

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO:

Commercial Enterprises, Inc., Defined Benefit  
Pension Plan  
674 Via De La Valle, Suite 310  
Solana Beach, California 92075  
Attention: Bryan Smith

APN: see attached "Exhibit A"

Space Above For Recorder's Use

## DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

**THIS DOCUMENT DOES NOT CONTAIN ANY PERSONAL INFORMATION (AS DEFINED IN NEVADA REVISED STATUTES (as amended, "NRS") SECTION 603A.040) IN VIOLATION OF NRS SECTION 239B.030.**

This DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made as of January 18, 2018, by and among Fairway One LLC, a Nevada limited liability company ("Trustor"), whose address is 1971 Pray Meadow, Glenbrook, Nevada 89413; North American Title Insurance Company ("Trustee"); and Commercial Enterprises, Inc., Defined Benefit Pension Plan ("Beneficiary"), whose address is 674 Via De La Valle, Suite 310, Solana Beach, California 92075.

### ARTICLE 1 GRANT IN TRUST AND SECURED OBLIGATIONS

1.1 **Grant in Trust.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustor hereby irrevocably and unconditionally grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, all estate, right, title and interest which Trustor now has or may later acquire in and to the following property (all or any part of which, or interest therein, as the context may require, may be referred to herein as the "Property"):

(a) That certain real property, located in Carson City, Nevada, more particularly described on Exhibit A attached hereto ("Land");

(b) Any and all buildings, structures and improvements now or hereafter erected on the Land ("Improvements"), and Trustor's right, title and interest in and to all other improvements that may now or hereafter be constructed upon the Land, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery and other articles attached to said buildings and improvements;

(c) All right, title and interest of Trustor in and to all leases, subleases, subtenancies, licenses, occupancy agreements and concessions covering the Land or the improvements or any portion thereof or space therein now or hereafter existing, and all right, title and interest of Trustor under the same, including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature ("Leases");

(d) All rents, issues, profits, royalties, revenues, income and other proceeds and benefits derived from the Land or the Improvements;

(e) Any and all building permits, land use entitlements, development rights, sewer capacity, map approvals, trip generation rights, density allocations and other rights or approvals relating to or authorizing the development of the Land;

(f) All right, title and interest of Trustor in and to all options to purchase or lease the Land or any portion or interest of or in the Land, and any greater estate in the Land owned or hereafter acquired;

(g) Any and all interests, estate or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Land;

(h) Any and all easements, parking rights, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; .

(i) All right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right of way of any street, open or proposed, adjoining the Land, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Land;

(j) All right, title and interest of Trustor in and to all tangible personal property now or at any time hereafter located on or at the Land or the Improvements and primarily used in connection therewith, including, but not limited to, all building materials, goods, machinery, tools, insurance proceeds, equipment (including fire sprinklers and alarm systems, office air conditioning, heating, refrigerating, electronic monitoring, entertainment, recreational, window or structural cleaning rigs, maintenance, exclusion of vermin or insects, removal of dust, refuse or garbage, and all other equipment of every kind), model home and/or lobby and all other indoor and outdoor furniture (including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets), wall beds, wall safes, furnishings, plumbing fixtures (including pipes, bathtubs, showers, sinks and faucets), wall beds, wall safes, furnishings, appliances (including ice boxes, refrigerators, fans, heaters, stoves, water heaters, dishwashers, trash compactors, ovens of all types, washing machines, dryers, other kitchen and laundry equipment and incinerators), inventory, rugs, carpets and other floor coverings, draperies and drapery rods and brackets, awnings, window shades, Venetian blinds, curtains, lamps, chandeliers and other lighting fixtures, and office maintenance and other supplies, and trees, shrubs and other landscaping and lawn care and landscaping vehicles and equipment;

(k) All intangible property and rights relating to the Land or Improvements or the operation thereof, including, without limitation, all service marks, trademarks, trade names, advertising campaigns and marketing or promotional materials;

(l) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Trustor with third parties (including all utility deposits), contract rights (including any and all guarantees and warranties relating to the construction of the Improvements, and the manufacture and installation of fixtures and other personal property, Trustor's rights under listing agreements with licensed real estate brokers and Trustor's rights as seller under executory purchase and sale agreements and related escrow instructions), development and use rights, governmental permits and licenses (including Trustor's rights and entitlements under approvals issued by the State of Nevada or any other governmental or quasi governmental entities with jurisdiction of the Land, including any and all Subdivision Public Reports [i.e., so-called "white reports"]), applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Beneficiary), which arise from or relate to construction on the Land or to any business now or later to be conducted on it, or to the Land and Improvements generally;

(m) All books and records pertaining to the Land, the Improvements, and all of the other Property, including computer-readable media and any computer hardware or software necessary to access and process such media;

(n) All proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Land, Improvements or the other Property into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Land, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; and

(o) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the foregoing.

1.2 **Secured Obligations.** Trustor makes the foregoing grant, conveyance, transfer and assignment in trust, and makes the assignment of rents set forth in Article 2 and grants the security interest set forth in Article 3, for the purpose of securing the following obligations (collectively, "Secured Obligations"), in any order of priority as Beneficiary may choose:

(a) Payment of indebtedness in the total principal amount of up to \$5,700,000.00, with interest thereon, evidenced by that certain Promissory Note of even date herewith, signed by Trustor, which has been delivered to and is payable to the order of Beneficiary, and which by this reference is hereby made a part hereof, and any and all modifications, extensions and renewals thereof and substitutions therefor ("Note");

(b) Performance of all obligations of Trustor under that certain Loan Agreement of even date herewith between Beneficiary as "Lender" and Trustor as "Borrower" ("Loan Agreement");

(c) Payment and performance of all obligations of Trustor under this Deed of Trust;

(d) Payment of all sums advanced by Beneficiary to protect the Property as permitted herein, with interest thereon at the rate per annum in effect from time to time under the Note;

(e) Payment of all other sums, with interest thereon, which may hereafter be loaned to Trustor or its successors or assigns by Beneficiary, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust;

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

This Deed of Trust, the Note, the Loan Agreement and any other instrument (other than a guaranty or environmental indemnity intended to be unsecured ) given to evidence or further secure the payment and performance of any of the Secured Obligations may sometimes hereafter be referred to collectively as the "Loan Documents". All initially capitalized terms not otherwise defined herein shall have the same meanings as in the Loan Agreement.

## ARTICLE 2 ASSIGNMENT OF RENTS

2.1 **Assignment of Rents.** Trustor hereby irrevocably, absolutely, presently and unconditionally assigns and transfers to Beneficiary all the rents, royalties, issues, profits, revenue, income and proceeds of the Property, whether now due, past due or to become due, including all prepaid rents, security deposits and lease early termination payments (collectively, the "Rents"), and hereby gives to and confers upon Beneficiary the right, power and authority to collect the Rents. This assignment of the Rents is intended to be an absolute assignment from Trustor to Beneficiary and not an assignment for security or the granting of a security interest

therein. Trustor shall on demand execute such further assignments to Beneficiary of leases or subleases or rents as Beneficiary may require from time to time.

**2.2 Grant of License.** Beneficiary hereby confers upon Trustor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Section 6.1, shall exist and be continuing. If an Event of Default has occurred and is continuing, Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Trustor, and without regard to the adequacy of Beneficiary's security under this Deed of Trust.

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

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

(d) Beneficiary's right to the Rents does not depend on whether or not Beneficiary takes possession of the Property as permitted under Article 6. Beneficiary may choose to collect the Rents, in its sole, absolute and unfettered discretion, either with or without taking possession of the Property.

**2.4 Application of Rents Collected.** Beneficiary shall apply all Rents collected by it first, to pay any costs and expenses of operation of the Property or collection of the Rents that may be incurred by Beneficiary, Trustee or any receiver; and thereafter, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose. Beneficiary shall have no liability for any funds it does not actually receive.

**2.5 No Loss or Waiver of Remedies.** If an Event of Default occurs while Beneficiary is in possession of all or part of the Property or is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law and in equity, including the right to exercise the power of sale granted under Section 1.1 and Subsection 6.2(d).

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

- (a) A "mortgagee in possession" for any purpose; or
- (b) Responsible for performing any of the obligations of the lessor under any lease; or
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.



**ARTICLE 3  
GRANT OF SECURITY INTEREST**

3.1 **Creation of Security Interest.** Trustor as debtor hereby grants Beneficiary as secured party a security interest in all of the Property described in Section 1.1 which under applicable law is personal property (collectively, "Personal Property"), to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the UNIFORM COMMERCIAL CODE, covering all such Personal Property. If an Event of Default occurs, Beneficiary shall have all the rights, powers and remedies of a secured party under the UNIFORM COMMERCIAL CODE. All of the rights, powers and remedies of Beneficiary under this Article shall be in addition to all rights, powers and remedies given to Beneficiary by any statute or rule of law, other provision of this Deed of Trust or any other of the Loan Documents or other agreement, shall be cumulative and may be exercised successively or concurrently without impairing or in any way affecting Beneficiary's security interest in the Personal Property.

3.2 **Financing Statements.** Trustor shall execute one or more financing statements and such other documents as Beneficiary may from time to time require to perfect or continue the perfection of Beneficiary's security interest in any Property. Trustor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require. In case Trustor fails to execute any financing statements or other documents for the perfection or continuation of any security interest, Trustor hereby appoints Beneficiary as its true and lawful attorney-in-fact to execute any such documents on its behalf. In addition, Trustor authorizes Beneficiary to authenticate, sign and/or file any such financing statements or amendments without the need for further signature or authentication by Trustor.

3.3 **Fixture Filing.** This Deed of Trust constitutes a financing statement filed as a fixture filing pursuant to the UNIFORM COMMERCIAL CODE the Uniform Commercial Code as adopted in Nevada, NAC 104.150. , as amended or recodified from time to time, covering any Property which is now or may later become fixtures attached to the Land or the Improvements. This filing is to be recorded in the real estate records of the county where the Property is located. In that connection, the following information is provided:

|                                 |                   |
|---------------------------------|-------------------|
| Name of Debtor:                 | Trustor           |
| Address of Debtor:              | See page 1 hereof |
| Debtor's State of Organization: | Nevada            |
| Debtor's Organizational Number: |                   |
| Name of Secured Party:          | Beneficiary       |
| Address of Secured Party:       | See page 1 hereof |

**ARTICLE 4  
RIGHTS AND DUTIES OF THE PARTIES**

4.1 **Representations and Warranties of Trustor.** Trustor represents, warrants and covenants that, except as previously disclosed to Beneficiary in a writing making reference to this warranty:

- (a) Trustor lawfully possesses and holds fee simple title to the Land as of the date this Deed of Trust is recorded;
- (b) Trustor has or will have good title to all Property other than the Land and Improvements;
- (c) Trustor has or will have all rights, permits, entitlements and approvals necessary to construct the Improvements on the Land;
- (d) Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Rents;

(e) This Deed of Trust creates a first position lien on the Land,

(f) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonably future beneficial use and enjoyment of the Land and Improvements;

(g) Trustor owns the Personal Property, and any other Property which under applicable law is personal property, free and clear of any security agreements, reservations of title or conditional sales contracts, and there is no financing statement affecting such Personal Property on file in any public office; and

(h) Trustor's place of business, or its chief executive office if it has more than one place of business, is located at the address specified above.

**4.2 Payment and Performance of Secured Obligations.** Trustor shall pay when due the principal of and the interest on the indebtedness evidenced by the Note, charges, fees and all other sums as provided in the Loan Documents, and the principal of and interest on any future advances secured by this Deed of Trust. Trustor shall promptly perform each other Secured Obligation in accordance with its terms.

**4.3 Maintenance, Repair, Alterations.** Trustor shall keep the Property in good condition and repair, and shall not remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or regulations) any of the Improvements; shall complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Land and promptly restore in like manner any Improvements which may be damaged or destroyed, and shall pay when due all claims for labor performed and materials furnished therefor; shall comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Property, or any part thereof, or requiring any alterations or improvements; shall not commit or permit any waste or deterioration of the Property; shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; shall comply with the provisions of applicable lease(s), if this Deed of Trust encumbers a leasehold(s); shall not commit, suffer or permit any act to be done in or upon the Property in violation of any law, ordinance or regulation.

**4.4 Development and Marketing of Residential Project.** Trustor shall use commercially reasonable efforts to market and sell the housing units.

**4.5 Required Insurance.** Trustor shall at all times provide, maintain and keep in force the policies of insurance required in the Loan Agreement.

**4.6 Delivery of Policies; Payment of Premiums.** Trustor shall furnish Beneficiary with an original, or a copy certified by an authorized agent of the insurer, of all policies of required insurance, and an original certificate of insurance of all such policies, setting forth the coverage as to the Property, the limits of liability as to the Property, the name of the carrier, the policy number and the expiration date. Trustor may provide any of the required insurance through blanket policies carried by Trustor and covering more than one location, upon satisfying Beneficiary that such blanket policies meet all the requirements hereof. At least twenty (20) days prior to the expiration of each such policy, Trustor shall furnish Beneficiary with evidence satisfactory to Beneficiary of the payment of premium and the re-issuance of a policy continuing insurance in force as required by this Deed of Trust. All such policies shall contain a provision that such policies will not be canceled or materially amended, which terms shall include any reduction in the scope or limits of coverage, without at least thirty (30) days prior written notice to Beneficiary. In the event Trustor fails to provide, maintain, keep in force or deliver or furnish to Beneficiary the policies of insurance required by this Deed of Trust, then such failure shall be a default hereunder and Beneficiary may procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and Trustor will pay all premiums thereon promptly upon demand by Beneficiary, and until such payment is made by Trustor the amount of all such premiums, together with interest thereon at the rate per annum in effect from time to time under the Note, shall be secured by this Deed of Trust. At the request of Beneficiary, Trustor shall deposit with Beneficiary, in monthly installments, an amount equal to one-twelfth (1/12th) of the estimated aggregate annual insurance premiums on all policies of insurance required by this Deed of Trust; provided, however, that Beneficiary shall make no

such request for monthly deposits unless and until such time (if ever) as an Event of Default (as defined in Section 6.1 below) has occurred, whereupon Beneficiary shall at any and all times thereafter have the right to require such monthly deposits by Trustor, whether or not the Event of Default has been cured. Trustor further agrees, upon Beneficiary's request, to cause all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents, and providing Trustor has deposited sufficient funds with Beneficiary pursuant to this Section, Beneficiary shall pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds deposited with Beneficiary are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Section. Beneficiary may commingle said reserve with its own funds and Trustor shall be entitled to no interest thereon.

#### **4.7 Damages and Insurance and Condemnation Proceeds.**

(a) Trustor hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payor to pay to Beneficiary, the following claims, causes of action, awards, payments and rights to payment: (i) all awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use which affects all or part of the Property or any interest in it; and (ii) all other awards, claims and causes of action, arising out of any warranty affecting all or any part of the Property, or for damage or injury to or decrease in value of all or part of the Property or any interest in it; and (iii) all proceeds of any insurance policies payable because of loss sustained to all or part of the Property; and (iv) all interest which may accrue on any of the foregoing.

(b) Trustor shall immediately notify Beneficiary in writing if: (i) any damage occurs or any injury or loss is sustained in any amount to all or part of the Property, or any action or proceeding relating to any such damage, injury or loss is commenced; or (ii) any offer is made, or any action or proceeding is commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property. If Beneficiary chooses to do so, it may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury or loss to all or part of the Property, and it may make any compromise or settlement of the action or proceeding. Beneficiary, if it so chooses, may participate in any action or proceeding relating to condemnation or taking of all or part of the Property, and may join Trustor in adjusting any loss covered by insurance.

(c) All proceeds of these assigned claims, other property and rights which Trustor may receive or be entitled to shall be paid to Beneficiary. In each instance, Beneficiary shall apply those proceeds first toward reimbursement of all of Beneficiary's costs and expenses of recovering the proceeds, including attorneys' fees

#### **4.8 Use of Proceeds by Trustor**

(a) If, in any instance, each and all of the following conditions are satisfied in Beneficiary's reasonable judgment, Beneficiary shall permit Trustor to use the balance of the proceeds assigned under the preceding Section ("Net Claims Proceeds") to pay costs of repairing or reconstructing the Property in the manner described below:

(i) The plans and specifications, cost breakdown, construction contract, construction schedule, contractor and payment and performance bonds for the work of repair or reconstruction must all be reasonably acceptable to Beneficiary.

(ii) Beneficiary must receive evidence satisfactory to it that after repair or reconstruction, the outstanding balance of all Secured Obligations will not exceed seventy-five percent (75%) of the value of the Property.



(iii) The Net Claims Proceeds must be sufficient in Beneficiary's determination to pay for the total cost of repair or reconstruction, including all associated development costs and interest projected to be payable on the Secured Obligations until the repair or reconstruction is complete; or Trustor must provide its own funds in an amount equal to the difference between the Net Claims Proceeds and a reasonable estimate, made by Trustor and found acceptable by Beneficiary, of the total cost of repair or reconstruction.

(iv) No Event of Default shall have occurred and be continuing.

(b) If the foregoing conditions are met, Beneficiary shall hold the Net Claims Proceeds in an interest-bearing account and shall disburse them to Trustor to pay costs of repair or reconstruction, on such terms and subject to such conditions as are reasonably established by Beneficiary to govern disbursement of funds, including without limitation providing evidence of costs, percentage completion of repair or reconstruction, application of payments and satisfaction of mechanic's liens. However, if Beneficiary finds that one or more of the foregoing conditions are not satisfied, it shall apply the Net Claims Proceeds to pay or prepay (without premium) some or all of the Secured Obligations in such order and proportions as it in its sole, absolute and unfettered discretion may choose.

(c) Trustor hereby specifically, unconditionally and irrevocably waives all rights of a property owner that provides for allocation of condemnation proceeds between a property owner and a lienholder, and any other law or successor statute of similar import.

(d) Nothing herein contained shall be deemed to excuse Trustor from repairing or maintaining the Property as provided in Section 4.3 hereof or restoring all damage or destruction to the improvements, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount, and the application or release by Beneficiary of any insurance proceeds shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice.

**4.9 Assignment of Insurance Policies Upon Foreclosure.** In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Trustor in and to all policies of insurance required by this Deed of Trust shall inure to the benefit of and pass to the successor in interest of Trustor, or the purchaser or grantee of the Property.

**4.10 Indemnification; Subrogation; Waiver of Offset**

(a) If Beneficiary is made a party defendant to any litigation concerning this Deed of Trust or the Property or any part thereof or interest therein, or the occupancy thereof by Trustor, then Trustor shall indemnify, defend and hold Beneficiary harmless from all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Beneficiary in any such litigation, whether or not any such litigation is prosecuted to judgment. If Beneficiary commences an action against Trustor to enforce any of the terms hereof or because of the breach by Trustor of any of the terms hereof, or for the recovery of any sum secured hereby, Trustor shall pay to Beneficiary reasonable attorneys' fees and expenses, and the right to such attorneys' fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Trustor breaches any term of this Deed of Trust, Beneficiary may employ an attorney or attorneys to protect its rights hereunder and, in the event of such employment following any breach by Trustor, Trustor shall pay Beneficiary reasonable attorneys' fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of breach. Notwithstanding the foregoing, if an action is actually commenced by either party and such action proceeds to final judgment in favor of Trustor, then (i) Trustor shall have no obligation to pay Beneficiary's attorneys' fees and expenses, and (ii) Beneficiary shall pay Trustor reasonable attorneys' fees and expenses incurred by Trustor in connection with such action.

(b) Trustor waives any and all right to claim or recover against Beneficiary, its officers, employees, agents and representatives, for loss of or damage to Trustor, the Property, Trustor's other



property or the property of others under Trustor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

(c) All sums payable by Trustor hereunder shall be paid without notice (except as expressly provided herein), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of, or any condemnation or similar taking of, the Property or any part thereof; (ii) any restriction or prevention of or interference with any use of the Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Land or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary or Trustor, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary or Trustor, or by any court, in any such proceeding; (v) any claim which Trustor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Trustor, or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor.

#### 4.11 Taxes and Impositions.

(a) Trustor shall pay, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including, without limitation, non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Property, which are assessed or imposed upon the Property, or become due and payable, and which create, may create or appear to create a lien upon the Property, or any part thereof, or upon any personal property, equipment or other facility used in the operation or maintenance thereof (all of which taxes, assessments and other governmental and non-governmental charges of like nature are hereinafter referred to as "Impositions"); provided, however, that if, by law, any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Trustor may pay the same, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Property in lieu of or in addition to the Impositions payable by Trustor pursuant to the preceding Subsection, or (ii) a license fee, tax or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined herein, and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions or, at the option of Beneficiary, all obligations secured hereby, together with all accrued interest thereon, shall immediately become due and payable. Anything to the contrary herein notwithstanding, Trustor shall have no obligation to pay any franchise, estate, inheritance, income, excess profits or similar tax levied on Beneficiary or on the obligations secured hereby.

(c) Subject to the provisions of Subsection (d) below, Trustor covenants to furnish Beneficiary, within thirty (30) days after the date upon which any such Imposition is due and payable by Trustor, official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payments thereof.

(d) Trustor shall have the right before any delinquency occurs to contest or object to the amount or validity of any such Imposition by appropriate legal proceedings, but this shall not be deemed or construed as in any way relieving, modifying or extending Trustor's covenant to pay any such Imposition at the time and in the manner provided in this Section, unless Trustor has given prior written notice to Beneficiary of Trustor's intent to so contest or object to an Imposition, and unless, at Beneficiary's sole option, (i) Trustor

shall furnish a good and sufficient bond as requested by and satisfactory to Beneficiary; or (ii) Trustor shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

(e) At the request of Beneficiary, Trustor shall pay to Beneficiary, on the day monthly installments of principal and/or interest are payable under the Note, until the Note is paid in full, an amount equal to one-twelfth (1/12<sup>th</sup>) of the annual impositions reasonably estimated by Beneficiary as necessary to pay the installment of taxes next due on the Property; provided, however, that Beneficiary shall make no such request for monthly deposits unless and until such time (if ever) as an Event of Default (as defined in Section 6.1 below) has occurred, whereupon Beneficiary shall at any and all times thereafter have the right to require such monthly deposits by Trustor, whether or not the Event of Default has been cured. Trustor further agrees to cause all bills, statements or other documents relating to Impositions to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents, and providing Trustor has deposited sufficient funds with Beneficiary pursuant to this Section, Beneficiary shall pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds deposited with Beneficiary are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Section. Beneficiary shall not be obliged to pay or allow any interest on any sums held by Beneficiary pending disbursement or application hereunder, and Beneficiary may impound or reserve for future payment of Impositions such portion of such payments as Beneficiary may in its reasonable discretion deem proper, applying the balance to the principal of or interest on the Secured Obligations. If Trustor fails to deposit with Beneficiary (exclusive of that portion of said payments which has been applied by Beneficiary on the principal of or interest on the indebtedness secured by the Loan Documents) sums sufficient to fully pay such Impositions at least thirty (30) days before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary as herein elsewhere provided, or, at the option of Beneficiary, the latter may, without making any advance whatever, apply any sums held by it upon any obligation of Trustor secured hereby. If any default occurs or exists on the part of Trustor in the payment or performance of any of Trustor's obligations under the terms of the Loan Documents, Beneficiary may, at any time and at Beneficiary's option, apply any sums or amounts in its hands received pursuant hereto, or as rents or income of the Property or otherwise, upon any indebtedness or obligation of Trustor secured hereby in such manner and order as Beneficiary may elect. The receipt, use or application of any such sums paid by Trustor to Beneficiary hereunder shall not be construed to affect the maturity of any indebtedness secured by this Deed of Trust or any of the rights or powers of Beneficiary or Trustee under the terms of the Loan Documents or any of the obligations of Trustor under any of the Loan Documents.

(f) Trustor covenants and agrees to use its best efforts to prevent the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Property as a single lien.

4.12 **Utilities.** Trustor shall pay when due all utility charges which are incurred by Trustor for the benefit of the Property or which may become a charge or lien against the Property for gas, electricity, water or sewer services furnished to the Property and all other assessments or charges of a similar nature, whether public or private, affecting the Property or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

4.13 **Actions Affecting Property.** Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and Trustor shall pay all costs and expenses, including cost of evidence of title and attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear.

4.14 **Actions by Trustee and/or Beneficiary to Preserve Property.** If Trustor fails to make any payment or to do any act as and in the manner provided in any of the Loan Documents, Beneficiary and/or

Trustee, each in its own absolute and unfettered discretion, without obligation so to do and without notice to or demand upon Trustor except as expressly provided for herein, and without releasing Trustor from any obligation, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. In connection therewith (without limiting their general powers), Beneficiary and/or Trustee shall have and are hereby given the right, but not the obligation, (i) to enter upon and take possession of the Property; (ii) to make additions, alterations, repairs and improvements to the Property which they or either of them may reasonably consider necessary or proper to keep the Property in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of either may affect or appears to affect the security of this Deed of Trust or be prior or superior hereto; and (v) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Trustor shall, immediately upon demand therefor by Beneficiary, pay all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing rights, including, without limitation, costs of evidence of title, court costs, appraisals, surveys and attorneys' fees.

**4.15 Survival of Warranties.** Trustor shall fully and faithfully satisfy and perform the obligations of Trustor contained in any of the Loan Documents. All representations, warranties and covenants of Trustor contained therein or incorporated by reference shall survive the close of escrow and funding of the loan evidenced by the Note, and shall remain continuing obligations, warranties and representations of Trustor during any time when any portion of the obligations secured by this Deed of Trust remain outstanding.

**4.16 Additional Security.** In the event Beneficiary at any time holds additional security for any of the obligations secured hereby, Beneficiary may after an Event of Default (as defined in Section 6.1 below) enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder.

**4.17 Appointment of Successor Trustee.** Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Trustor and recorded in the County in which the Property is located, and by otherwise complying with the provisions of the applicable law of the State of Nevada, substitute a successor or successors to the Trustee named herein or acting hereunder.

**4.18 Successors and Assigns.** This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" shall mean the owner and holder of the Note, whether or not named as Beneficiary herein.

**4.19 Inspections.** Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Property for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents.

**4.20 Liens.** If any claim of lien is recorded which affects the Property or a bonded stop notice is served upon Beneficiary which affects the Loan or Borrower's Funds (as defined in the Loan Agreement), Trustor shall, within twenty (20) days after such recording or service, (i) pay and discharge the same, (ii) effect the release thereof by recording or delivering to Beneficiary a surety bond in form and amount satisfactory to Beneficiary, or (iii) provide Beneficiary with other assurance which Beneficiary, in its sole discretion, deems to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of Beneficiary from the effect thereof. If Trustor fails to remove any lien on the Property or bonded stop notice against the Loan or Borrower's Funds, and fails to provide satisfactory security in lieu of removal of such lien or stop notice as provided in (ii) above, Beneficiary may pay such lien or bonded stop notice, or may contest the validity thereof, paying all costs and expenses of contesting the same, including attorneys' fees, and Trustor shall reimburse Beneficiary on demand for all payments made and costs and expenses incurred by Beneficiary in doing so.

**4.21 Trustee's Powers.** Trustee may, at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note



secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Property, (i) reconvey any part of the Property, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, or (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof.

4.22 **Beneficiary's Powers.** Beneficiary, without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Land not then or theretofore released as security for the full amount of all unpaid obligations, may from time to time and without notice (i) release any person so liable, (ii) extend the maturity or alter any of the terms of any such obligation, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed at any time at Beneficiary's option, any parcel, portion or all of the Property, (v) take or release any other additional security for any obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto, or (vii) advance additional funds to protect the security hereof and pay or discharge the obligations of Trustor hereunder or under the Loan Documents, and all amounts so advanced, with interest thereon at the rate per annum in effect from time to time under the Note, shall be secured hereby.

4.23 **Financial Statements.** Trustor shall cause to be delivered to Beneficiary, at the times and in the formats prescribed in the Loan Agreement, the financial statements described in the Paragraph of the Loan Agreement captioned "Additional Financial Information".

4.24 **Trade Names.** At the request of Beneficiary, Trustor shall execute a certificate in form satisfactory to Beneficiary listing the trade names under which Trustor operates or intends to operate the Property, and representing and warranting that Trustor does business under no other trade names with respect to the Property. Trustor shall immediately notify Beneficiary in writing of any change in said trade names and will, upon request of Beneficiary, execute any additional financing statements and other certificates revised to reflect the change in trade name.

4.25 **Reconveyance by Trustee.** Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or the person or persons legally entitled thereto, without warranty, any portion of the Property 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".

4.26 **Change in Composition of Trustor.** Without the prior written consent of Beneficiary, Trustor shall abstain from, and shall not cause or permit, to the extent it may do so, any change or transfer of interest in Trustor described in the Paragraph of the Loan Agreement captioned "Change in Borrower".

## ARTICLE 5 ACCELERATION OF MATURITY

### 5.1 **Acceleration on Sale.**

(a) Trustor understands that in making the loan evidenced by the Note, Beneficiary is relying to a material extent upon the business expertise and net worth of Trustor and upon the continuing interest which Trustor has in the Property. Accordingly, except as expressly provided herein to the contrary, in the event that Trustor, without the prior written consent of Beneficiary, directly or indirectly, voluntarily or involuntarily, sells, assigns, transfers, disposes of or agrees to sell, assign, transfer or dispose of all or any portion of or any interest in the Land or the Improvements (other than a lease in the ordinary course of Trustor's business), or in the event that any partner of Trustor (at any tier) sells, assigns, transfers or disposes of any such partner's interest in Trustor, then the same shall be deemed to increase the risk of Beneficiary, and Beneficiary may then, or at any time thereafter, declare the entire indebtedness secured hereby immediately due and payable, and may exercise all rights and remedies provided herein.

(b) For purposes of this Section, and except for transfers expressly authorized herein, (i) the terms "sell" and "transfer" shall include, in addition to the common and ordinary meaning of those terms and without limiting their generality, transfers made to subsidiary or affiliated entities, transfers made to a reconstituted partnership, transfers by any partnership (at any tier) to the individual partners or vice versa, transfers by any corporation (at any tier) to its shareholders or vice versa, any corporate merger or consolidation, and any "change in ownership" as that term is used from time to time in Nevada real property taxation law; and (ii) the term "transferee" shall mean purchaser, assignee, grantee or subsequent owner of all or any part of the Land or of any interest in Trustor. Beneficiary's options pursuant to Section 5.1(a) may be exercised at any time after the occurrence of any such event, and the acceptance of one or more installments from any person thereafter shall not constitute a waiver of Beneficiary's option. Beneficiary's approval of any sale, assignment, transfer, pledge or disposition or failure to exercise said option with respect thereto shall not be construed as a waiver of the provisions hereof with regard to any subsequent transaction.

(c) Beneficiary may condition its consent to a sale or transfer upon the fulfillment of certain requirements, including, but not limited to, the following (collectively, "Conditions of Transfer"): (i) that the proposed transferee meet Beneficiary's then-existing credit and other standards with respect to similar loans; (ii) that the transferee specifically assume personal liability for the outstanding balance of the indebtedness secured hereby and the obligations to be performed under the obligation and this Deed of Trust; (iii) that an assumption fee be paid to Beneficiary at the time of the transfer; (iv) that the interest rate payable under the obligation be increased; (v) that a new policy of beneficiary's title insurance be obtained; (vi) that new financing statements be filed; (vii) that the proposed transferee agree to restrictions on further transfers; and (viii) that endorsements to existing policies or new insurance policies be obtained. Beneficiary shall in no event be obligated to consent to any transfer of less than the entire Property (other than a lease in the ordinary course of Trustor's business), or to any transfer in any form, including, but not limited to, a sale and leaseback, which has the effect of creating additional expenses to or charges against the Property.

**5.2 Acceleration on Insolvency of Trustor.** In the event (i) Trustor fails to pay its debts generally as they come due or files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors; (ii) an involuntary petition is filed against Trustor under any bankruptcy or similar statute and such petition is not set aside or withdrawn or is still in effect within ten (10) days from the date of such filing (or such longer period as is reasonably necessary, provided Trustor promptly commences, and diligently and continuously pursues thereafter, its efforts to have the petition set aside or withdrawn); or (iii) a custodian, receiver or trustee (or other similar official) is appointed to take possession, custody or control of any of the properties of Trustor; or (iv) the Property becomes subject to the jurisdiction of a Federal Bankruptcy Court or successor to that court, or any similar state court; or (v) Trustor makes an assignment for the benefit of Trustor's creditors; or (vi) any portion of Trustor's assets is attached, executed upon or judicially seized in any manner, and such seizure is not discharged within thirty (30) days, Beneficiary at its option and to the extent permitted by applicable law may, without prior notice, declare all sums secured by this Deed of Trust, irrespective of their stated due date(s), immediately due and payable and may exercise all rights and remedies provided in this Deed of Trust.

## ARTICLE 6 DEFAULT; REMEDIES

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

(a) Trustor fails to pay any money as required under this Deed of Trust and does not cure that failure within five (5) days after written notice from Beneficiary or Trustee; or

(b) Trustor fails to perform any obligation arising under this Deed of Trust other than one to pay money, and does not cure that failure within five (5) days after written notice from Beneficiary or Trustee (or such longer period as is reasonably determined by Beneficiary to be necessary for completion of the cure, so long as Trustor begins promptly and thereafter diligently continues to cure the failure); or

(c) A default occurs under any of the Secured Obligations and is not cured within the applicable cure period, if any.

Notwithstanding the notice and cure periods set forth in this Section, if Beneficiary has provided to Trustor any such notice of default hereunder (whether as to monetary or non-monetary default) or under the Note, two (2) times during any calendar year, then no further notice nor cure period shall be required with respect to any subsequent Events of Default, whether during such calendar year or thereafter.

**6.2 Acceleration Upon Default; Additional Remedies.** At any time after any Event of Default, Beneficiary may declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Property, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including attorneys' fees) upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such rents, issues and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Property or the collection, receipt and application of rents, issues or profits, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon the occurrence of any Event of Default, including the right to exercise the power of sale.

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, and/or specifically enforce any of the covenants hereof.

(c) Exercise any or all of the remedies available to a secured party under the UNIFORM COMMERCIAL CODE, including, but not limited to:

(i) Either personally or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Trustor and all others claiming under Trustor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Trustor with respect to the Personal Property or any part thereof; provided, however, Beneficiary shall not obtain control of the Personal Property until such time as Beneficiary is eligible or is within ten (10) days of becoming eligible to record a Notice of Sale pursuant to Section 6.3 and applicable law. In the event Beneficiary demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Documents, Trustor promises and agrees to promptly turn over and deliver complete possession thereof to Beneficiary.

(ii) Without notice to or demand upon Trustor, make such payments and do such acts as Beneficiary may deem necessary to protect its security interest in the Personal Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder, and, in exercising any such powers or authority, pay all expenses incurred in connection therewith;

(iii) Require Trustor to assemble the Personal Property or any portion thereof at a place designated by Beneficiary and reasonably convenient to both parties, and promptly to deliver such Personal Property to Beneficiary, or an agent or representative designated by it. Beneficiary and



its agents and representatives shall have the right to enter upon any or all of Trustor's premises and property to exercise Beneficiary's rights hereunder;

(iv) Sell, lease or otherwise dispose of the Personal Property at public sale, with or without having the Personal Property at the place of sale, and upon such terms and in such manner as Beneficiary may determine. Beneficiary may be a purchaser at any such sale.

Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Beneficiary shall give Trustor at least ten (10) days prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof. Such notice may be mailed to Trustor at the address set forth at the beginning of this Deed of Trust.

(d) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Property to be sold, which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of the County in which the Property is located.

**6.3 Foreclosure by Power of Sale.** If Beneficiary elects to foreclose by exercise of power of sale under Subsection 6.2(d), Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(a) Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Property at the time and place of sale fixed by it in said Notice of Sale, either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(b) After deducting all costs, fees and expenses of Trustee, including costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale first to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the rate per annum in effect from time to time under the Note, then to payment of all other Secured Obligations, and the remainder, if any, to the person or persons legally entitled thereto.

(c) Trustee may postpone the sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

(d) The power of sale under this Deed of Trust shall not be exhausted by any one or more sales (or attempts to sell) as to all or any portion of the Property remaining unsold, but shall continue unimpaired until all of the Property has been sold by exercise of the power of sale herein contained and all indebtedness of Trustor to Beneficiary under the Deed of Trust, the Note or other Loan Documents has been paid in full.

**6.4 Appointment of Receiver.** If an Event of Default has occurred and is continuing, Beneficiary as a matter of right and without notice to Trustor or anyone claiming under Trustor, and without regard to the then value of the Property or the interest of Trustor therein, shall have the right to apply to any court having

jurisdiction to appoint a receiver or receivers of the Property, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided in Section 6.2(a) above, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Property unless such receivership is sooner terminated.

**6.5 Remedies Not Exclusive.** Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any of the Secured Obligations and to exercise all rights and powers under this Deed of Trust or under any Loan Instrument or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, 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 any of the Loan Documents to Trustee or Beneficiary, or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary, and either of them may pursue inconsistent remedies.

**6.6 Request for Notice.** hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in the first Section of this Deed of Trust.

## ARTICLE 7 MISCELLANEOUS

**7.1 Governing Law.** This Deed of Trust shall be governed by the laws of the State of Nevada. In the event that any provision or clause of any of the Loan Documents conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Documents which can be given effect without the conflicting provision, and to this end the provisions of the Loan Documents are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

**7.2 Trustor Waiver of Rights.** Trustor waives (i) the benefit of all laws now existing or that hereafter may be enacted providing for any appraisal before sale of any portion of the Property; (ii) any applicable statute of limitations; and (iii) the benefit of all laws that may hereafter be enacted in any way extending the time for the enforcement of the collection of the Note or the debt evidenced thereby or creating or extending a period of redemption from any sale made in collecting said debt. To the full extent Trustor may do so, Trustor agrees that Trustor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and Trustor, for Trustor, Trustor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Section and now in force, of which Trustor, Trustor's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Trustor expressly waives and relinquishes any and all rights and remedies which Trustor may have or be able to assert by reason of the laws of the State of Nevada pertaining to the rights and remedies of sureties.

7.3 **Usury.** If limits on interest imposed by are judicially determined to be applicable to the Note or any other amount secured hereby by the non-appealable order or judgment of a court with competent jurisdiction, then the total liability for the payments deemed to be interest shall not exceed the maximum interest allowed by governing Nevada law.

7.4 **Statements of Trustor.** Trustor, within ten (10) days after being given notice by mail, shall furnish to Beneficiary a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Deed of Trust, and stating whether any offset or defense exists against such principal and interest.

7.5 **Notices.** All notices and demands under this Deed of Trust shall be in writing, and shall be deemed served upon delivery, or if mailed, upon the first to occur of receipt thereof or three (3) days after deposit thereof in the United States Postal Service, certified mail, postage prepaid, addressed to the address of Beneficiary or Trustor appearing at the beginning of this Deed of Trust. Notices of change of address may be given in the same manner.

7.6 **Acceptance by Trustee.** Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

7.7 **Captions.** The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

7.8 **Invalidity of Certain Provisions.** If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or not fully secured by the lien of this Deed of Trust. If any provision of the Loan Documents shall be deemed void or unenforceable, it shall not affect the validity of the remaining provisions thereof which shall be considered severable.

7.9 **Subrogation.** To the extent that proceeds of the Note or advances under this Deed of Trust are used to pay any outstanding lien, charge or prior encumbrance against the Property, such proceeds or advances have been or will be advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

7.10 **No Merger.** If both the lessor's and lessee's estates under any lease or any portion thereof which constitutes a part of the Property shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Property pursuant to the provisions hereof, any leases or subleases then existing and created by Trustor shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

7.11 **Non-Waiver.** The acceptance by Beneficiary of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment when due of all other sums hereby secured or to declare a default as herein provided. The acceptance by Beneficiary of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon the condition that it shall not constitute a waiver of the obligation of Trustor to pay the entire sum then due, and Trustor's failure to pay said entire sum then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid, and Beneficiary or Trustee shall be at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Beneficiary thereafter of further sums on



account, or otherwise, entitled to exercise all rights in this instrument conferred upon them, or either of them, upon the occurrence of a default, and the right to proceed with a sale under any notice of default, and election to sell, shall in no way be impaired, whether any of such amounts are received prior or subsequent to such notice. Consent by Beneficiary to any transaction or action of Trustor which is subject to consent or approval of Beneficiary hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive transactions or actions. At any time and from time to time, without liability therefor and without notice, and without releasing or otherwise affecting the liability of any person for payment of any indebtedness hereby secured: (i) Beneficiary at its sole, absolute and unfettered discretion may extend the time for, or release any person now or hereafter liable for, payment of any or all such indebtedness, or accept or release additional security therefor, or subordinate the lien or charge hereof; or (ii) Trustee, upon written request of Beneficiary and presentation of the Note and any additional note(s) and this Deed of Trust for endorsement, may reconvey any part of said Land, consent to the making of any map or plat thereof, join in granting any easement thereof, or join in any such agreement of extension or subordination.

7.12 **Dispute Resolution.** The Loan Documents, fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Deed of Trust. The Loan Documents also grant further rights to Beneficiary and certain of them contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Property. Provisions of of the Note and Section 8.7 below shall govern with respect to any Claim, Counter Claim or other action which arises under the terms of this Deed of Trust.

## **Article 8 NEVADA STATE SPECIFIC PROVISIONS**

7.1 **Recommendation of Receiver.** Beneficiary shall have the right to recommend to the court the person to be appointed as receiver.

7.2 **Substitute Trustee.** Beneficiary, at Beneficiary's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed under this instrument. Without conveyance of the Mortgaged Property, the successor trustee will succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law

7.2 **Nevada Code.** The covenants set forth as Nos. 6, 7 (a reasonable amount), 8, and 9 of NRS Section 107.030, are hereby adopted and made a part of this Deed of Trust.

7.3 **Acceleration.**

(a) At any time during the existence of an Event of Default, Lender, at Lender's option, may declare the indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by applicable law or provided in this Instrument, the Loan Agreement or in any other Loan Document. Trustor acknowledges that the power of sale granted in this Instrument may be exercised by Beneficiary without prior judicial hearing. Trustor has the right to bring an action to assert the non-existence of an Event of Default or any other defense of Trustor to acceleration and sale. Beneficiary will be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees, costs of documentary evidence, abstracts and title reports.

(b) If Beneficiary invokes the power of sale, Beneficiary will execute or cause Trustee to execute a written notice of the occurrence of an Event of Default and of Beneficiary's election to cause the Property to be sold and will cause such notice to be recorded in each county in which the Property is located. Beneficiary will give notice of default in the manner provided by the laws of Nevada to Trustor and to such other persons as the laws of Nevada prescribe. Trustee will give notice of sale and Trustee will sell the Property according to the laws of Nevada. Trustee may sell the Property at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine.

Trustee may postpone sale of all or any part of the by public announcement at the time and place of any previously scheduled sale. Beneficiary or Beneficiary's designee may purchase the Property at any sale.

(c) Trustee will deliver to the purchaser at the sale, within a reasonable time after the sale, a deed conveying the Property so sold without any covenant or warranty, express or implied. The recitals in Trustee's deed will be prima facie evidence of the truth of the statements made in Trustee's deed. Trustee will apply the proceeds of the sale in the following order: (i) to all costs and expenses of the sale, including Trustee's fees not to exceed 5% of the gross sales price, Attorneys' Fees and Costs and costs of title evidence; (ii) to the Indebtedness in such order as Beneficiary, in Beneficiary's discretion, directs; and (iii) the excess, if any, to the person or persons legally entitled thereto.

7.4 **Reconveyance.** Upon payment of the Indebtedness, Beneficiary will request Trustee to reconvey the Mortgaged Property and will surrender this Instrument and the Note to Trustee. Trustee will reconvey the Mortgaged Property without warranty to the person or persons legally entitled thereto. Such person or persons will pay Trustee's reasonable costs incurred in so reconveying the Mortgaged Property

7.6 **Waiver of Homestead.** Trustor waives all right of homestead exemption in the Property.

7.7 **WAIVER OF TRIAL BY JURY.**

(a) **TRUSTOR AND BENEFICIARY EACH COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS TRUSTOR AND BENEFICIARY THAT IS TRIABLE OF RIGHT BY A JURY.**

(b) **TRUSTOR AND BENEFICIARY EACH WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

IN WITNESS WHEREOF, Trustor has signed and delivered this Deed of Trust as of the date first above written.

Trustor:  
Fairway One LLC,  
a Nevada limited liability company

By: Fairway One Builders L.L.C, a Nevada limited liability  
company  
Its: Managing Member

By: American Capital Management Corporation, a  
California corporation  
Its: Managing Member

By: \_\_\_\_\_  
James Taylor  
Sole Shareholder and Chairman

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of ~~California~~ Nevada )  
County of Douglas )

On January 18, 2018, before me, Diana R. York, notary public  
Date Here Insert Name and Title of Officer

personally appeared James Taylor  
(Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Diana R York





**THIS DEED OF TRUST ENCUMBERS THIS PROPERTY AND OTHERS**

**Exhibit A**

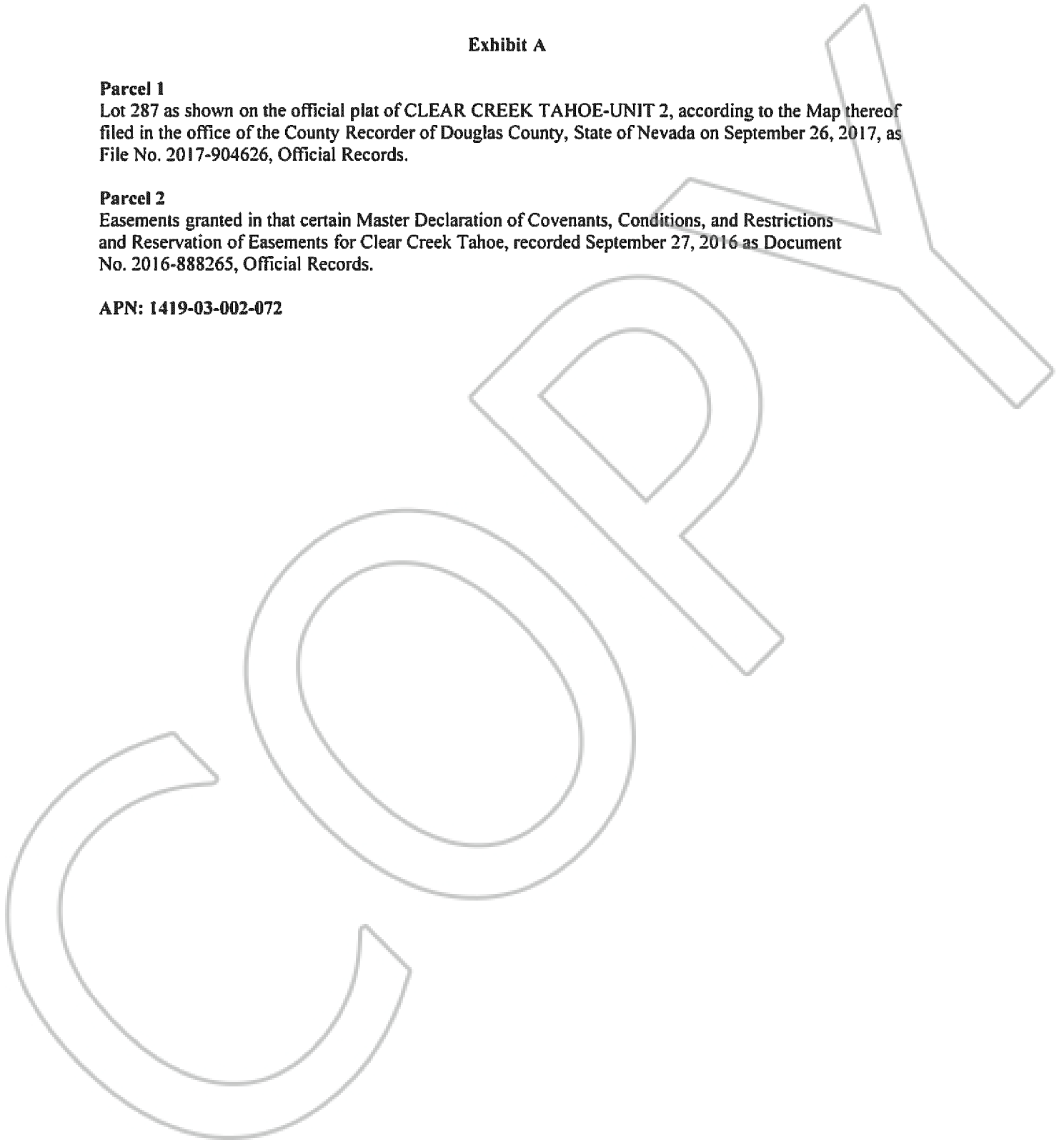
**Parcel 1**

Lot 287 as shown on the official plat of CLEAR CREEK TAHOE-UNIT 2, according to the Map thereof filed in the office of the County Recorder of Douglas County, State of Nevada on September 26, 2017, as File No. 2017-904626, Official Records.

**Parcel 2**

Easements granted in that certain Master Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for Clear Creek Tahoe, recorded September 27, 2016 as Document No. 2016-888265, Official Records.

**APN: 1419-03-002-072**



**THIS DEED OF TRUST ENCUMBERS THIS PROPERTY AND OTHERS**

**Exhibit A**

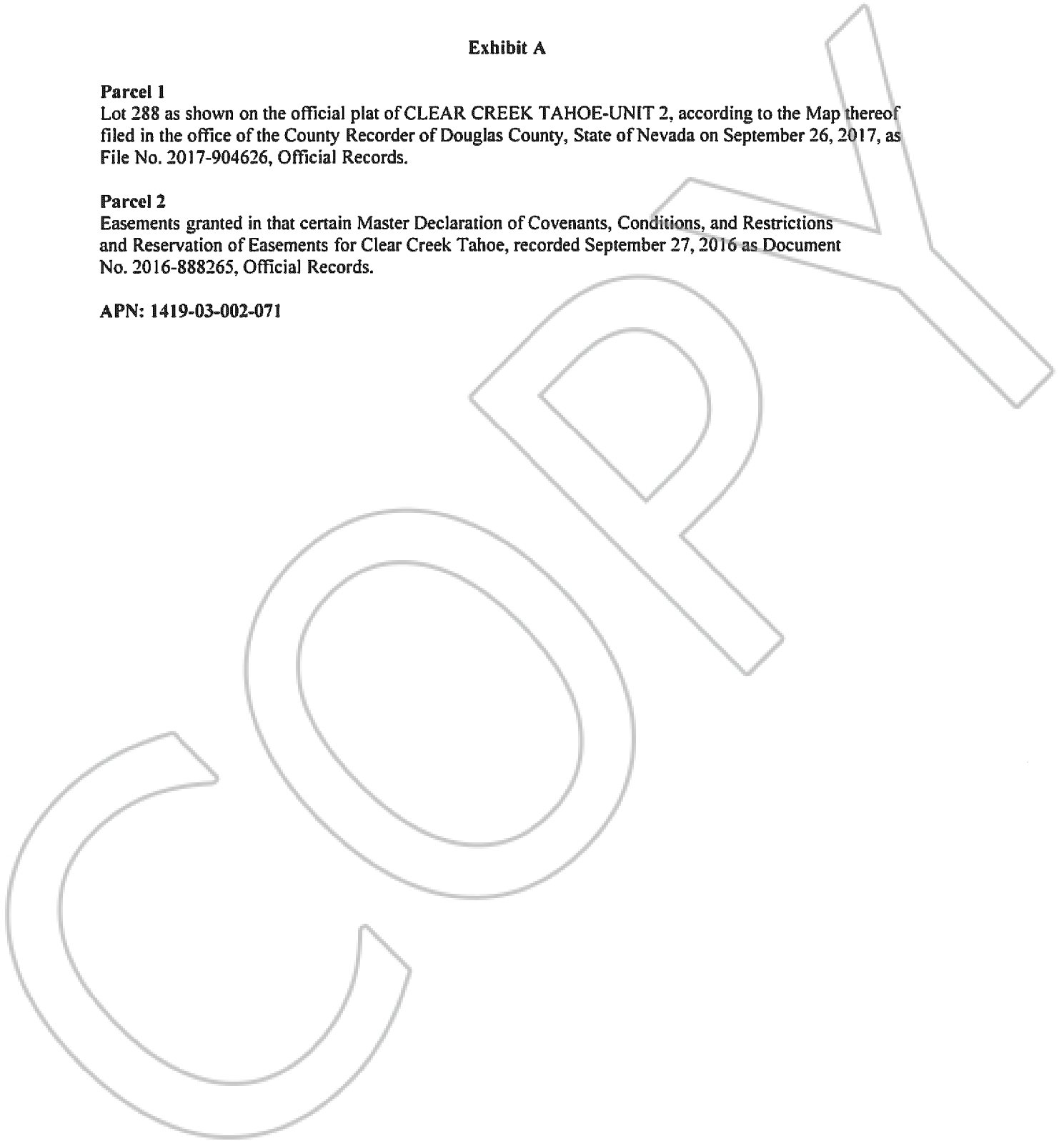
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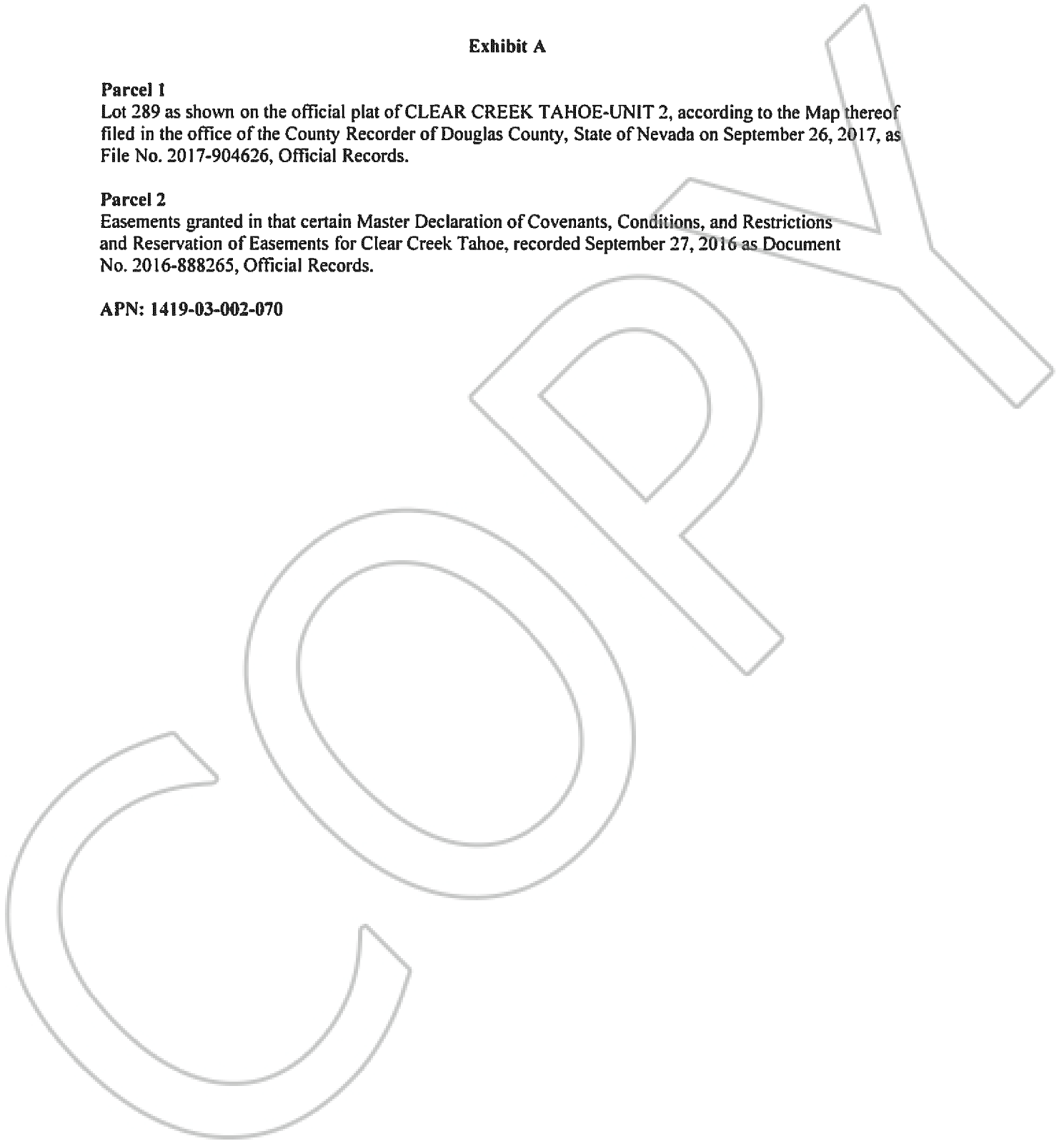
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**APN: 1419-03-002-070**





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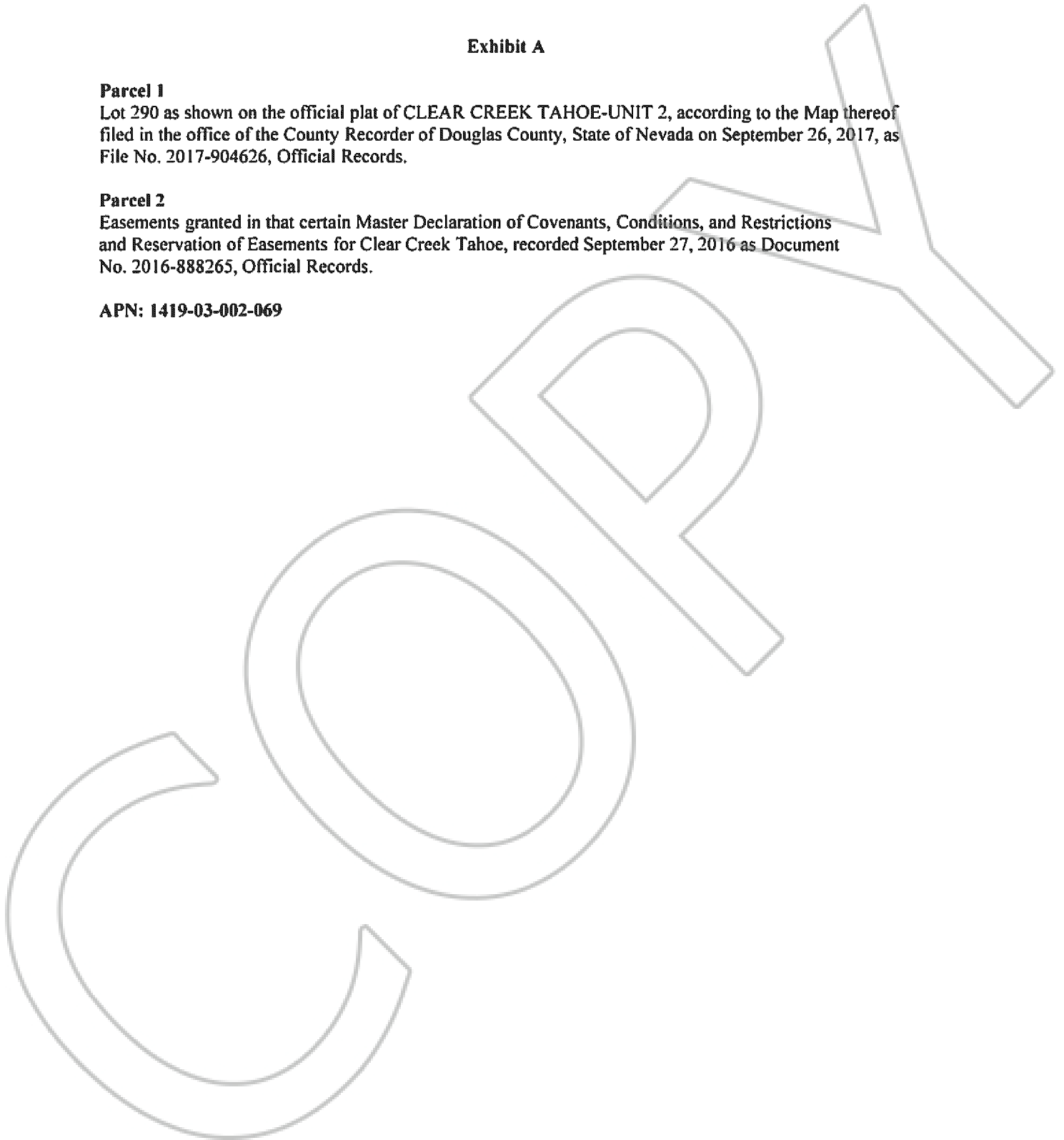
**Parcel 1**

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**Parcel 2**

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**APN: 1419-03-002-069**



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**Exhibit A**

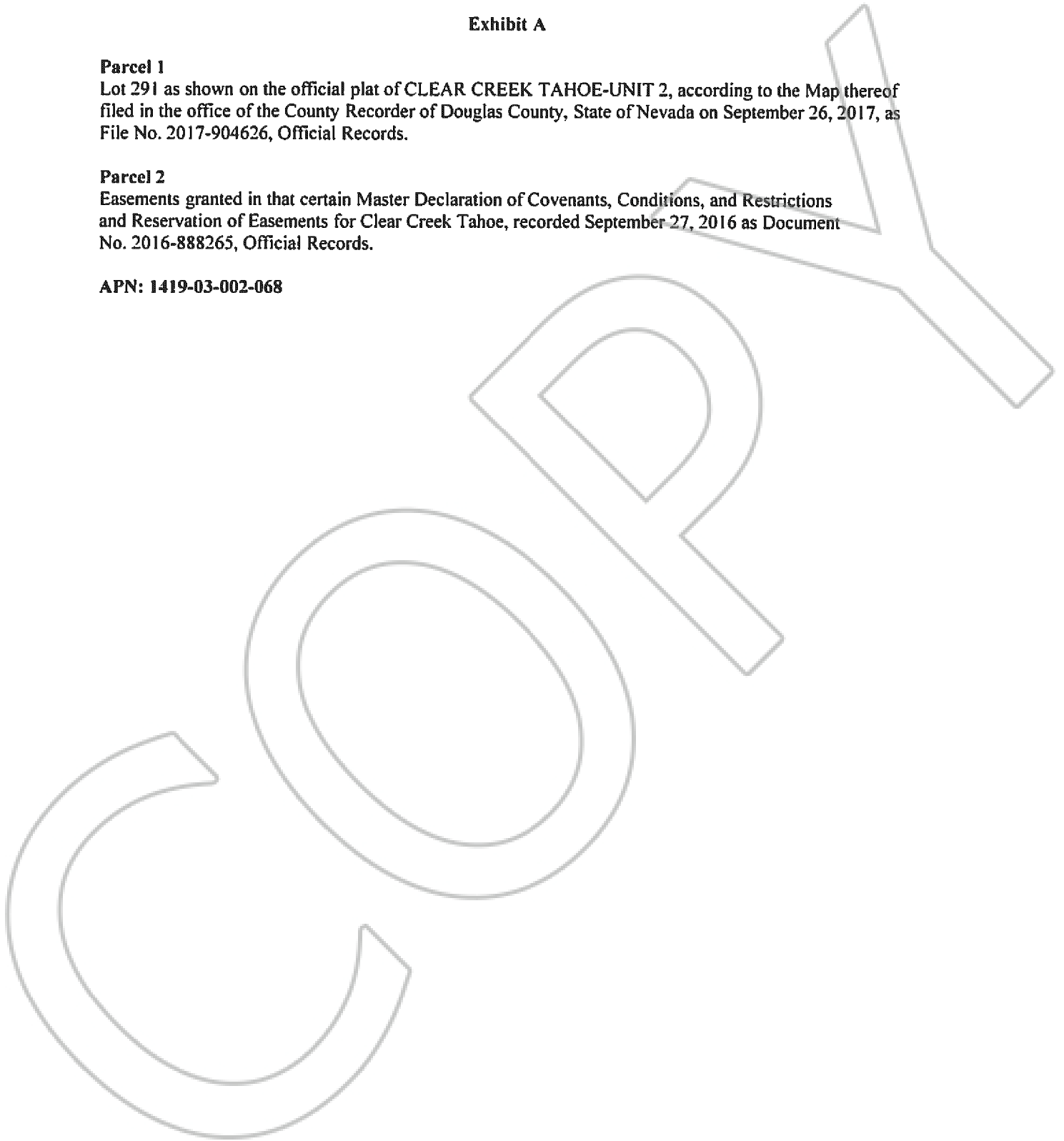
**Parcel 1**

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**Parcel 2**

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**APN: 1419-03-002-068**



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**Exhibit A**

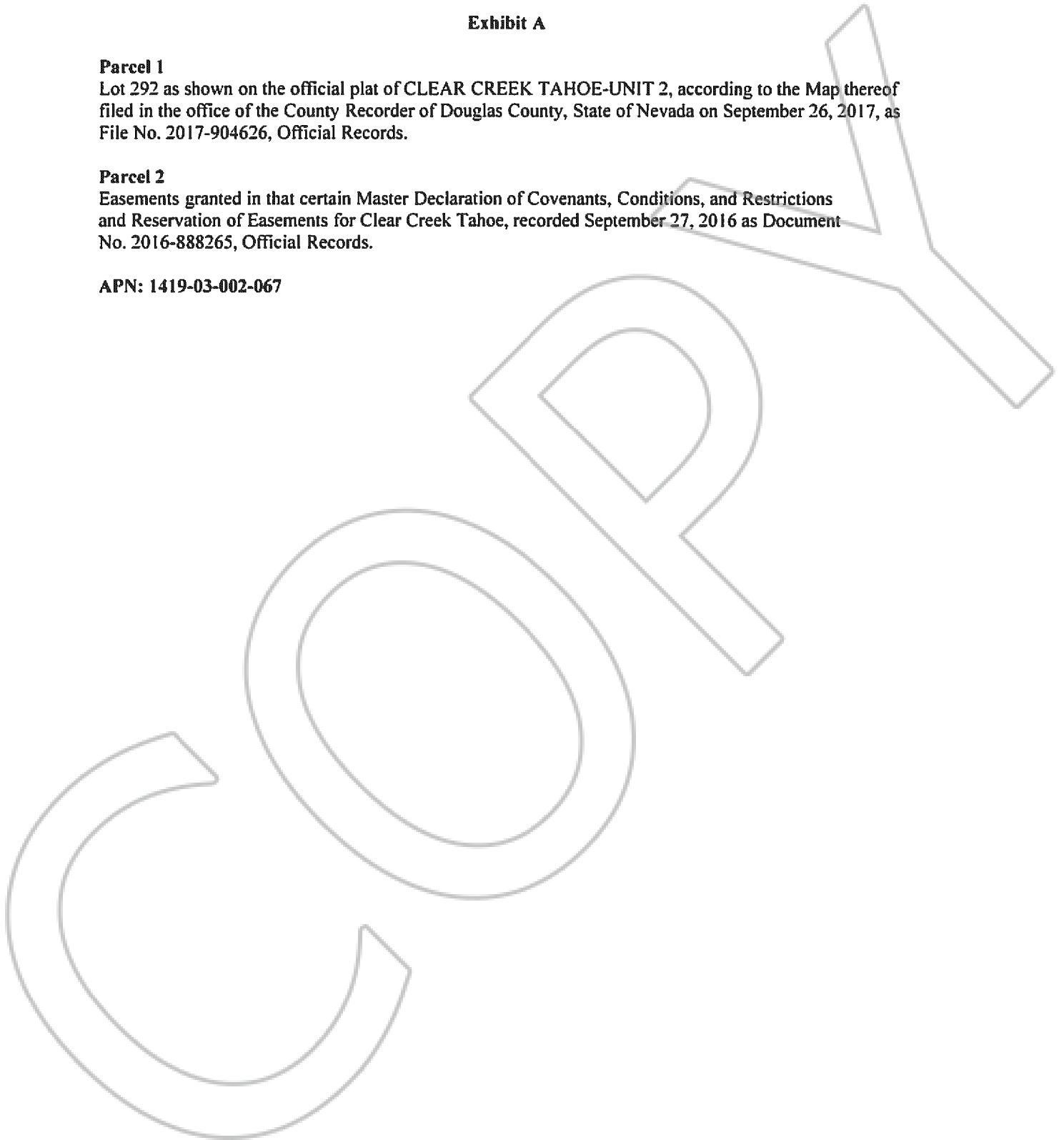
**Parcel 1**

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**APN: 1419-03-002-067**





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**APN: 1419-03-002-066**

