

RECORDING REQUESTED BY
FIRST AMERICAN TITLE CO.
NATIONAL COMMERCIAL SERVICES

APN: 1318-03-210-005 and 1318-03-210-006
RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

GOLDMAN SACHS BANK USA
c/o Greenberg Traurig, LLP
445 Hamilton Avenue, 9th Floor
White Plains, New York 10601
Attention: Gregory P. Murphy, Esq.

DOC # 828210
08/01/2013 02:38PM Deputy: PK
OFFICIAL RECORD

Requested By:
First American NCS Santa Al
Douglas County - NV
Karen Ellison - Recorder
Page: 1 of 43 Fee: \$56.00
BK-813 PG-279 RPTT: 0.00



Space Above This Line For Recorder's Use

DEED OF TRUST, SECURITY AGREEMENT
AND FIXTURE FILING

from

ARDEN COMPANIES, LLC, as Trustee of the VMF Trust established November 11, 2009
(a/k/a VMF Trust, established November 11, 2009, by Arden Companies, LLC, its Trustee)
("Grantor")

to

FIRST AMERICAN TITLE INSURANCE COMPANY
("Trustee")

FOR THE BENEFIT OF

GOLDMAN SACHS BANK USA
a New York banking corporation
("Lender")

Maximum Principal Amount Secured: \$75,000,000, plus other sums described in Section 1

Dated: August 1, 2013

Premises: Town of: Zephyr Cove
County of Douglas
State of Nevada



DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING

THIS DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING (this "**Deed of Trust**"), made this 1st day of August, 2013, by **ARDEN COMPANIES, LLC as Trustee of the VMF Trust established November 11, 2009 (a/k/a VMF Trust, established November 11, 2009, by Arden Companies, LLC, its Trustee)** having and address at 2560 E. Chapman Avenue, Suite 173, Orange, California 92869 ("**Grantor**"), and **FIRST AMERICAN TITLE INSURANCE COMPANY**, as Trustee, having a business address at 2490 Paseo Verde Pkwy., Suite 100, Henderson, Nevada 89074 (the "**Trustee**") for the benefit of **GOLDMAN SACHS BANK USA**, 222 S. Main Street, Salt Lake City, Utah 84101 (the "**Lender**").

RECITALS

A. WHEREAS, this Deed of Trust is given to secure (i) a revolving loan (the "**Facility 2 Loan**") in the principal sum of THIRTY TWO MILLION AND 00/100 DOLLARS (\$32,000,000.00) or so much thereof as may be advanced pursuant to that certain Revolving Loans (Committed Loan) Loan Agreement dated as of the date hereof among Grantor and Riverbend Ranch Ventures, LLC ("**Riverbend**", together with Grantor, the "**Facility 2 Borrower**") and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Facility 2 Loan Agreement**") with respect to the Facility 2 Loan, and evidenced by that certain Note dated the date hereof made by Facility 2 Borrower to Lender in the original principal amount of up to \$32,000,000.00 (such Note, together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter referred to collectively as the "**Note**"), and (ii) a Guaranty (Cross) (the "**Cross Guaranty**") given by Grantor (among others) to Lender with respect to (x) a revolving loan (the "**Facility 1 Loan**") in the principal sum of THIRTY SIX MILLION AND 00/100 DOLLARS (\$36,000,000.00) or so much thereof as may be advanced pursuant to that certain Revolving Loans (Committed Loan) Loan Agreement dated as of the date hereof among Stradella Court, LLC ("**Stradella**"), 9259 Robin Drive, LLC ("**9259**"), 9230 Robin Drive, LLC ("**9230**") and Arden Companies, LLC ("**Arden**", together with Stradella, 9259 and 9230, the "**Facility 1 Borrower**") and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Facility 1 Loan Agreement**"), and (y) a revolving loan (the "**Facility 3 Loan**" and together with the Facility 1 Loan and the Facility 2 Loan, collectively, the "**Loan**") in the principal sum of SEVEN MILLION AND 00/100 DOLLARS (\$7,000,000.00) or so much thereof as may be advanced pursuant to that certain Revolving Loans (Committed Loan) Loan Agreement dated as of the date hereof between Mountain Valley Ranch Ventures, LLC (the "**Facility 3 Borrower**", together with the Facility 1 Borrower and the Facility 2 Borrower, the "**Borrower**") and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Facility 3 Loan Agreement**", and together with the Facility 1 Loan Agreement, and the Facility 2 Loan Agreement, collectively, the "**Loan Agreement**") (the Lender and any assignee or other lawful owner of the Note being hereinafter sometimes referred to as the "**Holder**"); and

B. WHEREAS, Grantor desires to secure the payment and the performance of the all unpaid principal of, and accrued and unpaid interest due on, the Note and the Cross Guaranty and all other obligations, interest, fees, charges and expenses of the Grantor (collectively, the "**Obligations**") to the Lender arising under or in connection with the Loan Documents (as



hereinafter defined), excluding, however, any obligations of Grantor under the Environmental Indemnity Agreement; and

C. WHEREAS, this Deed of Trust is given pursuant to the Loan Agreement, and payment, fulfillment, and performance of the Obligations are secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Deed of Trust (the Loan Agreement, the Note, this Deed of Trust, that certain Assignment of Leases and Rents of even date herewith made by Grantor in favor of Lender (the "Assignment of Leases") and all other documents evidencing or securing the Obligations or delivered in connection with the making of the Loan are hereinafter referred to collectively as the "Loan Documents").

GRANT

NOW, THEREFORE, FOR AND IN CONSIDERATION of the said indebtedness evidenced by the Note and all other sums payable under or otherwise referenced in this Deed of Trust, of the acceptance by the Trustee of the trust hereby created, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Grantor hereby irrevocably grants, bargains, sells, pledges, assigns, warrants, transfers and conveys to the Trustee, and its successor or successors in trust, and their assigns, with Power of Sale for the benefit of Lender as Lender in trust, in fee simple, all of that land described in Exhibit A (hereinafter sometimes referred to as the "Land");

TOGETHER WITH all additional lands, estates and development rights hereafter acquired by Grantor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Deed of Trust; and

TOGETHER WITH all of the Grantor's right, title and interest, if any (including any after-acquired title or reversion), in and to the land lying in the bed of any street or road, open or proposed, located wholly or partially within the boundary of the Land or adjacent thereto; and

TOGETHER WITH all leases, subleases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into (including, without limitation, any and all security interests, contractual liens and security deposits), whether before or after the filing by or against Grantor of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code") (individually, a "Lease", collectively, the "Leases") and all right, title and interest of Grantor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Grantor of any petition for relief under the



Bankruptcy Code (collectively, the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Obligations; and

TOGETHER WITH any and all rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging or in any way appertaining, as well as any after-acquired title, franchise, license, reversion and remainder; and

TOGETHER WITH every building, structure and improvement of every kind and description now or hereafter erected or placed on the Land, and all materials now owned or hereafter acquired by the Grantor and intended for construction, reconstruction, alteration and repair thereof, all of which materials shall be deemed to be included within the Property immediately on their delivery to the Land (all of which are hereinafter referred to collectively as the "Improvements"); and

TOGETHER WITH all easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Grantor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto; and

TOGETHER WITH all other, further or additional right, title, interest or estate at any time heretofore or hereafter acquired by the Grantor in or to the Land or the Improvements (all of which shall automatically be and become subject to the lien, operation and effect of this Deed of Trust upon their acquisition by the Grantor); and

TOGETHER WITH all equipment now owned, or the ownership of which is hereafter acquired, by Grantor which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether



owned individually or jointly with others, and, if owned jointly, to the extent of Grantor's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**"); and

TOGETHER WITH all proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property; and

TOGETHER WITH all refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction; and

TOGETHER WITH all agreements, contracts, certificates, instruments, franchise agreements, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof, and all licenses, permits, approvals and consents which are required for the sale and service of alcoholic beverages on the Property heretofore or hereafter obtained from applicable state and local authorities, and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Grantor therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Grantor thereunder; and

TOGETHER WITH all accounts, accounts receivable, escrows (including, without limitation, all escrows, deposits, reserves and impounds established pursuant to this Deed of Trust), documents, instruments, chattel paper, claims, reserves (including deposits) representations, warranties and general intangibles, as one or more of the foregoing terms may be defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "**Uniform Commercial Code**"), and all contract rights, franchises, books, records, plans, specifications, permits, licenses (to extent assignable), approvals, actions, choses, claims, suits, proofs of claims in bankruptcy and causes of action which now or hereafter relate to, are derived from or are used in connection with the Property, all receivables, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Grantor or any operator or manager of the commercial space located in the Improvements or acquired from others, license, lease, sublease and concession fees and rentals, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance, or arising from the sale of any Property or the rendition of services in the ordinary course of business or otherwise (whether or not earned by performance), together with any Property returned by or reclaimed from customers wherever such Property is located, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business activities thereon (collectively called the "**Intangibles**"); and



TOGETHER WITH all of the Grantor's right, title and interest in and to any and all awards heretofore or hereafter made by any federal, state or local governmental or quasi-governmental authority, or by any other authority or corporation, exercising the power of condemnation or eminent domain with respect to any or all of the Property (including but not limited to any award for any change of grade or widening of any street or road affecting the Land), all of which awards, rights thereto and shares therein are hereby assigned to the Trustee, who are hereby authorized to collect and receive the proceeds thereof and to give proper receipts and acquittances therefor and, subject to the provisions of the Section entitled "Condemnation", to apply the net proceeds thereof, after deducting expenses of collection, as a credit upon any portion, as selected by the Trustee of the indebtedness secured hereby (the Land, all of the buildings and other Improvements, Fixtures, Intangibles, tenements, hereditaments, appurtenances, "general intangibles" as defined in the Uniform Commercial Code and other property interests hereinabove mentioned being hereinafter referred to collectively as the "Property"); and

TOGETHER WITH all tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property; and

TOGETHER WITH the right, in the name and on behalf of Grantor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property; and

TOGETHER WITH any and all other rights of Grantor in and to the items set forth above; and

TOGETHER WITH all proceeds, products, offspring, rents and profits from any of the foregoing, including those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

TO HAVE AND TO HOLD the Property unto the Trustee, their respective survivors or other successor or successors in trust and their assigns, in fee simple, subject to and only to the operation and effect of those instruments and matters listed in a schedule attached hereto as Exhibit B.

PROVIDED, HOWEVER, upon written request of Lender stating that all Obligations secured hereby have been paid, that Grantor has well and truly abided by and complied with each and every covenant and condition set forth in the Loan Documents, and upon the surrendering of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Grantor of Trustee's fees, Trustee shall reconvey to Grantor, or to the Person or Persons legally entitled thereto, without warranty, any portion of the estate hereby granted and then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the Person or Persons legally entitled thereto";



BUT IN TRUST, NEVERTHELESS, for and upon the uses, intents and purposes hereinafter mentioned, as security for the Holder's benefit and for enforcement of the Obligations; and

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, THE GRANTOR HEREBY COVENANTS, AGREES AND WARRANTS AS FOLLOWS:

1. OBLIGATIONS.

1.1 **Obligations Secured.** Grantor makes this Deed of Trust for the Obligations.

1.2 **Incorporation.** Except as otherwise set forth herein, all terms of the Obligations and the Loan Documents are incorporated herein by this reference. All Persons who may have acquired or acquire an interest in the Property shall be deemed to have notice of the terms of the Obligations and to have notice, if provided therein, that: (a) the Note evidences a one-time disbursement in the total amount of the Obligations; and (b) the rate of interest on one or more Obligations may vary from time to time.

1.3 **Payment of Obligations.** The Grantor shall pay promptly any and all Obligations at the date and place and in the manner provided in the Loan Documents.

1.4 **Payment of additional sums.** The Grantor shall repay to the Trustee or the Holder, as the case may be, at the times and in the manner provided herein, any additional sums advanced or expended by the Trustee or the Holder for the Grantor's account pursuant to this Deed of Trust, together with interest thereon as set forth herein.

1.5 **Performance of other Obligations.** The Grantor shall comply with and perform each covenant and condition of the Grantor set forth in the Note, this Deed of Trust or any other document or agreement pertaining to the Property or referred to in this Deed of Trust.

2. INSURANCE.

2.1 **Insurance.** Grantor, at its sole cost and expense, for the mutual benefit of Grantor and Lender, shall obtain and maintain, or cause to be obtained and maintained, during the entire term of this Deed of Trust (the "**Term**") the following policies of insurance.

2.1.1 Grantor will keep the Property insured against loss or damage by "Special" or "Broad Form" (formerly known as all risk) perils, including, but not limited to, fire, flood and such other hazards, risks and matters, including without limitation, Loss of Use, Personal Liability at no less than \$1,000,000, and Boiler & Machinery/Equipment breakdown (if applicable), as Lender may from time to time require in amounts required by Lender, and shall pay the premiums for such insurance (the "**Insurance Premiums**") as the same become due and payable and shall furnish to Lender evidence of the renewal of each of the Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Lender. The deductible shall not exceed \$50,000 without Lender's prior written



approval. All policies of insurance (the "**Policies**") shall be issued by insurers acceptable to Lender and shall contain the standard New York Mortgagee non-contribution clause naming Lender as the person to which all payments made by such insurance company shall be paid. Lender shall be listed as "Mortgagee" under such policies.

2.1.2 Flood insurance will be required if any portion of the Improvements is situated in a federally designated "special flood hazard area" (for example, Zones A and V) as designated by the Federal Emergency Management Agency, or any successor thereto, as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, The Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as each may be amended (collectively the "**Flood Insurance Acts**"). The minimum amount of flood insurance required is the lesser of one hundred percent (100%) of the Full Replacement Cost (plus Contents coverage, if applicable) for those portions of the Improvements located in such special flood hazard area, the maximum limit of coverage available for the Improvements under the Flood Insurance Acts, or the maximum amount permitted by applicable law. Deductibles shall not exceed \$25,000 without Lender's prior written consent. Grantor will assign and deliver the Policies to Lender.

2.1.3 Sinkhole and Mine Subsidence insurance shall be obtained and maintained if in the opinion of a professional engineer with experience in this professional area there is a foreseeable risk of loss due to this hazard. If any of such coverage is determined by such engineer to be necessary, deductibles shall not exceed 5% of the values at risk without Lender's prior written approval.

2.1.4 Ordinance or Law Coverage is required if any of the improvements are or become "legal non-conforming" during the life of the loan (based on zoning reports) and should include; (a) Loss to the undamaged portion of the building [equals building replacement costs], (b) The cost of demolishing the undamaged portion of the building (c) The increased cost of reconstruction or repairs to comply with current ordinances or laws. (b) and (c) each at no less than 10% of the building replacement cost value.

2.1.5 Not later than fifteen (15) days prior to the expiration date of each of the Policies, Grantor will deliver evidence satisfactory to Lender of the renewal of each of the Policies. Grantor shall not take out any separate or additional insurance which is contributing in the event of loss unless it is properly endorsed and otherwise satisfactory to Lender in all respects.

2.1.6 All policies must contain a cancellation clause with thirty (30) days written notice to Lender which will prohibit the cancellation of or material changes to the policy for any reason except for non-payment of premium. The cancellation provision must provide for at least a 10-day written notification for non-payment of premium.

The insurer shall be an insurance company duly qualified as such under the laws of the states in which the Property is located and duly authorized and licensed in such states to transact the



applicable insurance business and to write the insurance provided. The insurer shall be rated "A:IX" or better by A.M. Best or "A" or better by Standard & Poor's as to claims paying ability.

2.2 Intentionally Omitted.

2.3 Notice of Transfer or Loss. In the event of a change in ownership or occupancy of the Property, the Grantor shall give immediate notice thereof by mail to all insurers thereof (provided, that nothing herein shall be construed to permit such change in ownership if otherwise prohibited under the provisions hereof) and, in the event of loss, the Grantor will give immediate notice thereof to the Holder and the Holder may, but is not obligated to, make proof of loss if not made promptly by the Grantor.

2.4 Holder's Rights. Subject to the terms of Section 11 hereof, the Grantor hereby authorizes the Holder, at its sole option, to collect, adjust and compromise any loss claimed under any such insurance and, after deducting the costs of such collection, adjustment and compromise, at its option, (a) to the extent that an Event of Default has occurred, to apply the proceeds as a credit upon the Obligations secured hereby, or to the extent that an Event of Default has not occurred to the restoration of the Property (in which event the Holder shall not be obligated to see to the proper application thereof nor shall the amount so released or used be deemed a payment on any indebtedness secured hereby), or (b) to deliver the same to the owner of the Property.

2.5 Foreclosure or Extinguishment of Obligations. If any or all of the Property is sold in a foreclosure proceeding brought under this Deed of Trust, or if the title to any or all of the Property is transferred in extinguishment of the Obligations secured hereby, all of the Grantor's right, title and interest in and to any such insurance policy then in force shall inure to the benefit of, and pass to, the purchaser or grantee of the Property.

3. PAYMENT OF ASSESSMENTS, LIENS AND OTHER CHARGES.

3.1 Payment by Grantor. Except as set forth in Section 3.3 hereof, the Grantor shall (a) keep the Property free from liens of every kind (other than Permitted Encumbrances), and (b) pay, at least ten (10) days before delinquency and before any interest or penalty for nonpayment attaches thereto, all taxes, bonds, assessments, levies, water rates, sewer rentals and other governmental, quasi-governmental, public and private dues, fines, impositions (including but not limited to any benefit charge assessed for water and sewer facilities) and other charges heretofore or hereafter levied or assessed against any or all of the Property (including but not limited to all taxes to which the Grantor and any company, corporation, joint stock association or limited partnership in which the title to any or all of the Property may hereafter vest may now or hereafter be liable under applicable law, and which under such law may become a lien against the Property or be first distributable, allowable or payable before any amount evidenced by the Note, out of the proceeds of any judicial sale of the Property) (all of which are hereinafter referred to collectively as "**Assessments**"), excluding, however, the Holder's income and franchise taxes. If any ad valorem or excise tax or other public charge (other than any tax in the nature of an income tax) is imposed or levied on the Note, this Deed of Trust or any other



instrument held by the Holder as additional security for the Note, or on the Holder's interest in or acquisition of any of the foregoing, the Grantor shall promptly upon demand pay such tax or charge, including any interest and penalties incurred in connection therewith. At least ten (10) days before delinquency, the Grantor shall submit to the Holder evidence satisfactory to the Holder of the payment of each Assessment.

3.2 Payment by Holder. From the occurrence and during the continuance of an Event of Default, the Holder shall be entitled, in connection with any payment hereby authorized in the Grantor's place and stead relating to (a) any Assessment, sale, forfeiture, tax lien, or title or claim thereof made against the Property, to make such payment according to any bill, statement or estimate procured from the appropriate governmental or quasi-governmental authority without inquiring as to its accuracy or as to the validity of such Assessment, sale, forfeiture, tax lien, or title or claim thereof; or (b) any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim or charge, to be the sole judge of its legality or validity; or (c) the expense of any repair or replacement of any of the Property, to be the sole judge of its state of repair and of the necessity for incurring the expense of any such repair or replacement; or (d) any other purpose hereby authorized, but not listed in this subsection, to make such payment whenever in the Holder's judgment it is necessary or desirable to protect the full security intended to be created by this Deed of Trust.

3.3 Contested Matters. The Grantor shall have the right to contest in good faith the amount or validity of any Assessment by appropriate judicial proceedings conducted promptly and at the Grantor's sole expense, but such proceedings shall not relieve the Grantor of its covenant hereunder to pay such Assessments at the time and in the manner herein provided, or to extend the time for such payment, unless such judicial proceedings operate to prevent or suspend the collection of the Assessments so contested and the sale of the Property for or on account of their non-payment, but only upon posting, and concurrently supplying to Lender a certified copy of a statutory bond or other security sufficient under applicable law fully to protect any and all of the Property encumbered by such claim of Assessment and otherwise sufficient in Lender's sole opinion to protect Lender against any judgment in favor of the lien claimant or assessor, as applicable.

3.4 Change In Law. In the event of (a) the passage, after the date hereof, of any applicable law changing the laws for the taxation of mortgages or deeds of trust or indebtedness secured thereby for federal, state or local purposes, or the manner of collection of any such Assessments, so as to affect this Deed of Trust, or (b) the passage, after the date hereof, of any applicable law, or the determination by any governmental or quasi-governmental entity requiring internal revenue or other documentary stamps to be purchased for or placed on this Deed of Trust or the Note, or (c) the rendition by any court of competent jurisdiction of a decision that any undertaking by the Grantor under the provisions of this Section is legally inoperative, then, in any such event, the Obligations secured hereby and the interest accrued thereon shall, at the Holder's option and upon one hundred twenty (120) days prior written notice to the Grantor, become immediately due and payable (but there shall accrue no premium or penalty for prepayment which, but for this provision, would accrue under the provisions of this Deed of Trust, the Note or any other document relating to the loan secured hereby, because of



any payment made pursuant to such notice); provided, that such option and right shall be unavailing and the Note and this Deed of Trust shall remain in effect as though such law had not been enacted or promulgated if, notwithstanding such law, the Grantor lawfully pays when due and payable all such Assessments or the amount of all internal revenue or other documentary stamps, including all interest and penalties accrued thereon, to or for the Holder. The provisions of this Section are not intended in any way to affect the Holder with respect to any Obligations which may now or hereafter be payable on demand.

3.5 Tax and Insurance Impound. Upon the occurrence and during the continuance of an Event of Default, Grantor shall pay to Lender on demand for deposit into the Tax and Insurance Impound (defined below) an amount equal to the monthly amount that Lender estimates it must collect each month in order to have sufficient funds to pay the next payment of (i) the real property taxes ("**Taxes**") Lender reasonably estimates will be due to the applicable taxing authorities as of the date such Taxes are first due and payable without penalty or interest after the date hereof, and (ii) one twelfth of the Insurance Premiums that Lender reasonably estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof multiplied by the number of months elapsed from and including the first month in which the currently effective Policies became effective to and including the first month occurring after the month in which this Deed of Trust becomes effective. Thereafter, Grantor shall pay to Lender on the sixth (6th) day of each calendar month an amount equal to the monthly amount that Lender estimates it must collect each month in order to have sufficient funds to pay the next payment of (a) Taxes that Lender reasonably estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes at least thirty (30) days prior to the earlier of the date on which the Taxes would become delinquent if not paid or the date on which penalties and/or interest would commence to accrue on the Taxes due to non-payment and (b) one twelfth of the Insurance Premiums that Lender reasonably estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (the fund into which said amounts provided in clauses (a) and (b) above shall be deposited is called the "**Tax and Insurance Impound**"). The monthly payment into the Tax and Insurance Impound and the monthly payment payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Grantor to Lender. Grantor agrees to notify Lender immediately of any changes to the amounts, schedules and instructions for payment of any Taxes and Insurance Premiums of which it has or obtains knowledge and authorizes Lender or its agent to obtain the bills for Taxes and Other Charges directly from the appropriate taxing authority. Grantor hereby pledges to Lender and grants to Lender a security interest in any and all monies now or hereafter deposited in the Tax and Insurance Impound as additional security for the payment of the Obligations. Provided that there are sufficient amounts on deposit in the Tax and Insurance Impound and no Event of Default exists, Lender will apply the Tax and Insurance Impound to payments of Taxes and Insurance Premiums required to be made by Grantor pursuant hereto. In making any payment relating to the Tax and Insurance Impound, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums),



without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amounts on deposit in the Tax and Insurance Impound shall exceed the amounts due for Taxes and Insurance Premiums, Lender may at its election either return any excess to Grantor or credit such excess against future payments to be made to the Tax and Insurance Impound. In allocating such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Property. If at any time Lender determines that the amounts on deposit in the Tax and Insurance Impound are not or will not be sufficient to pay the Taxes and Insurance Premiums, Lender shall notify Grantor of such determination and Grantor shall increase its monthly payments to Lender by the amount that Lender reasonably estimates is sufficient to make up the deficiency at least thirty (30) days prior to (x) the earlier of the date on which the Taxes would become delinquent if not paid or the date on which penalties and/or interest would commence to accrue on the Taxes due to non-payment of the Taxes and/or (y) the date any of the Policies would expire, as the case may be. Whenever an Event of Default exists, Lender may apply any sums then present in the Tax and Insurance Impound to the payment of the Obligations in any order in its sole discretion. Until expended or applied as above provided, all amounts in the Tax and Insurance Impound shall constitute additional security for the Obligations. The Tax and Insurance Impound shall not constitute a trust fund and may be commingled with other monies held by Lender. Unless otherwise required by applicable law, Grantor shall not receive interest or other earnings on the Tax and Insurance Impound, which shall be held in Lender's name at a financial institution selected by Lender in its sole discretion. Following the delivery and recording of a satisfaction, release, reconveyance or discharge of this Deed of Trust duly executed by Lender, any funds remaining on deposit in the Tax and Insurance Impound will be disbursed to Grantor. If Lender so elects at any time, Grantor shall provide, at Grantor's reasonable expense, a tax service contract for the Term issued by a tax reporting agency acceptable to Lender. If Lender does not so elect, Grantor shall reimburse Lender for the reasonable cost of making annual tax searches throughout the Term.

4. **FURTHER ASSURANCES.** The Grantor shall, at its expense, promptly execute, acknowledge, deliver and cause to be recorded or filed all such further instruments, deeds, conveyances, supplemental deeds of trust, assignments, financing statements, renewals, continuation statements, transfers, assurances or other documents as are necessary, in the Holder's sole opinion, to (a) subject the Property to the lien of this Deed of Trust; (b) create, provide, perfect, preserve, continue and protect such lien thereon, whether now owned or hereafter acquired by the Grantor; (c) secure the rights and remedies of the Trustee and the Holder hereunder or under the Note; (d) transfer the Property to any new trustee or trustee; or (e) better assure, assign and confirm to the Holder the Assignment of Leases and the Rents (defined below). The Grantor shall pay to the Holder within fifteen (15) days of demand by Lender the amount of the expenses, charges and taxes incurred by the Holder in preparing, executing, recording, rerecording, filing or refiling any such document and such amounts shall accrue with Default Interest until payment thereof.

5. **MAINTENANCE AND USE OF PROPERTY.** The Grantor shall (a) maintain the Property in good condition and repair; (b) effect such repairs thereof as the Holder reasonably requires; (c) from time to time make all needed and proper replacements thereto so



that the Property will at all times be in good condition, fit and proper for the purposes for which it was originally erected or installed; (d) not commit or suffer any waste or deterioration of the Property or make change in the use of the Property which may increase any ordinary fire, environmental or other risk thereto; (e) (except for the replacement of fixtures and non-structural elements of the improvements made for the purpose of enhancing the economic viability of the Property, and by fixtures and non-structural elements which are of at least like quality), not permit the removal, demolition or material alteration of any building or other Improvement covered by the lien of this Deed of Trust, without obtaining the Holder's prior written consent thereto, which will not be unreasonably withheld, conditioned or delayed; (f) promptly repair, restore, replace or rebuild any part of the Property now or hereafter subject to the lien of this Deed of Trust which may be damaged or destroyed by any casualty whatsoever, or affected by any proceeding of the character referred to in Section 11; (g) obey and comply with every federal, state, local governmental and quasi-governmental law, statute, rule, directive, order, standard, ordinance and requirement applicable to or affecting any or all of the Property, now or hereafter enacted, adopted or issued and in force, the failure with which to comply would not reasonably be expected to have a Material Adverse Effect; (h) observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including but not limited to all zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions applicable to the Property or granted to or contracted for by the Grantor in connection with any existing or contemplated use of the Property, the failure with which to comply would not reasonably be expected to have a Material Adverse Effect; (i) obey and carry out every covenant, agreement, restriction and encumbrance contained in any instrument recorded among the land records of the said county where the Property is located or known to the Grantor, which may from time to time be in force and apply to or affect the Property or the Grantor's interest therein, and not use or permit the use of any or all of the Property in contravention thereof, the failure with which to comply would not reasonably be expected to have a Material Adverse Effect; and (j) permit the Holder, the Trustee, and their agents or employees to enter upon and inspect the Property upon reasonable prior written notice and at any reasonable time during normal business hours and to examine, audit, copy and extract each record of the Grantor relating to the Property or any portion thereof.

6. ENVIRONMENTAL REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION. Grantor shall enter into that certain Environmental Indemnity Agreement of even date herewith made by Grantor in favor of Lender (the "Environmental Indemnity Agreement"). Notwithstanding anything to the contrary contained herein, the terms of the Environmental Indemnity Agreement are not incorporated herein.

7. SUBSEQUENT ENACTMENTS. The Grantor agrees that in the event of the enactment of any law or ordinance, the promulgation of any zoning or other governmental or quasi-governmental regulation, or the rendition of any judicial decree restricting or affecting the use of the Property or rezoning the area wherein the same shall be situate, which has a Material Adverse Effect, the Holder may, upon at least one hundred twenty (120) days written notice to the Grantor, require payment of the Note at such time as may be stipulated in such notice, and the Note shall thereupon become due and payable. The provisions of this Section are not



intended in any way to affect the Holder with respect to any Obligations which may now or hereafter be payable on demand.

8. **TRANSFERS, LIENS AND ENCUMBRANCES.** The Grantor shall (a) not sell, abandon, cease to own, assign, transfer or dispose of any or all of the Property or any interest therein, without obtaining the Holder's prior written consent thereto; (b) except as provided in Section 3.3 hereof, not create or otherwise permit to be created any lien or encumbrance against the Property or any interest of the Grantor therein, by or pursuant to any mortgage, deed of trust, security agreement or other instrument, as security for the repayment of any indebtedness or the performance of any obligation or undertaking by the Grantor or any other Person; (c) not create or permit to be created or filed against the Property any other lien or encumbrance other than permitted hereunder or the Lien created hereunder in favor of Holder or provided the Lien has within thirty (30) days been bonded pursuant to a statutory bond or other security in accordance with all applicable Legal Requirements sufficient fully to protect any and all of the Property encumbered by such claim of Lien and to stay the sale of all or any portion of the Property on account of such Lien; and (d) except as provided in Section 3.3 hereof, keep and maintain the Property free from the claims of all Persons supplying labor or materials in connection with the construction or reconstruction of any Improvements on the Property, regardless of by whom such labor or materials may have been contracted. A "**transfer**" of the Property includes (i) the direct or indirect sale, transfer or conveyance of the Property or any portion thereof or interest therein; (ii) the execution of an installment sale contract or similar instrument affecting all or a portion of the Property; and (iii) if Grantor is a partnership, joint venture, limited liability company, corporation or some other type of legal entity, any direct or indirect change (whether in one transaction or a series of transactions or whether by operation of law or otherwise) in the beneficial ownership or number of issued and outstanding ownership interests in such entity (e.g., shares in a corporation) of any class after which the percentage of such ownership interest in such entity owned by any Person or group of Persons is at least ten percent (10%) more or less than it was on the date of this Deed of Trust.

9. **INTENTIONALLY OMITTED.**

10. **ASSIGNMENT OF LEASES AND RENTS.** Grantor shall enter into that certain Assignment of Leases and Rents of even date hereof in favor of Lender (the "**Assignment of Leases and Rents**").

11. **CASUALTY; CONDEMNATION; USE OF PROCEEDS.**

11.1 **Casualty and Condemnation.**

(a) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**") or if Grantor shall have knowledge of the actual or threatened commencement of any condemnation or eminent domain proceeding that would affect any portion of the Land or Improvements (a "**Condemnation**"), Grantor shall give prompt written notice thereof to Lender and, with respect to a Condemnation, shall deliver to Lender copies of any and all papers served in connection with such Condemnation.



(b) Lender may participate in any proceedings for any taking by any public or quasi public authority accomplished through a Condemnation or any transfer made in lieu of or in anticipation of a Condemnation (which transfer in lieu and Condemnation are collectively referred to as a "**Taking**") to the extent permitted by law. Upon Lender's written request, Grantor shall deliver to Lender all instruments requested by it to permit such participation. Grantor shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Grantor shall not consent or agree to a Taking without the prior written consent of Lender in each instance, which consent shall not be unreasonably withheld, conditioned or delayed in the case of a Taking of an insubstantial portion of the Property.

(c) Subject to the terms of Section 11.2, all insurance proceeds payable under the Policies and all awards or payments payable on account of a Taking ("**Award**"), and all causes of action, claims, compensation, awards and recoveries for any other damage, injury, or loss or diminution in value of the Property, are hereby assigned, transferred and set over to and shall be paid to Lender. Grantor agrees to execute and deliver from time to time such further instruments as may be reasonably requested by Lender to confirm the foregoing assignment to Lender. Grantor hereby irrevocably constitutes and appoints Lender as the attorney in fact of Grantor (which power of attorney shall be irrevocable so long as any of the Obligations is outstanding, shall be deemed coupled with an interest, and shall survive the voluntary or involuntary dissolution of Grantor), with full power of substitution, subject to the terms of Section 11.2, to settle for, collect and receive all proceeds of insurance and any Award and any other awards, damages, insurance proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittance therefor; provided that Lender shall not exercise such power of attorney except either when an Event of Default exists or when Grantor has failed to take any of the actions described in this sentence after a reasonable period of time has passed following receipt of written notice from Lender of its intent to use such power to take the action.

(d) If Lender applies an Award to the Obligations in accordance with Section 11.2, Lender shall be entitled to allocate out of the Award for the purpose of paying accrued unpaid interest on the Note interest at the rate or rates provided in the Note and shall not be limited to the interest paid on an Award by the condemning authority. Grantor shall use all commercially reasonable efforts to cause any Award that is payable to Grantor to be paid directly to Lender, and if any such Award is nevertheless paid to Grantor, Grantor shall promptly remit such Award to Lender to be held and applied in accordance with the terms of this Deed of Trust. If the Property is sold, through foreclosure or deed-in-lieu thereof, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note (to the extent permitted in the Note or herein) shall have been sought, recovered or denied, to receive the Award, or a portion thereof, to the extent sufficient to pay the unpaid portion, if any, of the Obligations.

(e) The reasonable, actual out-of-pocket expenses incurred by Lender in the adjustment and collection of the proceeds of insurance or an Award shall become part of the Obligations and be secured hereby and shall be reimbursed by Grantor to Lender within ten (10)



days after written demand or, at Lender's election, deducted by and reimbursed to Lender from such proceeds.

11.2 Use of Proceeds of Insurance or Award.

(a) In case of loss or damages covered by any of the Policies and in case of an Award for any Taking, the following provisions shall apply:

(i) In the event of a Casualty that does not exceed ten percent (10%) of the FMV (defined below) of the Land and Improvements, Grantor may settle and adjust any claim without the consent of Lender and agree with the insurance company or companies on the amount to be paid upon the loss; provided that such adjustment is carried out in a competent and timely manner. In such case, Grantor is hereby authorized to collect and receive any such insurance proceeds. As used in this Section 11.2, the term "**FMV**" means the fair market value of the Land and Improvements as set forth in the appraisal relied upon by Lender as of the date hereof or any subsequent Qualifying Appraisal. As used in this Deed of Trust, the term "**Qualifying Appraisal**" means an appraisal report of the Land and Improvements prepared by an appraiser licensed in the State in which the Land is located and who has at least five years' experience in appraising property similar to the Land and Improvements in the county in which the Land is located, which satisfies the criteria for appraisals that may be relied upon by national banks under applicable Federal laws, rules and regulations, which contains both an "as-is" and a "stabilized value" estimate, and which is otherwise reasonably satisfactory to Lender.

(ii) In the event of a Casualty that exceeds ten percent (10%) but does not exceed fifteen percent (15%) of the FMV of the Land and Improvements, then and in that event Lender may settle and adjust any claim, provided, however, that any final agreement with the insurance company or companies of the amount to be paid for the Casualty shall be subject to the approval of Grantor as hereinafter provided, such approval not to be unreasonably withheld, delayed or conditioned. In any such case, the proceeds under the Policies shall be due and payable solely to Lender and held in escrow by Lender in accordance with the terms of this Deed of Trust. Grantor shall have the right to participate in the settlement discussions with the applicable insurance company or companies, or applicable authorities, and Lender shall keep Grantor apprised of all material settlement offers and discussions and the results thereof. Lender shall provide ten (10) business days advance written notice to Grantor of the terms and amount of any proposed final agreement on any such claim (such proposed final amount, the "**Lender Approved Settlement Amount**"). If Grantor disapproves of Lender's settlement of the claim on such terms and at such amount, Grantor must furnish written notice of such disapproval (any such notice, an "**Arbitration Notice**") to Lender within ten (10) business days after Grantor's receipt of Lender's notice, such notice of disapproval by Grantor to state Grantor's election to implement the arbitration procedure set forth in this Section 11.2. Grantor's failure to furnish notice of disapproval prior to the expiration of such ten (10) business day period shall constitute and be deemed Grantor's consent and approval to Lender's settlement of the applicable claim for an amount not less than the Lender Approved Settlement Amount.



(iii) In the event of a Casualty that exceeds fifteen percent (15%) of the FMV of the Land and Improvements, Lender may settle and adjust any claim related thereto without the consent of Grantor and agree with the insurance company or companies on the amount to be paid on the loss, and the proceeds of any such policy shall be due and payable solely to Lender and held in escrow by Lender in accordance with the terms of this Deed of Trust.

(iv) In the event of (A) a Taking for which the Award is equal to or less than fifteen percent (15%) of the FMV of the Land and Improvements or the Taking renders fifteen percent (15%) or less of the rentable square feet of the Improvements untenable or (B) in the event of a Casualty where the loss is in an aggregate amount equal to or less than thirty percent (30%) of the FMV of the Land and Improvements or the Casualty renders thirty percent (30%) or less of the rentable square feet of the Improvements untenable, and (1) no Event of Default or an event which with notice and/or the passage of time would constitute an Event of Default exists and (2) in the reasonable judgment of Lender (i) the Property can be restored in all material respects to the condition thereof that existed prior to the Casualty or Taking within the time period that business income interruption insurance will be payable under the coverage obtained by Grantor pursuant to Section 2.1 above and in all events not less than six (6) months prior to the stated Maturity Date, (ii) (x) as restored the FMV of and the net income (i.e., gross revenues less all customary and regular operating expenses, including Obligations service) from the Property will not be less than the FMV of and net income from the Property that existed immediately prior to the Casualty or Taking or (y) Leases covering in the aggregate not less than sixty-five percent (65%) of the rentable square feet of the Improvements will be in full force and effect during and upon completion of the Repair Work (defined below), (iii) all necessary government approvals will be obtained to allow the rebuilding and reoccupancy of the Improvements, and (iv) there are sufficient sums available (through insurance proceeds, the Award and contributions by Grantor, the full amount of which contribution shall at Lender's option have been deposited with Lender) for the Repair Work (including, without limitation, for any reasonable costs and expenses of Lender to be incurred in administering the Repair Work) and for payment of the Obligations as it becomes due and payable during the Repair Work, then, and only then, the proceeds of insurance or of the Award (after reimbursement of any expenses incurred by Lender) shall be applied in the manner set forth below and disbursed to Grantor for the cost of restoring, repairing, replacing or rebuilding (collectively the "**Repair Work**") the Property or part thereof subject to the Casualty or Taking. Grantor hereby covenants and agrees to commence and diligently to prosecute the Repair Work; provided always, that Grantor shall pay all costs (and if required by Lender, Grantor shall deposit the total thereof with Lender in advance) of the Repair Work in excess of the net proceeds of insurance or Award made available pursuant to the terms hereof.

(v) Except as otherwise provided in this Deed of Trust, in the event of any Casualty or Taking Lender may elect in its absolute sole discretion and without regard to the adequacy of the security for the Obligations, to (A) apply the proceeds of insurance collected upon any Casualty or Award collected upon any Taking to the payment of the Obligations in accordance with the Loan Agreement, with or without accelerating the



Maturity Date and declaring the entire outstanding Obligations to be due and payable within one hundred twenty (120) days, or (B) hold the insurance proceeds or Award proceeds and make them available to Grantor for the cost of the Repair Work in the manner set forth below.

(vi) In the event Grantor is either entitled to disbursements from the insurance proceeds or Award proceeds held by Lender or Lender elects to make such proceeds available to Grantor for the Repair Work, such proceeds shall be disbursed to Grantor for costs and expenses incurred by Grantor for the Repair Work following (A) the receipt by Lender of a written request from Grantor for disbursement and a certification by Grantor to Lender that the applicable portion of the Repair Work has been completed or will be completed with the proceeds of the subject disbursement, (B) the delivery to Lender of invoices, receipts or other evidence verifying the cost of performing the applicable portion of the Repair Work, and (C) for disbursement requests in excess of \$10,000.00 with respect to any single portion of the Repair Work, or for any single portion of the Repair Work that is structural in nature, delivery to Lender of (1) affidavits, conditional lien waivers or other evidence reasonably satisfactory to Lender showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished material or labor to the Property have been, or upon receipt of the payment described in such affidavit or conditional lien waiver will have been, paid all amounts due for labor and materials furnished to the Property through the date covered by such draw request, less any retainage, and (2) a certification from an inspecting architect or other third party reasonably acceptable to Lender describing the completed portion of the Repair Work and verifying its completion and cost. Lender shall not be required to make any such advances more frequently than one time in any calendar month. Lender may, in any event, require that all plans and specifications for the Repair Work be submitted to and approved by Lender prior to commencement of the Repair Work, which approval shall not be unreasonably withheld, delayed or conditioned. In no event shall Lender assume any duty or obligation for the adequacy, form or content of any such plans and specifications, nor for the performance, quality or workmanship of any Repair Work. With respect to disbursements to be made by Lender, no payment made prior to the final completion of the Repair Work shall exceed ninety percent (90%) of the cost of the Repair Work performed from time to time (except that a contractor or subcontractor may be paid its share of any retainage upon such contractor's or subcontractor's completion of its entire portion of the Repair Work and its execution and delivery to Grantor (with copies to Lender) of all applicable lien waivers and/or lien releases); funds other than proceeds of insurance or the Award shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in the hands of Lender, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Lender by or on behalf of Grantor for that purpose, shall be at least sufficient in the reasonable judgment of Lender to pay for the cost of completion of the Repair Work, free and clear of all liens or claims for lien. Any surplus which may remain out of the proceeds of insurance or Award held by Lender after payment of the costs of the Repair Work shall be paid to Grantor or, if an Event of Default exists, shall in the sole and absolute discretion of Lender, be retained by



Lender and applied to payment of the Obligations or paid to the party or parties legally entitled to such surplus.

(vii) If Grantor delivers an Arbitration Notice to Lender, Grantor and Lender shall, within five (5) business days after Lender's receipt of any such notice, jointly designate an independent and unaffiliated individual who has not less than ten (10) years' experience with respect to settlement of claims resulting from casualties in respect of properties similar to the Land and Improvements. Not later than five (5) business days after such joint designation of such individual, Grantor and Lender shall submit to such individual their separate determinations of the commercially reasonable settlement amount for the applicable Casualty together with any documentation and other backup therefor and shall simultaneously therewith provide a copy of such submission to the other party. The individual so appointed shall review the applicable submissions and within ten (10) days after such individual's designation either selects one of the submitted settlement amounts or an amount in between the submitted settlement amounts as more accurately reflective of the commercially reasonable settlement amount. Notice of such selection shall be furnished to Grantor and Lender by the applicable individual prior to the expiration of such ten-day period. Upon such selection, Lender shall be authorized to settle the applicable claim for an amount not less than the settlement amount so selected without any further right of consent of Grantor.

(viii) In the event that Grantor and Lender are unable to agree on one individual to act as arbitrator within the five (5) business day period following Lender's receipt of the Arbitration Notice as contemplated under Section 11.2(a)(vii), then, in such case, the procedure set forth in this subparagraph (viii) shall be observed in lieu thereof. Not later than five (5) business days after Lender's receipt of an Arbitration Notice, Grantor and Lender shall each designate an independent and unaffiliated individual who has not less than ten (10) years' experience with respect to settlement of claims resulting from casualties in respect of properties similar to the Land and Improvements and notify the other party of such appointment by identifying the appointee. Not later than five (5) business days after both arbitrators are appointed, the two selected arbitrators shall select a third arbitrator who shall also be an independent and unaffiliated individual who has not less than ten (10) years' experience with respect to settlement of claims resulting from casualties in respect of properties similar to the Land and Improvements, such selection to take place within five (5) business days after such arbitrator's appointment. Grantor and Lender shall submit to such third arbitrator their separate determinations of the commercially reasonable settlement amount together with any documentation and other backup therefor and shall simultaneously therewith provide a copy of such submission to the other party. The third arbitrator so appointed shall review the applicable submissions and within ten (10) days after such individual's designation either selects one of the submitted settlement amounts or an amount in between the submitted settlement amounts as more accurately reflective of the commercially reasonable settlement amount. Notice of such selection shall be furnished to Grantor and Lender by the applicable individual prior to the expiration of such ten-day period. Upon such selection, Lender shall be authorized to settle the applicable claim for an amount



not less than the settlement amount so selected without any further right of consent of Grantor.

(ix) Time shall be of the essence with respect to the performance of any and all rights and obligations under this Section 11.2. The decisions of the arbitrator(s), if any, engaged under this Section 11.2, shall be final and binding and may not be appealed to any court of competent jurisdiction or otherwise except upon a claim of fraud or corruption. All of the reasonable, actual costs and expenses of the arbitrator(s), if any, engaged under this Section 11.2, shall be the sole responsibility of Grantor.

(x) Notwithstanding anything to the contrary contained herein, the proceeds of insurance or Award disbursed to Grantor in accordance with the terms and provisions of this Deed of Trust shall be reduced by the reasonable costs (if any) incurred by Lender in the adjustment and collection thereof and by the reasonable costs incurred by Lender of paying out such proceeds (including, without limitation, reasonable attorneys' fees and costs paid to third parties for inspecting the Repair Work and reviewing the plans and specifications therefor).

(b) If Grantor undertakes the Repair Work, Grantor shall promptly and diligently, at Grantor's sole cost and expense and regardless of whether the insurance proceeds or Award, as applicable, shall be sufficient for the purpose, complete the Repair Work to restore the Property as nearly as possible to its value, condition and character immediately prior to the Casualty or Taking in accordance with the foregoing provisions.

(c) Any partial reduction in the Obligations resulting from Lender's application of any sums received by it under this Section 11.2 shall take effect only when Lender actually receives such sums and elects to apply such sums to the Obligations and, in any event, the unpaid portion of the Obligations shall remain in full force and effect and Grantor shall not be excused in the payment thereof. Partial payments received by Lender, as described in the preceding sentence, shall be applied against the Note consistent with the prepayment provisions described therein for casualty or condemnation proceeds.

12. **EXPENSES.** The Grantor shall pay to the Holder on demand all costs and expenses (including but not limited to reasonable attorneys' fees and disbursements whether for internal or outside counsel) incurred by the Holder in connection with the Obligations or this Deed of Trust at any time, including after entry of a judgment of foreclosure, and which shall in all instances include, without limitation, costs of collection, of preserving or exercising any right or remedy of the Holder or the Trustee under this Deed of Trust or any related security agreement or guaranty, of workout or bankruptcy proceedings by or against the Grantor, of defending against any claim asserted as a direct or indirect result of the Obligations or of performing any Obligation of the Grantor pursuant to this Deed of Trust or otherwise (including payment of any amount the Grantor is obligated to pay to the Holder pursuant to the Note and/or this Deed of Trust). The Holder reserves the right to have the Grantor pay, upon demand, administrative fee(s) in regard to any administrative action the Holder is required or requested to take including the preparation of discharges, releases or assignments to third-parties. Such costs,



expenses and fees due by Grantor shall accrue with Default Interest from the date of demand until payment is actually received by the Holder. Each such cost, expense and fee, and any interest thereon, shall constitute part of the Obligations and be secured by this Deed of Trust and may be added to the judgment in any suit brought by the Holder against the Grantor on this Deed of Trust. In any action or proceeding to foreclose this Deed of Trust or to recover or collect the Obligations secured hereby, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

13. **INDEMNIFICATION.** The Grantor shall indemnify the Holder and its Affiliates (defined below) and each officer, employee, accountant, attorney and other agent thereof and each Trustee (each such Person being an "**Indemnified Party**") on demand, without any limitation as to amount, against each liability, claim of liability, loss, damage, demand or expense (including all reasonable fees and disbursements of external counsel retained for advice, suit, appeal or other proceedings or purpose, and of any expert or agents an Indemnified Party may retain) heretofore or hereafter imposed on, incurred by or asserted against any Indemnified Party (including any claim involving any allegation of any violation of applicable law of any governmental or quasi-governmental authority (including any environmental law or criminal law)), however asserted and whether now existing or hereafter arising, arising out of or relating to Grantor's ownership, or disposition or use of any of the Property, the Lien thereon granted under this Deed of Trust or any other right granted hereunder and under the Assignment of Leases and Rents as set forth herein and further agrees to pay, upon demand, any expense that Holder may incur (including attorneys' fees and disbursements for outside counsel) due to Grantor's failure to provide appropriate defense and indemnification to Holder in a timely manner. The foregoing indemnity shall not apply to liability, cost or expense solely attributable to an Indemnified Party's gross negligence or willful misconduct. The amount of any such liability, loss, damage, demand or expense, together with Default Interest thereon from the date of loss, shall, immediately and without notice, be due and payable by the Grantor to the Holder. This indemnity agreement shall survive payment and performance of the Obligations. Any amounts payable under this or any other section of this Deed of Trust shall be additional Obligations secured hereby.

14. **EVENTS OF DEFAULT.** An Event of Default under the Loan Agreement shall constitute an Event of Default under this Deed of Trust.

15. **HOLDER'S RIGHTS ON EVENT OF DEFAULT.** From the occurrence and during the continuance of an Event of Default and without further notice to or demand upon the Grantor or any other party having an interest in the Property or any Guarantor, and without regard to the value of the Property held as security for the Obligations due hereunder or the solvency of any Person liable for the payment of such Obligations, the Holder (or the Trustee on written authorization of the Holder) may, at its option and whether or not electing to declare the whole Obligation due and payable, do any or all of the following:



15.1 Declare the entire amount of the Obligations which is then unpaid, including any interest and other unpaid sums accruing thereunder, and any other amounts payable under this Deed of Trust or any other document executed in connection therewith, to be immediately due and payable. All Obligations, whether or not payable on demand, shall be immediately due and payable, without demand or notice of any kind, automatically upon the commencement of the Grantor's bankruptcy, if voluntary, and upon the lapse of forty-five (45) days without dismissal, if involuntary. The provisions of this Section are not intended in any way to affect any rights of the Holder with respect to any Obligations which may now or hereafter be payable on demand.

15.2 Terminate the license granted to the Grantor under the Assignment of Leases and Rents and, either personally or by any attorney or agent without bringing any action or proceeding, or by a receiver appointed by a court of competent jurisdiction, to the extent permissible by law, enter upon and/or take possession of any or all of the Property. Upon such entry, the Holder shall have the right, to the extent permissible by law (a) to exclude the Grantor its agents and servants wholly from the Property, and to have, hold, manage, lease, use, operate and control it on such terms and for such period of time as the Holder deems proper in its sole discretion; and (b) to collect and receive all payments and Rents with respect to any Leases, for which this Deed of Trust shall be sufficient authority whether or not any such Leases have been assigned to the Holder. Upon every such entry, the Holder, at the Grantor's expense, may from time to time (a) take such steps and expend such sums as are reasonably necessary to preserve and protect the Property; and (b) make all necessary and proper repairs, renewals, replacements and useful or required alterations and improvements to the Property as, in the Holder's sole judgment, are reasonably necessary or desirable. After deducting the expenses of, or incident to, managing and operating the Property, conducting the business thereof, making any repairs, maintenance, renewals, replacements, alterations and improvements thereto, taking and retaining possession of the Property, and keeping it properly insured, the Holder shall be entitled to apply the residue of the Rents and the payments, if any, arising as aforesaid, to the payment of (a) any Assessment having priority over the lien created by this Deed of Trust; (b) premiums for all insurance which the Holder deems necessary or desirable, with interest thereon; (c) the Obligations secured by this Deed of Trust; and (d) all costs and reasonable attorneys' fees incurred in connection therewith, all in such order or priority as the Holder determines, any statute, law, custom or use to the contrary notwithstanding.

15.3 Cure any Event of Default without releasing the Grantor from any obligation hereunder.

15.4 Commence and maintain one or more actions at law or in equity or by any other appropriate remedy to (a) protect and enforce the Holder's rights, whether for the specific performance of any covenant or agreement herein contained (which covenants and agreements the Grantor agrees shall be specifically enforceable by injunctive or other appropriate equitable remedy); or (b) collect any sum then due hereunder; or (c) aid the execution of any power herein granted; or (d) foreclose this Deed of Trust either by judicial action or through Trustee; or (e) sell the Property in accordance with applicable law, without regard to whether or not any sum secured by this Deed of Trust is then due and payable and without prejudice to the right of the



Holder thereafter to pursue and enforce any other appropriate remedy against the Grantor, whether such remedy is provided for hereunder or by any applicable law for any Event of Default which may have occurred at the time at which any such earlier action was commenced.

16. **POWER OF SALE.** To the extent allowed by applicable law, from the occurrence and during the continuance of an Event of Default the Lender, its successors and assigns, may elect to cause the Property or any part thereof to be sold as follows:

(a) Lender may proceed as if all of the Property were real property, in accordance with subparagraph (d) below, or Lender may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the Property without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with subparagraph (c) below, separate and apart from the sale of real property, the remainder of the Property being treated as real property.

(b) Lender may cause any such sale or other disposition to be conducted immediately following the expiration of any grace period, if any, herein provided (or immediately upon the expiration of any redemption period required by law) or Lender may delay any such sale or other disposition for such period of time as Lender deems to be in its best interest. Should Lender desire that more than one such sale or other disposition be conducted, Lender may at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Lender may deem to be in its best interest.

(c) Should Lender elect to cause any of the Property to be disposed of as personal property as permitted by subparagraph (a) above, it may dispose of any part hereof in any manner now or hereafter permitted by Article 9 of the Uniform Commercial Code or in accordance with any other remedy provided by law. Both Grantor and Lender shall be eligible to purchase any part or all of such property at any such disposition. Any such disposition may be either public or private as Lender may so elect, subject to the provisions of the Uniform Commercial Code. Lender has no obligation to clean up or otherwise prepare any of the Property for sale. Lender shall give Grantor at least five (5) days prior written notice of the time and place of any public sale or other disposition of such property or of the time at or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Grantor as provided in subparagraph (k) hereof, it shall constitute reasonable notice to Grantor.

(d) Should Lender elect to sell the Property which is real property or which Lender has elected to treat as real property, upon such election Lender or Trustee shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, Trustee, without demand on Grantor, at the time and place specified in the notice of sale, shall sell such Property, or any portion thereof specified by Lender, at public auction to the highest bidder for cash in lawful money of the United States, subject, however, to the provisions of subparagraph (i) hereof. Trustee for good cause may, and upon request of Lender shall, from time to time, postpone the sale by public announcement thereof at the time and place noticed



therefor. If the Property consists of several lots or parcels, Lender may designate the order in which such lots or parcels shall be offered for sale or sold. Any Person, including Grantor, Trustee or Lender, may purchase at the sale, and if Lender is the highest bidder, Lender may credit the portion of the purchase price that would be distributed to Lender against the obligations in lieu of paying cash. Upon any sale Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession.

(e) In the event of a sale or other disposition of any such property, or any part thereof, and the execution of a deed or other conveyance, pursuant thereto, the recitals therein of facts, such as a default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchaser, payment of purchase money, and any other fact affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts; and any such deed of conveyance shall be conclusive against all Persons as to such facts recited therein.

(f) The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Property, shall be applied by Lender or Trustee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(i) to the payment of the costs and expenses of taking possession of the Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (A) trustee's and receiver's fees and expenses, (B) court costs, (C) attorneys' and accountants' fees and expenses, (D) costs of advertisement, and (E) the payment of all ground rent, real estate taxes and assessments, except any taxes, assessments, or other charges subject to which the Property shall have been sold;

(ii) to the payment of all amounts (including interest), other than the unpaid principal balance of the Note and accrued but unpaid interest, which may be due to Lender under the Loan Documents;

(iii) to the payment of the Obligations in such manner and order of preference as Lender in its sole discretion may determine; and

(iv) the balance, if any, to the payment of the Persons legally entitled thereto.

(g) The acknowledgment of the receipt of the purchase money, contained in any deed or conveyance executed as aforesaid, shall be sufficient discharge from all obligations to see to the proper application of the consideration therefor.

(h) Grantor hereby expressly waives any right which it may have to direct the order in which any of the Property shall be sold in the event of any sale or sales pursuant hereto.



(i) Upon any sale of the Property, whether made under a power of sale herein granted or pursuant to judicial proceedings, if the holder of the Note is a purchaser at such sale, it shall be entitled to use and apply all or any portion of the indebtedness then secured hereby for or in settlement or payment of all or any portion of the purchase price of the property purchased, and, in such case, this Deed of Trust, the Note and documents evidencing expenditures secured hereby shall be presented to the Person conducting the sale in order that the amount of said indebtedness so used or applied may be credited thereon as having been paid.

(j) No remedy herein conferred upon or reserved to Trustee or Lender is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this instrument to Trustee or Lender, or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by Trustee or Lender, and either of them may pursue inconsistent remedies. If there exists additional security for the performance of the Obligations secured hereby, the holder of the Note, at its sole option and without limiting or affecting any rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder either concurrently with whatever other rights it may have in connection with such other security or in such order as it may determine.

(k) Grantor hereby requests that every notice of default and every notice of sale be given in accordance with the provisions of Section 23 hereof except as otherwise required by statute. Grantor may, from time to time, change the address to which notice of default and sale hereunder shall be sent by sending a copy of such request to Lender, its successors or assigns in accordance with the provisions of Section 23 hereof.

17. FORECLOSURE SALE.

17.1 If any or all of the Property or any estate or interest therein is to be sold pursuant to this Deed of Trust, by a judicial action or through Trustee, it may be sold at public auction, as an entirety or in one or more parcels, by one sale or several sales held at one time or at different times, with such postponement of any such sale as the Trustee deems appropriate and without regard to any right of the Grantor or any other Person to the marshaling of assets. Any such sale shall be held at such time and at such place as permitted by law, and shall be made upon such terms and after such previous public notice as required by law, as the Trustee deem appropriate. The Holder may bid and become the purchaser at any such sale, and shall, upon presentation of the Note or a true copy thereof at such sale, be credited for the unpaid balance due under the Note and any interest accrued and unpaid thereon, or such portion of such unpaid balance or interest as the Holder may specify, against any price bid by the Holder thereat or any deposit required or paid in connection therewith. The terms of sale being complied with, the Trustee shall (at the expense of the purchaser) convey to the purchaser at such sale the Grantor's interest in so much of the Property as is so sold, free of and discharged from all estate, right, title or interest of the Grantor at law or in equity, such purchaser being hereby discharged from all liability to see to the application of the purchase money.



17.2 On any sale of the Grantor's interest in any or all of the Property, whether under the assent to a decree or power of sale herein granted, or by other foreclosure or judicial proceedings, the proceeds of such sale, together with any other sum then held as security hereunder or due under any of the provisions hereof as part of the Property, shall be applied (after paying all expenses of sale, including reasonable attorneys' fees and a commission to the party making the sale equal to the commission allowed to Trustee for making sales of property under orders or decrees of a court having competent jurisdiction, and all Assessments which the Trustee and the Holder deem it advisable to pay and all sums advanced, with interest thereon, as herein provided) to the payment of the aggregate Obligations then secured hereby and interest thereon to the date of payment, paying over the surplus, if any, less the expense, if any, of obtaining possession, to the Grantor or any Person entitled thereto upon the surrender and delivery to the purchaser of possession of the Property.

18. **COMMISSIONS: PREPAYMENT PREMIUMS.** Immediately on the first insertion of any advertisement or notice of any such sale under Section 16 and 17 hereof, there shall become due and owing by the Grantor to the Holder all expenses incident to such advertisement or notice, all court costs and all expenses incident to any foreclosure proceedings brought under this Deed of Trust or otherwise in connection with such sale, and no party shall be required to receive only the aggregate Obligations then secured hereby with interest thereon to the date of payment unless accompanied by a tender of payment of such expenses, costs and commissions.

19. **EFFECT OF PAYMENT.** Any payment made under this Deed of Trust by any subsequent owner of any or all of the Property, any other Person whose interest in the Property might be prejudiced in the event of a failure to make such payment, or any stockholder, officer or director of a corporation which at any time is liable for such payment or owns or has an interest in the Property or in the Grantor, shall be deemed, as between the Holder and all Persons who at any time may be liable as aforesaid or may own any or all of the Property or the Grantor, to have been made on behalf of all such Persons.

20. **TRUSTEE.** The Holder shall have, and is hereby granted by the Grantor, with a warranty of further assurances, the irrevocable power to appoint a substitute Trustee or Trustee hereunder and to remove any or all of the Trustee hereunder from time to time without notice and without specifying any reason therefor, by recording a substitution of trustee in the office in which this Deed of Trust is recorded. Such power of removal and appointment may be exercised from time to time as the Holder deems advisable, and such exercise no matter how often, shall not result in its exhaustion. Upon the recordation of each such substitution of trustee, each Trustee so appointed shall thereupon, without any further act or deed or conveyance, become fully vested with identically the same title and estate in and to the Property and with all of the identical rights, powers, trusts and duties of his predecessor or predecessors in the Property, as if originally named as one of the Trustee. Whenever in this Deed of Trust reference is made to the Trustee, it shall be construed to mean the Trustee or Trustee for the time being, whether the original or any successor Trustee. All title, estate, rights, powers, trusts and duties hereunder given, appertaining to or devolving upon the Trustee shall be in each of the Trustee, so that any action hereunder, or purporting to be hereunder, of either one of the original or any successor



Trustee shall for all purposes be considered to be, and shall be as effective as, the action of both Trustee. If two or more Persons are Trustee and the substitution of a Trustee becomes necessary for any reason, the substitution of one or more Trustee in the place of the said two or more Persons shall be sufficient. Trustee accepts the trust created by this Deed of Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Lender or Trustee shall be a party, unless brought by Trustee.

21. **ESTOPPEL CERTIFICATES.** The Grantor shall, within five (5) business days after receiving a written request thereof from the Holder, certify to the Holder or any party designated by the Holder, by a writing duly acknowledged, the amount of principal and interest then owing under the Note and whether any offset or defense exists against the Obligations secured thereby.

22. **INTENTIONALLY OMITTED.**

23. **NOTICES.** Any notice, demand, consent, approval, request or other communication or document to be provided hereunder or under any applicable law pertaining hereto to a party hereto shall be in writing and duly given if delivered pursuant to Section 8.12 of the Loan Agreement.

24. **WARRANTY OF TITLE; TITLE INSURANCE.** The Grantor hereby warrants that it (a) lawfully holds good and marketable title to, and possesses, the Property in fee simple absolute, subject to and only to the operation and effect of those instruments and matters listed in **Exhibit B**, as aforesaid or such Assessments as are the subject of Section 3.3 hereof; (b) holds the right to encumber such title by this Deed of Trust; (c) will protect, preserve and defend the Property and the title thereto against the claims of any party whatsoever; and (d) will give such further assurances thereof as may be required by the Holder. Upon request by the Holder, the Grantor shall furnish to the Holder at the Grantor's own cost and expense a title insurance policy in the then outstanding amount of the Obligations, (a) naming the Holder as mortgagee; (b) covering the lien on the Property granted pursuant to this Deed of Trust; (c) containing no exception not otherwise approved by the Holder; (d) issued by a title insurance company qualified to do business in the state where the Property is located and satisfactory to the Holder; and (e) otherwise in form and substance satisfactory to the Holder.

25. **AUTHORIZATION AND POWER OF ATTORNEY.** From the occurrence and during the continuance of an Event of Default the Holder is irrevocably and unconditionally authorized to act, and the Grantor irrevocably and unconditionally appoints the Holder, as the attorney-in-fact of the Grantor, with full power of substitution and of revocation, to take, in the name of the Grantor or otherwise at the sole option of the Holder, each action relating to the Property or any portion thereof that, subject to this Deed of Trust, the Grantor could take in the same manner, to the same extent and with the same effect as if the Grantor were to take such action; provided, however, that the Holder shall not have the right, pursuant to such authorization or as such attorney-in-fact, to sell or otherwise dispose of the Property or any portion thereof.



Such power of attorney is irrevocable and is coupled with an interest in the Property in favor of the Holder, and shall not be terminated or otherwise affected by the death, disability or incompetence of the Grantor, if an individual. No other Person shall be appointed the Grantor's attorney with any of such powers, so long as any part of Obligations secured hereby is unpaid.

26. **RIGHT OF SETOFF.** After the occurrence and during the continuance of an Event of Default the Holder shall have the right to set off against the Obligations any property held in a deposit or other account with the Holder or any of its Affiliates or otherwise owing by the Holder or any of its Affiliates in any capacity to the Grantor or any Guarantor. Such set-off shall be deemed to have been exercised immediately at the time the Holder or such Affiliate elect to do so.

27. **GENERAL.**

27.1 **Definitions and Construction.** As used herein:

27.1.1 Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

27.1.2 All references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders; (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well; (c) the word "or" has the inclusive meaning represented by the phrase "and/or", the word "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; and (d) to any section, subsection, paragraph or subparagraph shall, unless therein expressly indicated to the contrary, be deemed to have been made to such section, subsection, paragraph or subparagraph of this Deed of Trust.

27.2 **Governing Law; Jurisdiction.** THIS DEED OF TRUST SHALL BE CONSTRUED, INTERPRETED, ENFORCED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEVADA (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAW) AND THE LAWS OF THE UNITED STATES APPLICABLE TO TRANSACTIONS WITHIN NEVADA, EXCEPT THE LAWS OF THE STATE OF NEW YORK AND THE LAWS OF THE UNITED STATES APPLICABLE TO TRANSACTIONS WITHIN NEW YORK SHALL GOVERN THE CONSTRUCTION, INTERPRETATION, ENFORCEMENT AND GOVERNANCE OF THE LOAN AGREEMENT, THE GUARANTY AND THE OTHER LOAN DOCUMENTS AND THE INDEBTEDNESS SECURED HEREBY AND THEREBY. The Grantor consents that the Holder may affect any service of process in the manner and at the Grantor's address set forth above in the Section entitled "Notices" for providing notice or demand; provided, however, the Grantor agrees that nothing contained herein will prevent the Holder from bringing any action, enforcing any award or judgment or exercising any rights against the Grantor individually, against any of the Property or against any other property of the Grantor within any other county, state or other foreign or domestic jurisdiction, including, without limitation, at the election of and in the sole discretion of Holder, the State of California. Each of the parties hereto agrees that a



final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Grantor acknowledges and agrees that the venue provided above is the most convenient forum for the Grantor, the Trustee and the Holder and the Grantor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Deed of Trust.

27.3 Covenants to Run with Land. The grants, terms, covenants, provisions and conditions hereof shall run with the land and shall be binding upon the Grantor, its heirs, personal representatives, successors and permitted assigns, and shall inure to the benefit of the Trustee and their survivors and successors, and the Holder and its successors and assigns.

27.4 Miscellaneous. Time shall be of the essence with respect to this Deed of Trust. This Deed of Trust may be amended or supplemented only by a written agreement executed and, if necessary, acknowledged by the party against whom enforcement of such amendment or supplement is sought. The headings of the sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents. Each writing or plat referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby made a part hereof. Nothing in this Deed of Trust and no transaction related hereto shall operate or be construed to require the Grantor to make any payment or do anything contrary to applicable law. No determination by any court, governmental or quasi-governmental body or otherwise that any provision of this Deed of Trust or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision; or (b) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

27.5 Waiver. All rights, remedies, privileges or discretions of the Holder and the Trustee under this Deed of Trust and applicable law are cumulative, and no right or remedy shall be exclusive of any other right or remedy. No single, partial or delayed exercise by the Holder and the Trustee of any right or remedy shall preclude full and timely exercise by the Holder and the Trustee at any time of any right or remedy of the Holder and the Trustee without notice or demand, at the Holder's or Trustee's sole option. No course of dealing or other conduct, no oral agreement or representation made by the Holder or the Trustee or usage of trade shall operate as a waiver of any right or remedy of the Holder or the Trustee. No waiver of any right or remedy of the Holder or the Trustee shall be effective unless made specifically in writing by the Holder or the Trustee. Neither the Grantor nor any other Person now or hereafter obligated to pay any or all of the Obligations secured by this Deed of Trust shall be relieved of such obligation by reason of (a) the failure of the Holder, the Trustee or any other Person to comply with any request of the Grantor, or to take any action to foreclose this Deed of Trust or otherwise enforce any of the provisions of this Deed of Trust or any Obligations secured hereby; (b) the release, regardless of consideration, of any or all of the Property; or (c) the agreement or stipulation, by any subsequent owner of any or all of the Property and the Holder, extending the time of payment or modifying the terms of the Note, this Deed of Trust or any other document executed in connection therewith, without the prior written consent of the Grantor or such other



Person, and in the event of any such agreement or stipulation, the Grantor and each such other Person shall continue to be liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by the Holder.

27.6 **Joint and Several Liability.** If there is more than one Grantor, each of them shall be jointly and severally liable for adhering to the terms and satisfying the conditions hereof and the term "**Grantor**" shall include each as well as all of them. If there is more than one Guarantor the term "**Guarantor**" shall include each as well as all of them.

28. **SECURITY AGREEMENT AND FIXTURE FILING.** This Deed of Trust constitutes a "**security agreement**" within the meaning of, and creates and grants (and the Grantor does hereby create and grant) to the Holder a security interest under, Article 9 of the Uniform Commercial Code, in all Property (other than the Land and the Improvements). Grantor acknowledges and agrees that, in applying the law of any jurisdiction that at any time enacts all or substantially all of the uniform provisions of Revised Article 9 of the Uniform Commercial Code, the foregoing collateral description covers all assets of Grantor affixed to, or used in connection with any portion of the Property. The Holder shall have the right to file in any public office, without the signature of the Grantor, each financing statement relating to such fixtures and proceeds therefrom that the Holder shall deem necessary or desirable at the sole option of the Holder.

This Deed of Trust is being recorded in the county where the Property is located and constitutes as a fixture filing in accordance with the Uniform Commercial Code. With respect to said fixture filing, (i) the debtor is the Grantor, and Grantor's name and address appear in the first paragraph of this Deed of Trust, and (ii) the secured party is Lender, and Lender's name and address appear in the first paragraph of this Deed of Trust.

29. **NO MERGER OF ESTATES.** So long as any part of the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Lender, any lessee or any third party by purchase or otherwise.

30. **WAIVER OF JURY TRIAL.** TO THE EXTENT NOT PROHIBITED UNDER APPLICABLE LAW, GRANTOR, HOLDER AND TRUSTEE EACH HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE TO THE FULLEST EXTENT NOT PROHIBITED BY LAW ANY RIGHT TO TRIAL BY JURY THEY MAY HAVE IN ANY ACTION OR PROCEEDING, IN LAW OR IN EQUITY, IN CONNECTION WITH THIS DEED OF TRUST OR THE TRANSACTIONS RELATED THERETO. THE GRANTOR REPRESENTS AND WARRANTS THAT NO REPRESENTATIVE OR AGENT OF THE HOLDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE HOLDER WILL NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS RIGHT TO JURY TRIAL WAIVER. THE GRANTOR ACKNOWLEDGES THAT THE LENDER HAS BEEN INDUCED TO ACCEPT THIS DEED OF TRUST BY, AMONG OTHER THINGS, THE PROVISIONS OF THIS SECTION.



31. **CONVEYANCE OR TRANSFER OF PROPERTY.** Grantor expressly agrees that upon a violation of Section 8 of this Deed of Trust by Grantor and acceleration of the principal balance of the Note because of such violation, Grantor will pay all sums required to be paid in connection therewith. Grantor expressly acknowledges that Grantor has received adequate consideration for the foregoing agreement.

32. **ADDITIONAL ADVANCES AND DISBURSEMENTS; COSTS OF ENFORCEMENT.**

(a) If any Event of Default exists and is continuing beyond all applicable notice and cure periods, Lender shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Grantor after five (5) days prior written notice. All sums advanced and expenses incurred at any time by Lender under this Section or otherwise under this Deed of Trust or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, with Default Interest, and all such sums, together with interest thereon, shall be secured by this Deed of Trust.

(b) Grantor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Deed of Trust and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Deed of Trust and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Lender in respect thereof, by litigation or otherwise.

33. **NO MORTGAGEE IN POSSESSION.** Neither the enforcement of any of the remedies under this Deed of Trust, the Assignment of the Leases and Rents, the Environmental Indemnity Agreement, the security interests, nor any other remedies afforded to Lender under the Loan Documents, at law or in equity shall cause Lender or Trustee to be deemed or construed to be a mortgagee in possession of the Property, to obligate Grantor or Trustee to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

34. **TRUSTEE/LENDER INDEMNIFICATION.** Except with respect to the gross negligence or willful misconduct of Trustee and Lender, Trustee and Lender shall be indemnified, held harmless and reimbursed by Grantor for any liability, damage or expense, including reasonable attorneys' fees and amounts paid in settlement, which they or either of them may incur or sustain in the execution of this Deed of Trust or in the doing of any act which they, or either of them, are required to permitted to do by the terms hereof or by law.

35. **MARSHALING AND OTHER MATTERS.** Grantor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshaling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Grantor hereby expressly waives any and all rights of redemption from sale under any order or decree of



foreclosure of this security agreement on behalf of Grantor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Deed of Trust and on behalf of all persons to the extent permitted by applicable law.

36. **REQUEST FOR NOTICES.** GRANTOR REQUESTS THAT A COPY OF ANY NOTICE OF DEFAULT AND A COPY OF ANY NOTICE OF SALE HEREUNDER BE MAILED TO IT AT THE ADDRESS SET FORTH IN THE FIRST PARAGRAPH OF THIS DEED OF TRUST.

37. **NEVADA SPECIFIC PROVISIONS.**

(a) Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Section 37 and the other terms and conditions of this Deed of Trust, the terms and conditions of this Section 37 shall control and be binding.

(b) The introductory phrase of the Granting Clauses of this Deed of Trust is hereby amended by deleting the phrase “hereby irrevocably grants, bargains, sells, pledges, assigns, warrants, transfers and conveys to the Trustee, and its successor or successors in trust, and their assigns, with Power of Sale for the benefit of Lender as beneficiary in trust, in fee simple, all of that land described in Exhibit A (hereinafter sometimes referred to as the “Land”)” and adding the following: “Grantor does hereby irrevocably grant, bargain, sell, pledge, assign, warrant, transfer and convey to Trustee, in trust with power of sale, and Trustee’s successors and assigns, for the benefit of Lender, all of that land described in Exhibit A (hereinafter sometimes referred to as the “Land”), together with the following property, rights, interests and estates now owned, or hereafter acquired by Grantor”.

(c) Section 10 of this Deed of Trust is hereby amended by adding the following:

“Under such Assignment of Leases and Rents, Lender shall also have the right to receive all of the rents, issues and profits of the Property, overdue, due or to become due, and to apply the same, after payment of all necessary charges and expenses, including reasonable attorneys’ fees, on account of the indebtedness secured hereby. Lender may do any and all of the foregoing in its own name or in the name of Grantor and Grantor hereby irrevocably appoints Lender as its attorney-in-fact for such purposes.”

(d) Section 15.3 of this Deed of Trust is hereby amended by adding the following:

“Grantor hereby appoints Lender its true and lawful attorney-in-fact to act in its name, place and stead to accomplish any of the foregoing.”

(e) A new Section 15.5 of the Deed of Trust is hereby added to read as follows:



“15.5 The Lender of this Deed of Trust, upon the occurrence of an Event of Default or in any action to foreclose this Deed of Trust or upon the actual or threatened waste to any part of the Property, shall be entitled to the appointment of a receiver without notice and without regard to the value of the Property as security for the Obligations, or the solvency or insolvency of any person liable for the payment of the Obligations. Lender may also, at any time after such default, apply to any court of competent jurisdiction for the appointment of a receiver and Grantor agrees that such appointment shall be made upon a prima facie showing of a claimed default without reference to any offsets or defenses against such default. Such receiver shall have all the rights and powers provided Lender pursuant to this section or otherwise provided hereunder or by law. Said receiver may borrow monies and issue certificates therefor. Said certificates shall be a lien on the Property subordinate only to this Deed of Trust and the Leases; provided, however, that should any of said certificates be acquired by Lender the amount thereof shall constitute additional indebtedness secured hereby. Such receiver may lease all or any portion of the Property on such terms and for such a term (which may extend beyond the terms of such receiver’s appointment and/or, if Lender so consents, sale of the Property hereunder) as such receiver may deem appropriate in its sole and absolute discretion. The entering upon and taking possession of the Property pursuant to this section and the collection of the rents, issues and profits therefrom shall not cure or waive any default or notice of default hereunder or invalidate any act of Lender pursuant thereto.”

(f) A new Section 15.6 of this Deed of Trust is hereby added to read as follows:

“15.6 Without limiting the generality of the foregoing, any Property may, at the sole and absolute option of Lender, (i) be sold hereunder by Trustee with the remainder of the Property, (ii) be sold pursuant to the Uniform Commercial Code, or (iii) be dealt with by Lender in any other manner provided by statute, law or equity. Without limiting the foregoing, Lender may require Grantor to assemble the Property and make it available to Lender at a place to be designated by Lender. In the event of default, Lender shall be the attorney-in-fact of Grantor with respect to any and all matters pertaining to the Property with full power and authority to give instructions with respect to the collection and remittance of payments, to endorse checks, to enforce the rights and remedies of Grantor, and to execute on behalf of Grantor and in Grantor’s name any instruction, agreement or other writing required therefor. This power shall be irrevocable and deemed to be a power coupled with an interest. Lender may, in its sole discretion, appoint Trustee as the agent of Lender for the purpose of disposition of the Collateral in accordance with the Uniform Commercial Code. Grantor acknowledges and agrees that a disposition of the Property in accordance with Lender’s rights and remedies in respect to land as hereinabove provided is a commercially reasonable disposition thereof.”



(g) The following shall be added to Section 16, entitled "Power of Sale", to read as follows:

"(l) Should default be made by Grantor in payment or performance of any indebtedness or other obligation or agreement secured hereby and/or in performance of any agreement herein, or should Grantor otherwise be in default hereunder, Lender may, subject to NRS 107.080, declare all sums secured hereby immediately due by delivery to Trustee of a written notice of breach and election to sell (which notice Trustee shall cause to be recorded and mailed as required by law) and shall surrender to Trustee this Deed of Trust and the Note.

(m) Should Lender have elected to accelerate the indebtedness secured hereby, Lender may initiate foreclosure of the Property by requesting the Trustee to effectuate a non-judicial foreclosure sale. Trustee shall give and record such notice as the law then requires as a condition precedent to a trustee's sale. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Grantor except as required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Lender in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Grantor nor any other person or entity other than Lender shall have the right to direct the order in which the Property is sold. In the conduct of any such sale Trustee may act itself or through any auctioneer, agent or attorney. Time and place of sale is subject to NRS 107.081."

(h) Fixture Filing. Supplementing the provisions of Section 28 of this Deed of Trust, this Deed of Trust shall constitute a fixture filing pursuant to NRS 104.9402, as amended from time to time. Some or all of the Collateral may be or become a fixture in which Lender has a security interest under the security agreement provided for in Section 28 above (the "**Security Agreement**"). However, nothing herein shall, or shall be deemed to, create any lien or interest in favor of the Trustee in any Property which is not a fixture. The rights, remedies and interests of Lender are independent and cumulative, and there shall be no merger of any lien hereunder with any security interest created by the Security Agreement. Lender may elect to exercise or enforce any of its rights, remedies or interests under either or both this Deed of Trust or the Security Agreement as Lender may from time to time deem appropriate.

(i) Incorporation of Certain Nevada Covenants. To the extent not inconsistent with the provisions hereof, the statutory covenants of NRS 107.030, with the exception of covenant 9, are hereby adopted by reference and made a part hereof.

(j) Future Advances. This Deed of Trust secures future advances, as defined in NRS 106.320, and is to be governed by NRS 106.300 to 106.400, inclusive. The maximum principal amount to be secured hereby is \$75,000,000.00.



(k) Grace Period for Cure. The grace period for payment referenced in the Note shall run concurrently with the 35 day statutory cure period under NRS 107.080(2)(a)(2).

(m) Subject to NRS 107.080 Foreclosure Procedures. Lender's rights and remedies under this Deed of Trust shall be subject to NRS 107.080.

(n) Power to Enter for Environmental Issues. Without limiting the generality of Section 15.2 of this Deed of Trust, Grantor agrees that Lender shall have the same right, power and authority to enter and inspect the Property as is granted to a secured lender under NRS Section 40.507, and that Lender will have the right to appoint a receiver to enforce the right to enter and inspect the Property to the extent such authority is provided under Nevada law, including, without limitation, the authority granted to a secured lender under NRS Section 32.015.

(o) Ability to Waive Lien for Environmental Issues. In the event that any portion of the Property is determined to be "environmentally impaired" (as "environmentally impaired" is defined in NRS 40.502, then, without otherwise limiting or in any way affecting Lender's or Trustee's rights and remedies under this Deed of Trust, Lender may elect to exercise its right under NRS 40.501 through 40.512, inclusive, to (i) waive its lien on such environmentally impaired or affected portion of the Property, and (ii) exercise the rights and remedies of an unsecured creditor, including reduction of its claim against Grantor to judgment and any other rights and remedies permitted by applicable laws. Grantor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of NRS 40.505, if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant or user of any portion of the Property and Grantor knew or should have known of the activity by such lessee, occupant or user which caused or contributed to the release or threatened release. Lender shall have the right under this Deed of Trust to allocate amounts recovered on the Obligations first to those portions thereof other than damages and other amounts recoverable under NRS 40.509, and thereafter to damages and other amounts recoverable under said Section.

(p) Personal Property May Be Sold as a Single Parcel by Election of Lender. Any such sale may be held as part of and in conjunction with any foreclosure sale of the other properties and rights constituting the Property in order that the Property, including the personal property, may be sold as a single parcel if the Lender elects, as permitted by NRS Section 104.9604, and Grantor agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of the personal property.

(q) Conflicts with Nevada Gaming Laws. All rights, remedies and powers provided in this Deed of Trust may be exercised only to the extent that the exercise thereof does not violate any applicable provision of the Nevada Gaming Laws, and all provisions of this Deed of Trust are intended to be subject to all applicable mandatory provisions of the Nevada Gaming Laws which may be controlling and to be limited to the extent necessary so that they will not render this Deed of Trust invalid or unenforceable, in whole or in part.



(r) Waiver of Condemnation Proceeds. Grantor hereby specifically, unconditionally and irrevocably waives all rights of a property owner granted under applicable law which provide for allocation of condemnation proceeds between a property owner and a lienholder, including the provisions of NRS 37.115.

38. WAIVER OF CHAPTER 40 PROTECTIONS. GRANTOR DOES HEREBY AND SHALL CAUSE THE GUARANTOR TO, WAIVE AND RELINQUISH ALL RIGHTS AND REMEDIES ACCORDED BY APPLICABLE LAW TO BORROWERS AND GUARANTORS GENERALLY AND AGREES NOT TO ASSERT OR TAKE ADVANTAGE OF ANY SUCH RIGHTS OR REMEDIES, INCLUDING, WITHOUT LIMITATION: ANY RIGHT PROVIDED BY NRS § 40.430 AND JUDICIAL DECISIONS RELATING THERETO, AND NRS § 40.451. ET SEQ. AND JUDICIAL DECISIONS RELATING THERETO, OR ANY OTHER STATUTE OR DECISION, TO REQUIRE LENDER TO PROCEED AGAINST GRANTOR OR ANY OTHER PERSON OR TO PROCEED AGAINST OR EXHAUST ANY SECURITY HELD AT ANY TIME OR TO PURSUE ANY OTHER REMEDY IN LENDER'S POWER BEFORE PROCEEDING AGAINST THE GRANTOR, GRANTOR SPECIFICALLY AGREEING THAT SUCH WAIVERS ARE INTENDED TO TAKE ADVANTAGE OF THE WAIVERS PERMITTED BY NRS §40.495(2) TO THE MAXIMUM EXTENT PERMITTED.

[NO FURTHER TEXT ON THIS PAGE/
SIGNATURE PAGE FOLLOWS]

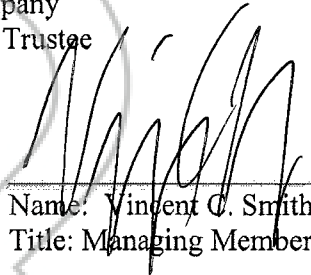


IN WITNESS WHEREOF, the Grantor, intending to be legally bound, has executed this Deed of Trust as a SEALED INSTRUMENT or caused it to be executed and ensealed on its behalf by its duly authorized representatives, the day and year first above written.

GRANTOR:

VMF Trust, established November 11, 2009

By: Arden Companies, LLC,
a Delaware limited liability
company
Its: Trustee

By: 
Name: Vincent C. Smith
Title: Managing Member



ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

On July 22, 2013 before me, JACKIE FOUNTAIN notary public
(insert name and title of the officer)

personally appeared VINCENT C. SMITH who 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 executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 Jackie Fountain (Seal)

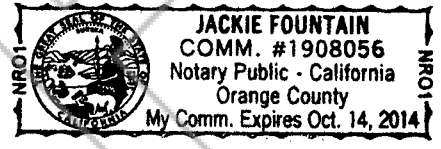
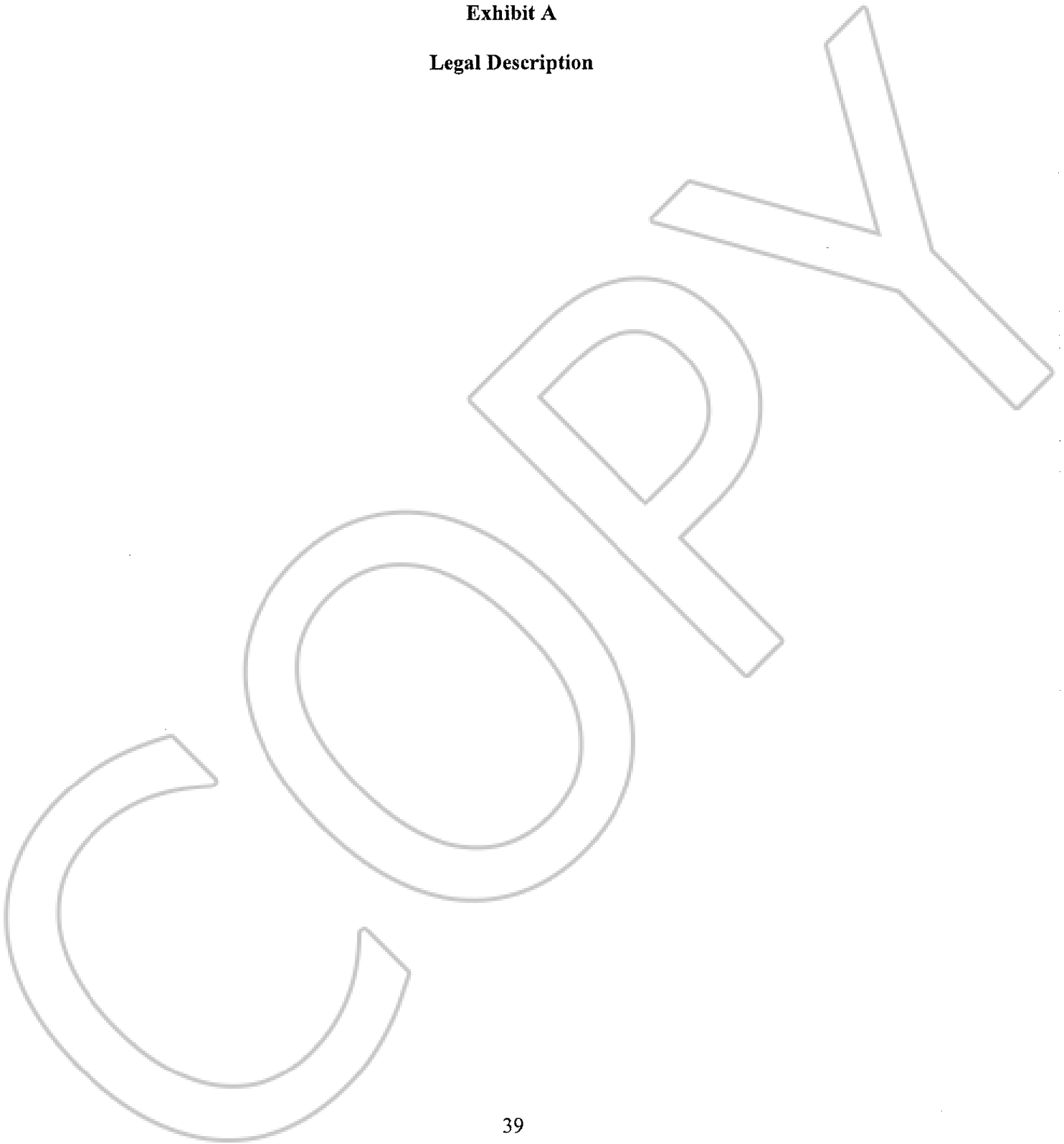




Exhibit A
Legal Description





Legal Description

Real property in the City of Zephyr Cove, County of Douglas, State of Nevada, described as follows:

PARCEL 1:

LOTS 22 AND 23 OF SKYLAND SUBDIVISION NO. 1, ACCORDING TO THE MAP THEREOF, FILED IN THE OFFICE OF THE COUNTY RECORDER OF DOUGLAS COUNTY, STATE OF NEVADA, ON FEBRUARY 27, 1958, AS FILE NO. 12967.

EXCEPTING ANY PORTION OF THE ABOVE DESCRIBED PROPERTY LYING WITHIN THE BED OF LAKE TAHOE BELOW THE LINE OF NATURAL ORDINARY HIGH WATER AND ALSO EXCEPTING ANY ARTIFICIAL ACCRETIONS TO THE LAND WATERWARD OF THE LINE OF NATURAL ORDINARY HIGH WATER OR, IF LAKE LEVEL HAS BEEN ARTIFICIALLY LOWERED, EXCEPTING ANY PORTION LYING BELOW AN ELEVATION OF 6,223.00 FEET, LAKE TAHOE DATUM ESTABLISHED BY NRS 321.595.

PARCEL 1A :

TOGETHER WITH A NON-EXCLUSIVE RIGHT-OF-WAY FOR ACCESS TO THE WATERS OF LAKE TAHOE AND FOR BEACH AND RECREATIONAL PURPOSES AS SET FORTH IN DEED RECORDED FEBRUARY 05, 1960, IN BOOK 1, PAGE 268, FILE NO. 15573, OFFICIAL RECORDS.

PARCEL 2:

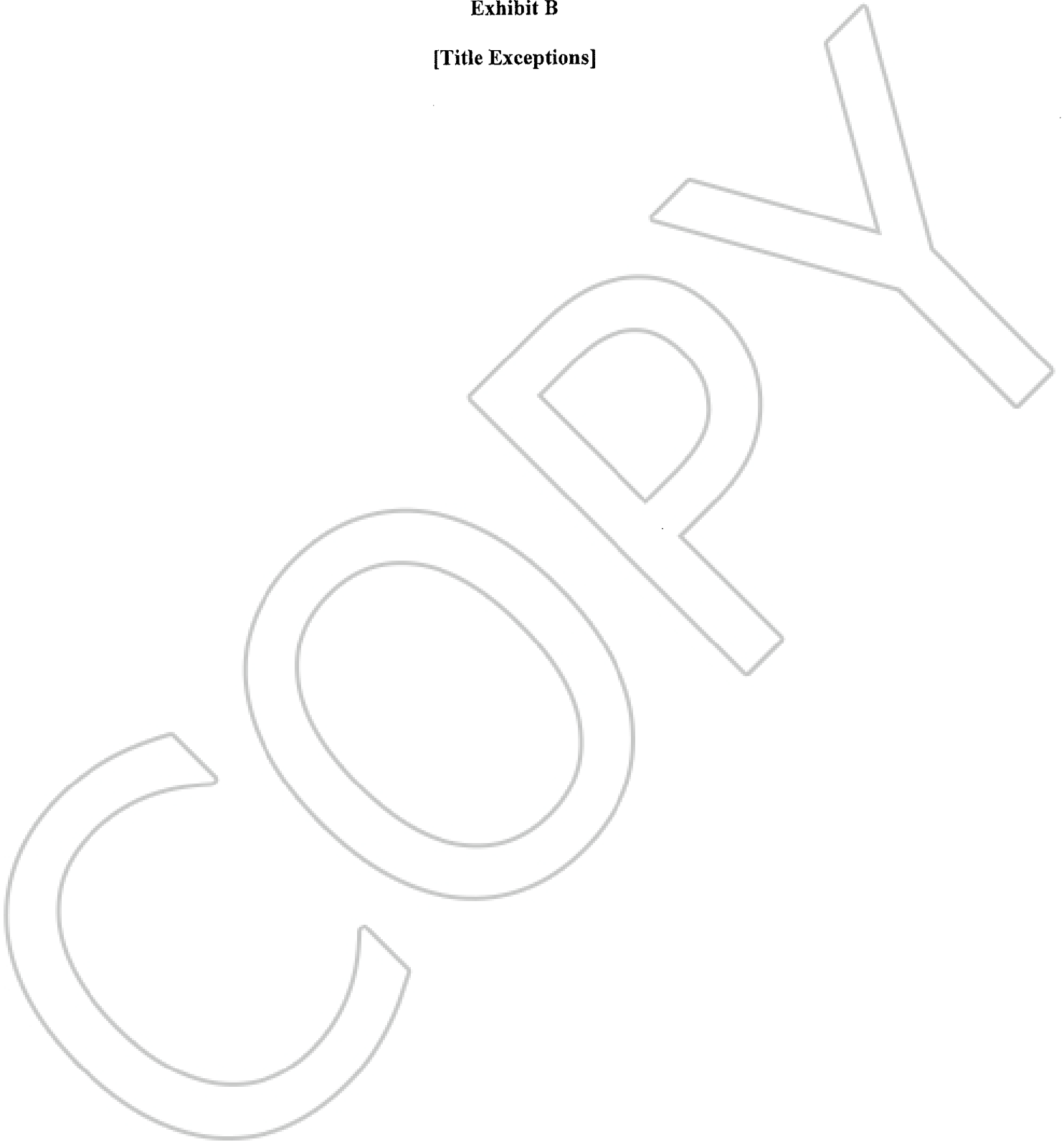
THAT PARCEL OF LAND LYING BETWEEN THE LOW WATER LINE OF LAKE TAHOE AS IT EXISTED ON THE 12TH DAY OF APRIL, 1870, AND THE PROPERTY SHOWN ON THE MAP OF SKYLAND SUBDIVISION NO. 1, FILED IN THE OFFICE OF THE RECORDER OF DOUGLAS COUNTY, NEVADA, ON FEBRUARY 27, 1958, THAT IS APPURTENANT TO LOTS 22 AND 23, AS THEY ARE SHOWN ON SAID MAP.

EXCEPTING ANY PORTION OF THE ABOVE DESCRIBED PROPERTY LYING WITHIN THE BED OF LAKE TAHOE BELOW THE LINE OF NATURAL ORDINARY HIGH WATER AND ALSO EXCEPTING ANY ARTIFICIAL ACCRETIONS TO THE LAND WATERWARD OF THE LINE OF NATURAL ORDINARY HIGH WATER OR, IF LAKE LEVEL HAS BEEN ARTIFICIALLY LOWERED, EXCEPTING ANY PORTION LYING BELOW AN ELEVATION OF 6,223.00 FEET, LAKE TAHOE DATUM ESTABLISHED BY NRS 321.595.



Exhibit B

[Title Exceptions]





File No.: **NCS-617053-09-SA1**

Policy No.: **617053-09L**

EXCEPTIONS FROM COVERAGE

PART I

This Policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. Water rights, claims or title to water, whether or not shown by the public records.
2. Any taxes that may be due, but not assessed, for new construction which can be assessed on the unsecured property rolls, in the Office of the County Assessor, per Nevada Revised Statute 361.260. A lien not yet due or payable.
3. Any and all rights of the United States of America Pertaining to the raising or lowering of the level of Lake Tahoe between the elevations of 6,223.00 feet and 6,229.5 feet above sea level, pursuant to N.R.S. 321.595, also pursuant to the Truckee River Agreement.
4. Any adverse claim based upon the assertion that:
 - a) Said land or any part thereof is now or at any time has been below the low watermark of LAKE TAHOE established at elevation 6,223 feet, Lake Tahoe datum, in the event the boundary of said Lake has been artificially raised or is now at any time has been below the low watermark if said Lake is in its natural state.
 - b) Some portion of said land has been created by artificial means or has accreted to such portion so created.
 - c) Some portions of the said land has been brought within the boundaries thereof by an avulsive movement of Lake Tahoe, or has been formed by accretion of any such portion.
 - d) Rights and easements for recreation, commerce, navigation and fishery.
 - e) Any rights in favor of the public which may exist if said land or portions thereof are or were at any time used by the public.
5. Any lien which may be levied by the Tahoe-Douglas General Improvement District by reason of said land lying within its boundaries. A lien not yet due or payable.
6. Any lien which may be levied by the Skyland General Improvement District and Skyland Water District by reason of said land lying within its boundaries. A lien not yet due or payable.
7. Any lien which may be levied by the Tahoe Regional Planning Association by reason of said land lying within its boundaries. A lien not yet due or payable.
8. Reservations, exceptions and provisions, as contained in Patent conveying the land.



9. Easements, dedications, reservations, provisions, relinquishments, recitals, certificates, and any other matters as provided for or delineated on Plat Map No. 12967 referenced in the legal description contained herein. Reference is hereby made to said plat for particulars.
10. Covenants, conditions, and restrictions in a Deed recorded September 26, 1957, in Book C-1, Page 561 as Instrument No. 12655 of Deeds Records.
11. The terms, conditions and provisions contained in the document entitled "Maintenance and easements of an agreement relating to a party wall dividing the basement between Lots 23 and 24", executed by and between Richard R. Costa, Trustee U/A September 17, 1997, Richard R. Costa Declaration of Trust and Robert L. Underwood, as Trustee of The Underwood Revocable Living Trust U/D/I August 21, 1998, as amended September 15, 1999, recorded October 01, 1999 in Book 1099, Page 0311 as Instrument No. 478019 of Official Records.

Said Agreement in part, states "The party wall, as constructed, does not necessarily sit on the exact boundary line between Lots 23 and 24".

12. An easement for the right of ingress and egress to maintain and repair the electrical/telephone lines and incidental purposes in the document recorded October 01, 1999 in Book 1099, Page 316 as Instrument No. 478020 of Official Records.

NOTICE: This is a pro-forma policy furnished to or on behalf of the party to be insured. It neither reflects the present status of title, nor is it intended to be a commitment to insure. The inclusion of endorsements as part of the pro-forma policy in no way evidences the willingness of the Company to provide any affirmative coverage shown therein.

There are requirements which must be met before a final policy can be issued in the same form as this pro-forma policy. A commitment to insure setting forth these requirements should be obtained from the Company.