
Business Park Phase I, recorded in the office of the Douglas County Recorder, State  
of Nevada, on September 21, 1993, in Book 993, at Page 3579, as File No. 318019,  
Official Records, further described as follows:

Parcel 2C as shown on Record of Survey of Carson Valley Business Park (a Commercial Subdivision) filed for record in the office of the county Recorder of Douglas county, State of Nevada on May 20, 2005, in Book 0505, Page 9310, as Document No. 644905.

APN 1320-04-001-079

TOGETHER WITH and including all buildings, all fixtures, including but not limited to all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning apparatus, and elevators (the Trustor hereby declaring that it is intended that the items herein enumerated shall be deemed to have been permanently installed as part of the realty), and all improvements now or hereafter existing thereon; the hereditaments and appurtenances and all other rights thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, and the Rents, issues and profits of the above described property.

Trustor further irrevocably grants, transfers, and assigns to Beneficiary the Rents, income, issues, and profits from the Property, absolutely and unconditionally, and not merely as additional security for the indebtedness secured by this Deed of Trust. Prior to the occurrence of an event of default under this Deed of Trust, Beneficiary grants permission to Trustor to collect and retain the Rents, income, issues, and profits of the Property as they become due and payable. In the event of a default under the Note or this Deed of Trust, Beneficiary shall have the right, with or without taking possession of the Property, to collect all Rents, issues, royalties, and profits, and shall be entitled either personally or by attorney or agent, without bringing any action or proceeding, or by a receiver to be appointed by the court, to enter into possession, and hold, occupy, possess, and enjoy the Property, make, cancel, enforce, and modify leases, obtain and eject tenants, and set and modify rents and terms of rent. Beneficiary shall have the further right to sue, and to take, receive, and collect all or any part of the Rents, issues, royalties, and profits of the Property, and after paying all costs of maintenance, operation, and collection, including reasonable attorneys' fees, as Beneficiary may deem proper, to apply the balance upon the entire indebtedness then secured by this Deed of Trust. The receipt and application by the Beneficiary of such Rents, issues, and profits, after execution and delivery of the Notice of Default and Election to Sell or during the pendency of the Trustee's sales proceedings under this Deed of Trust, shall not cure such breach or default nor affect the sale proceedings, or any sale made pursuant to this Deed of Trust. All such Rents, issues, and profits, less the costs of operation, maintenance, collection and reasonable attorneys' fees, when received by Beneficiary, shall be applied in reduction of the entire indebtedness from time to time outstanding secured by this Deed of Trust, in such order as Beneficiary may determine.

If the Rents of the Property are not sufficient to satisfy the costs, if any, of taking control of and managing the Property and collecting the Rents thereof, any funds expended

by Beneficiary for such purposes shall become indebtedness of the Trustor to Beneficiary and shall be secured by this Deed of Trust. Such amounts shall be repayable to Beneficiary upon demand and shall bear interest from the date of the disbursement at the rate of (legal rate) percent per annum.

1. This Deed of Trust is given for the purpose of securing, in such order of priority as Beneficiary may determine:

(a) payment of a promissory note of this date, in the principal sum of *Three Hundred Fourteen Thousand and no/100 Dollars (\$314,000.00)* signed by Trustor in favor of Beneficiary (the "Note"); and

(b) payment of all other moneys herein agreed or provided to be paid by Trustor and performance of all other obligations of Trustor contained herein, in the Note, and any other loan documents executed in connection with the Note and this Deed of Trust, and any amendment, modification or change hereto or thereto; and

(c) performance of each agreement of Trustor contained in any other agreement given by Trustor to Beneficiary which is for the purpose of further securing any indebtedness or obligation secured hereby.

2. This conveyance is made upon and subject to the further trust that Trustor shall remain in quiet and peaceable possession of the Property and take the profits thereof to Trustor's use until default be made in any payment of an installment due on the Note or in the performance of any of the covenants or conditions contained therein or in this Deed of Trust; and, also to secure the reimbursement of the Beneficiary or any other holder of the Note, the Trustee or any substitute trustee of any and all costs and expenses incurred, including reasonable attorneys' fees, on account of any litigation which may arise with respect to this Trust or with respect to the indebtedness evidenced by the Note, the protection and maintenance of the Property hereinabove described or in obtaining possession of the Property after any sale which may be made as hereinafter provided.

3. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and Note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose, and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

4. Upon default in any of the covenants or conditions of this instrument or of the Note or loan documents secured hereby, Beneficiary (or assigns) may without notice and without regard to the adequacy of security for the indebtedness secured, either

personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by the court, enter upon and take possession of the Property or any part thereof, and do any acts which Beneficiary deems proper to protect the security hereof, and either with or without taking possession of the Property, collect and receive the rents, royalties, issues, and profits thereof, including Rents accrued and unpaid, and apply the same, less costs of operation and collection, upon the indebtedness secured by this Deed of Trust, the Rents, royalties, issues, and profits, being hereby assigned to Beneficiary as further security for the payment of such indebtedness. Exercise of rights under this paragraph shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice but shall be cumulative to any right and remedy to declare a default and to cause notice of default to be recorded as hereinafter provided, and cumulative to any other right and/or remedy hereunder, or provided by law, and may be exercised concurrently or independently. Expenses incurred by Beneficiary hereunder, including reasonable attorneys' fees, shall be secured hereby.

5. Upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice of default and of election to cause to be sold the Property, which notice Trustee shall cause to be recorded. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of sale having been given as then required by law for the sale of real property under writ of execution, Trustee, without demand on Trustor, shall sell the Property or any part thereof at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, 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 time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement, in the event that any indebtedness secured hereby shall not have been fully satisfied by said sale, Trustee may give notice of sale of any property not previously noticed for sale in the manner set forth above and sell the same in the manner set forth above. Trustee shall deliver to any purchaser its deed conveying the property so sold, but without any covenant or warranty, express implied. The recitals of such deed thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement, in the event that any indebtedness secured hereby shall not have been fully satisfied by said sale, Trustee may give notice of sale of any property not previously noticed for sale in the manner set forth above and sell the same in the manner set forth above. Trustee shall deliver to any purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals of such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale. After deducting all costs, fees and expenses of Trustee, including a reasonable fee for the





attorney of Trustee, and of this trust, including cost evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto. The Beneficiary may take any other appropriate action pursuant to state or federal statute either in state or federal court or otherwise for the disposition of the property. Trustor hereby constitutes and appoints the Trustee as Trustor's agent and attorney in fact to make such recitals and to execute said conveyance and hereby covenants and agrees that the recitals so made shall be binding and conclusive upon Trustor, and said conveyance shall be effectual to bar all equity or right of redemption, homestead, dower, right of appraisement, and all other rights and exemptions of the Trustor, all of which are hereby expressly waived and conveyed to the Trustee. In the event of a sale as hereinabove provided, Trustor, or any person in possession under the Trustor, shall then become and be tenants holding over and shall forthwith deliver possession to the purchaser at such sale or be summarily dispossessed, in accordance with the provisions of law applicable to tenants holding over. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, and are granted as cumulative to all other remedies for the collection of said indebtedness.

6. The proceeds of any sale of said property in accordance with Paragraph 5 shall be applied first to payments of fees, costs, and expenses of said sale, the expenses incurred by the Beneficiary for the purpose of protecting or maintaining the Property and reasonable attorney's fees; secondly, to payment of the indebtedness secured hereby; and thirdly, to pay any surplus or excess to the person or persons legally entitled thereto.

7. In the event the Property is sold pursuant to the authorization contained in this Deed of Trust or at a judicial foreclosure sale and the proceeds are not sufficient to pay the total indebtedness secured by this instrument and evidenced by the Note, the Beneficiary will be entitled to a deficiency judgment for the amount of the deficiency.

8. The following covenants: Nos. 1, 3, 4 (legal rate), 5, 6, 8 and 9 of Nevada Revised Statutes 107.030, when not inconsistent with other covenants and provisions herein contained, are hereby adopted and made a part of this Deed of Trust.

9. The rights and remedies hereby granted shall not exclude any other rights or remedies granted by law, and all rights and remedies granted hereunder or permitted by law shall be concurrent and cumulative. A violation of any of the covenants herein expressly set forth shall have the same effect as the violation of any covenant herein adopted by reference.

10. The Trustor covenants and agrees as follows:

(a) Promptly to pay the indebtedness evidenced by the Note at the times and in the manner therein provided.

(b) To pay prior to delinquency all taxes, assessments, water rates, and other governmental or municipal charges, fines or impositions, for which provision has not been made hereinbefore, and will promptly deliver the official receipts therefor to the Beneficiary.

(c) To pay such expenses and fees as may be incurred in the protection and maintenance of the Property, including the fees of any attorney employed by the Beneficiary for the collection of any or all of the indebtedness hereby secured, of such expenses and fees as may be incurred in any foreclosure sale by the Trustee, or court proceedings or in any other litigation or proceeding affecting the Property, and attorneys' fees reasonably incurred in any other way.

(d) The rights created by this conveyance shall remain in full force and effect during any postponement or extension of the time of the payment of the indebtedness evidenced by the Note or any part thereof secured hereby.

(e) To continuously maintain hazard insurance of such type or types and in such amounts as the Beneficiary may from time to time require, on the improvements now or hereafter on the Property, and will pay promptly when due any premiums therefor. All insurance shall be carried in companies acceptable to Beneficiary and the policies and renewals thereof shall be held by Beneficiary and have attached thereto loss payable clauses in favor of and in form acceptable to the Beneficiary. In the event of loss, Trustor will give immediate notice in writing to Beneficiary and Beneficiary may make proof of loss if not made promptly by Trustor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Trustor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary at its option either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In the event of a Trustee's sale or other transfer of title to the Property in extinguishment of the indebtedness secured hereby, all right, title, and interest of the Trustor in and to any insurance policies then in force shall pass at the option of the Beneficiary to the purchaser or Beneficiary.

(f) To keep the Property in as good order and condition as they are now and will not commit or permit any waste thereof, reasonable wear and tear excepted; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon. In the event of the failure of the Trustor to keep the buildings on the Property and those to be erected on the Property, or



improvements thereon, in good repair, the Beneficiary may make such repairs as in the Beneficiary's discretion it may deem necessary for the proper preservation thereof, and any sums paid for such repairs shall bear interest from the date of payment at the rate specified in the Note, shall be due and payable on demand and shall be fully secured by this Deed of Trust.

(g) Without the prior written consent of the Beneficiary, not to voluntarily create or permit to be created against the Property subject to this Deed of Trust any lien or liens inferior or superior to the lien of this Deed of Trust and further to keep and maintain the same free from the claim of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises.

(h) Not to rent or assign any part of the rent of the Property or demolish, remove, or substantially alter any building without the written consent of the Beneficiary.

(i) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

11. In the event Trustor fails to pay any federal, state, or local tax assessment, income tax or other tax lien, charge, fee, or other expense charged to the Property herein described, the Beneficiary is hereby authorized to pay the same and any sum so paid by Beneficiary shall be added to and become a part of the principal amount of the indebtedness evidenced by the Note. If Trustor shall pay and discharge the indebtedness evidenced by the Note, and shall pay such sums and shall discharge all taxes and liens and the costs, fees, and expenses of making, enforcing and executing this Deed of Trust, then this Deed of Trust shall be cancelled and surrendered.

12. The Trustor covenants that Trustor is lawfully seized and possessed of and has the right to sell and convey the Property; that the same is free from all encumbrances except as hereinabove recited; and that Trustor, and the successors in interest of Trustor, shall warrant and defend the title to the Property and every part thereof against the lawful claims of all persons whomsoever.

13. For better security of the indebtedness hereby secured the Trustor, upon the request of the Beneficiary, its successors or assigns, shall execute and deliver a supplemental mortgage or mortgages covering any additions, improvements, or betterments made to the Property hereinabove described and all property acquired after the date hereof (all in form satisfactory to Beneficiary). Furthermore, should Trustor fail to cure any



default in the payment of a prior or inferior encumbrance on the Property described by this Deed of Trust, Trustor hereby agrees to permit Beneficiary to cure such default, but Beneficiary is not obligated to do so; and such advances shall become part of the indebtedness secured by this Deed of Trust, subject to the same terms and conditions.

14. That all awards of damages in connection with any condemnation for public use of or injury to any of the Property are hereby assigned and shall be paid to Beneficiary, who may apply the same to payment of the installments last due under the Note, and the Beneficiary is hereby authorized, in the name of the Trustor, to execute and deliver valid acquittances thereof and to appeal from any such award.

15. The irrevocable right to appoint a substitute trustee or trustees is hereby expressly granted to the Beneficiary, or assigns, to be exercised at any time hereafter without notice and without specifying any reason therefor, by filing for record in the office where this Deed of Trust is recorded an instrument of appointment. Trustor and the Trustee herein named or that may hereinafter be substituted hereunder expressly waive notice of the exercise of this right as well as any requirement or application to any court for the removal, appointment or substitution of any trustee hereunder.

16. Notice of the exercise of any option granted herein to the Beneficiary or to the holder of the Note secured hereby is not required to be given to Trustor, Trustor having hereby waived such notice.

17. The Note secured by this Deed of Trust was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

(a) When SBA is the holder of the Note, this document and all documents evidencing or securing the Note and other indebtednesses secured hereby will be construed in accordance with federal law. Any clause in this Deed of Trust requiring arbitration is not enforceable when SBA is the holder of the Note or other indebtednesses secured hereby.

(b) Beneficiary or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Deed of Trust.





18. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the Note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

19. The Beneficiary may, without notice to or consent of Trustor, extend the time of the payments of any indebtedness secured hereby to any successor in interest of the Trustor without discharging the Trustor from liability thereon. If the Trustor shall sell, convey, or alienate the Property, or any part thereof, or any interest therein, or shall be divested of title in any manner or way whether voluntary or involuntary, any indebtedness or obligation secured hereby, irrespective of the maturity date expressed in the Note or other indebtednesses secured hereby, at the option of the holder hereof, and without demand or notice, shall immediately become due and payable. At any time, or from time to time, without liability therefor and without notice, upon written request of the Beneficiary, and without affecting the personal liability of any person for the payment of indebtedness secured hereby, or the effect of this Deed of Trust upon the remainder of the Property, Trustee may; (i) reconvey any part of the Property, (ii) consent to the making of any map or plat thereof, (iii) join in granting any easement thereon, or (iv) join in any extension agreement, or any agreement subordinating the lien or charge hereof. Acceptance by Beneficiary of any sum in payment of any indebtedness secured hereby, after the date when the same is due, or after the filing of breach and election to sell, shall not constitute a waiver of the right either to require prompt payment when due of all other sums so secured, or to declare default as herein provided for failure so to pay, or to proceed with the sale under any such notice of breach and election to sell, for any unpaid balance of said indebtedness. If the Beneficiary holds any additional security for any obligation secured hereby, it may enforce the sale thereof, at its option, either before or after a sale is made hereunder. It is expressly agreed that the trust created hereby is irrevocable by Trustor. A judicial decree, order, or judgment holding any provision or portion of this instrument invalid or unenforceable shall not in any way impair or preclude the enforcement of the remaining provisions or portions of this instrument.

20. Trustor requests that a copy of any notice of default and any notice of sale hereunder be mailed to Trustor at the address set forth above.

IN WITNESS WHEREFORE, the Trustor has executed this Deed of Trust and the Trustee and Beneficiary have accepted the delivery of this instrument as of the day and year first above written.

TRUSTOR:

*A.J. Max, LLC, a Nevada limited liability company*

*Kenneth L. Frank*  
Kenneth L. Frank, Member/Manager

*Linda J. Frank*  
Linda J. Frank, Member/manager

STATE OF NEVADA        )  
  ) ss.  
COUNTY OF DOUGLAS    )

This instrument was acknowledged before me on August 11, 2005, by Kenneth L. Frank, as Member/Manager of A.J. Max, LLC, a Nevada limited liability company.



*Stephanie Morris*  
Notary Public

STATE OF NEVADA        )  
  ) ss.  
COUNTY OF DOUGLAS    )

This instrument was acknowledged before me on August 11, 2005, by Linda J. Frank, as Member/ sm of A.J. Max, LLC, a Nevada limited liability company.



*Stephanie Morris*  
Notary Public