

DOUGLAS COUNTY, NV

2019-934400

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ETRCO

KAREN ELLISON, RECORDER

APN# : 1320-35-001-029

**Recording Requested By:**

Western Title Company, LLC

**Escrow No.:** 105752-ARJ

**When Recorded Mail To:**

Colven, Tran & Meredith, P.C.

1401 Burnham Drive

Plano, TX 75093

**Mail Tax Statements to: (deeds only)**

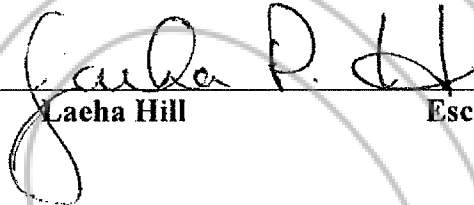
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(space above for Recorder's use only)

I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the social security number of any person or persons.

(Per NRS 239B.030)

Signature \_\_\_\_\_



Lacha Hill

Escrow Assistant

**Deed of Trust**

This page added to provide additional information required by NRS 111.312  
(additional recording fee applies)

Assessor Parcel Number:  
1320-35-001-029

Recording requested by and  
after recording return to:  
Colven, Tran & Meredith, P.C.  
1401 Burnham Drive  
Plano, Texas 75093

Property Address:  
1516 East Valley Road  
Gardnerville, Nevada 89410

**DEED OF TRUST**

**THIS DEED OF TRUST** is made this 21 day of August, 2019, by and between **DAVID A. NEWELL**, a married man as his sole and separate property (the "Trustor"), whose mailing address is 1516 East Valley Road, Gardnerville, Nevada 89410, **PACIFIC WESTERN BANK** (the "Beneficiary"), whose mailing address is 5404 Wisconsin Avenue, 2nd Floor, Chevy Chase, Maryland 20815, and **WESTERN TITLE COMPANY** (the "Trustee"), whose mailing address is 1362 Highway 395, Suite 109, Gardnerville, Nevada 89410.

**WITNESSETH:**

WHEREAS, this Deed of Trust (this "Deed of Trust") is made and delivered by Trustor, as security for that certain Unconditional Guarantee dated May 16, 2018, made by the Trustor (the "Guarantee"), in favor of Beneficiary in order to secure a loan (the "Loan") from Beneficiary to D & T Real Estate Properties, LLC, a Nevada limited liability company, and David A. Newell, DDS, PLLC, a Nevada professional limited liability company (collectively, "Borrower") in the original principal amount of One Million Six Hundred Ninety-One Thousand Five Hundred and No/100 Dollars (\$1,691,500.00), which loan is evidenced by a promissory note dated May 16, 2018 made by Borrower to the order of Beneficiary in the original principal amount of the Loan (the "Note"). Trustor's obligations under the Deed of Trust and Guarantee and Borrower's obligations under the Note are hereby referred to as the "Obligations"

NOW, THEREFORE, in order to secure the Obligations described in the Recitals above, including the performance of the covenants herein contained, and also to secure the payment of any and all other indebtedness, direct or contingent, that may now or hereafter become owing by Borrower as a direct or indirect result of the Obligations, Borrower does, in consideration of One Dollar and No/100 (\$1.00) and other good and valuable consideration, in hand paid by Trustee, GRANT, BARGAIN, and SELL to Trustee, in trust, with power of sale, the real estate, situate, lying and being in the City of Gardnerville, County of Douglas, State of Nevada, as described on Exhibit "A" annexed hereto and made a part hereof (the "Real Estate"), together with all improvements thereon situated and which may hereafter be erected or placed thereon, and all and singular the tenements, hereditaments, and appurtenances, water rights, if any, and easements thereunto belonging and the rents, issues and profits thereof, which are hereby expressly conveyed and assigned to the Beneficiary as additional security and as an equal and primary fund with the property herein conveyed for the performance of the Obligations and the repayment of all sums secured by this Deed of Trust.

It is mutually covenanted and agreed, by and between the parties hereto that, in addition to all other things which at law or by convention are regarded as fixtures, and specifically but not by way of limitation, all furniture, furnishings, appliances, equipment, fixtures and appurtenances now or hereafter acquired by Trustor and installed or located upon the Real Estate, whether attached or detached, and such other goods and chattels as may ever be furnished by a landlord in letting and operating an unfurnished building, similar to any building now or hereafter standing on said Real Estate, whether or not the same are or shall be attached to said building by nails, screws, bolts, pipe connections, masonry, or in any other manner whatsoever, which are now or hereafter to be used upon said described Real Estate shall be conclusively deemed to be "fixtures" and an accession to the freehold and a part of the realty, whether affixed or annexed or not, and conveyed by this Deed of Trust; and all the estate, right, title or interest of the said Trustor in said Real Estate, property, improvements, furniture, apparatus, furnishings and fixtures, are hereby expressly conveyed, assigned and pledged to Beneficiary hereby (the Real Estate and all other property described in this paragraph are hereinafter collectively referred to as the "Premises").

TO HAVE AND TO HOLD the above described Premises with the appurtenances and fixtures thereto appertaining or belonging unto the Beneficiary, its successors and assigns, forever, for the purposes herein set forth and to secure the Obligations hereinbefore described, and interest thereon.

The Trustor hereby expressly covenants and agrees with the Beneficiary, its successors and assigns, as follows:

1. Ability to Mortgage the Premises. That Trustor has unencumbered title, in fee simple, to the above described Premises and has full right and power to convey and mortgage the same and covenants and agrees to execute and deliver or cause to be executed and delivered same, subject only to (a) a first deed of trust (the "First Deed of Trust") in favor of BBVA USA, to secure an indebtedness in the original principal amount of Five Hundred Sixty Thousand Three Hundred Sixty and No/100ths Dollars (\$560,360.00), which First Deed of Trust was dated July 17, 2019 and

recorded in the Official Records of Douglas County, Nevada Recorder on July 22, 2019 as Document No. 2019-932352.

2. Covenants of Trustor. The Trustor, its successors and assigns, agree as follows: (i) to pay all indebtedness hereby secured as the same from time to time becomes due and agrees that if remittance be made in payment of principal or interest or otherwise either by check or draft, it shall be subject to the condition that such check or draft may be handled for collection in accordance with the practice of the collecting bank or banks, and that any receipt issued therefor shall be void unless the amount due is actually received by the Beneficiary; (ii) to keep the Premises in good repair and commit no waste on said property and to do nothing and to permit nothing to be done that may impair the value of the Premises or the security intended to be effected by this Deed of Trust; (iii) to pay promptly, when due, all taxes and assessments, levied or assessed upon the Premises, and, in no event to permit said Premises, or any part thereof, to be sold or forfeited for nonpayment of such taxes or assessments; (iv) not to permit the lien of any mechanics or materialmen or any prior or coordinate lien of any kind to attach to or to remain against the said Premises; (v) to comply strictly with all of the laws, ordinances, and rulings of any municipal or other governmental department relating to said Premises. In the event the Trustor shall fail to keep and perform any of the foregoing covenants and agreements, then the Beneficiary may, at its option, (i) pay any delinquent taxes or assessments or redeem such Premises from any tax sale or forfeiture or purchase any tax title obtained or that shall be obtained thereon; (ii) pay or compromise any and all suits or claims for liens by mechanics or materialmen or any other suits or claims that may be made against said Premises; (iii) make repairs upon said Premises; or (iv) pay insurance premiums on policies covering said Premises; and the said Trustor further covenants and agrees to repay forthwith, without demand, all moneys paid for any such purpose and any other moneys advanced by the Beneficiary to protect the lien of this Deed of Trust, with interest thereon from the date of the payment at the rate of eleven percent (11%) per annum, and all such moneys shall, if not otherwise repaid, become so much additional indebtedness secured by this Deed of Trust and be included in any decree foreclosing this Deed of Trust and be paid out of the rents, issues and profits of the Premises hereinbefore described, or out of the proceeds of sale of said Premises; and it shall not be obligatory upon the Beneficiary to inquire into the validity of (i) any such tax deed, taxes or assessments or of sale or of forfeitures therefor, or (ii) claims of liens of mechanics or materialmen or other liens or claims affecting said Premises before advancing money in that behalf, as herein authorized, but nothing herein contained shall be construed as requiring the Beneficiary to advance or expend any moneys for any purpose aforesaid nor shall any such payments or advancements be construed so as to in any way limit or impair the right of the Beneficiary to avail itself of such default by taking such action at law or in equity as it may deem necessary or advisable to enforce the security hereby given it.

3. Hazard Insurance. The Trustor further agrees to keep all buildings, improvements and fixtures, constituting part of the Premises, until the indebtedness secured hereby is fully repaid, insured against loss or damage, by fire, lightning, tornado, rents or other casualty for such amounts and in such insurance company or companies as may be satisfactory to the Beneficiary, and it is hereby expressly agreed that the Beneficiary shall not be liable for any failure to insure or for the insolvency or irresponsibilities of any such insurance company or companies. All sums recoverable on any such insurance policy shall be made payable to the Beneficiary, by a Beneficiary clause,

satisfactory to the Beneficiary, to be attached to such policies, except in case of sale pursuant to a foreclosure of this Deed of Trust, from which time and until the period of redemption, if any, shall expire, said insurance policy or policies shall be made payable to the holder of the certificate of sale. All such policies shall be retained by the Beneficiary as additional security for the Obligations secured by this Deed of Trust and by the purchaser under any sale or decree of foreclosure; and in the event any such insurance policy shall expire during the life of this Deed of Trust, or any extension thereof, the Trustor hereby agrees to procure and pay for insurance policies complying with the above qualifications, replacing said expired policies and deposit same with the Beneficiary together with receipts (showing the premiums therefor have been paid in full) ten (10) days prior to said expiration date. Such insurance policy shall provide that Beneficiary shall be given not less than ten (10) days advance notice of cancellation or termination of the policy. In case of loss the Beneficiary or the holder of any certificate of sale, or the holder of the decree of sale, is hereby authorized to settle and adjust any claims under such policies or to allow said Trustor to settle with the insurance company or companies the amount to be paid upon the loss; and in either case such holder of the policy is authorized to collect and receipt for any such insurance money and apply it, at the option of the Beneficiary, in reduction of the principal or any other indebtedness hereby secured, whether due or not, or may allow the Trustor to use said insurance money, or any part thereof, in repairing the damage or restoring the improvements, without affecting the lien hereof for the full amount secured hereby, and during the time said insurance money may be retained by the Beneficiary, the Beneficiary shall not be liable for any interest thereon; that in case of a loss after foreclosure proceedings have been instituted, the proceeds of any such insurance, if not applied as aforesaid in repairing damage or restoring improvements, shall be used to pay the amount due in accordance with the decree of foreclosure and any other indebtedness secured hereby, and the balance, if any, shall be paid to the owner of the equity of redemption, if any, on reasonable request or as the court may direct. Notwithstanding any of the foregoing provisions to the contrary, the Beneficiary shall, prior to the institution of foreclosure proceedings and provided Trustor is not then in default under any of the terms or provisions of this Deed of Trust, allow the Trustor to use any insurance proceeds in repairing the damage or restoring the improvements subject to such terms and conditions as Beneficiary may reasonably impose as to disbursement of such proceeds.

4. Events of Defaults. In case of (a) a default by the Trustor with respect to the Guarantee, which default remains uncured beyond any cure period provided in such guarantee, or (b) a default by Borrower under the Note, which default remains uncured beyond any cure period provided in the Note, or (c) a default by Trustor in the performance of its obligations hereunder, which default shall continue beyond the cure period contained herein; or (d) the failure of Trustor to pay any tax, insurance premium, water rate or assessment for ten (10) days after the due date therefor; or (e) upon failure or default in the performance of any of the covenants contained in this Deed of Trust continuing for a period of ten (10) days; or (f) in the event that any proceeding shall be begun to enforce or collect any junior lien against the Premises; or (g) said Premises coming into the possession or control of any court; or (h) threatened removal or demolition of any improvements on the Premises or portion thereof; or (i) any default under the First Deed of Trust or the note which is secured by the First Deed of Trust, then Trustor shall be deemed in default hereunder and Beneficiary shall be entitled to exercise any of its remedies set forth in Section 5 hereof.

5. Remedies. When any event of default which is not cured within the applicable grace period, if any, has occurred and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing Trustor from complying with the terms of this instrument) and in addition to such other rights as may be available under applicable law, but subject at all times to any mandatory legal requirements:

(a) Foreclosure. Trustee may proceed to protect and enforce the rights of the Beneficiary hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Deed of Trust. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness hereby secured in the decree of sale, all expenditures and expenses authorized by Chapter 40 et seq. of the Nevada Revised Statutes (the "Act") and all other expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Trustee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this section, and such other expenses and fees as may be incurred in the protection of the Premises and rents and income therefrom and the maintenance of the lien of this Deed of Trust, including the reasonable fees of any attorney employed by Beneficiary in any litigation or proceedings affecting this Deed of Trust or the Premises, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional indebtedness hereby secured and shall be immediately due and payable by Trustor, with interest thereon at the Default Rate identified in the Note until paid (hereinafter defined).

(b) Appointment of Receiver. In any foreclosure proceeding the court shall, upon application, at once, and with ten (10) days notice to Trustor, or any party claiming under Trustor, and without giving bond on such application (such notice and bond being hereby expressly waived) and also without reference to the then value of said Premises, to the use of said Premises as a homestead, or to the solvency or insolvency of any person liable for any said indebtedness, appoint a receiver for the benefit of the legal holder of the indebtedness secured hereby, to take possession of the Premises, with power to collect rents, issues and profits of the Premises, then due or to become due, during the pendency of such foreclosure suit, and until the time to redeem the same shall expire (such rents, issues and profits being hereby expressly assigned and pledged as additional security for the payment of the indebtedness secured by this Deed of Trust); this provision for appointment of a receiver being expressly a condition upon which the loan hereby secured was made.

(c) Taking Possession, Collecting Rents, Etc. Upon demand by Beneficiary, Trustor shall surrender to Beneficiary and Beneficiary may enter and take possession of the Premises or any part thereof personally, by its agent or attorneys or be placed in possession or receiver as provided in the Act, and Beneficiary, in its discretion, personally, by its agents or attorneys or pursuant to court order as Trustee in possession or receiver as provided in the Act may enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers, and accounts of Trustor relating thereto, and may exclude Trustor and any agents and servants thereof wholly therefrom and may, on behalf of Trustor, or in its own name as Beneficiary and under the powers herein granted:

(1) enter upon the Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Premises, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Trustor;

(2) cancel or terminate any lease or sublease of all or part of the Premises for any cause or on any ground that would entitle Trustor to cancel the same;

(3) elect to disaffirm any lease or sublease of all or any part of the Premises made subsequent to this Deed of Trust without Beneficiary's prior written consent;

(4) extend or modify any then existing leases and make new leases of all or any part of the Premises, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the expiration date of any guarantee of the Loan or the maturity date of the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Trustor, all persons whose interests in the Premises are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness hereby secured, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(5) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Premises as may seem judicious to Beneficiary, to insure and reinsure the Premises and all risks incidental to Beneficiary's possession, operation and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom; and

(6) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, to the payment of taxes, premiums and other charges applicable to the Premises, or in reduction of the indebtedness hereby secured in such order and manner as Beneficiary shall select.

Nothing herein contained shall be construed as constituting Beneficiary a "Beneficiary in Possession" in the absence of the actual taking of possession of the Premises. The right to enter and take possession of the Premises and use any personal property therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Beneficiary hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Trustor hereby further expressly releases and waives any and all damages and claims for damages occasioned by such expulsion, except as result from the wrongful act or omission of Beneficiary, its agents or contractors. The expenses (including any receiver's fees, reasonable counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Trustor promises to pay upon demand together with interest at a rate of nine percent (9%) per annum. Beneficiary shall not be liable to account to Trustor for any action taken pursuant hereto other than to account for any rents actually received by Beneficiary. Without taking possession of the Premises, Beneficiary may, in the event the Premises become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Premises (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon at the rate of eleven percent (11%) per annum.

6. Compliance with State and Federal Law.

(a) Compliance with Federal Law. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

1. When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.
2. Beneficiary or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan.

Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.



(b) Compliance with Nevada Law. In the event that any provision in this Deed of Trust shall be inconsistent with any provision of the Act the provisions of the Act shall take precedence over the provisions of this Deed of Trust, but shall not invalidate or render unenforceable any other provision of this Deed of Trust that can be construed in a manner consistent with the Act. In addition:

1. If any provisions of this Deed of Trust shall grant to Trustee any rights or remedies upon default of the Trustor which are more limited than the rights that would otherwise be vested in Trustee under the Act in the absence of said provision, Trustee shall be vested with the rights granted in the Act to the full extent permitted by law; provided, however, that nothing herein contained shall be deemed to derogate from any cure rights or notice requirements expressly provided for in this Deed of Trust.
2. Without limiting the generality of the foregoing, all expenses incurred by Trustee to the extent reimbursable under the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated herein shall be added to the indebtedness secured by this Deed of Trust or by the judgment of foreclosure.

7. Waiver of Right to Redeem From Sale - Waiver of Appraisalment, Valuation, Etc. Trustor shall not and will not apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but hereby waives the benefit of such laws. Trustor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Premises may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Trustee or Beneficiary may determine. Beneficiary shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Beneficiary so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Beneficiary with the amount payable to Beneficiary out of the net proceeds of such sale. To the fullest extent permitted by law, Trustor hereby voluntarily and knowingly waives its rights of reinstatement and redemption as allowed under the Act, on behalf of Trustor, and each and every person acquiring any interest in, or title to the Premises described herein subsequent to the date of this Deed of Trust, and on behalf of all other persons to the extent permitted by applicable law.

8. Costs and Expenses of Foreclosure. All fees and expenses allowable pursuant to the provisions hereof shall be additional indebtedness secured hereby and shall be a charge upon said Premises and shall constitute a lien thereon prior and paramount to the principal note and interest secured hereby, and whenever possible shall be provided for in any judgment or decree entered in any such proceedings. There shall be included in any decree foreclosing the lien of this Deed of

Trust and be paid out of the rents or proceeds of any sale made in pursuance of any such decree in the following order: (1) all costs of such suit or suits, advertising, sale and conveyance, reasonable attorneys' fees of attorneys for the Trustee, stenographers' fees, outlays for documentary evidence and costs of abstract and examination of title, title opinions and title guaranty policies; (2) all moneys advanced by the Beneficiary for any purpose authorized in the Deed of Trust, with interest on such advances at a rate of eleven percent (11%) per annum (the "Default Rate"); (3) all the accrued interest remaining unpaid on the indebtedness hereby secured; (4) all of the principal note at such times remaining unpaid. The overplus of the proceeds of the sale, if any, shall then be paid to the Trustor. In case, after legal proceedings are instituted to foreclose the lien of this indenture, after the failure of Trustor to cure any default under the terms hereof prior to the expiration of any applicable grace periods, tender is made of the entire indebtedness due hereunder, the Beneficiary shall be entitled to reimbursement for expenses incurred in connection with such legal proceedings, including such expenditures as are enumerated above, and such expenses shall be so much additional indebtedness secured by this indenture, and no such suit or proceedings shall be dismissed or otherwise disposed of until such fees, expenses and charges shall have been paid in full.

The Trustor promises to pay all costs, expenses and reasonable attorneys' fees incurred by the Beneficiary in collecting the debt secured hereby whether by foreclosure, suit or otherwise, in protecting or sustaining the lien of this Deed of Trust or in any litigation or controversy arising from or in connection with any guaranty of the Loan or the Note or this Deed of Trust, together with interest thereon, provided the same are incurred after the failure of Trustor to cure any default hereunder prior to the expiration of any applicable grace periods, from the date of payment at the Default Rate and the Trustor agrees that any such sums and the interest thereon shall be a lien on said Premises and property and shall be secured by this Deed of Trust.

9. Application of Proceeds. The proceeds of any foreclosure sale of the Premises or of any sale of property shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings; Second, to all other items which under the terms hereof constitute indebtedness hereby secured with interest thereon as herein provided.

10. Beneficiary's Remedies Cumulative - No Waiver. No remedy or right of Beneficiary shall be exclusive of but shall be cumulative and in addition to every other remedy or right now or hereafter existing at law or in equity or by statute. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Beneficiary.

11. Beneficiary Party to Suits. If Beneficiary shall be made a party to or shall intervene in any action or proceeding affecting the Premises or the title thereto or the interest of Beneficiary under this Deed of Trust (including probate and bankruptcy proceedings), or if Beneficiary employs an attorney to collect any or all of the indebtedness hereby secured or to enforce any of the terms hereof or realize hereupon or to protect the lien hereof, or if Beneficiary shall incur any costs or

expenses in preparation for the commencement of any foreclosure proceeding or for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not any such foreclosure or other suit or proceeding shall be actually commenced, then in any such case, Trustor agrees to pay to Beneficiary, immediately and without demand, all reasonable costs, charges, expenses and attorneys' fees incurred by Beneficiary in any such case, and the same shall constitute so much additional indebtedness hereby secured payable upon demand with interest at the rate of eleven percent (11%) per annum.

12. Environmental Matters. The Trustor agrees to indemnify, defend and hold Beneficiary and Trustee harmless from and against any and all loss, cost (including attorney fees), liability and damage whatsoever, including all foreseeable and unforeseeable consequential damages, directly or indirectly arising out of the presence, use, generation, storage or disposal of "Hazardous Substances" or "Hazardous Waste" (as those terms are defined or cross-referenced in the applicable provisions of the Code of Federal Regulations pertaining to the United States Environmental Protection Authority) or similarly dangerous contaminants in, on, under or, in the proximate vicinity of the Premises and the cost of any required or necessary repair, cleanup or detoxification and the preparation of any closure or other required plans, incurred by Beneficiary and/or Trustee by reason of any violation of any applicable statute or regulation for the protection of the environment which occurs or has occurred upon the Premises, or by reason of the imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of such violation. It is expressly understood and agreed that to the extent that Beneficiary or Trustee is strictly liable under any such statute, Trustor's obligation to Beneficiary and/or Trustee under this indemnity shall likewise be without regard to fault on the part of Trustor with respect to the violation of law which results in liability to Beneficiary and/or Trustee. The provisions of this Section 12 shall survive the performance of the Obligations, the repayment of any additional sums or indebtedness hereby secured, the release of the Deed of Trust and all other indication of termination of the relationship between the Trustor and Beneficiary and/or Trustee.

13. Costs upon Foreclosure or Public Sale. In the case of the foreclosure of the lien of this Deed of Trust by the Trustee, in any court of law or equity, or the public sale of the Premises by Trustee there shall be allowed all court costs and expenses incurred by the Trustee, including reasonable attorney's fees, stenographers' charges, cost of procuring a complete abstract of title to said Premises and continuations thereof, opinions of title or title guaranty policies and continuations thereof covering said foreclosure proceedings, cost of procuring testimony and evidence and all costs and expenses incurred by the Trustee in and about any such suit or proceeding or sale, or in the preparation therefor; and in case the Trustee shall be made party to any suit or legal proceedings by reason of this Deed of Trust, its costs, expenses and reasonable attorneys' fees in such suit or proceedings shall be paid by the Trustor and if not paid shall become so much additional indebtedness hereunder and shall be a further lien or charge upon said Premises.

14. Due on Sale. Trustor will not without the prior written consent of Beneficiary, transfer, convey, mortgage, assign or encumber the Premises. If Trustor is a trust, the beneficiaries of Trustor will not encumber, assign or convey their beneficial interest in Trustor without the prior written consent of Beneficiary. If the Trustor is a partnership, there shall be no encumbrance, assignment or

conveyance of a majority in interest of the original partners in the partnership without the prior written consent of Beneficiary. If the Trustor is a corporation, there shall be no encumbrance, assignment or conveyance of a majority of the shareholders of the corporation without the prior written consent of Beneficiary. Whenever the consent of Beneficiary is required under this paragraph, such consent may be withheld by Beneficiary for any reason.

15. Prepayment. Trustor may prepay, at any time, the outstanding principal balance due under the Note (along with any other sums due to the obligee thereunder, including any prepayment fees or charges required to be paid under the Note) only in accordance with the terms of the Note. Upon the permitted prepayment by Trustor of all amounts described in the preceding sentence, Beneficiary shall release the encumbrance of this Deed of Trust from the Premises and shall reconvey same to Trustor.

16. Liens. No lien provided for by the Statutes of Nevada, in force at any time while the lien hereof exists, in favor of any person furnished labor or materials in the erection or repair of any building now or hereafter on said land, shall attach to said land or building, except as subject and subordinate to the lien of this instrument and any person dealing with said Premises after the recording of this instrument is hereby charged with notice of and consent to this stipulation, and with a waiver of any lien except as subject and subordinate hereto.

17. Change in Law. In the event of the passage, after the date of this Deed of Trust, of any law of the State of Nevada deducting from the value of land for the purpose of taxation any lien thereon or changing in any way the laws now in force for the taxation of Deeds of Trust for State or local purposes or the manner of collection of such tax so as to make it obligatory upon the Beneficiary to pay such tax, or if any such tax is imposed under any existing law, then the whole of the principal sum secured hereby, together with accrued interest thereon shall, at the option of the Beneficiary, after thirty (30) days notice to the Trustor, become due and payable, and the said Trustee shall have the right to foreclose immediately this Deed of Trust, unless said Trustor shall pay such tax or charge forthwith upon demand or unless adequate title insurance over any such lien is provided to Beneficiary; provided, however, that should the payment of such tax or charge result in usury, then only such portion of such tax or charge shall be paid by the Trustor as will not amount to an exaction of interest in excess of the highest rate permitted by law.

18. Remedies Cumulative. All rights and remedies given to the Beneficiary by the covenants, undertakings and provisions of this Deed of Trust, are deemed to be cumulative and not in any way in derogation of the rights of the Beneficiary under the laws of the State of Nevada and the invalidity of any one or more covenants, phrases, sentences, clauses or paragraphs of this Deed of Trust shall not affect the remaining portions of this indenture, or any part hereof; and the failure on the part of the Beneficiary to exercise any option or privilege granted under the note or Deed of Trust shall not be deemed a waiver of such option or privilege nor estop the Beneficiary from at any time in the future exercising such option or privilege.

19. Covenants Run with Land. Every covenant and agreement, condition, promise and undertaking herein, of said Trustor, shall run with the land, is a condition upon which the loan secured was made, and is of the essence of this instrument, and breach of any thereof shall be deemed a material breach going to the substance hereof and shall extend to and be binding upon the Trustor and any and all persons claiming by, through or under the Trustor, to the same effect as if they were in every case named and expressed and all of the covenants hereof shall bind them and each of them, both jointly and severally and shall inure to the benefit of the Beneficiary, its successors and assigns; any notice to be given hereunder may be given by first-class mail, the date of mailing to be taken as the date of giving such notice and without respect to the actual receipt thereof.

20. Assignment of Leases. Trustor agrees that as additional security for the payment of the indebtedness secured hereby, any and all future leases or subleases made by Trustor or its tenants for all or any part of the Premises. During the term of this Deed of Trust, each lease of Trustor shall contain a provision requiring that at the election of the holder of the indebtedness, the tenant will assign any permitted sublease to such holder.

21. Public Liability Insurance. Trustor shall provide Beneficiary with a certificate of insurance establishing that the Trustor is insured for comprehensive general public liability insurance with respect to the Premises, which insurance shall provide single limit coverage for not less than \$1,000,000.00. Such insurance shall be placed with a company acceptable to the Beneficiary and shall provide that Beneficiary shall be given not less than ten (10) days advance notice of cancellation or termination of the policy.

22. Additional Collateral - Security Agreement. With respect to the Additional Collateral (hereinafter defined):

(a) Trustor hereby grants a security interest in and to, and hereby sells, conveys, confirms, mortgages and sets over unto Beneficiary and its successors and assigns, all (i) furniture, furnishings, appliances, equipment, fixtures and appurtenances now or hereafter acquired by Trustor and installed or located upon the Real Estate, (ii) all contract rights of Trustor pertaining or with respect to the Real Estate, and (iii) all other property interests, intangible rights or other interests held or capable of being held by Trustor with respect to the items described in subsection (i) above or the Real Estate (collectively, the "Additional Collateral") whether now or hereafter located, erected on or placed in or upon the Real Estate or any part thereof, and all replacements thereof and accessions thereto and all proceeds thereof. Trustor represents and covenants that (y) except for the security interest granted hereby, Trustor is the owner of the Additional Collateral free from any lien, security interest or encumbrance, and (z) Trustor has made payment in full for all such Additional Collateral. Trustor will, upon request from Beneficiary, deliver to Beneficiary such further security agreements, chattel mortgages, financing statements and evidence of ownership of such items as Trustor may specify in such request.

(b) If a default shall occur under the Note or this Deed of Trust and be continuing beyond the expiration of any applicable grace and notice periods, Beneficiary shall have all rights and remedies available to Trustor under the Note and this Deed of Trust as well as all rights and remedies of a "secured party" under the Nevada Uniform Commercial Code Chapter 104 ("Code"). Trustor hereby waives all rights that may legally be waived and agrees that ten (10) days notice by Beneficiary to Trustor is fair and reasonable notification under the Code of any public sale of any of the Additional Collateral and is also fair and reasonable notification after which any private sale or other disposition of the Additional Collateral can occur. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Trustee in connection with the enforcement or assertion of any rights or remedies of Beneficiary shall be included in the indebtedness secured hereby and shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Trustee and/or Beneficiary. Trustor agrees that, without the written consent of Beneficiary, Trustor will not remove or permit to be removed from the Real Estate any of the Additional Collateral except that so long as Trustor is not in default hereunder, Trustor shall be permitted to sell or otherwise dispose of the Additional Collateral in the ordinary course of Trustor's business or when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of Trustor's business from the Real Estate, but only upon replacing the same with, or substituting for the same, other Additional Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Additional Collateral shall be subject to the security interest created hereby and that the security interest of Beneficiary shall be perfected and prior to any other security interest, it being expressly understood and agreed that all replacements, substitutions and additions to the Additional Collateral shall be and become immediately subject to the security interest of this Deed of Trust and Security Agreement and covered hereby. Trustor covenants and represents that all of the Additional Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto, unless Beneficiary otherwise consents, will be, free and clear of any other liens, encumbrances, title retention devices and security interests.

(c) Trustor, upon request by Beneficiary from time to time, shall execute, acknowledge and deliver to Beneficiary, a separate security agreement, financing statement or other similar security instruments, in form satisfactory to Beneficiary, covering all property of any kind whatsoever owned by Trustor, which in the sole opinion of Beneficiary is essential to the operations of Trustor's business from the Real Estate and which constitutes goods within the meaning of the Code or concerning which there may be any doubt whether the title to same has been conveyed by or security interest perfected by this Deed of Trust, and Trustor will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Beneficiary may request in order to perfect, preserve, maintain, continue and extend the security interest and the priority of this Deed of Trust and such security interest. Trustor further agrees to pay to Beneficiary on demand all costs and expenses incurred by Beneficiary in connection with the preparation, execution, recording, filing and re-filing of any such document. Trustor shall from time to time, on request of Beneficiary, deliver to Beneficiary an inventory of the Additional Collateral in reasonable detail.

23. Eminent Domain. Trustor further covenants and agrees that if the above described Premises or any part thereof be condemned under any power of eminent domain or acquired for any public use or quasi-public use, the damages, proceeds and consideration for such acquisition to the extent of the full amount of indebtedness upon this Deed of Trust and obligation secured hereby remaining unpaid, are hereby assigned by Trustor to Beneficiary, its successors or as said Trustee, its successors or assigns, to be applied on account of the last maturing installments of such indebtedness.

24. Payment of Taxes. Within fifteen (15) days of the due date of every installment of real estate taxes or special assessments hereafter accruing with respect to the subject Premises, Trustor shall present to Beneficiary, a photographic or other duplicated copy of the receipted tax bill showing the payment of such installment, or other evidence satisfactory to the Beneficiary that the tax payment has been made.

25. Bankruptcy of Principal Party. If Trustor, any guarantor of the Loan or any principal of Trustor (a "Principal Party") shall make an assignment for the benefit of creditors, or if a receiver be appointed for Trustor or for any part of the Premises, or if any Principal Party files a petition in bankruptcy, or is adjudicated a bankrupt or files any petition or institutes any proceedings under the Federal bankruptcy laws of the United States, and such proceedings shall not be dismissed or order appointing a receiver shall not be dismissed within thirty (30) days, then on the happening of any one or more of these events, the whole indebtedness secured hereby shall immediately become due and payable, at the option of the Beneficiary, and this Deed of Trust may thereupon be foreclosed for the whole of said principal, interest and costs.

26. Cost of Collection. Trustor promises to pay all costs, expenses and reasonable attorneys' fees incurred by Beneficiary or Trustee in enforcing its rights under this Deed of Trust, in collecting any debt secured hereby whether by foreclosure, suit or otherwise, in protecting or sustaining the lien of this Deed of Trust or in any litigation or controversy arising from or in connection with any guarantee of the Loan or the Note or this Deed of Trust, together with interest thereon, from the date of payment at the rate of eleven percent (11%), and Trustor agrees that any such sums and the interest thereon shall be a lien on said Premises and property and shall be secured by this Deed of Trust.

27. Forbearance. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Obligations hereby secured.

28. Severability. Wherever possible each provision of this Deed of Trust shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Deed of Trust shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Deed of Trust. In the event of a conflict of any of the terms and provisions of this Deed of Trust with the terms and provisions of any other instrument or

agreement given to create or evidence any of the Obligations secured by this Deed of Trust, Beneficiary may, at its option, determine which terms and provisions shall prevail.

29. Time of Essence; Waiver. It is specifically agreed that time is of the essence of this Deed of Trust. The waiver of any option, or any obligations secured hereby, shall not at any time thereafter be held to be abandonment of such rights. Notice of the exercise of any option granted to Beneficiary herein, or in the Obligations secured hereby, is not required to be given.

30. Successors and Assigns. All of the covenants herein contained of Trustor shall bind Trustor, its successors and assigns, and the benefits and advantages thereof shall inure to the benefit of Beneficiary, its successors and assigns. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders.

31. Waiver of Homestead. Trustor hereby waives any and all homestead rights which Trustor may have in the Premises.

32. Senior Deed of Trust. Trustor shall perform all of its obligations under the First Deed of Trust on a timely basis and shall give to Beneficiary when received copies of any notices received from the Beneficiary under the First Deed of Trust or the holder of the note secured thereby. Trustor represents that (a) there are no defaults under the First Deed of Trust, (b) this Deed of Trust is permitted under the First Deed of Trust, and (c) there are only uniform payments of principal and interest scheduled under the First Deed of Trust. Trustor agrees that any sums advanced for the purpose of curing any default under the First Deed of Trust shall become additional indebtedness secured hereby.

33. Substitute Trustee. Beneficiary, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this security instrument is recorded. Without conveyance of the property, the successor trustee shall succeed to all title, power and duties conferred upon Trustee herein and by applicable law.

34. Notices. Notice from one party to another relating to this Deed of Trust shall be deemed effective if made in writing and delivered to the recipient's address set forth below by any of the following means: (a) hand delivery, (b) registered or certified mail, postage prepaid, with return receipt requested, (c) first class or express mail, postage prepaid, or (d) Federal Express or like overnight courier service. Notice made in accordance with this paragraph shall be deemed delivered upon receipt if delivered by hand, three (3) business days after mailing if mailed by first class, registered or certified mail, or one business day after mailing or deposit with an overnight courier service if delivered by express mail or overnight courier. Any notice which either party hereto may desire or be required to give to the other party shall be addressed to:



TRUSTOR

David A. Newell  
1516 East Valley Road  
Gardnerville, Nevada 89410

BENEFICIARY

Pacific Western Bank  
Attn: Loan Department  
5404 Wisconsin Avenue, 2nd Floor  
Chevy Chase, Maryland 20815


TRUSTEE

Western Title Company  
1362 Highway 395, Suite 109  
Gardnerville, Nevada 89410

or at such other place as either party hereto may by notice in writing designate as a place for service of notice. This notice provision shall be inapplicable to any judicial or non-judicial proceeding where Nevada law governs the manner and timing of notices in foreclosure or receivership proceedings.

IN WITNESS WHEREOF, the undersigned, as Trustor, have caused these presents to be duly executed as of the day and year first above written and hereby expressly waive any and all homestead rights that the undersigned may have in the real property described on Exhibit "A":

**TRUSTOR:**



David A. Newell

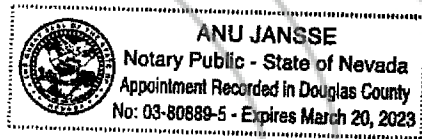
STATE OF NEVADA     )  
  ) ss  
COUNTY OF DOUGLAS )

I, Anu Jansse a Notary Public, do hereby certify that David A. Newell, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including for the purpose of waiving his homestead rights in and to the real property described on Exhibit "A" to such instrument.

GIVEN under my hand and notarial seal, this 27<sup>th</sup> day of August, 2019.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 3/20/23



**EXHIBIT "A"**

**Legal Description**

All that certain real property situated in the City of Gardnerville, County of Douglas, State of Nevada, described as follows:

Parcel No. 3A-2B, as set forth on the Parcel Map for Dennis C. and Patti L. Dirksen, according to the map thereof, filed in the office of the County Recorder of Douglas County, State of Nevada, on December 16, 1992, in Book 1292, Page 2626, as Document No. 29524.

EXCEPTING THEREFROM all mineral, oil, gas and other hydrocarbons, as granted to the Stock Petroleum Co., Inc., in Grant Deed recorded March 13, 1980, in Book 380, Page 1315, as Document No. 42677.

**Property Address:**

1516 East Valley Road  
Gardnerville, Nevada 89410

**Assessor Parcel Number:**

1320-35-001-029