

OFFICIAL RECORD

Requested By:
MARQUIS TITLE

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Edward Baker, Trustee
Melvin Laub, Trustee
c/o Rifkind Law Group
790 Mission Avenue
San Rafael, California 94901
Attention: Leonard A. Rifkind, Esq.

Douglas County - NV
Werner Christen - Recorder

Page: 1 of 32 Fee: 48.00
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Loan No. 1 282050-SLG

APN: 1318-15-802-008

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT**

THIS DOCUMENT CONSTITUTES A FIXTURE FILING IN ACCORDANCE WITH
NEVADA COMMERCIAL CODE (THE "Nevada Commercial Code")

RECORDER: INDEX FOR SPECIAL NOTICE

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "Deed of Trust") is made as of May 21, 2008, by Jean Merkelbach and Chad Smittkamp, husband and wife as joint tenants; Elk Point Development LLC, a Nevada Limited Liability Company (collectively "Trustor"), whose address is P.O. Box 321, Glenbrook, Nevada 89413-0321, to Marquis Title & Escrow, Inc., a Nevada Corporation, 1520 US Hwy 395N Gardnerville, Nevada 89410 (the "Trustee"), and MELVIN LAUB, TRUSTEE, OR HIS SUCCESSORS IN INTEREST UNDER THE MELVIN LAUB 1996 FAMILY TRUST, as amended, as to an undivided ten (10) percent interest; and EDWARD G. BAKER AND ROSEMARIE BAKER, TRUSTEES OF THE BAKER FAMILY TRUST, U/D/T JUNE 9, 1977, AND AS AMENDED JANUARY 8, 1986, as to an undivided ninety (90) percent interest, and their successors and assigns, its successors and assigns or any subsequent holder of this Note (hereinafter sometimes collectively referred to as "Beneficiary") whose address is P.O. Box 2287, La Jolla, California 92038-2287, or at such other place as Lender may designate in writing.

1. Grant and Secured Obligations.

1.1 Grant. For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 below, Trustor hereby irrevocably and unconditionally grants, bargains, sells, conveys, mortgages and warrants to Trustee, in trust for the benefit of Beneficiary, with power of sale and with right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "Property"):

(a) The real property located in Douglas County, Nevada, described in Exhibit A attached hereto and made a part hereof, together with together with all existing and future easements and rights affording access to it (the "Premises");

(b) All buildings, structures and improvements now or hereafter located or on the Premises (the "Improvements");

(c) All existing and future appurtenances, privileges, easements, franchises and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any Premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and Improvements;

(d) Any land lying within the right-of-way of any street (open or proposed) adjoining the land described herein, any and all sidewalks, alleys, and strips and gores of land adjacent to or used in connection with such land, and any development agreements relative to such land;

(e) All rents, incomes, profits, revenues, royalties, bonuses, rights, accounts, contract rights, general intangibles and benefits of or from the Premises or the Improvements (including without limitation all cash or security deposits, advance rentals and deposits or payments of similar nature, all minimum annual rent, percentage rent, late charges, utilities charges, common area maintenance charges);

(f) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions relating to the use and enjoyment of all or any part of the Premises and Improvements and all extensions, renewals, amendments, modifications, replacements, and guarantees thereof ("Leases");

(g) All real property and improvements on it, and all appurtenances and other property and interests of any kind or character, whether described in Exhibit A or not, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements;

(h) All goods, materials, supplies, chattels, furniture, furnishings, Fixtures (as hereinafter defined), equipment, signs and machinery now or later to be attached to, placed in or on, or used in connection with the ownership, development, use, enjoyment, occupancy, operation or maintenance of all or any part of the Premises and Improvements, whether stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust;



(i) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Premises or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Premises or Improvements;

(j) All judgments, awards of damages and settlements hereafter made as a result of or in lieu of any taking of the property herein described or any part thereof or interest therein under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to such property or any part thereof or interest therein;

(k) All proceeds, including without limitation, insurance proceeds, and claims arising on account of any damage to or taking of the property herein described and all causes of action and recoveries for any loss and diminution in value of such property; and all deposits made by Trustor with third parties in connection with the development of the land and refunds received by the Trustor with respect to payments made in connection with the development of the land;

(l) All interest, estate or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the property described herein, including without limitation remainders, reversions, homesteads, transferable entitlements and development rights, usage rights (including without limitation drainage, horticultural, mineral, mining, water, oil, gas, and any other rights to produce or share in production), privileges and royalties;

(m) All the estate, interest, right and title and other claim or demand which Trustor now has or may hereafter acquire against anyone with respect to any damage to all or any part of the property described herein, including without limitation, damage arising from any defect in or with respect to the design or construction of all or any part of the improvements and damage resulting therefrom;

(n) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Trustor with third parties (including all utility deposits), contract rights, development and use rights and agreements, governmental permits, licenses, consents, approvals, authorizations and applications, plats, maps, surveys, architectural and engineering plans, specifications and drawings, as-built drawings, reports, test borings, market surveys, and other similar work products, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Beneficiary), which arise from or relate to construction on the Premises or to any business now or later to be conducted on it, or to the Premises and Improvements generally and any builder's or manufacturer's warranties with respect thereto;

(o) All insurance policies pertaining to the Premises and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Premises, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty

insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Premises, Improvements or the other property described above or any part of them, or breach of warranty in connection with any construction on the Premises, including causes of action arising in tort, contract, fraud or concealment of a material fact;

(p) All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("Books and Records");

(q) (i) all agreements heretofore or hereafter entered into relating to the construction, ownership, operation, management, leasing, sale or use of the Premises or Improvements, (ii) any and all present and future amendments, modifications, supplements, and addenda to any of the items described in clause (i), (iii) any and all guarantees, warranties and other undertakings (including payment and performance bonds) heretofore or hereafter entered into or delivered with respect to any of the items described in clauses (i) through (ii), (iv) all trade names, trademarks, logos and other materials used to identify or advertise, or otherwise relating to the Premises or Improvements, and (v) all building permits, governmental permits, licenses, variances, conditional or special use permits, and other authorizations (collectively, the "Permits") now or hereafter issued in connection with the construction, development, ownership, operation, management, leasing, sale or use of the Premises or Improvements, to the fullest extent that the same or any interest therein may be legally assigned by Trustor; and

(r) All products and proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

Capitalized terms used above and elsewhere in this Deed of Trust without definition have the meanings given them in the Loan Agreement referred to in Section 1.2(c) below.

1.2 Secured Obligations. Trustor makes the grant, conveyance, and mortgage set forth in Section 1.1 above, and grants the security interest set forth in Section 3 below for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Beneficiary may choose:

(a) Payment of all obligations at any time owing under a promissory note (the "Note") bearing even date herewith, payable by Trustor as maker in the stated principal amount of **SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$750,000.00)** to the order of Beneficiary; and;

(b) Performance of all obligations, covenants and agreements to be performed pursuant to the terms and conditions of the Note and all amendments, extensions, modifications and renewals thereof;

(c) Payment of all sums, together with interest thereon as applicable, and the performance of all obligations, covenants and agreements to be performed pursuant to the terms and conditions of that certain Loan Agreement of even date herewith executed by Trustor, as Borrower, and Beneficiary, as Lender (the "Loan Agreement"), all the terms, covenants, conditions, provisions and agreements of which are incorporated herein by this reference. Unless otherwise defined herein, all capitalized terms used in this Deed of Trust shall have the same meanings as set forth in the Loan Agreement;

(d) Payment of all sums, together with interest thereon as applicable, and the performance of all obligations, covenants and agreements to be performed pursuant to the terms and conditions of this Deed of Trust and under any of the other Loan Documents executed by Trustor (expressly excluding, however, the obligations of Trustor under that certain Environmental Indemnity Agreement of even date herewith executed by Trustor in favor of Beneficiary, which document expressly is not secured by this Deed of Trust);

(e) Payment and performance of all future advances and other obligations that Trustor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when a writing evidences the parties' agreement that the advance or obligation be secured by this Deed of Trust; and

(f) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations.

(g) Upon Borrower paying down the principal balance of the Loan by \$250,000 or more, and otherwise in compliance with all terms set forth in this Deed of Trust and the Loan Agreement, Lender's agrees to release this Deed of Trust secured by the Property described in Exhibit "A" hereto, and reconvey the same to Borrower.

1.3 Constructive Notice. All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Note or the Loan Agreement which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

2. Assignment of Rents.

2.1 Absolute Assignment. Trustor hereby irrevocably, absolutely, presently and unconditionally grants, transfers and assigns to Beneficiary all of Trustor's right, title and interest, whether now existing or hereafter acquired, in all Leases, together with all rents (and payments in lieu of rents), royalties, issues, profits, revenue, income, accounts, proceeds and other benefits of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits (some or all collectively, as the context may require, "Rents"). including the right, power and authority to collect the Rents. This assignment is intended to and shall be an absolute assignment of the Leases by Trustor to Beneficiary

2.2 Grant of License. Beneficiary hereby confers upon Trustor a license (“License”) to collect and retain the Rents as they become due and payable, so long as no Event of Default shall exist and be continuing. Upon the occurrence of an Event of Default, Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to (i) terminate this License without notice to or demand upon Trustor, and without regard to the adequacy of Beneficiary’s security under this Deed of Trust, at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of said property or any part hereof. It is expressly understood that Beneficiary’s right to collect the rents, issues and profits, is in no manner conditional upon Beneficiary first taking possession of said property. Should Beneficiary enter and take possession of said property, and/or collect the rents, issues and profits and apply the same as provided for herein, such act shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

2.3 Collection and Application of Rents. Subject to the License granted to Trustor under Section 2.2 above, Beneficiary has the right, power and authority to collect any and all Rents. Trustor hereby appoints Beneficiary its attorney in fact to perform any and all of the following acts, if and at the times when Beneficiary in its sole discretion may so choose:

- (a) Demand, receive and enforce payment of any and all Rents; or
- (b) Give receipts, releases and satisfactions for any and all Rents; or
- (c) Sue either in the name of Trustor or in the name of Beneficiary for any and all Rents.

Beneficiary and Trustor agree that the mere recordation of the assignment granted herein entitles Beneficiary immediately to collect and receive rents upon the occurrence of an Event of Default, without first taking any acts of enforcement under applicable law, such as, but not limited to, providing notice to Trustor, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver. Further, Beneficiary’s right to the Rents does not depend on whether or not Beneficiary takes possession of the Property as permitted under Section 6.3(c). In Beneficiary’s sole discretion, Beneficiary may choose to collect Rents either with or without taking possession of the Property. Beneficiary shall apply all Rents collected by it in the manner provided under Section 6.7. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity.

2.4 Notice. All lessees under any and all Leases are hereby irrevocably authorized and notified by Trustor to rely upon and to comply with (and shall be fully protected in so doing) 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 lessees’ undertakings under the Leases, and lessees shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing hereunder.

2.5 Proceeds. Beneficiary shall have the right to apply all amounts received by it pursuant to this assignment to pay any of the following in such amounts and in such order as Beneficiary shall deem appropriate: (i) any and all Secured Obligations, together with all costs and attorneys' fees; (ii) all expenses of leasing, operating, maintaining and managing the Property, including without limitation, the salaries, fees, commissions and wages of a managing agent and such other employees, agents or independent contractors as Beneficiary deems necessary or desirable; (iii) all taxes, charges, claims, assessments, any other liens, and premiums for all insurance Beneficiary deems necessary or desirable; (iv) the cost of all alterations, renovations, repairs or replacements; and (v) all expenses incident to taking and retaining possession of the Property.

2.6 Trustor's Interest Under Lease. Trustor warrants that Trustor is the sole owner of the entire lessor's interest under each of the Leases; that each of the Leases is valid and enforceable and has not been altered, modified or amended in any manner whatsoever save as herein set forth; that neither Trustor nor the lessee named in any Lease is in default under any of the terms, covenants or conditions thereof except as previously disclosed by Trustor to Beneficiary in writing; that no rent reserved in any of the Leases has been assigned or anticipated; and that no rent for any period subsequent to the date of this Deed of Trust has been collected in advance of the time when the same becomes due under the terms of the Leases.

2.7 Performance Under Leases. Trustor covenants with Beneficiary to observe and perform all of the obligations imposed upon the lessor under each of the Leases and not to do or permit to be done anything to impair the security thereof, not to collect any of the rent, income and profits arising or accruing under the Leases or from the property described in this Deed of Trust in advance of the time when the same shall become due; not to execute any other assignment of lessor's interest in any of the Leases or assignment of rents arising or accruing under the Leases or from the property described herein; not to alter, modify or change the terms of any of the Leases or give any consent or exercise any option required or permitted by such terms without the prior written consent of Beneficiary, or cancel or terminate any of the Leases or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the premises demised thereby or of any interest therein so as to effect directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, lessee thereunder; not to alter, modify or change the terms of any guaranty of any of the Leases or cancel or terminate such guaranty without the prior written consent of Beneficiary; not to consent to any assignment of or subletting under any of the Leases, whether or not in accordance with its terms, without the prior written consent of Beneficiary; and at Beneficiary's request to specifically assign and transfer to Beneficiary any and all subsequent Leases upon all or any part of the property described herein.

2.8 Beneficiary Not Responsible. Under no circumstances shall Beneficiary have any duty to produce Rents from the Property. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Premises and Improvements, unless Beneficiary agrees in writing to the contrary, Beneficiary is not and shall not be deemed to be:

- (a) A "Beneficiary in possession" for any purpose; or

(b) Responsible for performing any of the obligations of the lessor under any lease; or

(c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or

(d) Liable for any loss sustained by Trustor resulting from Beneficiary's failure to let the premises after default or from any other act or omission of Beneficiary in managing the property described herein after default unless such loss is caused by the willful misconduct or bad faith of Beneficiary, or otherwise liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

Beneficiary shall not be obligated to perform or discharge, nor does Beneficiary hereby undertake to perform or discharge, any obligation, duty or liability under the Leases or under or by reason of this Deed of Trust and Trustor shall, and does hereby agree, to indemnify, defend and hold Beneficiary harmless from and against any and all liability, loss, damage or expense which may or might be incurred under the Leases or under or by reason of this Deed of Trust and from and against any and all claims and demands whatsoever which may be asserted against Beneficiary by reason of any alleged obligations or undertakings on its part to perform or discharge under any of the terms, covenants or agreements contained in any of the Leases. Should Beneficiary incur any such liability under the Leases or under or by reason of this Deed of Trust or in defense of any such claims or demands, the amount thereof, including costs, expenses and attorneys' fees, shall be secured by this Deed of Trust and Trustor shall reimburse Beneficiary therefor immediately upon demand, and upon the failure of Trustor so to do Beneficiary may, at its option, declare all sums secured hereby immediately due and payable. It is further understood and agreed that neither this assignment nor this Deed of Trust shall operate to place responsibility for the control, care, management or repair of the property described herein upon Beneficiary, or for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Beneficiary responsible or liable for any waste committed on the property by the lessees or any other parties, or for any dangerous or defective condition of said property, or for any negligence in the management, upkeep, repair or control of said property resulting in loss or injury or death to any lessee, licensee, employee or stranger.

3. Grant of Security Interest.

3.1 Grant. Trustor grants to Beneficiary a security interest in, and pledges and assigns to Beneficiary, all of Trustor's right, title and interest now or hereafter acquired in and to all of the following described personal property (collectively, the "Personalty"):

(a) all tangible personal property of every kind and description, whether now existing or later acquired, including, without limitation, all goods, materials, supplies, tools, books, records, chattels, furniture, fixtures, equipment and machinery, and, without limiting the generality of any of the foregoing classifications, including any and all fire sprinkler, alarm, trash compaction, security, heating, ventilation and air conditioning, electrical, plumbing and any other utility, life safety or maintenance system and any and all components or units thereof, and in all cases whether attached to, placed in or on, or



used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises and the Improvements, whether stored on the Premises or elsewhere; and

(b) all rights to the payment of money, reserves, deferred payments, refunds, savings and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Trustor with third parties (including all utility deposits), accounts, including, without limitation, the Escrow Account, if any, (provided, however, this Deed of Trust does not create a lien on accounts receivable, other than accounts receivable constituting Rents, arising in the ordinary course of the business conducted by Trustor on the Property), contract rights, money, instruments, documents and chattel paper; and

(c) all general intangibles (to the extent not included under clause (b) above) relating to the Premises, the Improvements, and/or any business now or later to be conducted thereon by Trustor, including, without limitation, all permits, licenses and goodwill, all books, records and files, including, without limitation, computer readable memory and data and any computer software or hardware reasonably necessary to access and process such memory and data, all architectural and engineering plans, specifications and drawings, and as-built drawings, which arise from or relate to the Premises, the Improvements, and/or any of the foregoing property described in this Section 3.1, all claims to or demands for the voluntary or involuntary conversion of any of the Premises, the Improvements or the other property described above into cash or liquidated claims, all proceeds of present and future fire, hazard or casualty insurance policies, all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Premises, the Improvements or the other property described above or any part of them, or breach of warranty in connection with any construction on the Premises, including causes of action arising in tort, contract, fraud or concealment of a material fact; and

(d) all substitutions, replacements, additions, accessions and proceeds for or to any of the foregoing property described in this Section 3.1.

3.2 Financing Statements. Trustor hereby authorizes Beneficiary to file one or more financing statements and such other documents as Beneficiary may from time to time require to perfect or continue the perfection of Beneficiary's security interest in any part of the Property. In addition, Trustor agrees to sign any and all other documents that Beneficiary deems necessary in its sole discretion to perfect, protect, and continue Beneficiary's lien and security interest in the Property. As provided in Section 5.9 below, Trustor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require. In case Trustor fails to execute such other documents for the perfection or continuation of any security interest, Trustor hereby appoints Beneficiary as its true and lawful attorney-in-fact to execute any such documents on its behalf. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.



3.3 Security Agreement. This Deed of Trust constitutes a security agreement under the Nevada Uniform Commercial Code covering all Personalty.

4. Fixture Filing.

This Deed of Trust constitutes a fixture filing under Article 9 of the Nevada Uniform Commercial Code, as amended or recodified from time to time, covering any Property which now is or later may become fixtures attached to the Premises or the Improvements. For this purpose, the respective addresses of Trustor, as debtor, and Beneficiary and Trustee, as secured parties, are as set forth in the preambles of this Deed of Trust. "Fixtures" shall include all articles of personal property now or hereafter attached to, placed upon for an indefinite term or used in connection with said real property, appurtenances and improvements, together with all goods and other property which are at any time so related to the Property that an interest arises in them under real estate law.

5. Rights and Duties of the Parties.

5.1 Representations and Warranties. Trustor represents and warrants that:

- (a) Trustor lawfully possesses and holds fee simple title to all of the Premises and Improvements;
- (b) Trustor has or will have good title to all Property other than the Premises and Improvements;
- (c) Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Rents;
- (d) This Deed of Trust creates a second and prior lien on the Property;
- (e) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements;
- (f) Trustor owns any Property which is personal property free and clear of any security agreements, reservations of title or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office; and
- (g) Trustor's place of business, or its chief executive office if it has more than one place of business, is located at the address specified below.

5.2 Taxes, and Assessments. Trustor shall pay prior to delinquency all taxes, levies, charges and assessments, in accordance with Article 12 of the Loan Agreement.

5.3 Performance of Secured Obligations. Trustor shall promptly pay and perform each Secured Obligation in accordance with its terms.

5.4 Liens, Charges and Encumbrances. Trustor shall immediately discharge any lien on the Property which Beneficiary has not consented to in writing in accordance with the terms of Article 13 of the Loan Agreement.

5.5 Damages and Insurance and Condemnation Proceeds. In the event of any casualty or condemnation of the Property, the provisions of Article 16 of the Loan Agreement shall govern.

5.6 Maintenance and Preservation of Property.

(a) Trustor shall insure the Property as required by the Loan Agreement and keep the Property in good condition and repair.

(b) Trustor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change or variance in any zoning or other Premises use classification which affects the Property or any part of it, except as permitted or required by the Loan Agreement or with Beneficiary's express prior written consent in each instance

(c) If all or part of the Property becomes damaged or destroyed, Trustor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices, regardless of whether or not Beneficiary agrees to disburse Proceeds or other sums to pay costs of the work of repair or reconstruction under Article 16 of the Loan Agreement.

(d) Trustor shall not commit or allow any act upon or use of the Property which would violate: (i) any applicable Laws or order of any Governmental Authority, whether now existing or later to be enacted and whether foreseen or unforeseen; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Property. Trustor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Trustor on the Property or any part of it under the Loan Agreement.

(e) Trustor shall not commit or allow waste of the Property, including those acts or omissions characterized under the Loan Agreement as waste which arises out of Hazardous Material.

(f) Trustor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

5.7 Releases, Extensions, Modifications and Additional Security. From time to time, Beneficiary may perform any of the following acts without incurring any liability or giving notice to any person:

(a) Release any person liable for payment of any Secured Obligation;

(b) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

(c) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;

(d) Alter, substitute or release any property securing the Secured Obligations;

(e) Consent to the making of any plat or map of the Property or any part of it;

(f) Join in granting any easement or creating any restriction affecting the Property; or

(g) Join in any subordination or other agreement affecting this Deed of Trust or the lien of it; or

(h) Release the Property or any part of it.

5.8 Release. When all of the Secured Obligations have been paid and performed in full and all fees and other sums owed by Trustor under Section 5.9 of this Deed of Trust and the other Loan Documents have been paid in full, Beneficiary shall request Trustee in writing to reconvey the Property and shall surrender this Deed of Trust and all notes and instruments evidencing the Secured Obligations to Trustee. When Trustee receives Beneficiary's written request for reconveyance and all fees and other sums owing to it by Trustor under Section 5.9 hereof, Trustee shall reconvey the Property, or so much of it as is then held under this Deed of Trust, without warranty to the person or persons legally entitled to it. That person or those persons shall pay any costs of preparation and recordation of such release. In the reconveyance, the grantee may be described as "the person or persons legally entitled thereto," and the recitals of any matters or facts shall be conclusive proof of their truthfulness. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance.

5.9 Compensation, Exculpation, Indemnification.

(a) Trustor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Beneficiary when the law provides no maximum limit, for any services that Beneficiary or Trustee may render in connection with this Deed of Trust, including providing a statement of the Secured Obligations or providing the reconveyance pursuant to Section 5.8 above. Trustor shall also pay or reimburse all of Beneficiary's and Trustee's costs and expenses which may be incurred in rendering any such services. Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including any rights or remedies afforded to Beneficiary and Trustee under Section 6.3, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Deed of Trust, including attorneys' fees, experts' fees and other legal costs, costs of any Trustee's Sale (as defined in Section 6.3(i) below) or any Foreclosure Sale (as defined in Section

6.3(k)(ii) below) and any cost of evidence of title. If Beneficiary and/or Trustee, as required by applicable law, chooses to dispose of Property through more than one Trustee's Sales and/or more than one Foreclosure Sale, Trustor shall pay all costs, expenses or other advances that may be incurred or made by Beneficiary and/or Trustee in each of such Trustee's Sale and/or Foreclosure Sales. In any suit to foreclose the lien hereof or enforce any other remedy of Trustee or Beneficiary under this Deed of Trust or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Trustee and Beneficiary for reasonable attorneys' costs, experts' fees and fees (including the costs and fees of paralegals), survey charges, appraiser's fees, inspecting engineer's and/or architect's fees, fees for environmental studies and assessments and all additional expenses incurred by Trustee and Beneficiary with respect to environmental matters, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Trustee and Beneficiary may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to, the value of or the environmental condition of the Property. All expenditures and expenses of the nature mentioned in this Section 5.9(a), and such expenses and fees as may be incurred in the protection of the Property and maintenance of the lien of this Deed of Trust, including the fees of any attorney (including the costs and fees of paralegals) employed by Trustee or Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Note or the Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the Default Rate and shall be secured by this Deed of Trust.

(b) Neither Beneficiary nor Trustee shall be directly or indirectly liable to Trustor or any other person as a consequence of any of the following:

(i) Beneficiary's or Trustee's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary and/or Trustee in this Deed of Trust;

(ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the 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 Property, or from any other act or omission of Beneficiary in managing the Property, after an Event of Default, unless the loss is caused by the willful misconduct and bad faith of Beneficiary.

Trustor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Beneficiary or Trustee.

(c) Trustor agrees to indemnify Beneficiary and Trustee against and hold them harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees, experts' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which they may suffer or incur:

(i) In performing any act required or permitted by this Deed of Trust or any of the other Loan Documents or by law;

(ii) Because of any failure of Trustor to perform any of its obligations;
or

(iii) Because of any alleged obligation of or undertaking by Beneficiary and/or Trustee to perform or discharge any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Property other than the Loan Documents.

This agreement by Trustor to indemnify Beneficiary and Trustee shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Deed of Trust.

(d) Trustor shall pay all obligations to pay money arising under this Section 5.9 immediately upon demand by Beneficiary. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at the Default Rate.

5.10 Defense and Notice of Claims and Actions. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Deed of Trust and the rights and powers of Beneficiary created under it, against all adverse claims. Trustor shall give Beneficiary prompt notice in writing if any claim is asserted which does or could affect any such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.11 Subrogation. Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust or with the proceeds of any loan secured by this Deed of Trust.

5.12 Site Visits, Observation and Testing. Beneficiary and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purpose of performing appraisals, observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. Beneficiary has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or

testing by Beneficiary, its agents or representatives shall impose any liability on any of Beneficiary, its agents or representatives. In no event shall any site visit, observation or testing by Beneficiary, its agents or representatives be a representation that Hazardous Material are or are not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation or ordinance pertaining to Hazardous Material or any other applicable governmental law. Neither Trustor nor any other party is entitled to rely on any site visit, observation or testing by any of Beneficiary, its agents or representatives. Neither Beneficiary, its agents or representatives owe any duty of care to protect Trustor or any other party against, or to inform Trustor or any other party of, any Hazardous Material or any other adverse condition affecting the Property. Beneficiary shall give Trustor reasonable notice before entering the Property. Beneficiary shall make reasonable efforts to avoid interfering with Trustor's use of the Property in exercising any rights provided in this Section 5.12.

5.13 Notice of Change. Trustor shall give Beneficiary prior written notice of any change in: (a) the location of its place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Property, including the Books and Records; and (c) Trustor's name or business structure. Unless otherwise approved by Beneficiary in writing, all Property that consists of personal property (other than the Books and Records) will be located on the Premises and all Books and Records will be located at Trustor's place of business or chief executive office if Trustor has more than one place of business.

5.14 Substitution of Trustee. From time to time, Beneficiary may substitute a successor to any Trustee named in or acting under this Deed of Trust in any manner now or later to be provided at law, or by a written instrument executed and acknowledged by Beneficiary and recorded in the office(s) of the recorder(s) of the county or counties where the Premises and Improvements are situated. Any such instrument shall be conclusive proof of the proper substitution of the successor Trustee, who shall automatically upon recordation of the instrument succeed to all estate, title, rights, powers and duties of the predecessor Trustee, without conveyance from it.

6. Accelerating Transfers, Default and Remedies.

6.1 Accelerating Transfers.

"Accelerating Transfer" means any Transfer prohibited under Article 20 of the Loan Agreement.

Trustor acknowledges that Beneficiary is making one or more advances under the Loan Agreement in reliance on the expertise, skill and experience of Trustor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Beneficiary's reliance, Trustor agrees that Trustor shall not make any Accelerating Transfer, unless the transfer is preceded by Beneficiary's express written consent to the particular transaction and transferee. Beneficiary may withhold such consent in its sole discretion. If any Accelerating Transfer occurs, Beneficiary may, in its sole discretion, without being required to demonstrate any actual impairment of its security or any increased risk of default hereunder, declare all of the Secured Obligations

to be immediately due and payable, and Beneficiary may invoke any rights and remedies provided by Section 6.3 of this Deed of Trust.

6.2 Events of Default. Trustor will be in default under this Deed of Trust upon the occurrence of any one or more of the following events (some or all collectively, "Events of Default;" any one singly, an "Event of Default").

Failure of Trustor (i) (x) to make any principal payment when due, (y) to pay any interest within five (5) days after the date when due, or (z) to observe or perform any of the other covenants or conditions by Trustor to be performed under the terms of this Deed of Trust or any of the other Loan Documents concerning the payment of money for a period of ten (10) days after written notice from Beneficiary that the same is due and payable, or (ii) for a period of thirty (30) days after written notice from Beneficiary, to observe or perform any non-monetary covenant or condition contained in this Deed of Trust or any of the other Loan Documents; provided that if any such failure concerning a non-monetary covenant or condition is susceptible to cure but cannot reasonably be cured within said thirty (30) day period, then Trustor shall have an additional sixty (60) day period to cure such failure and no Event of Default shall be deemed to exist hereunder so long as (x) Trustor commences such cure within the initial thirty (30) day period and diligently and in good faith pursues such cure to completion within such resulting ninety (90) day period from the date of Beneficiary's notice, and (y) the existence of such uncured default will not result in any tenant under a Lease having the right to terminate such Lease due to such uncured default; and provided further that if a different notice or grace period is specified under Article 17 of the Loan Agreement (or elsewhere in this Deed of Trust or the Loan Agreement) in which such particular breach will become an Event of Default, the specific provision shall control; or

An "Event of Default" occurs under the Loan Agreement or any other Loan Document.

6.3 Remedies. At any time after an Event of Default, Beneficiary shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Beneficiary at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Acceleration. Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately.

(b) Receiver. Beneficiary shall, as a matter of right, with notice and without giving bond to Trustor or anyone claiming by, under or through Trustor, and without regard for the solvency or insolvency of Trustor or the then value of the Property, apply ex parte to any court having jurisdiction to appoint a receiver to enter upon and take possession of all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer. Such receiver shall have all powers and duties prescribed by applicable law, all other powers which are necessary or

usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Beneficiary would have, upon entering and taking possession of the Property under Section 6.3(c) below.

(c) Entry. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Beneficiary may in its reasonable discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing all of Trustor's or the then owner's Books and Records; entering into, enforcing, modifying or canceling leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Beneficiary; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Premises and make all of it available to Beneficiary at the site of the Premises. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments.

(d) Cure; Protection of Security. Beneficiary may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary may also enter the Property and/or do any and all other things which it may in its reasonable discretion consider necessary and appropriate to protect the security of this Deed of Trust, including, without limitation, completing construction of the improvements at the Property contemplated by the Loan Agreement. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or to be conclusive as among the parties to this Deed of Trust; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary. Beneficiary may take any of the actions permitted under this Section 6.3(d) either with or without giving notice to any person. Any amounts expended by Beneficiary under this Section 6.3(d) shall be secured by this Deed of Trust.

(e) Uniform Commercial Code Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the Nevada Uniform Commercial Code.

(f) Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this instrument or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust. Without limiting the foregoing, Beneficiary may proceed by a suit or suits in law or equity, whether for specific



performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the right provided in Section 6.3(b), upon, or at any time after the filing of a complaint to foreclose this Deed of Trust, Trustee and Beneficiary shall be entitled to seek the appointment of a receiver of the Property by the court in which such complaint is filed.

(g) Power of Sale. Under this power of sale, Beneficiary shall have the discretionary right to cause some or all of the Property, including any Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(h) Sales of Personal Property. Beneficiary may dispose of any personal property separately from the sale of real property, in any manner permitted by Article 9 of the Nevada Uniform Commercial Code, including any public or private sale, or in any manner permitted by any other applicable law. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Secured Obligation Nevada law. In connection with any sale or other disposition of such Property, Trustor agrees that the following procedures constitute a commercially reasonable sale:

Beneficiary shall mail written notice of the sale to Trustor not later than forty-five (45) days prior to such sale. Once per week during the four weeks immediately preceding such sale, Beneficiary will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Beneficiary will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Beneficiary shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(i) Trustee's Sales of Real Property or Mixed Collateral. Beneficiary may choose to dispose of some or all of the Property which consists solely of real property in any manner then permitted by applicable law. In its discretion, Beneficiary may also or alternatively choose to dispose of some or all of the Property, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, as permitted by the Nevada Uniform Commercial Code. Trustor agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of the personal property. For purposes of this power of sale, either a sale of real property alone, or a sale of both real and personal property together in accordance with the Nevada Uniform Commercial Code, will sometimes be referred to as a "Trustee's Sale."

Before any Trustee's Sale, Beneficiary or Trustee shall give such notice of default and election to sell as may then be required by law. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, Trustee shall sell the property being sold at a public auction to be held at the

time and place specified in the notice of sale. Neither Trustee nor Beneficiary shall have any obligation to make demand on Trustor before any Trustee's Sale. From time to time in accordance with then applicable law, Trustee may, and in any event at Beneficiary's request shall, postpone any Trustee's Sale by public announcement at the time and place noticed for that sale.

At any Trustee's Sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States. Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any Trustee's Sale, shall be conclusive proof of their truthfulness. Any such deed shall be conclusive against all persons as to the facts recited in it.

(j) Other Remedies. Beneficiary may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Trustor or any other person or entity in favor of Beneficiary in connection with the Secured Obligations or any part thereof, without prejudice to the right of Beneficiary thereafter to enforce any appropriate remedy against Trustor. Beneficiary shall have the right to pursue all remedies afforded to a Beneficiary under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto which may become effective from time to time after the date hereof.

(k) Single or Multiple Foreclosure Sales. If the Property consists of more than one lot, parcel or item of property, Beneficiary and/or Trustee, as required by applicable law, may:

(i) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Beneficiary may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale;" and any two or more, "Foreclosure Sales").

If Beneficiary chooses to have more than one Foreclosure Sale, Beneficiary at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Beneficiary may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Deed of Trust on any part of the Property which has not been sold, until all of the Secured Obligations have been paid in full.

6.4 Credit Bids. At any Foreclosure Sale, any person, including Trustor or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Beneficiary may settle for the purchase price by crediting the sales price of the property against the following obligations:

- (a) First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to pay or reimburse Beneficiary and Trustee under Section 5.9 of this Deed of Trust; and
- (b) Second, all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose.

6.5 Impounds. Notwithstanding anything to the contrary contained herein, any buyer at the sale (including Beneficiary) shall have the right to require the Trustee to impound from any amounts that may be due and payable to Trustor hereunder such funds as required by the Internal Revenue Code of 1986 (“Code”), Section 1445, and/or the Nevada law, unless prior to said sale Trustor has delivered to Trustee a certification directed to the Trustee, Beneficiary and buyer at said sale, executed by Trustor under penalty of perjury, which contains the following:

- (a) The name of Trustor;
- (b) Trustor’s U.S. Taxpayer Identification Number;
- (c) The office address of Trustor;
- (d) A statement that Trustor is not a “foreign person” within the meaning of Sections 1445 and 7701 of the Code; and
- (e) Such other matters as may be required to have such certification comply with the provisions of Section 1445 of the Code and/or Nevada law.
- (f) Trustee shall deliver said certification to the buyer (and to Beneficiary if Beneficiary is not the buyer) concurrently with delivery of the deed or deeds as described below.

6.6 Application of Foreclosure Sale Proceeds. Beneficiary shall apply the proceeds of any Foreclosure Sale in the following manner:

- (a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to reimburse Beneficiary or Trustee under Section 5.9 of this Deed of Trust;
- (b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Beneficiary under the terms of this Deed of Trust which then remain unpaid;

(c) Third, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it.

6.7 Application of Rents and Other Sums. Beneficiary shall apply any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale which Beneficiary may receive or collect under Section 6.3 above, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Beneficiary or any receiver;

(b) Second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Beneficiary shall have no liability for any funds which it does not actually receive.

7. The Trustee.

7.1 Certain Rights. With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ and consult with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his or her agents or attorneys, (iii) to select and employ, in and about the execution of his or her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee (and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith), and (iv) any and all other lawful action that Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Premises for debts contracted for or liability or damages incurred in the management or operation of the Premises. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Trustor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save and hold Trustee harmless against,

any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

7.2 Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, and shall be segregated from any other moneys of Trustee.

7.3 Successor Trustees. Trustee may resign by the giving of notice of such resignation in writing to Beneficiary. If Trustee shall die, resign or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary, in Beneficiary's sole discretion and with or without cause, shall prefer to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of the aforementioned Trustee, Beneficiary shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees) in succession who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation and such appointment be executed on its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Trustor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or his or her successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute trustees are appointed, each of such multiple substitute trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Deed of Trust or applicable law. Any prior election to act jointly or severally shall not prevent either or both of such multiple substitute Trustees from subsequently executing, jointly or severally, any or all of the provisions hereof.

7.4 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Trustor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Trustor.

7.5 Succession Instruments. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its, his or her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in such Trustee's place.

7.6 No Representation by Trustee or Beneficiary. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Beneficiary.

8. Miscellaneous Provisions.

8.1 Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Deed of Trust. The Loan Documents also 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 Property.

8.2 No Waiver or Cure.

(a) Each waiver by Beneficiary must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary to take action on account of any default of Trustor. Consent by Beneficiary to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Deed of Trust or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Deed of Trust; or prejudice Beneficiary or any receiver in the exercise of any right or remedy afforded any of them under this Deed of Trust; 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.

(i) Trustee or Beneficiary, its agent or a receiver takes possession of all or any part of the Property in the manner provided in Section 6.3(c).

(ii) Beneficiary collects and applies Rents as permitted under Sections 2.3 and 6.7 above, either with or without taking possession of all or any part of the Property.

(iii) Beneficiary or Trustee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Beneficiary under Section 5.5 above.

(iv) Beneficiary makes a site visit, observes the Property and/or conducts tests as permitted under Section 5.12 above.

(v) Beneficiary or Trustee receives any sums under this Deed of Trust or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

(vi) Beneficiary, Trustee or any receiver invokes any right or remedy provided under this Deed of Trust.

8.3 Powers of Beneficiary.

(a) If Beneficiary performs any act which it is empowered or authorized to perform under this Deed of Trust, including any act permitted by Sections 5.7 or 6.3(d) of this Deed of Trust, that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Deed of Trust on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Trustor shall not be released or changed if Beneficiary grants any successor in interest to Trustor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Beneficiary shall not be required to comply with any demand by the original Trustor that Beneficiary refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(b) Beneficiary may take any of the actions permitted under Sections 6.3(b) and/or 6.3(c) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Deed of Trust.

(c) From time to time, Beneficiary may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Deed of Trust. Beneficiary may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

8.4 Merger. No merger shall occur as a result of Beneficiary's acquiring any other estate in or any other lien on the Property unless Beneficiary consents to a merger in writing.

8.5 Joint and Several Liability. If Trustor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust.

8.6 Applicable Law. The Deed of Trust shall be governed by the laws of the State of Nevada.



8.7 Successors in Interest. The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section 8.7 does not waive the provisions of Section 6.1 above.

8.8 Interpretation.

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Deed of Trust are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(c) No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Deed of Trust. The Exhibits to this Deed of Trust are hereby incorporated in this Deed of Trust.

8.9 Waiver of Statutory Rights. To the extent permitted by law, Trustor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but hereby waives the benefit of such laws. Trustor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Trustor hereby waives any and all rights of redemption, if any, from sale under any judgment of foreclosure of this Deed of Trust on behalf of Trustor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Deed of Trust. The foregoing waiver of right of redemption is made pursuant to the provisions of applicable law.

8.10 Severability. If any provision of this Deed of Trust should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Deed of Trust except that if such provision relates to the payment of any monetary sum, then Beneficiary may, at its option, declare all Secured Obligations immediately due and payable.

8.11 Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing (c) if by Federal Express or other reliable overnight courier service, on the next Business Day after

delivered to such courier service or (d) if by telecopier on the day of transmission so long as copy is sent on the same day by overnight courier as set forth below:

Trustor: Jean Merkelbach
Chad Smittkamp
P.O. Box 321
Glenbrook, Nevada 89413-0321

Beneficiary: Edward Baker, Trustee
Melvin Laub, Trustee
P.O. Box 2287
La Jolla, California 92038-2287
Telephone: (858) 453.0802
Facsimile: (858) 453.0902

With a copy to: Rifkind Law Group
790 Mission Avenue
San Rafael, CA 94901
Attention: Leonard A. Rifkind, Esq.
Telephone: (415) 485-2200
Facsimile: (415) 453-7605

Trustee: Marquis Title & Escrow, Inc.,
1520 US Hwy 395N
Gardnerville, Nevada 89410

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

Any notice or demand delivered to the person or entity named above to accept notices and demands for Trustor shall constitute notice or demand duly delivered to Trustor, even if delivery is refused.

8.12 Beneficiary's Lien for Service Charge and Expenses. At all times, regardless of whether any Loan proceeds have been disbursed, this Deed of Trust secures (in addition to any Loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Beneficiary not to exceed the maximum amount secured hereby. For purposes hereof, all obligations of Trustor to Beneficiary under all Interest Rate Agreements and any indebtedness or obligation contained therein or evidenced thereby shall be considered an obligation of Trustor secured hereby.

8.13 Inconsistencies. In the event of any inconsistency between this Deed of Trust and the Loan Agreement, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid security interest upon the Property, otherwise the provisions of the Loan Agreement shall be controlling.



8.14 Presence of Hazardous Materials; Remedies. Trustor hereby acknowledges and agrees that the condition of the property covered by this Deed of Trust is a material basis upon which Beneficiary has agreed to make the loan to Trustor evidenced by the Note. Trustor hereby further acknowledges and agrees that if any of such property is determined to be “environmentally impaired” or to be an “affected parcel” (as those terms are defined by applicable law, such determination might (a) impair the security which Beneficiary has agreed to take in making the loan evidenced by the Note, and/or (b) place an independent liability upon Beneficiary for which Beneficiary is not otherwise protected and which Beneficiary would not accept in the first instance in making such loan to Trustor. Accordingly, Trustor hereby agrees that in any such event, then, without waiver of any other rights or remedies which Beneficiary may have under this Deed of Trust, (i) at Beneficiary’s option, the obligations and indebtedness of Trustor shall not be secured by this Deed of Trust, in which event Trustor shall not have the benefit of any protections afforded under applicable law, or any other antideficiency laws now existing or hereinafter enacted, (ii) Beneficiary shall have all rights and remedies under applicable law, including, without limitation, the right of Beneficiary to waive its lien against all or any portion of the property encumbered hereby and pursue Trustor as an unsecured creditor, and (iii) Beneficiary shall have the further right to pursue any other remedy available at law or in equity, including without limitation under the separate Environmental Indemnity Agreement given by Trustor to Beneficiary as part of the Loan Documents.

8.15 Trustor and Lien Not Released. From time to time, without affecting the obligation of Trustor or its successors or assigns to pay the sums secured by this Deed of Trust and to perform the covenants of Trustor contained herein, without affecting the guarantee of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and without affecting the lien or priority of lien hereof on the property described herein, Beneficiary may, at Beneficiary’s option, without giving notice to or obtaining the consent of Trustor, Trustor’s successors or assigns or of any junior lienholder or guarantors, and without liability on Beneficiary’s part, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of said indebtedness, release from this Deed of Trust any part of said property, consent to any map or plan on said property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Trustor to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Trustor shall pay Beneficiary a reasonable service charge, together with such title insurance premiums and attorneys’ fees as may be incurred at Beneficiary’s option, for any such action if taken at Trustor’s request.

8.16 Counterparts. This Deed of Trust may be executed in any number of counterparts and by different signatories hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument, for the same effect as if all signatories hereto had signed the same signature page. Any signature page of this Deed of Trust may be detached from any counterpart of this Deed of Trust without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Deed of Trust identical in form hereto but having attached to it one or more additional signature pages.

9. ARBITRATION.

EXCEPT AS SPECIFICALLY PROVIDED HEREIN, ALL DISPUTES, CLAIMS, OR CONTROVERSIES (WHETHER SOUNDING IN TORT OR CONTRACT OR BASED UPON A STATUTE) (HEREINAFTER "CLAIMS") ARISING OUT OF, BASED UPON, OR RELATING TO THIS DEED OF TRUST SHALL BE SUBMITTED FIRST TO MEDIATION, WHICH SHALL BE COMPLETED WITHIN THIRTY (30) DAYS OF WRITTEN DEMAND BY EITHER PARTY, AND THEN TO BINDING ARBITRATION BEFORE A RETIRED JUDGE OF JAMS, LLC IN RENO, NEVADA PURSUANT TO THE JAMS, LLC COMPREHENSIVE ARBITRATION RULES AND PROCEDURES. JUDGMENT UPON THE ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF AND SHALL BE FINAL, BINDING, AND NONAPPEALABLE. NOTWITHSTANDING THE FOREGOING, THIS CLAUSE SHALL NOT:

9.1 LIMIT OR PROHIBIT BENEFICIARY AND/OR TRUSTEE FROM BRINGING ANY ACTION IN ANY COURT OF COMPETENT JURISDICTION FOR INJUNCTIVE RELIEF; FOR APPOINTMENT OF A RECEIVER; FOR PROVISIONAL REMEDIES, INCLUDING TEMPORARY PROTECTIVE ORDERS AND WRITS OF ATTACHMENT; OR FOR JUDICIAL FORECLOSURE; AND THE FILING OF SUCH ACTIONS BY BENEFICIARY AND/OR TRUSTEE SHALL NOT

(a) CONSTITUTE A WAIVER OF THIS ARBITRATION PROVISION; OR

(b) LIMIT THE COURT FROM REFERRING AS MUCH OF THE CLAIMS IN THE ACTION TO ARBITRATION AS POSSIBLE;

9.2 LIMIT OR PROHIBIT BENEFICIARY AND/OR TRUSTEE FROM EXERCISING ANY OF ITS RIGHTS AS A BENEFICIARY AND/OR TRUSTEE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THE INVOCATION OF THE POWER OF SALE UNDER THIS DEED OF TRUST OR THE USE OF ANY SET-OFF OR LIEN RIGHTS;


9.3 APPLY TO CLAIMS UNDER THE ENVIRONMENTAL INDEMNITY AGREEMENT GIVEN IN CONNECTION WITH THE LOAN SECURED BY THIS DEED OF TRUST, WHICH CLAIMS MAY BE FILED IN ANY COURT OF COMPETENT JURISDICTION.

THIS ARBITRATION PROVISION SHALL BE DEEMED TO BE SELF-EXECUTING AND IN THE EVENT THAT TRUSTOR FAILS TO APPEAR AT ANY PROPERLY NOTICED ARBITRATION PROCEEDING, AN AWARD MAY BE ENTERED AGAINST TRUSTOR NOTWITHSTANDING ITS FAILURE TO APPEAR.

THE ARBITRATOR IS SPECIFICALLY AUTHORIZED TO, AND AS APPROPRIATE, SHALL RECOMMEND OR AWARD TO THE PREVAILING PARTY IN THE ARBITRATION PROCEEDINGS ITS REASONABLE ATTORNEYS' FEES AND COSTS, INCLUDING, WITHOUT LIMITATION, JAMS, LLC ADMINISTRATION FEES AND THE ARBITRATOR'S FEES. THE PREVAILING PARTY SHALL ALSO BE


ENTITLED TO RECOVER THE REASONABLE ATTORNEYS' FEES AND COSTS IT INCURS IN CONNECTION WITH THE CONFIRMATION OF THE AWARD AND ANY PROCEEDINGS REQUIRED TO ENFORCE A JUDGMENT BASED ON THE AWARD.


BY EXECUTING THIS DEED OF TRUST, TRUSTOR, TO THE FULLEST EXTENT NOW OF HEREAFTER PERMITTED BY APPLICABLE LAW, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY UNDER THE UNITED STATES CONSTITUTION, THE CONSTITUTION OF THE STATE OF NEVADA AND ALL APPLICABLE STATUTES, IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS DEED OF TRUST, THE NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF TRUSTOR OR BENEFICIARY INCLUDING WITHOUT LIMITATION ANY TORT ACTION. SUCH WAIVER SHALL EXTEND TO ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE ULTIMATELY ARBITRATED PURSUANT TO THIS PROVISION OR DECIDED THROUGH JUDICIAL PROCEEDINGS. TRUSTOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS DEED OF TRUST AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. TRUSTOR FURTHER ACKNOWLEDGES THAT (i) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A MATERIAL INDUCEMENT FOR BENEFICIARY TO MAKE THE LOAN, ENTER INTO THIS DEED OF TRUST AND EACH OF THE OTHER LOAN DOCUMENTS, AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN. TRUSTOR HEREBY AGREES THAT THIS AGREEMENT CONSTITUTES A WRITTEN CONSENT, TO THE EXTENT NOW OR HEREAFTER PERMITTED BY APPLICABLE LAW, TO WAIVER OF TRIAL BY JURY. TRUSTOR DOES HEREBY CONSTITUTE AND APPOINT BENEFICIARY ITS TRUE AND LAWFUL ATTORNEY-IN-FACT, WHICH APPOINTMENT IS COUPLED WITH AN INTEREST, AND TRUSTOR DOES HEREBY AUTHORIZE AND EMPOWER BENEFICIARY, IN THE NAME, PLACE AND STEAD OF TRUSTOR, TO FILE THIS AGREEMENT WITH THE CLERK OR JUDGE OF ANY COURT OF COMPETENT JURISDICTION AS A STATUTORY WRITTEN CONSENT TO WAIVER OF TRIAL BY JURY.

TRUSTOR'S INITIALS: 

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

"TRUSTOR"

By:  Dated: 5-21, 2008
Jean Merkelbach, an individual

By:  Dated: 5-21, 2008

Chad Smittkamp, an individual

**SIGNATURE BLOCK CONTINUES ON
FOLLOWING PAGE**

**Elk Point Development, LLC, a Nevada Limited Liability
Company**

**By: Distinctive Homes International, LLC
Its: Manager**

By: *Jean Merkelbach*
Jean Merkelbach, its manager
Dated: 5-21, 2008

By: *Chad Smittkamp*
Chad Smittkamp, its manager
Dated: 5-21, 2008

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

STATE OF NEVADA)
) ss.
COUNTY OF Douglas)

On 5/21, 2008, before me, Sharon Goodwin, personally appeared Jean Merkelbach, member, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

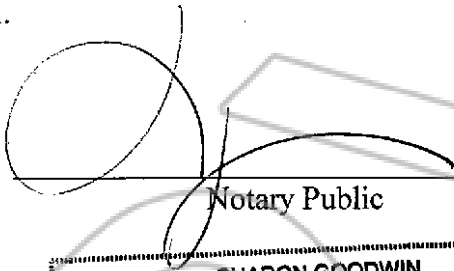
WITNESS my hand and official seal.

STATE OF NEVADA)
) ss.
COUNTY OF Douglas)



On 5/21, 2008, before me, Sharon Goodwin, personally appeared Chad Smithers, Member, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Notary Public



COPIES

EXHIBIT "A"

PARCEL I:

A parcel of land located within a portion of Section 15, Township 13 North, Range 18 East, M.D.B.&M., more particularly described as follows:

Commencing at the Southeast corner of said Section 15; thence along the Section line common to Sections 15 and 22 North 89°54'09" West, 1, 513.39 feet to a point on the Northeasterly right-of-way of U.S. Highway 50 as described in the conveyance to the State of Nevada recorded on July 18, 1933 in the office of the Recorder of Douglas County, Nevada in Book T of Deeds, Page 436; thence along said Northeasterly right-of-way North 47°36'00" West, 674.72 feet to the Southwest corner of a parcel of land shown as NEVADA ALLIED INDUSTRIES on the Record of Survey for NEVADA ALLIED INDUSTRIES recorded September 25, 1980 in the office of the Recorder of Douglas County, Nevada in Book 980, Page 1969, as Document No. 48927, a round ¾" iron pipe and plug RLS 3519; the point of beginning thence continuing along said Northeasterly right-of-way North 47°36'00" West 152.81 feet; thence North 43°32'23" East 70.01 feet, thence South 47°36'25" West, 26.67 feet; thence North 42°24'00" East, 63.25 feet; thence South 47°36'52" East, 31.73 feet; thence North 42°19'21" East, 55.58 feet; thence South 47°36'00" East, 171.43 feet to a point on the Westerly right-of-way of Elks Point Road; thence along said Westerly right-of-way South 42°24'00" West, 163.84 feet; thence along the arc of a curve to the right having a delta angle of 90°00'0", radius of 25.00 feet and arc curve length of 39.27 feet to the point of beginning.

PARCEL II:

Those certain Reciprocal Easements as described in Declaration of Reciprocal Easement dated December 18, 1998, recorded December 21, 1998, in Book 1298, Page 5054, as Document No. 457043, of Official Records of Douglas County, State of Nevada.

NOTE: The above metes and bounds description appeared previously in that certain instrument recorded in the office of the County Recorder of Douglas County, Nevada on December 2, 2003, as Document No. 598470 of Official Records.