

OFFICIAL RECORD

Requested By:

STEWART TITLE OF DOUGLAS

COUNTY

Douglas County - NV
Werner Christen - Recorder

Page: 1 Of 33 Fee: 46.00
BK-0206 PG-5844 RPTT: 0.00



APN NO.'s 1420-06-802-002
1420-06-802-005
1420-06-802-006

Recording Requested by
HOUSING CAPITAL COMPANY,
a Minnesota partnership

And when recorded return to:
HOUSING CAPITAL COMPANY
1825 South Grant Street, Suite 630
San Mateo, CA 94402
Attention: Loan Administration Manager
Loan No. 1590R-08-09

Mail Tax Statements to:

716 N. Carson Street, Suite E
Carson City, NV 89703

05043534A

DEED OF TRUST
with Assignment of Leases and Rents,
Security Agreement and Fixture Filing

NOTICE: This Deed of Trust secures an indebtedness which provides for a revolving line of credit and which provides for a variable rate of interest.

THE PARTIES TO THIS DEED OF TRUST, made as of January 23, 2006, are JOHN C. SERPA ("Non-Borrower Trustor"), DGD DEVELOPMENT LIMITED PARTNERSHIP, a Nevada limited partnership ("Trustor"), Stewart Title Company ("Trustee"), and HOUSING CAPITAL COMPANY, a Minnesota partnership ("Beneficiary").

ARTICLE I. GRANT IN TRUST

1.1 **Grant.** For the purposes and upon the terms and conditions in this Deed of Trust, Trustor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all that real property located in the County of Douglas, State of Nevada, described on **Exhibit A** attached hereto ("the "Real

Property"), together with the following (all of which together with said Real Property, is referred to herein as the "Subject Property");

- (a) All appurtenances, easements, rights and rights of way appurtenant or related thereto;
- (b) All buildings, other improvements and fixtures now or hereafter located thereon (the Improvements);
- (c) All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on, the Real Property; together with all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes, drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and services marks arising from or related to the Real Property and any business conducted thereon by Trustor; together with all books records and files relating to any of the foregoing;
- (d) All sales contracts of any nature whatsoever now or hereafter executed covering any portion of the Real Property or Improvements, together with any modifications thereof, and also together with any and all deposits or other payments made in connection therewith (subject, however, to any applicable restrictions imposed by law);
- (e) All permits, certificates, licenses, approvals, contracts, entitlements and authorizations, however characterized, issued or in any way furnished for the acquisition, operation and use of the Real Property or Improvements, including warranties and guaranties, and all deposits made with or other security given to utility companies and governmental agencies with respect to the Real Property or Improvements;
- (f) All rights of Trustor as declarant under any Declaration affecting any of the Real Property;
- (g) All insurance policies (and unearned premiums thereon) pertaining to the Subject Property, whether or not required to be carried by the terms of the Loan Documents, and all proceeds thereof;
- (h) Any evidence of title to the Subject Property provided by Trustor to Beneficiary;



- (i) Any bank account(s) into which proceeds of the Secured Obligations as defined below are deposited by Beneficiary for the benefit of Trustor; and
 - (j) All interest or estate which Trustor may hereafter acquire in the property described above, and all replacements, proceeds, additions and accretions thereto. The listing of specific rights or property shall not be interpreted as a limit of general terms.
- 1.2 **Address.** The address of the Subject Property has not yet been established, however, the failure to designate an address shall not affect the validity or priority of the lien of this Deed of Trust on the Subject Property as described on Exhibit A.

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **Obligations Secured.** Trustor makes this grant and assignment for the purpose of securing the following obligations ("Secured Obligations"):
- (a) Payment to Beneficiary of all sums at any time owing under a revolving promissory note ("Note") of even date herewith, executed by Trustor, as Borrower, and payable to the order of Beneficiary as Lender, with a revolving credit limit of SEVEN MILLION ONE HUNDRED FIFTY-SIX THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$7,156,500.00), under which Beneficiary has agreed to make advances to Trustor, which advances will be of a revolving nature and may be made, repaid and remade from time to time, subject to the limitation that the total outstanding principal balance at any one time under said Note (not including interest thereon at a rate which will be adjusted from time to time pursuant to the terms of said Note, and any late charges, collection costs and other charges under said Note or advances hereunder) will not exceed the credit limit stated above; and
 - (b) Payment and performance of all obligations of Trustor under this Deed of Trust; and
 - (c) Payment and performance of all obligations of Trustor under a loan agreement ("Loan Agreement") of even date herewith by and between Trustor as Borrower, and Beneficiary, as "Lender" and any and all other "Loan Documents" (as defined in the Loan Agreement); and
 - (d) Payment and performance of all obligations, if any, which any rider attached as an Exhibit to this Deed of Trust recites are secured hereby; and



- (e) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and
- (f) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note.

2.2 **Future Advances.** This Deed of Trust is governed by NRS 106.300 to 106.400 and secure future advances as provided in such Sections. The maximum amount of principal (as defined in NRS Section 106.345 secured hereby (including disbursements that the Lender may, but shall not be obligated to, make under this Deed of Trust, the Loan Documents, or any other document with respect thereto) shall not exceed SEVEN MILLION ONE HUNDRED FIFTY-SIX THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$7,156,500.00). This Deed of Trust shall be valid and have prior to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property given prior by law.

2.3 **Obligations.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

2.4 **Incorporation.** All terms of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or the Loan Agreement may permit borrowing, repayment and re-borrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **Assignment.** Trustor hereby irrevocably assigns to Beneficiary all of Trustor's right, title and interest in, to and under: (a) all leases of the Subject Property (to the extent any leases are entered into), all licenses and agreements relating to the management, leasing or operation of the Subject Property and all other agreements of any kind relating to the use or occupancy of the Subject Property, whether now existing or entered into after the date hereof ("Leases"); and (b) the rents, issues and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases ("Payments"). The term "Leases" shall also include all guarantees of and security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Subject Property.
- 3.2 **Grant of License.** Beneficiary confers upon Trustor a license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect and apply the Payments pursuant to Section 6.4 without notice and without taking possession of the Subject Property. Trustor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Trustor hereby relieves the lessees from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary.
- 3.3 **Effect of Assignment.** The foregoing irrevocable Assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Subject Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Subject Property by the lessees or any other parties; for any dangerous or defective condition of the Subject Property; or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any Lessee, licensee, employee, invitee or other person. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (i) the exercise or failure to exercise any of the rights, remedies or powers granted to Beneficiary hereunder; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.



- 3.4 **Representations and Warranties.** Trustor represents and warrants that: (a) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases; and (b) no rent or other payment under any existing Lease has been paid by any lessee for more than one (1) month in advance; and (c) none of the lessor's interests under any of the Leases has been transferred or assigned.
- 3.5 **Covenants.** Trustor covenants and agrees at Trustor's sole cost and expense to: (a) perform the obligations of lessor contained in the Leases and enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases; (b) give Beneficiary prompt written notice of any default which occurs with respect to any of the Leases, whether the default be that of the lessee or of the lessor; (c) deliver to Beneficiary fully executed, counterpart original(s) of each and every Lease if requested to do so; and (d) execute and record such additional assignments of any Lease or specific subordinations of any Lease to the Deed of Trust, in form and substance acceptable to Beneficiary, as Beneficiary may request. Except with Beneficiary's prior written consent, or as otherwise permitted by any provision of the Loan Agreement, Trustor shall not: (i) enter into any Leases after the date of this Assignment; (ii) execute any other assignment relating to any of the Leases; (iii) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rent one (1) month in advance of the time when it becomes due; (iv) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge the lessees from any obligations thereunder; (v) consent to any assignment or subletting by any lessee; or (vi) subordinate or agree to subordinate any of the Leases to any other deed of trust or encumbrance. Any such attempted action in violation of the provisions of this Subsection shall be null and void.
- 3.6 **Estoppel Certificates.** Within thirty (30) days after request by Beneficiary, Trustor shall deliver to Beneficiary and to any party designated by Beneficiary estoppel certificates executed by Trustor and by each of the lessees, in recordable form, certifying (if such be the case): (i) that the foregoing assignment and the Leases are in full force and effect; (ii) the date of each lessee's most recent payment of rent; (iii) that there are no defenses or offsets outstanding, or stating those claimed by Trustor or lessees under the foregoing assignment or the Leases, as the case may be; and (iv) any other information reasonably requested by Beneficiary.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **Security Interest.** Trustor hereby grants and assigns to Beneficiary as of the "Effective Date" (defined in the Loan Agreement) a security interest, to secure payment and performance of all of the Secured Obligations, in all of the Subject Property which is or may be held to be personal property and in which Trustor now or at any time hereafter has any interest ("Collateral"). As to all of the Subject Property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust is to be recorded in the real property records and filed as a fixture filing under Nevada Uniform Commercial Code, as amended or recodified from time to time ("UCC").
- 4.2 **Representations and Warranties.** Trustor represents and warrants that as of the effective date as defined in the Loan Agreement: (a) Trustor has good title to the Collateral; (b) Trustor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity; and (c) Trustor's principal place of business is located at the address specified herein.
- 4.3 **Rights of Beneficiary.** In addition to Beneficiary's rights as a "Secured Party" under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under UCC §104.9620, or other applicable law.
- 4.4 **Rights of Beneficiary on Default.** Upon the occurrence of a Default as defined in Section 6.1 under this Deed of Trust, then in addition to all of Beneficiary's rights as a "Secured Party" under the UCC or otherwise by law or under this Deed of Trust:
- (a) Beneficiary may (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Real Property, the Improvements or any other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become purchaser at any such sales; and



- (b) Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell or dispose of the Collateral as Beneficiary deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Beneficiary may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect, by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of any or all of the Collateral.

Notwithstanding any other provision hereof, Beneficiary shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Trustor shall make an express written election of said remedy under UCC §104.9620, or other applicable law.

- 4.5 **Power of Attorney.** Upon ten (10) business days notice of the necessity of a power of attorney, Trustor will irrevocably appoint Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Beneficiary may, without the obligation to do so, in Beneficiary's name, or in the name of Trustor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Trustor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.

- 4.6 **Possession and Use of Collateral.** Except as otherwise provided in this Section or the other Loan Documents, so long as no Default exists under this Deed of Trust or any of the Loan Documents, Trustor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Trustor's business and in accordance with the Loan Agreement.

ARTICLE 5. **RIGHTS AND DUTIES OF THE PARTIES**

- 5.1 **Title.** Trustor warrants that Trustor lawfully holds and possesses fee simple title to the Subject Property without limitation on the right to encumber, and that this Deed of Trust is a first and prior lien on the Subject Property, except for non-delinquent taxes and assessments.
- 5.2 **Taxes and Assessments.** Subject to Trustor's rights to contest payment of taxes as may be provided in the Loan Agreement, Trustor shall pay prior to delinquency all taxes,



assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein. Trustor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; provided, however, Trustor shall have no obligation to pay taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income.

- 5.3 **Tax and Insurance Impounds.** If Trustor should fail to pay taxes and/or insurance premiums prior to delinquency, then at Beneficiary's option and upon its demand, Trustor, shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to: (i) all taxes, assessments and levies 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 (ii) premiums for any and all insurance required by the Loan Agreement next due. If Beneficiary determines that any amounts paid by Trustor are insufficient for the payment in full of such taxes, assessments, levies and/or insurance premiums, Beneficiary shall notify Trustor of the increased amounts required to pay all amounts due, whereupon Trustor shall pay to Beneficiary within thirty (30) days thereafter the additional amount as stated in Beneficiary's notice. All sums so paid shall not bear interest, except to the extent and in any minimum amount required by law; and Beneficiary shall, unless Trustor is otherwise in Default hereunder or under any Secured Obligation, apply said funds to the payment of, or at the sole option of Beneficiary release said funds to Trustor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon Default by Trustor hereunder or under any Secured Obligation; Beneficiary may apply all or any part of said sums to any Secured Obligation and/or to cure such Default, in which event Trustor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of Default not cured by such application. Upon assignment of this Deed of Trust, Beneficiary shall have the right to assign all amounts collected and in its possession to its assignee whereupon Beneficiary and its Trustee shall be released from all liability with respect thereto. Within forty-five (45) days following full repayment of the Secured Obligations (other than full repayment of the Secured Obligations as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Secured Obligations) or at such earlier time as Beneficiary may elect, the balance of all amounts collected and in Beneficiary's possession shall be paid to Trustor and no other party shall have any right or claim thereto.

5.4 **Performance of Secured Obligations.** Trustor shall promptly pay and perform each Secured Obligation when due.

5.5 **Liens, Encumbrances and Charges.** Trustor shall immediately discharge any lien other than non-delinquent taxes or assessments not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust. Subject to the provisions of the Loan Agreement regarding mechanics' liens, Trustor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber all or any part of the Subject Property or any interest therein, whether senior or subordinate hereto.

5.6 **Damages; Insurance and Condemnation Proceeds.**

(a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Trustor to Beneficiary and, at the request of Beneficiary, shall be paid directly to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Subject Property; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Subject Property; (iii) all insurance proceeds that become payable by reason of loss sustained to all or any part of the Subject Property, under all insurance policies that are subject to the assignment in Section 1.1(g) above; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in Section 5.7(d), Beneficiary may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and subject to the provisions of Section 5.6(b) may apply the balance to the Secured Obligations in any order, and/or Beneficiary may release all or any part of the proceeds to Trustor upon any conditions Beneficiary may impose. Beneficiary may reasonably commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided, however, in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure.

(b) Notwithstanding anything in Section 5.6(a) Beneficiary shall permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration provided all of the following have been satisfied: (i) the deposit with Beneficiary of such additional funds which Beneficiary reasonably determines are needed to pay all cost of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) establishment of an arrangement for lien releases and disbursement of funds acceptable to

Beneficiary; (iii) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be reasonably acceptable to Beneficiary; (iv) such reasonable conditions as set forth in the Loan Agreement; and (v) the delivery to Beneficiary of evidence acceptable to Beneficiary (aa) that upon completion of the work, the size, capacity and total value of the Subject Property will be at least as great as it was before the damage or condemnation occurred; (bb) that there has been no material adverse change in the financial condition or credit of Trustor since the date of this Deed of Trust; and (cc) of satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Trustor hereby acknowledges that the conditions described above are reasonable.

5.7 **Maintenance and Preservation of the Subject Property.** Subject to the provisions of the Loan Agreement, Trustor covenants: (a) to insure the Subject Property against such risks as Beneficiary may reasonably require and to comply with the requirements of any insurance companies insuring the Subject Property; (b) to keep the Subject Property in good condition and repair; (c) except with Beneficiary's prior written consent, not to remove or demolish the Subject Property or any part thereof, not to alter, restore or add to the Subject Property (except as expressly provided for in the Loan Agreement) and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property; (d) to repair or restore, promptly and in good and workmanlike manner, the Subject Property or any part thereof which may be damaged or destroyed, provided that, any insurance or condemnation proceeds paid out as a result of such damage or destruction shall be made available to Trustor for such purposes if Trustor satisfies the requirements pertaining thereto as set forth above in Section 5.6(b); (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Subject Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to knowingly commit or permit waste of the Subject Property; (g) to do all other acts which from the character or use of the Subject Property may be reasonably necessary to maintain and preserve its value; (h) not to knowingly make any use of the Subject Property which would invalidate any insurance thereon which Trustor is required to carry pursuant to the Loan Agreement; and (i) not to construct any improvements on the Real Property, except those described in the Loan Agreement.

5.8 **Defense and Notice of Losses, Claims and Actions.** At Trustor's sole expense, Trustor shall protect, preserve and defend the Subject Property and title to and right of possession of the Subject Property, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims. Trustor shall give Beneficiary and Trustee



prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Subject Property, of any condemnation offer or action actually made or filed, and of any Default hereunder, or any event which will become a Default hereunder after notice and/or expiration of any cure period.

5.9 **Acceptance of Trust; Powers and Duties of Trustee.** Trustee accepts this trust when this Deed of Trust is recorded. From time to time upon written request of Beneficiary and without affecting the personal liability of any person for payment of any indebtedness or performance of any obligations secured hereby, Trustee may, without liability therefor and without notice: (i) reconvey all or any part of the Subject Property; (ii) consent to the making of any map or plat thereof; and (iii) join in any grant of easement thereon, any declaration of covenants and restrictions, or any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust. Except as may be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder, and may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding, including, without limitation, actions in which Trustor, Beneficiary or Trustee shall be a party unless held or commenced and maintained by Trustee under this Deed of Trust. Trustee shall not be obligated to perform any act required of it hereunder unless the performance of the act is requested in writing and Trustee is reasonably indemnified and held harmless against loss, cost, liability or expense.

5.10 **Compensation; Exculpation; Indemnification.**

(a) Trustor shall pay upon demand Trustee's fees and reimburse Trustee for necessary expenses in the administration of this trust, including reasonable attorneys' fees, together with interest at the "Default Rate" (as defined in the Note) from the date funds were spent. Trustor shall pay to Beneficiary reasonable and customary compensation for services rendered concerning this Deed of Trust, including without limit any statement of amounts owing under any Secured Obligation. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of (i) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Subject Property or under this Deed of Trust; or (iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Subject Property after a default or from any other act or omission of Beneficiary in managing the Subject Property after a Default unless the loss is

caused by the gross negligence or willful misconduct of Beneficiary and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Trustor.

- (b) Trustor indemnifies Trustee, Beneficiary and their respective directors, officers, employees, agents, successors and assigns (including without limitation any participants in the loan secured hereby) against, and holds Trustee, Beneficiary and their respective directors, officers, employees, agents, successors and assigns (including without limitation any participants in the loan secured hereby) harmless from, all losses, damages, liabilities, claims, causes of action, judgments, fines, penalties, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other expenses which they may suffer or incur: (i) by reason of this Deed of Trust; (ii) by reason of the execution of this trust or in performance of any act required or permitted hereunder or by law; (iii) as a result of any failure of Trustor to perform Trustor's obligations; (iv) 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 herein or in any other document related to the Subject Property; (v) as the result of any negligence or intentional wrongful act or omission of Trustor; or (vi) as the result of any death, personal injury or bodily injury occurring on or about the Real Property, except for Beneficiary's own gross negligence or willful misconduct. The above obligation of Trustor to indemnify and hold harmless shall survive the release and cancellation of the Secured Obligations and the release and reconveyance or partial release and reconveyance of this Deed of Trust.
- (c) Trustor shall pay all amounts and indebtedness arising under this Section 5.10 immediately upon demand by Trustee or Beneficiary together with interest thereon from the date the indebtedness arises at the rate of interest applicable to the principal balance of the Note as specified therein.

5.11 **Substitution of Trustees.** From time to time, by a writing, signed and acknowledged by Beneficiary and recorded in the Office of the Recorder of Douglas County, Nevada Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this Section 5.11 shall be conclusive proof of the proper substitution of such new Trustee.

5.12 **Transfer or Encumbrance of Property by Trustor.** Trustor acknowledges that: (a) the financial stability, development expertise and managerial and marketing ability of Trustor

were and are a substantial and material consideration to Beneficiary and, in reliance thereon, Beneficiary has agreed to make the loan to Trustor evidenced by the Loan Documents; and (b) the transfer of the Subject Property to anyone other than an owner-occupant of individual lots or units within the Subject Property or a change in the person or entity constructing and developing the Subject Property may significantly and materially alter or reduce Beneficiary's security for the Note. Accordingly, as a material inducement to Beneficiary to enter into the transactions contemplated by the Loan Documents, Trustor shall not transfer the Subject Property or any portion thereof or interest therein, other than the sale and transfer of Units to purchasers in the ordinary course of Trustor's business, without the prior written consent of Beneficiary, except as may be specifically permitted elsewhere herein. Beneficiary may grant or deny such consent in its sole discretion and, if consent should be given, any such transfer shall be subject to this Deed of Trust, and any transferee shall assume all of Trustor's obligations hereunder and agree to be bound by all provisions and perform all obligations contained herein. In the event of any such transfer without the written consent of Beneficiary, Beneficiary may, at its option, without demand or notice, declare all sums secured hereby immediately due and payable. Consent to one such transfer shall not be deemed to be a waiver of the right to require consent to future or successive transfers. As used herein, "transfer" shall mean (i) the sale, agreement to sell, transfer or conveyance of the Subject Property, or any portion thereof or interest therein, including, without limitation, air rights and development rights, whether voluntary, involuntary, by operation of law or otherwise, or the lease of all or substantially all of the Subject Property, but shall not include the conveyance of easements or licenses reasonably necessary for the development of the Subject Property in compliance with the Loan Agreement, the repair or replacement of any Collateral in the ordinary course of business or the sale and transfer of Units to purchasers in the ordinary course of Trustor's business; (ii) any transfer by way of security, including the placing or permitting the placing on the Subject Property of any mortgage, deed of trust, assignment of rents or other security device; and (iii) if Trustor, or any person owning directly or indirectly through one or more entities any interest in Trustor (individually and collectively a "Principal"), is a partnership, joint venture, trust, closely-held corporation or other entity, the issuance, sale, conveyance, transfer, disposition or encumbering of more than twenty percent (20%) of any class of the currently issued and outstanding stock or other beneficial interest of Trustor, or any Principal or a change of any general partner or any joint venturer of Trustor or any Principal, either voluntarily, involuntarily, or otherwise. For purposes of this section, "closely-held corporation" shall mean any corporation not listed on a national or regional stock exchange.

- 5.13 **Releases, Extensions, Modifications and Additional Security.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property or in any manner obligated under the Secured Obligations ("Interested Parties"), Beneficiary may, from time to time, release any person or entity

from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Subject Property and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Deed of Trust upon the Subject Property.

- 5.14 **Reconveyance.** Upon Beneficiary's written request, Trustee shall reconvey, without warranty, the Subject Property or that portion thereof then held hereunder. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto" and the recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Subject Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Subject Property to the person or persons legally entitled thereto.
- 5.15 **Subrogation.** Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any loan secured by this Deed of Trust.
- 5.16 **Right of Inspection.** Beneficiary, its agents and employees, may enter the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and ascertaining Trustor's compliance with the terms hereof.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **Default.** For all purposes hereof, the term "Default" shall mean (a) the failure of Trustor to perform any material obligation hereunder, or the failure to be true of any material representation or warranty of Trustor contained herein, and the continuance of such failure for ten (10) business days after notice, or within any longer grace period, if any, allowed in the Loan Agreement for such failure, subject to any right the Trustor may have under the Loan Agreement to commence the cure of any breach or default and diligently pursue such cure to completion within the time frames established therein, or (b) the existence of any Default as defined in the Note, the Loan Agreement or any other Loan Document.
- 6.2 **Rights and Remedies.** At any time after Default, Beneficiary and Trustee shall each have all the following rights and remedies which are not exclusive of any other rights or remedies either or both may have at law or equity:

- (a) Within ten (10) business days notice, to declare all Secured Obligations immediately due and payable;
- (b) Within ten (10) business days notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Trustor and, in connection therewith, to enter upon the Subject Property and do such acts and things as Beneficiary or Trustee deems necessary or desirable to protect the security hereof, including, without limitation:
 - (i) 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 under this Deed of Trust; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Deed of Trust; or (v) to employ counsel, accountants, contractors and other appropriate persons;
- (c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations;
- (d) To apply to a court of competent jurisdiction for and obtain the ex parte appointment of a receiver of the Subject Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Trustor hereby consents to such ex parte appointment of a receiver and waives notice of any hearing or proceeding for such appointment;
- (e) To enter upon, possess, manage and operate the Subject Property or any part thereof, to collect all rents, income and profits therefrom, to take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Subject Property, to make, terminate, enforce or modify leases of the Subject Property upon such terms and conditions as Beneficiary deems proper, and to make repairs, alterations and improvements to the Subject Property as necessary,

in Trustee's or Beneficiary's reasonable judgment, to protect or enhance the security hereof;

- (f) 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. As a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as 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 Beneficiary in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Trustor nor any other person or entity other than Beneficiary 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 from time to time postpone sale of all or any portion of the Subject Property by public announcement at such time and place of sale. 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 the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Trustor or Beneficiary may purchase at the sale; and
- (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 upon the Secured Obligations all in such order and manner as Trustee and Beneficiary, or either of them, determine in their sole discretion;
- (h) To suspend or terminate, at its option, its obligation to make further disbursements under the Loan Agreement; and
- (i) To exercise any other rights or remedies available to Beneficiary at law, in equity, by statute or otherwise.

If Beneficiary spends its funds in exercising any of its rights or remedies hereunder, the amount of funds spent shall be payable to Beneficiary upon demand, together with interest at the Default Rate from the date the funds were spent.

At any sale of the Subject Property held pursuant to Section 6.2(c) or Section 6.2(f) above, Beneficiary may bid, as the equivalent of cash, the amount of all or any of the Secured Obligations, including, without limitation, attorneys' fees.

- 6.3 **Application of Foreclosure Sale Proceeds.** After deducting all costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale, Trustee shall apply all proceeds of any foreclosure sale: (i) to payment of all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note, and to payment of all other Secured Obligations, in any order Beneficiary may elect in its sole discretion; and (ii) the remainder, if any, to the person or persons legally entitled thereto.
- 6.4 **Application of Other Sums.** All sums received by Beneficiary under Section 3.2 or Section 6.2, less all reasonable costs and expenses incurred by Beneficiary or any receiver under Section 3.2 or Section 6.2, including, without limitation, reasonable attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided, however, Beneficiary shall have no liability for funds not actually received by Beneficiary.
- 6.5 **No Cure or Waiver.** Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Subject Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Trustor has cured all other Defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of this Deed of Trust.
- 6.6 **Payment of Costs, Expenses and Attorney's Fees.** Trustor agrees to pay to Beneficiary immediately and without demand all reasonable costs and expenses incurred by Trustee and Beneficiary pursuant to subparagraphs (a) through (g) inclusive of Section 6.2 (including, without limitation, court costs and reasonable attorneys' fees, whether incurred in litigation or not and also including, without limitation, fees and costs in any action intended to protect Beneficiary's interests or security in any bankruptcy case in which Trustor or any of its affiliates is a debtor) with interest from the date of expenditure until said sums have been paid, at the rate applicable to the principal balance



of the Note as specified therein. In addition, Trustor shall pay to Trustee all Trustee's fees hereunder and shall reimburse Trustee for all expenses incurred in the administration of this trust, including, without limitation, any reasonable attorneys' fees.

- 6.7 **Power to File Notices and Cure Defaults.** Upon the occurrence of a Default, Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Beneficiary may perform any obligation of Trustor hereunder; provided, however, that: (i) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (ii) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act under this Section.
- 6.8 **Restoration of Position.** In case Beneficiary shall have undertaken to enforce any right under this Deed of Trust by foreclosure, sale, entry or otherwise, and such undertaking shall have been discontinued or abandoned for any reason or shall have been determined adversely to Beneficiary, then and in every such case Trustor, Trustee and Beneficiary shall be restored to their former positions and rights hereunder with respect to the Subject Property, and all rights, remedies, powers and security of Beneficiary and Trustee shall continue in full force and effect, as if no such proceedings had ever been initiated.
- 6.9 **Evidence of Title.** In the event of the occurrence of any Default under this Deed of Trust, Beneficiary may procure evidence of title to the Subject Property, including but not limited to an abstract of title or continuation thereof or a title insurance policy or commitment therefor or extension thereof, covering the Real Property, and/or chattel lien searches covering any of the remainder of the Subject Property, all at the sole cost and expense of Trustor, and, in case action is commenced to foreclose this Deed of Trust or to sell the Subject Property, Trustor agrees that, in addition to the reasonable attorneys' fees of Beneficiary (prior to trial, at trial and on appeal), it will pay any court costs which may be incurred in connection therewith. The reasonable costs of any such abstract of title, continuation, title insurance policy, commitment or extension, and chattel lien searches, and all of such court costs and reasonable attorneys' fees, together with interest thereon at



the Default Rate (as that term is defined in the Note) from the date incurred, shall be charged and added to the indebtedness secured hereby and shall be payable on demand.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 **Additional Provisions.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Subject Property and such further rights and agreements are incorporated herein by this reference.
- 7.2 **Merger.** No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Subject Property unless Beneficiary consents to a merger in writing.
- 7.3 **Obligations of Trustor, Joint and Several.** If more than one person has executed this Deed of Trust as "Trustor", the obligations of all such persons hereunder shall be joint and several.
- 7.4 **Recourse to Separate Property.** Any married person who executes this Deed of Trust as a Trustor agrees that any money judgment which Beneficiary or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of that married person secured by this Deed of Trust may be collected by execution upon that person's separate property, and any community property of which that person is a manager.
- 7.5 **Waiver of Marshalling Rights.** Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Subject Property, hereby waives all rights to have the Subject Property and/or any other property which is now or later may be security for any Secured Obligation ("Other Property") marshalled upon any foreclosure of this Deed of Trust or on a foreclosure of any other security for any of the Secured Obligations. Beneficiary shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Subject Property and any or all of the Other Property as a whole or in separate parcels, in any order that Beneficiary may designate.
- 7.6 **Rules of Construction.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "Subject Property" means all and any part of the Subject Property and any interest in the Subject Property.



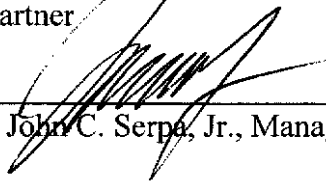
- 7.7 **Successors in Interest.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section does not waive the provisions of Section 5.12.
- 7.8 **Incorporation. Exhibits A, B and C,** are attached, and are hereby incorporated into this Deed of Trust by this reference.
- 7.9 **Addresses; Request for Notice.** Notice to Beneficiary shall be sent to Beneficiary addressed to: HOUSING CAPITAL COMPANY, a Minnesota partnership, 1825 South Grant Street, Suite 630, San Mateo, California 94402, Attn: Loan Administration Manager, Loan #1590R-08-09. Any Trustor whose address is set forth below hereby requests that a copy of notice of default and notice of sale be mailed to him at that address. Failure to insert an address shall constitute a designation of Trustor's last known address as the address for such notice. Correspondence to Trustee shall be addressed to: 111 W. Proctor Street, Carson City, NV 89703.

IN WITNESS WHEREOF, Trustor and Non-Borrower Trustor have executed this Deed of Trust as of the day and year set forth above.

"Trustor(s)"

DGD DEVELOPMENT LIMITED PARTNERSHIP,
a Nevada limited partnership

By: SSS INVESTMENTS, LLC, a
Nevada limited liability company
Its: General Partner

By: 
John C. Serpa, Jr., Manager

Address:
716 N. Carson Street, Suite E
Carson City, NV 89701

"Non-Borrower Trustor"



John C. Serpa

(attach notary acknowledgments)



STATE OF NEVADA

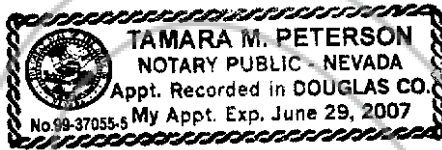
COUNTY OF DOUGLAS

On FEBRUARY 9th, 2006 before me, TAMARA M. PETERSON, a Notary Public, personally appeared JOHN C. SERPA JR. AND JOHN C. SERPA, personally known to me to be the person(s) (or proved to me on the basis of satisfactory evidence) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

[SEAL]



**EXHIBIT A
(Description of Property)**

Exhibit A to DEED OF TRUST dated as of January 23, 2006, executed by JOHN C. SERPA, as Non-Borrower Trustor, DGD DEVELOPMENT LIMITED PARTNERSHIP, a Nevada limited partnership, as Trustor, to Stewart Title Company, as Trustee, for the benefit of HOUSING CAPITAL COMPANY, a Minnesota partnership, as Beneficiary.

Description of Property

The land referred to herein is situated in the State of Nevada, County of Douglas, described as follows:

A portion of the Southeast ¼ of Section 6, Township 14 North, Range 20 East, M.D.B.&M., Douglas County, Nevada described as follows:

Parcels B, C AND D as shown on Parcel Map for JACK BAY #2 filed in the office of the Douglas County Recorder on June 10, 1980 in Book 680 of Official Records, Page 974 as Documents No. 45171.

ASSESSOR'S PARCEL NO.'s	1420-06-802-002
	1420-06-802-005
	1420-06-802-006

EXHIBIT B
CROSS-DEFAULT / CROSS-COLLATERALIZATION RIDER

Exhibit B to DEED OF TRUST dated as of January 23, 2006, executed by JOHN C. SERPA, as Non-Borrower Trustor, DGD DEVELOPMENT LIMITED PARTNERSHIP, a Nevada limited partnership, as Trustor, to Stewart Title Company, as Trustee, for the benefit of HOUSING CAPITAL COMPANY, a Minnesota partnership, as Beneficiary.

1. **ADDITIONAL SECURITY - OBLIGATIONS SECURED BY OTHER DEED OF TRUST A.** In addition to the obligations secured by this Deed of Trust and described as "Secured Obligations" therein, this Deed of Trust shall also secure the payment and performance of all obligations secured by that certain deed of trust ("Other Deed of Trust A") made by DGD DEVELOPMENT LIMITED PARTNERSHIP, a Nevada limited partnership, as trustor, to Stewart Title Company as trustee, for the benefit of Beneficiary, dated as of January 29, 2004, and recorded February 23, 2004 as Instrument No. 2996808 in the office of the County Recorder of Washoe County, Nevada. (Loan No. 1330R)
2. **ADDITIONAL SECURITY - OBLIGATIONS SECURED BY OTHER DEED OF TRUST B.** In addition to the obligations secured by this Deed of Trust and described as "Secured Obligations" therein, this Deed of Trust shall also secure the payment and performance of all obligations secured by that certain deed of trust ("Other Deed of Trust B") made by DGD DEVELOPMENT LIMITED PARTNERSHIP, a Nevada limited partnership, as trustor, to First American Title Company of Nevada as trustee, for the benefit of Beneficiary, dated as of September 2, 1999, and recorded September 15, 1999 as Instrument No. 0476580, Book 0999, Page 2636-2654 in the office of the County Recorder of Douglas County, Nevada. (Loan No. 777)
3. **OTHER DEED OF TRUST DEFINED.** The Other Deed of Trust A and the Other Deed of Trust B are collectively referred to herein as the "Other Deed of Trust".
4. **DEFAULT - OTHER DEED OF TRUST.** A Default under the Other Deed of Trust, as defined therein, shall, at Beneficiary's option, constitute a Default under this Deed of Trust.
5. **WAIVER OF MARSHALLING RIGHTS.** Trustor waives all rights to have all or part of the Subject Property described in the Deed of Trust and/or the Other Deed of Trust marshalled upon any foreclosure of the Deed of Trust or the Other Deed of Trust. Beneficiary shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of the Subject Property described in either or both of said deed of trust as a whole or in separate parcels, in any order that Beneficiary may designate. Trustor makes this waiver for itself, for all persons and entities claiming through or under Trustor and for persons and entities claiming through



or under Trustor and for persons and entities who may acquire a lien on all or any part of the Subject Property described in either of said deed of trust, or any interest therein.

6. **WARRANTIES AND REPRESENTATIONS.** Trustor represents and warrants that the lien of the Other Deed of Trust is a first lien on the property described therein and covered thereby and that the provisions of this Deed of Trust will not cause intervening liens to become prior to the lien of the Other Deed of Trust. If any intervening lien exists or hereafter arises, Trustor shall cause the same to be released or subordinated to the lien of the Other Deed of Trust, without limiting any other right or remedy available to Beneficiary.

Trustor further warrants that Trustor has no legal or equitable claim against any trustor named in the Other Deed of Trust which would be prior to the lien of the Other Deed of Trust, or which would entitle Trustor to a judgment entitling Trustor to an equitable lien on all or any portion of that property prior in lien to the Other Deed of Trust.

7. **NON-IMPAIRMENT.** Except as supplemented and/or modified by this Deed of Trust, all of the terms, covenants and conditions of the Other Deed of Trust and the other loan documents executed in connection therewith shall remain in full force and effect.
8. **LIEN OF DEED OF TRUST AND OTHER DEED OF TRUST.** Trustor and Beneficiary acknowledge and agree that: this Deed of Trust shall constitute a lien or charge upon only that property described herein as the "Subject Property"; and the Other Deed of Trust shall constitute a lien or charge upon only that property described therein as the "Subject Property".

**EXHIBIT C
NON-BORROWER TRUSTOR RIDER**

Exhibit C to DEED OF TRUST dated as of January 23, 2006, executed by JOHN C. SERPA, as Non-Borrower Trustor, DGD DEVELOPMENT LIMITED PARTNERSHIP, a Nevada limited partnership, as Trustor, to Stewart Title Company, as Trustee, for the benefit of HOUSING CAPITAL COMPANY, a Minnesota partnership, as Beneficiary.

To the extent the Deed of Trust secures that certain revolving promissory note secured by deed of trust, dated January 23, 2006, executed by Borrower in favor of Housing Capital Company, a Minnesota partnership, and other loan documents ("Loan Documents") made by a party or parties ("Borrower") not identical to the party or parties constituting Non-Borrower Trustor, the party or parties constituting Non-Borrower Trustor agree as follows:

1. **CONDITIONS TO EXERCISE OF RIGHTS.** Non-Borrower Trustor hereby waives any right it may now or hereafter have to require Beneficiary, as a condition to the exercise of any remedy or other right against Non-Borrower Trustor hereunder or under any other documents executed by Non-Borrower Trustor in connection with any Secured Obligation: (a) to proceed against any borrower or other person, or against any other collateral assigned to Beneficiary by Non-Borrower Trustor or any Borrower or other person; (b) to pursue any other right or remedy in Beneficiary's power; (c) to give notice of the time, place or terms of any public or private sale of real or personal property collateral assigned to Beneficiary by any Borrower or other person (other than Non-Borrower Trustor), with respect to any such personal property collateral; or (d) to make or give (except as otherwise expressly provided in the Loan Documents) any presentment, demand, protest, notice of dishonor, notice of protest or other demand or notice of any kind in connection with any Secured Obligation or any collateral (other than the Subject Property) for any Secured Obligation.
2. **DEFENSES.** Non-Borrower Trustor hereby waives any defense it may now or hereafter have that relates to: (a) any disability or other defense of any Borrower or other person; (b) the cessation, from any cause other than full performance, of the obligations of Borrower or any other person; (c) the application of the proceeds of any Secured Obligation, by any Borrower or other person, for purposes other than the purpose represented to Non-Borrower Trustor by any Borrower or otherwise intended or understood by Non-Borrower Trustor or any Borrower; (d) any act or omission by Beneficiary which directly or indirectly results in or contributes to the release of any borrower or other person or any collateral for any Secured Obligation; (e) the unenforceability or invalidity of any collateral assignment (other than the Deed of Trust and the amendments thereto) or guaranty with respect to any Secured Obligation, or the lack of perfection or continuing perfection or lack of priority of any lien (other than the lien of the Deed of Trust) which secures any Secured obligation; (f) any failure of

Beneficiary to marshal assets in favor of Non-Borrower Trustor or any other person; (g) any modification of any Secured Obligation, including any renewal, extension, acceleration or increase in interest rate; or (h) any and all rights and defenses arising out of an election of remedies by Beneficiary, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Non-Borrower Trustor's rights of subrogation and reimbursement against the principal; (i) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (j) any failure of Beneficiary to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (k) the election by Beneficiary, in any bankruptcy proceeding of any person, of the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code; (l) any extension of credit or the grant of any lien under Section 364 of the United States Bankruptcy Code; (m) any use of cash collateral under Section 363 of the United States Bankruptcy Code; or (n) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person. Non-Borrower Trustor further waives any and all rights and defenses that Non-Borrower Trustor may have because Borrower's debt is secured by real property; this means, among other things, that: (1) Beneficiary may collect from Non-Borrower Trustor without first foreclosing on any real or personal property collateral pledged by Borrower; (2) if Beneficiary forecloses on any real property collateral pledged by Borrower, than (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) Beneficiary may collect from Non-Borrower Trustor even if Beneficiary, by foreclosing on the real property collateral, has destroyed any right Non-Borrower Trustor may have to collect from Borrower. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Non-Borrower Trustor may have because Borrower's debt is secured by real property. Without limiting the generality of the foregoing or any other provision hereof, Non-Borrower Trustor further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to Non-Borrower Trustor.

3. **SUBROGATION**. Non-Borrower Trustor hereby waives, until such time as all Secured Obligations are fully performed: (a) any right of subrogation against any Borrower that relates to any Secured Obligation; (b) any right to enforce any remedy Non-Borrower Trustor may now or hereafter have against any Borrower that relates to any Secured Obligation; and (c) any right to participate in any collateral now or hereafter assigned to Beneficiary with respect to any Secured Obligation.

4. **BORROWER INFORMATION.** Non-Borrower Trustor warrants and agrees: (a) that Non-Borrower Trustor has not relied, and will not rely, on any representations or warranties by Beneficiary to Non-Borrower Trustor with respect to the credit worthiness of any Borrower or the prospects of repayment of any Secured Obligation from sources other than the Subject Property; (b) that Non-Borrower Trustor has established and/or will establish adequate means of obtaining from each Borrower on a continuing basis financial and other information pertaining to the business operations, if any, and financial condition of each Borrower; (c) that Non-Borrower Trustor assumes full responsibility for keeping informed with respect to each Borrower's business operations, if any, and financial condition; (d) that Beneficiary shall have no duty to disclose or report to Non-Borrower Trustor any information now or hereafter known to Beneficiary with respect to any Borrower, including, without limitation, any information relating to any of Borrower's business operations or financial condition; and (e) that Non-Borrower Trustor is familiar with the terms and conditions of the Loan Documents and consents to all provisions thereof.
5. **REINSTATEMENT OF LIEN.** Beneficiary's rights hereunder shall be reinstated and revived, and the enforceability of the Deed of Trust shall continue, with respect to any amount at any time paid on account of any Secured Obligation which Beneficiary is thereafter required to restore or return in connection with a bankruptcy, insolvency, reorganization or similar proceeding with respect to any Borrower.
6. **SUBORDINATION.** Until all of the Secured Obligations have been fully paid and performed: (a) Non-Borrower Trustor hereby agrees that all existing and future indebtedness and other obligations of each Borrower to Non-Borrower Trustor (collectively, the "Subordinated Debt") shall be and are hereby subordinated to all Secured Obligations which constitute obligations of the applicable Borrower, and the payment thereof is hereby deferred in right of payment to the prior payment and performance of all such Secured Obligations; (b) Non-Borrower Trustor shall not collect or receive any cash or non-cash payments on any Subordinated Debt or transfer all or any portion of the Subordinated Debt; and (c) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, any Borrower with respect to any Subordinated Debt is received by Non-Borrower Trustor, such payment or distribution shall be held in trust and immediately paid over to Beneficiary, is hereby assigned to Beneficiary as security for the Secured Obligations, and shall be held by Beneficiary in an interest bearing account until all Secured Obligations have been fully paid and performed.
7. **HAZARDOUS MATERIALS.**
 - 7.1 **Special Representations and Warranties.** Without in any way limiting the other representations and warranties set forth in the Deed of Trust and the subsequent



amendments thereto, and after reasonable investigation and inquiry, Non-Borrower Trustor hereby specifically represents and warrants to the best of Non-Borrower Trustor's knowledge as of the date of this Deed of Trust as follows:

- (a) **Hazardous Materials**. The Subject Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any oil, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances that are "hazardous substances," "hazardous wastes," "hazardous materials", "highly hazardous substances", "extremely hazardous substances", or "toxic substances" under the Hazardous Materials Laws, as described below, and/or other applicable environmental laws, ordinances and regulations (collectively, the "Hazardous Materials").

- b) **Hazardous Materials Laws**. The Subject Property is in compliance with all laws, ordinances and regulations relating to Hazardous Materials ("Hazardous Materials Laws"), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, ("CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act., as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f et seq.; NRS Section 41.540 through 41.750, NRS Chapters 444, 445A, 445B, 459, 590 or 618 and all comparable and applicable federal, state and local laws, statutes, orders, regulations and ordinances of other jurisdictions and any guidance documents promulgated thereunder.

- (c) **Hazardous Materials Claims**. There are no claims or actions ("Hazardous Materials Claims") pending or threatened against Non-Borrower Trustor or the Subject Property by any governmental entity or agency or by any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws.

7.2 **Hazardous Materials Covenants.** Non-Borrower Trustor agrees as follows:

- (a) **No Hazardous activities.** Non-Borrower Trustor shall not cause or permit the Subject Property to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.
- (b) **Compliance.** Non-Borrower Trustor shall comply and cause the Subject Property to comply with all Hazardous Materials Laws.
- (c) **Notices.** Non-Borrower Trustor shall immediately notify Beneficiary in writing of: (i) the discovery of any Hazardous materials on, under or about the Subject Property; (ii) any knowledge by Non-Borrower Trustor that the Subject Property does not comply with any Hazardous Materials Laws; and (iii) any Hazardous Materials Claims.
- (d) **Remedial Action.** In response to the presence of any Hazardous Materials on, under or about the Subject Property, Non-Borrower Trustor shall immediately take, at Non-Borrower Trustor's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.

7.3 **Inspection By Beneficiary.** Upon reasonable prior notice to Non-Borrower Trustor, Beneficiary, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding) enter and inspect the Subject Property for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Subject Property.

7.4 **Hazardous Materials Indemnity.** Non-Borrower Trustor hereby agrees to defend, indemnify and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns from and against any and all losses, damages, liabilities, claims, actions, judgements, court costs and legal or other expenses (including, without limitation, attorneys' fees and expenses) which Beneficiary may incur as a direct or indirect consequence of the use, generation, manufacture, storage, disposal, threatened disposal, transportation or presence of Hazardous Materials in, on, under or about the Subject Property. Non-Borrower Trustor shall immediately pay to Beneficiary upon demand any amounts owing under this indemnity, together with interest from the date the indebtedness arises until paid at the rate of interest applicable to the principal balance of the Note.

NON-BORROWER TRUSTOR'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS BENEFICIARY SHALL SURVIVE THE CANCELLATION OF THE NOTE AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THE DEED OF TRUST.

- 7.5 **Legal Effect of Section**. Non-Borrower Trustor and Beneficiary agree that: (a) this Section 7 is intended as Beneficiary's written request for information (and Non-Borrower Trustor's response) concerning the environmental condition of the real property security is intended by Beneficiary and Non-Borrower Trustor to be an "environmental provision" for purposes of NRS 40.502, and as such it is expressly understood that Non-Borrower Trustor's duty to indemnify Beneficiary hereunder shall survive: (a) any judicial or nonjudicial foreclosure under the Deed of Trust, or transfer of the Subject Property in lieu thereof, (b) the release and reconveyance or cancellation of the Deed of Trust, and (c) the satisfaction of all of Non-Borrower Trustor's obligation under the Loan Documents.
8. **LAWFULNESS AND REASONABLENESS**. Non-Borrower Trustor warrants that all of the waivers in the Deed of Trust are made with full knowledge of their significance, and of the fact that events giving rise to any defense or other benefit waived by Non-Borrower Trustor may destroy or impair rights which Non-Borrower Trustor would otherwise have against beneficiary, Borrower and other persons, or against collateral. Non-Borrower Trustor agrees that all such waivers are reasonable under the circumstances and further agrees that, if any such waiver is determined (by a court of competent jurisdiction) to be contrary to any law or public policy, the other waivers herein shall nonetheless remain in full force and effect.
9. **ENFORCEABILITY**. Non-Borrower Trustor hereby acknowledges that: (a) the obligations undertaken by Non-Borrower Trustor in this Rider to the Deed of Trust are complex in nature, and (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of Beneficiary's consideration for entering into this transaction, Beneficiary has specifically bargained for the waiver and relinquishment by Non-Borrower Trustor of all such defenses, and (d) Non-Borrower Trustor has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Non-Borrower Trustor does hereby represent and confirm to Beneficiary that Non-Borrower Trustor is fully informed regarding, and that Non-Borrower Trustor does thoroughly understand: (i) the nature of all such possible defenses, and (ii) the circumstances under which such defenses may arise, and (iii) the benefits which such defenses might confer upon Non-Borrower Trustor, and (iv) the legal consequences to Non-Borrower Trustor of waiving such defenses. Non-Borrower Trustor acknowledges that Non-Borrower Trustor makes this

Rider to the Deed of Trust; with the intent that this Rider to the Deed of Trust and all of the informed waivers herein shall each and all be fully enforceable by Beneficiary, and that Beneficiary is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

10. **DISCLOSURE OF INFORMATION; PARTICIPATIONS.** Non-Borrower Trustor understands and agrees that Beneficiary may elect, at any time, to sell, assign, or participate all or any part of Beneficiary's interest in the Loan, and that any such sale, assignment or participation may be to one or more financial institutions, private investors, and/or other entities, at Beneficiary's sole discretion. Non-Borrower Trustor further agrees that Beneficiary may disseminate to any such potential purchaser(s), assignee(s) or participant(s) all documents and information (including, without limitation, all financial information) which has been or is hereafter provided to or known to Beneficiary with respect to: (a) the subject Property and its operation; (b) any party connected with the Loan (including, without limitation, the Non-Borrower Trustor, the Borrower, any partner of Borrower and any guarantor); and/or (c) any lending relationship other than the Loan which Beneficiary may have with any party connected with the Loan.

11. **WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY TO THIS RIDER TO THE DEED OF TRUST HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATIONS THEREOF OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE LOAN DOCUMENTS (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENTS OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY PARTY TO THIS DEED OF TRUST MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.**