

DOC # 815113
12/24/2012 12:39PM Deputy: AR
OFFICIAL RECORD
Requested By:
Stewart Title of Nevada Re
Douglas County - NV
Karen Ellison - Recorder
Page: 1 of 8 Fee: \$21.00
BK-1212 PG-6568 RPTT: 0.00



The undersigned hereby affirms that this document submitted for recording does not contain any personal information.

Assessor Parcel No(s): 1220-04-101-013

RECORDATION REQUESTED BY:

Nevada State Bank, Construction Lending Department - North, One West Liberty Street, 2nd Floor, Reno, NV 89501

WHEN RECORDED MAIL TO:

Nevada State Bank, Commercial Loan Servicing Department 3800, P. O. Box 990, Las Vegas, NV 89125-0990

SEND TAX NOTICES TO:

1380 Gardnerville, LLC; 7754-A Balboa Blvd.; Van Nuys, CA 91406

FOR RECORDER'S USE ONLY

MODIFICATION OF DEED OF TRUST

THIS MODIFICATION OF DEED OF TRUST dated November 20, 2012, is made and executed between 1380 Gardnerville, LLC, a Nevada limited liability company, as to Parcels 1 and 2, whose address is 7754-A Balboa Blvd., Van Nuys, CA 91406 ("Grantor") and Nevada State Bank, whose address is Construction Lending Department - North, One West Liberty Street, 2nd Floor, Reno, NV 89501 ("Lender").

DEED OF TRUST. Lender and Grantor have entered into a Deed of Trust dated May 20, 2002 (the "Deed of Trust") which has been recorded in Douglas County, State of Nevada, as follows:

Recording date is June 4, 2002, Book #0543810, Book #0602.

REAL PROPERTY DESCRIPTION. The Deed of Trust covers the following described real property located in Douglas County, State of Nevada:

See attached Exhibit "A"

Prepared by:
Stewart Title
704 W. Nye Lane, Suite 101
Carson City, NV 89703

The Real Property or its address is commonly known as 1380 North Highway 395, Gardnerville, NV 89410. The Real Property tax identification number is 1220-04-101-013.

MODIFICATION. Lender and Grantor hereby modify the Deed of Trust as follows:



**MODIFICATION OF DEED OF TRUST
(Continued)**

Loan No: 5001

Page 2

Vesting and Grantor to read as follows:

1380 Gardnerville, LLC, a Nevada limited liability company, as to Parcels 1 and 2

Deed of Trust now secures Promissory Note dated December 20, 2012 in the amount of \$740,000.00 herein.

CONTINUING VALIDITY. Except as expressly modified above, the terms of the original Deed of Trust shall remain unchanged and in full force and effect. Consent by Lender to this Modification does not waive Lender's right to require strict performance of the Deed of Trust as changed above nor obligate Lender to make any future modifications. Nothing in this Modification shall constitute a satisfaction of the promissory note or other credit agreement secured by the Deed of Trust (the "Note"). It is the intention of Lender to retain as liable all parties to the Deed of Trust and all parties, makers and endorsers to the Note, including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, shall not be released by virtue of this Modification. If any person who signed the original Deed of Trust does not sign this Modification, then all persons signing below acknowledge that this Modification is given conditionally, based on the representation to Lender that the non-signing person consents to the changes and provisions of this Modification or otherwise will not be released by it. This waiver applies not only to any initial extension or modification, but also to all such subsequent actions.

DISPUTE RESOLUTION. This section contains a jury waiver, arbitration clause, and a class action waiver. READ IT CAREFULLY.

This dispute resolution provision shall supersede and replace any prior "Jury Waiver," "Judicial Reference," "Class Action Waiver," "Arbitration," "Dispute Resolution," or similar alternative dispute agreement or provision between or among the parties.

JURY TRIAL WAIVER; CLASS ACTION WAIVER. As permitted by applicable law, each party waives their respective rights to a trial before a jury in connection with any Dispute (as "Dispute" is hereinafter defined), and Disputes shall be resolved by a judge sitting without a jury. If a court determines that this provision is not enforceable for any reason and at any time prior to trial of the Dispute, but not later than 30 days after entry of the order determining this provision is unenforceable, any party shall be entitled to move the court for an order compelling arbitration and staying or dismissing such litigation pending arbitration ("Arbitration Order"). If permitted by applicable law, each party also waives the right to litigate in court or an arbitration proceeding any Dispute as a class action, either as a member of a class or as a representative, or to act as a private attorney general.

ARBITRATION. If a claim, dispute, or controversy arises between us with respect to this Agreement, related agreements, or any other agreement or business relationship between any of us whether or not related to the subject matter of this Agreement (all of the foregoing, a "Dispute"), and only if a jury trial waiver is not permitted by applicable law or ruling by a court, any of us may require that the Dispute be resolved by binding arbitration before a single arbitrator at the request of any party. By agreeing to arbitrate a Dispute, each party gives up any right that party may have to a jury trial, as well as other rights that party would have in court that are not available or are more limited in arbitration, such as the rights to discovery and to appeal.

Arbitration shall be commenced by filing a petition with, and in accordance with the applicable



**MODIFICATION OF DEED OF TRUST
(Continued)**

Loan No: 5001

Page 3

arbitration rules of, JAMS or National Arbitration Forum ("Administrator") as selected by the initiating party. If the parties agree, arbitration may be commenced by appointment of a licensed attorney who is selected by the parties and who agrees to conduct the arbitration without an Administrator. Disputes include matters (i) relating to a deposit account, application for or denial of credit, enforcement of any of the obligations we have to each other, compliance with applicable laws and/or regulations, performance or services provided under any agreement by any party, (ii) based on or arising from an alleged tort, or (iii) involving either of our employees, agents, affiliates, or assigns of a party. However, Disputes do not include the validity, enforceability, meaning, or scope of this arbitration provision and such matters may be determined only by a court. If a third party is a party to a Dispute, we each will consent to including the third party in the arbitration proceeding for resolving the Dispute with the third party. Venue for the arbitration proceeding shall be at a location determined by mutual agreement of the parties or, if no agreement, in the city and state where lender or bank is headquartered.

After entry of an Arbitration Order, the non-moving party shall commence arbitration. The moving party shall, at its discretion, also be entitled to commence arbitration but is under no obligation to do so, and the moving party shall not in any way be adversely prejudiced by electing not to commence arbitration. The arbitrator: (i) will hear and rule on appropriate dispositive motions for judgment on the pleadings, for failure to state a claim, or for full or partial summary judgment; (ii) will render a decision and any award applying applicable law; (iii) will give effect to any limitations period in determining any Dispute or defense; (iv) shall enforce the doctrines of compulsory counterclaim, res judicata, and collateral estoppel, if applicable; (v) with regard to motions and the arbitration hearing, shall apply rules of evidence governing civil cases; and (vi) will apply the law of the state specified in the agreement giving rise to the Dispute. Filing of a petition for arbitration shall not prevent any party from (i) seeking and obtaining from a court of competent jurisdiction (notwithstanding ongoing arbitration) provisional or ancillary remedies including but not limited to injunctive relief, property preservation orders, foreclosure, eviction, attachment, replevin, garnishment, and/or the appointment of a receiver, (ii) pursuing non-judicial foreclosure, or (iii) availing itself of any self-help remedies such as setoff and repossession. The exercise of such rights shall not constitute a waiver of the right to submit any Dispute to arbitration.

Judgment upon an arbitration award may be entered in any court having jurisdiction except that, if the arbitration award exceeds \$4,000,000, any party shall be entitled to a de novo appeal of the award before a panel of three arbitrators. To allow for such appeal, if the award (including Administrator, arbitrator, and attorney's fees and costs) exceeds \$4,000,000, the arbitrator will issue a written, reasoned decision supporting the award, including a statement of authority and its application to the Dispute. A request for de novo appeal must be filed with the arbitrator within 30 days following the date of the arbitration award; if such a request is not made within that time period, the arbitration decision shall become final and binding. On appeal, the arbitrators shall review the award de novo, meaning that they shall reach their own findings of fact and conclusions of law rather than deferring in any manner to the original arbitrator. Appeal of an arbitration award shall be pursuant to the rules of the Administrator or, if the Administrator has no such rules, then the JAMS arbitration appellate rules shall apply.

Arbitration under this provision concerns a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. sec. 1 et seq. This arbitration provision



**MODIFICATION OF DEED OF TRUST
(Continued)**

Loan No: 5001

Page 4

shall survive any termination, amendment, or expiration of this Agreement. If the terms of this provision vary from the Administrator's rules, this arbitration provision shall control.

RELIANCE. Each party (i) certifies that no one has represented to such party that the other party would not seek to enforce jury and class action waivers in the event of suit, and (ii) acknowledges that it and the other party have been induced to enter into this Agreement by, among other things, the mutual waivers, agreements, and certifications in this section.

WAIVER OF DEFENSES AND RELEASE OF CLAIMS. The undersigned hereby (i) represents that neither the undersigned nor any affiliate or principal of the undersigned has any defenses to or setoffs against any Indebtedness or other obligations owing by the undersigned, or by the undersigned's affiliates or principals, to Lender or Lender's affiliates (the "Obligations"), nor any claims against Lender or Lender's affiliates for any matter whatsoever, related or unrelated to the Obligations, and (ii) releases Lender and Lender's affiliates, officers, directors, employees and agents from all claims, causes of action, and costs, in law or equity, known or unknown, whether or not matured or contingent, existing as of the date hereof that the undersigned has or may have by reason of any matter of any conceivable kind or character whatsoever, related or unrelated to the Obligations, including the subject matter of this Agreement. The foregoing release does not apply, however, to claims for future performance of express contractual obligations that mature after the date hereof that are owing to the undersigned by Lender or Lender's affiliates. As used in this paragraph, the word "undersigned" does not include Lender or any individual signing on behalf of Lender. The undersigned acknowledges that Lender has been induced to enter into or continue the Obligations by, among other things, the waivers and releases in this paragraph.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MODIFICATION OF DEED OF TRUST AND GRANTOR AGREES TO ITS TERMS. THIS MODIFICATION OF DEED OF TRUST IS DATED NOVEMBER 20, 2012.

GRANTOR:

1380 GARDNERVILLE, LLC

By: _____

Jerry F. Rosenstock, Manager of 1380 Gardnerville,
LLC



**MODIFICATION OF DEED OF TRUST
(Continued)**

Loan No: 5001

Page 6

LENDER ACKNOWLEDGMENT

STATE OF _____)

) SS

COUNTY OF _____)

This instrument was acknowledged before me on _____ by _____
_____ of Nevada State Bank, as designated agent
of Nevada State Bank.

(Signature of notarial officer)

Notary Public in and for State of _____

(Seal, if any)



EXHIBIT "A"

LEGAL DESCRIPTION

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

PARCEL 1:

A Parcel of land, located in the NE 1/4 of the NW 1/4 of Section 4, Township 12 North, Range 20 East, M.D.B. & M., Town of Gardnerville, County of Douglas, Nevada, more particularly described as follows:

COMMENCING at the Northeast corner of Section 4, proceed South 89°02'06" West, a distance of 3,583.65 feet to the TRUE POINT OF BEGINNING, which is the Northwest corner of the parcel, and which is also the Northeast corner of the Hintze parcel, and lies on the Southerly right of way line of Nevada State Highway, U.S. 395, proceed thence South 9°02'48" East, a distance of 399.58 feet to the Southwest corner of the parcel; thence East 233.04 feet to the Southeast corner of the parcel; thence North 09°02'48" West, a distance of 338.00 feet to the Northeast corner of the parcel: thence Westerly along the Southerly right of way line of Nevada State Highway, U.S. 395, around a curve to the left having a radius of 610.50 feet a central angle of 23°38'56" and a length of 251.98 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM a parcel of land located in the Northeast 1/4 of the Northwest 1/4 of Section 4, Township 12 North, Range 20 East, M.D.B. & M., TOWN OF GARDNERVILLE, County of Douglas, State of Nevada, described as follows:

COMMENCING at the Northeast corner of said Section 4, proceed South 88°45'05" West, a distance of 3,470.00 feet to the TRUE POINT OF BEGINNING, which is the Northeast corner of the parcel and lies on the Southerly right of way line of Nevada State Highway, U.S. 395; proceed thence Westerly, along said Southerly right of way, around a curve to the left, having a radius of 610.50 feet, a central angle of 10°48'26", a semi-tangent of 57.75 feet, and a length of 115.15 feet to the Northwest corner of the parcel; thence South 9°02'48" East, a distance of 399.58 feet, to the Southwest corner of the parcel; thence East, a distance of 111.53 feet to the Southeast corner of the parcel; thence North 9°02'48" West, a distance of 384.12 feet to the POINT OF BEGINNING.

FURTHER EXCEPTING THEREFROM that portion of the Northeast 1/4 of the Northwest 1/4 of Section 4, Township 12 North, Range 20 East, M.D.B. & M., more particularly described as follows:

COMMENCING at the Northeast corner of said Section 4: thence South 84°56'30" West, 3,446.33 feet to the POINT OF BEGINNING; thence South 09°02'48" East, 154.00 feet; thence East, 121.51 feet; thence North 09°02'48" West, 171.00 feet; thence South 81°57'32" West, 120.02 feet to the POINT OF BEGINNING.

PARCEL 2:

A portion of the Northeast 1/4 of the Northwest 1/4 of Section 4, Township 12 North, Range 20 East, M.D.B. & M., TOWN OF GARDNERVILLE, Douglas County, Nevada, described as



follows:

COMMENCING at the Northeast corner of said Section 4; thence South $87^{\circ}55'27''$ West, 3,342.62 feet to the Southerly right of way line of Nevada State Highway, U.S. 395, also the POINT OF BEGINNING; thence South $09^{\circ}02'48''$ East 167.08 feet; thence North $81^{\circ}57'32''$ East, 2.00 feet; thence North $09^{\circ}02'48''$ West, 166.02 feet to Southerly right of way line of said U.S. 395; thence in a Westerly direction on a curve to the left, having a radius of 610.50 feet, a central angle of $00^{\circ}13'33''$ and a length of 2.28 feet, to the POINT OF BEGINNING.

APN: 1220-04-101-013

"IN COMPLIANCE WITH NEVADA REVISED STATUE 111.312, THE HEREIN ABOVE LEGAL DESCRIPTION WAS TAKEN FROM INSTRUMENT RECORDED JULY 31, 1998, BOOK 798, PAGE 7471, AS FILE NO. 445976, RECORDED IN THE OFFICIAL RECORDS OF DOUGLAS COUNTY, STATE OF NEVADA."

