

DOC # 789916  
09/22/2011 01:19PM Deputy: PK  
OFFICIAL RECORD

Requested By:  
First American Title Howard  
Douglas County - NV  
Karen Ellison - Recorder  
Page: 1 of 13 Fee: \$26.00  
BK-911 PG-3871 RPTT: 169.65



APN: 1318-15-802-010

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO  
AND MAIL TAX STATEMENTS TO:

ROIC ZEPHYR COVE, LLC  
c/o Retail Opportunity Investments Corp.  
3 Manhattanville Road, 2nd Floor  
Purchase, New York 10577  
Attention: Chief Financial Officer

The undersigned hereby affirms that this document submitted for recording does not contain the personal information of any person or persons per N.R.S. 239B.030.  
*Barbara Greiner as Agent of Declarant*  
Signature of Declarant or Agent

DEED IN LIEU OF FORECLOSURE

FOR VALUABLE CONSIDERATION, as set forth below, receipt of which is hereby acknowledged, ZEPHYR COVE INVESTORS, LLC, a California limited liability company ("Grantor"), does hereby GRANT, BARGAIN, and SELL to ROIC ZEPHYR COVE, LLC, a Delaware limited liability company ("Grantee"), its successors and assigns forever, all that certain real property (the "Property") situated in the County of Douglas, State of Nevada, described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

TOGETHER WITH all tenements, hereditaments, and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Grantor hereby acknowledges that it is Grantor's intention to convey by this Deed not only all of Grantor's present right, title and interest, but also any and all right, title and interest after acquired by Grantor or its successors or assigns in the Property.

The consideration for this Deed includes the release of the Grantor from personal liability, pursuant to the terms and subject to the conditions of that certain Deed in Lieu of Foreclosure Agreement dated September 12, 2011 (the "**Agreement**") among Grantor, Grantee



and certain other parties with respect to those debts, obligations, costs, and charges (herein collectively "**Indebtedness**") secured by the by that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of January 9, 2006 executed by Borrower for the benefit of Goldman Sachs Commercial Mortgage Capital, L.P., a Delaware limited partnership ("**Original Lender**"), which was recorded in the official records of Douglas County, Nevada on January 10, 2006 as Document No. 0665256 (the "**Deed of Trust**"), together with additional consideration as set forth in the Agreement. The Deed of Trust secures the Indebtedness, including, without limitation, the obligations of Borrower under that certain Deed of Trust Note dated January 9, 2006 (the "**Note**") in the original principal amount of Twenty Six Million Dollars (\$26,000,000.00) given by Borrower to Original Lender. Borrower is the owner of the Property and the current maker and obligor under the Note. Grantee is the successor in interest to Original Lender and the current holder of the Note.

Grantor hereby confirms that the consideration set forth above for the execution and delivery of this Deed represents fair consideration for the conveyance of the Property accomplished hereby. Grantor hereby further confirms that this Deed is executed voluntarily by Grantor and not as a result of duress or threats of any kind and, furthermore, that it is executed and delivered in good faith and is not given or intended to hinder, delay or defraud any creditor or to contravene the bankruptcy laws of the United States or any other applicable federal or state laws.

Upon execution and delivery of this Deed, Grantor shall have no right, title, or interest in or to the Property whatsoever. Grantor declares that this conveyance is freely and fairly made. This Deed is an absolute conveyance of the title to the Property in effect as well as in form and is not intended as a mortgage, as a conveyance in trust, or as a hypothecation of any kind or character and Grantor hereby confirms that this Deed is not given as security for the payment or repayment of money or indebtedness, or as security of any kind or nature, and there is no agreement or understanding, oral or written, between Grantor and Grantee or any other person relative to a reconveyance of the Property to Grantor, or to the sale or conveyance to anyone else for the benefit of Grantor, or to any division of any proceeds realized from the Property by sale or otherwise.

Grantor acknowledges that it has consulted legal counsel of its choice to review the terms, conditions and legal effect of this Deed and to evaluate the advisability and propriety thereof.

Grantor declares that, except for this Deed, that certain Bill of Sale and Assignment of even date herewith executed by Grantor for the benefit of Grantee (the "**Bill of Sale**"), the Agreement (to the extent that such Agreement states that it survives this conveyance), and the other documents and instruments executed pursuant to the Agreement, and except for the Deed of Trust, and the other Loan Documents referred to in the Agreement, there are no agreements, oral or written, between Grantor and Grantee with respect to the Real Property.

[End of Text; Signature on Next Page]



IN WITNESS WHEREOF, Grantor has executed this Deed in Lieu of Foreclosure as of September 21, 2011.

ZEPHYR COVE INVESTORS, LLC, a California limited liability company

By: Zephyr Cove Manager, LLC, a California limited liability company, Its Manager

By:   
Thomas A. Cologna, Member

By:   
Peter Hollingshead, Member

*COOPER*



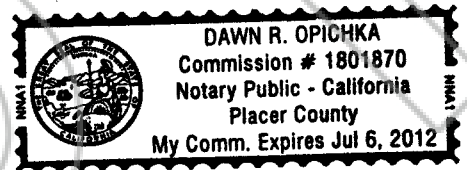
STATE OF California }  
  } SS.  
COUNTY OF Placer }

On September 19, 2011, before me, Dawn R. Opichka, Notary Public, personally appeared Thomas A. Cologna, who proved to me on the basis of satisfactory evidence to be the person(s) 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(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Dawn R. Opichka* (Seal)



*Dawn R Opichka*  
*EXP 7-6-2012*

STATE OF California }  
  } SS.  
COUNTY OF Placer }

On September 19, 2011, before me, Dawn R. Opichka, Notary Public, personally appeared Peter Hollingshead, who proved to me on the basis of satisfactory evidence to be the person(s) 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(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Dawn R. Opichka* (Seal)



*Dawn R Opichka*  
*EXP 7-6-2012*



**EXHIBIT A**

**DESCRIPTION OF THE LAND**

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

**Parcel 1:**

A parcel of land located within a portion of Section 15, Township 13 North, Range 18 East, Mount Diablo Meridian, 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, 1513.39 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 July 18, 1933 in the Office of Recorder, Douglas County, Nevada in Book T of Deed, at 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 Recorder, Douglas County, Nevada, in Book 980, at Page 1969, as Document No. 48927, a found 3/4" iron pipe and plug RLS 3519;  
 thence continuing along said Northeasterly right-of-way North 47°36'00" West, 152.81 feet to THE POINT OF BEGINNING;  
 thence along said Northeasterly right-of-way North 47°36'00" West, 437.47 feet to the Southeasterly corner of Parcel #1 as shown on said Record of Survey;  
 thence North 84°15'35" East, 25.88 feet;  
 thence North 42°24'00" East, 50.32 feet;  
 thence North 26°07'31" West 18.56 feet;  
 thence North 42°24'00" East, 13.61 feet;  
 thence North 47°36'00" West, 120.00 feet;  
 thence South 42°24'00" West, 71.06 feet;  
 thence non-tangent to the preceding course along the arc of a curve to the left having a radius of 29.50 feet, central angle of 46°39'32", an arc length of 24.02 feet, a chord bearing and distance of South 24°01'56" East, 23.37 feet;  
 thence South 47°21'42" East, 68.90 feet;  
 thence South 36°36'19" East, 20.91 feet;  
 thence South 17°25'22" East, 10.60 feet to a point on the Northeasterly right-of-way of U.S. Highway 50;  
 thence along said Northeasterly right-of-way North 47°36'00" West, 175.55 feet to the Southeasterly corner of Shell Oil Company, A.P.N. 05-290-01, as recorded in the Office of Recorder, Douglas County, Nevada in Book 1094, at Page 559;  
 thence along the boundary of said Shell Oil Company the following five courses:  
 thence North 42°24'00" East, 88.00 feet;  
 thence along the arc of a curve to the left having a radius of 82.50 feet, central angle of



46°00'00", and an arc length of 66.24 feet;  
 thence North 03°36'00" West, 65.41 feet;  
 thence South 80°30'10" West, 117.91 feet;  
 thence South 42°24'00" West, 100.00 feet to a point on said Northeasterly right-of-way of U.S. Highway 50;  
 thence along said Northeasterly right-of-way North 47°36'00" West, 14.45 feet;  
 thence North 42°24'00" East, 545.28 feet;  
 thence South 52°35'03" East, 40.63 feet;  
 thence North 68°56'23" East 164.88 feet;  
 thence North 04°43'13" West, 17.70 feet;  
 thence South 59°30'37" East, 128.00 feet;  
 thence South 76°36'23" West, 67.98 feet;  
 thence South 09°08'39" East 200.78 feet;  
 thence South 09°10'30" East, 122.01 feet;  
 thence along the arc of a curve to the left having a radius of 34.12 feet, central angle of 89°43'38" and arc length of 53.43 feet;  
 thence North 81°05'52" East 64.33 feet;  
 thence South 12°39'37" East, 30.95 feet;  
 thence South 35°39'37" East, 348.46 feet to a point on the Westerly right-of-way of Elks Point Road;  
 thence along said Westerly right-of-way along the arc of a curve to the right having a radius of 320.00 feet, central angle of 33°22'12", arc length of 186.37 feet, chord bearing South 25°42'54" West, and chord length of 183.75 feet;  
 thence along said Westerly right-of-way South 42°24'00" West, 80.76 feet;  
 thence North 47°36'00" West, 171.43 feet;  
 thence South 42°19'21" West, 55.58 feet;  
 thence North 47°36'52" West, 31.73 feet;  
 thence South 42°24'00" West, 63.25 feet;  
 thence South 47°36'25" East, 26.67 feet;  
 thence South 43°32'23" West, 70.01 feet to THE POINT OF BEGINNING.

NOTE: The above metes and bounds legal description appeared previously in that certain document recorded May 21, 2003 in Book 503, Page 11230 as Instrument No. 577573 of Official Records, Douglas County, Nevada.

**Parcel 2:**

Those certain easements as described in a Reciprocal Easement Agreement recorded October 7, 1980, in Book 1080, at Page 455, as Document No 49341, of Official Records, of Douglas County, Nevada.

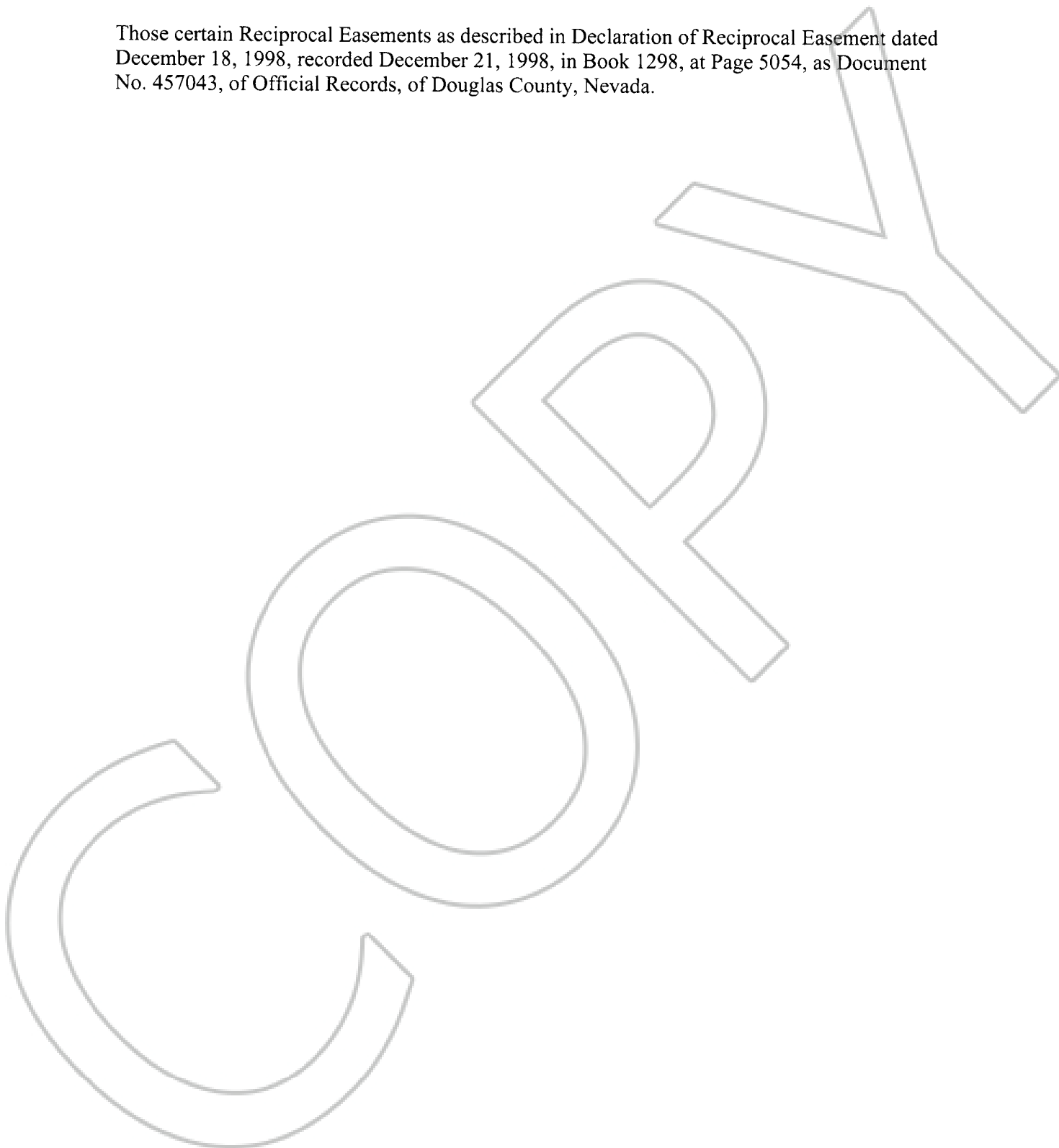
**Parcel 3:**

Those certain easements as described in Declaration of Reciprocal Easement contained in Deed recorded October 5, 1994, in Book 1094, at Page 559, as Document No. 347650, of Official Records, of Douglas County, Nevada.



**Parcel 4:**

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





**ESTOPPEL AFFIDAVIT**  
(Deed-in-Lieu of Foreclosure)

STATE OF CALIFORNIA )  
 ) SS.  
COUNTY OF Placer )

Thomas A. Cologna, an individual, and Peter Hollingshead, an individual (individually and collectively, "**Affiant**"), each for himself, deposes and says:

Affiants are the sole members of Zephyr Cove Manager, LLC, a California limited liability company, which is the manager of ZEPHYR COVE INVESTORS, LLC, a California limited liability company ("**Grantor**").

Grantor is the identical party who made, executed, and delivered that certain Deed in Lieu of Foreclosure (the "**Grant Deed**") to ROIC ZEPHYR COVE, LLC, a Delaware limited liability company, dated of even date herewith, conveying that certain real property more particularly described on Exhibit A attached hereto (collectively, the "**Real Property**").

That the Grant Deed is intended to be and is an absolute conveyance of the title to the Real Property to the grantee named therein, and was not and is not now intended as a mortgage, trust conveyance, or security of any kind; that it is/was the intention of Affiant, as sole members of the manager of Grantor, as well as the intention of Grantor by the Grant Deed to convey, and by the Grant Deed, Grantor did convey to the grantee therein, all of Grantor's rights, title and interest absolutely in and to the Real Property; that possession of the Real Property has been surrendered to the grantee;

That in the execution and delivery of the Grant Deed, Grantor was not acting under any misapprehension as to the effect thereof, and acted freely and voluntarily and was not acting under coercion or duress;

That possession of the Real Property has been surrendered to the grantee named in the Grant Deed;

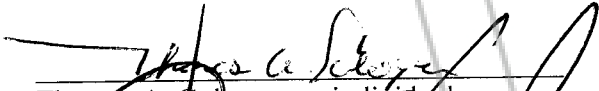
That the consideration to Grantor for the Grant Deed was and is the covenant not to sue and other consideration set forth in that certain Deed in Lieu of Foreclosure Agreement dated as of September 12, 2011 (the "**Agreement**"), executed by Grantor, Grantee, and the other parties named therein; that at the time of making the Grant Deed, Affiant believed and now believes that the aforesaid consideration therefor represents the fair value of the Real Property so deeded;

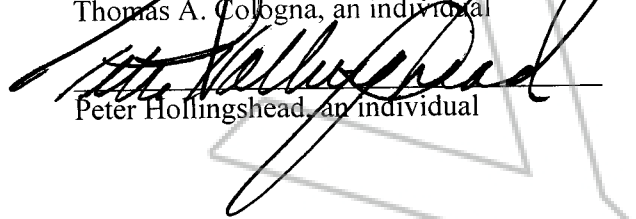
This affidavit is made for the protection and benefit of the grantee in the Grant Deed, and such grantee's successors and assigns, and all other parties hereafter dealing with or who may acquire an interest in the Real Property herein described, and particularly for the benefit of First American Title Insurance Company which is about to insure the title to the Real Property in reliance thereon, and any other title company which may hereafter insure the title to the Real Property; and





That Affiant will testify, declare, depose or certify under penalty of perjury before any competent tribunal, officer, or person, in any case now pending or which may hereafter be instituted, to the truth of the particular facts hereinabove set forth.

  
Thomas A. Cologna, an individual

  
Peter Hollingshead, an individual

September 21, 2011

**COOPER**





**EXHIBIT A**

**LEGAL DESCRIPTION OF THE LAND**

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Those certain easements as described in Declaration of Reciprocal Easement contained in Deed recorded October 5, 1994, in Book 1094, at Page 559, as Document No. 347650, of Official Records, of Douglas County, Nevada.



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