

RECORDING REQUESTED BY AND WHEN  
RECORDED RETURN TO:

ZIONS BANCORPORATION, N.A.  
dba Nevada State Bank  
One West Liberty, 2<sup>nd</sup> Floor  
Reno, Nevada 98501  
Attn: Richard Thomas, Vice President

2659309

(Space Above For Recorder's Use)

APN: 1318-23-401-48; 1318-23-401-49; 1318-23-401-50

**DEED OF TRUST  
WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

**NAME OF TRUSTOR(S):** NORTHERN NEVADA COMSTOCK INVESTMENTS, LLC, a Nevada limited liability company; and STILLWATER GAMING, LLC, a Nevada limited liability company

**NAME OF BORROWER(S):** DAVID SCOTT TATE, as Trustee of the David Scott Tate Gaming Trust, a trust created under the laws of the State of Nevada pursuant to a Trust Agreement dated October 31, 2002 by and between David Scott Tate as Grantor and Trust, as amended by a First Restatement dated December 28, 2011; NORTHERN NEVADA COMSTOCK INVESTMENTS, LLC, a Nevada limited liability company; and CHURCHILL REAL ESTATE INVESTMENTS, LLC, a Nevada limited liability company (each as a "Borrower" and, collectively, the "Borrowers")

**NAME OF TRUSTEE(S):** GREAT BASIN TITLE COMPANY LLC d/b/a WESTERN NEVADA TITLE COMPANY

**NAME OF BENEFICIARY:** ZIONS BANCORPORATION, N.A. dba Nevada State Bank

**THIS DEED OF TRUST SECURES A NOTE WHICH PROVIDES FOR A VARIABLE  
INTEREST RATE**

**DEED OF TRUST  
WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (“**Deed of Trust**”), is made as of April 14, 2023, by NORTHERN NEVADA COMSTOCK INVESTMENTS, LLC, a Nevada limited liability company (“**NNCI**”); and STILLWATER GAMING, LLC, a Nevada limited liability company (“**Stillwater**” or “**Accommodation Trustor**”) (NNCI and Stillwater are referred to individual and collectively, as the context may require, herein as “**Trustor**”), as trustor, to GREAT BASIN TITLE COMPANY d/b/a WESTERN NEVADA TITLE COMPANY, as trustee (“**Trustee**”) for the benefit of ZIONS BANCORPORATION, N.A. dba Nevada State Bank (“**Beneficiary**”). The mailing address of Trustor, Trustee and Beneficiary are the addresses for those parties set forth or referred to in Section 7.8 below. Capitalized terms used herein that are not otherwise defined, shall have the meaning set forth in the Loan Agreement (as defined hereinafter). The capitalized terms on the cover page of this Deed of Trust shall have the meaning there specified. Each Trustor is a Borrower or an entity affiliated with and has a direct or indirect stake in the success of Borrowers and is, therefore, benefitted by the credit and loan accommodations being provided to Borrowers by Beneficiary (as more fully hereinafter described). In this connection, Accommodation Trustor further adopts and incorporates herein the provisions of Exhibit B which is also attached hereto and, by this reference, fully incorporated herein.

**ARTICLE 1. GRANT IN TRUST**

- 1.1. GRANT.** For the purposes of and upon the terms and conditions in this Deed of Trust, Trustor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all of Trustor’s right, title and interest in and to the following property, rights, interests and estates in all of that real property located in the County of Douglas, State of Nevada, described on Exhibit A attached hereto, together with all buildings and other improvements, fixtures and equipment now or hereafter located on the real property, all right, title, interest, and privileges of Trustor in and to all streets, roads, and alleys used in connection with or pertaining to such real property, all water and water rights (but excluding minerals, oil and gas, and other hydrocarbon substances) in, on or under the real property, all appurtenances, easements, rights and rights of way appurtenant or related thereto, all air rights, development rights and credits, licenses and permits related to the real property, and without limiting the foregoing, all of Trustor’s right, title and interest in and to (a) the current and/or future lease or leases which lease or leases have not been recorded, for the real property described on Exhibit A and all buildings and other improvements, fixtures and equipment now or hereafter located on the real property, together with any written or oral amendments, modifications, renewals, extensions, or replacements thereof, and (b) those certain gaming assets, including, without limitation, the slot machines, now or hereafter located on the real property and including, without limitation, all of Stillwater’s

right, title and interest as owner, lessor, or otherwise of such gaming assets. All of the foregoing and all interest or estate which Trustor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing, are collectively referred to herein as the “**Property**”. The listing of specific rights or property shall not be interpreted as a limit of general terms.

- 1.2. **WARRANTY OF TITLE; USE OF PROPERTY.** Trustor warrants that, subject to Permitted Encumbrances, it is the sole owner of good and marketable unencumbered title to the Property. Trustor warrants that the Property is not used principally for agricultural or farming purposes, and that the Property is not homestead property.

## **ARTICLE 2. OBLIGATIONS SECURED**

- 2.1. **OBLIGATIONS SECURED.** Trustor makes this Deed of Trust for the purpose of securing: (a) the payment and performance of the obligations contained herein and in that certain Revolving Reducing Loan Agreement dated March 20, 2013, as amended and restated by Amended and Restated Credit Agreement dated January 12, 2023 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), and in the other Loan Documents; (b) the payment of FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) and other amounts owing from time to time pursuant to the terms of that certain Revolving Note dated January 12, 2023 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Note**”), plus interest thereon, executed by Borrowers, and payable to Beneficiary, as lender; (c) any and all increases, extensions, renewals, or modifications of the Note, Loan Agreement, or the Loan Documents, whether the same be in greater or lesser amounts; and (d) payment and performance of any future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Deed of Trust (collectively, the “**Secured Obligations**”).
- 2.2. **INCORPORATION.** The term “obligations” is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations, together with all costs of collecting the Secured Obligations. All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and the rate of interest on one or more Secured Obligations may vary from time to time.

## **ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS**

- 3.1. **ASSIGNMENT.** Trustor hereby irrevocably assigns to Beneficiary all of Trustor’s right, title and interest in, to and under: (a) all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing, occupancy or operation of the Property, whether such leases, licenses and agreements are now existing

or entered into after the date hereof (“**Leases**”); and (b) the rents, issues, revenues, receipts, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases (“**Payments**”). The term “**Leases**” shall also include all leases, subleases and other agreements for the use or occupancy of the Property, all guarantees of and security for the tenant’s performance thereunder, the right to exercise any landlord’s liens and other remedies to which the landlord is entitled, and all amendments, extensions, renewals or modifications thereto. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary’s right to the Leases and Payments is not contingent, upon and may be exercised without, possession of the Property.

**3.2. GRANT OF LICENSE.** Beneficiary confers upon Trustor a revocable license (“**License**”) to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect and apply the Payments pursuant to the terms hereof without notice and without taking possession of the Property. All payments thereafter collected by Trustor shall be held by Trustor as trustee under a constructive trust for the benefit of Beneficiary. Trustor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rentals or other sums which may at any time become due under the Leases, or for the performance of any of the tenants’ undertakings under the Leases, and the tenants shall have no duty to inquire as to whether any Default has actually occurred or is then existing. Trustor hereby relieves the tenants from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary. Beneficiary may apply, in its sole discretion, any Payments so collected by Beneficiary against any Secured Obligation, whether existing on the date hereof or hereafter arising. Collection of any Payments by Beneficiary shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice.

**3.3. EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or any other parties, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; (d) responsible for or under any duty to produce rents or profits; or (e) directly or indirectly liable to Trustor or any other person as a consequence of the exercise or failure to exercise any of the rights, remedies or powers granted to Beneficiary hereunder or to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.

#### **ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING**

**4.1. SECURITY INTEREST.** Trustor hereby grants and assigns to Beneficiary a security interest, to secure payment and performance of all of the Secured Obligations, in all of the

following described personal property in which Trustor now or at any time hereafter has any interest (collectively, the “**Collateral**”):

All goods, building and other materials, supplies, inventory, work in process, equipment, titled, licensed or and registered motor vehicles, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on the Property; together with all Payments and other rents and security deposits derived from the Property; all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Property or any business now or hereafter conducted thereon by Trustor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Property, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to the Property; all advance payments of insurance premiums made by Trustor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof; all of Trustor’s right, title and interest, now or hereafter acquired; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a “fixture” under applicable law, this Deed of Trust constitutes a fixture filing under the Nevada Uniform Commercial Code, as amended or recodified from time to time (“**UCC**”).

The filing of a financing statement covering the Collateral shall not be construed to derogate from or impair the lien or provisions of this Deed of Trust with respect to any property described herein which is real property or which the parties have agreed to treat as real property. Similarly, nothing in any financing statement shall be construed to alter any of the rights of Beneficiary under this Deed of Trust or the priority of Beneficiary’s lien created hereby, and such financing statement is declared to be for the protection of Beneficiary in the event any court shall at any time hold that notice of Beneficiary’s priority of interest in any property or interests described in this Deed of Trust must, in order to be

effective against a particular class of persons, including but not limited to the federal government and any subdivision, agency or entity of the federal government, be filed in the UCC records.

- 4.2. RIGHTS OF BENEFICIARY.** Beneficiary shall have all the rights of a “Secured Party” under the UCC. Upon the occurrence of a Default, in addition to such rights, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary’s rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Further, upon the occurrence of a Default, Beneficiary may: (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor’s expense; and/or (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under the UCC or other applicable law.

Trustor acknowledges and agrees that a disposition of the Collateral in accordance with Beneficiary’s rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that ten (10) days prior notice of such disposition is commercially reasonable notice. Trustor further agrees that any sale or other disposition of all or any portion of the Collateral may be applied by Beneficiary first to the reasonable expenses in connection therewith, including reasonable attorneys’ fees and disbursements, and then to the payment of the Secured Obligations.

- 4.3. REPRESENTATIONS, WARRANTIES AND COVENANTS.** Trustor represents and warrants that: (a) Trustor’s principal place of business is located at the address shown in Section 7.8; and (b) Trustor’s legal name is exactly as set forth on the first page of this Deed of Trust and all of Trustor’s organizational documents or agreements delivered to Beneficiary are complete and accurate in every respect. Trustor agrees: (a) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Beneficiary thirty (30) days prior written notice thereof; (b) to cooperate with Beneficiary in perfecting all security interests granted herein and in obtaining such agreements from third parties as Beneficiary deems necessary, proper or convenient in connection with the creation, preservation, perfection, priority or enforcement of any of its rights hereunder; and (c) that Beneficiary is authorized to file financing statements in the name of Trustor to perfect Beneficiary’s security interest in Collateral.
- 4.4. ADDITIONAL SECURITY AGREEMENTS.** No materials, equipment, furnishings, fixtures or articles of personal property located on the Property, or any other part of the

improvements which constitute a portion of the Collateral shall be purchased or installed under any security agreement executed by Trustor wherein the right is reserved or accrues to anyone to remove or repossess such property or to have a security interest superior to that in favor of Beneficiary as evidenced by this Deed of Trust. Trustor shall not execute any security agreement on any materials, equipment, furnishings, fixtures or articles used in the construction or operation of the Improvements, or on articles of personal property located therein, so that the ownership thereof will not vest unconditionally in Trustor, free from encumbrances. Trustor shall deliver to Beneficiary upon written request the contracts, bills of sale, statements, receipted vouchers and agreements under which Trustor claims title to such materials, fixtures or articles.

## ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1. PERFORMANCE OF SECURED OBLIGATIONS.** Trustor and Borrower shall promptly pay and perform each Secured Obligation when due. If Trustor fails to timely pay or perform any portion of the Secured Obligations (including taxes, assessments and insurance premiums), or if a legal proceeding is commenced that may significantly affect Beneficiary's rights in the Property, then Beneficiary may (but is not obligated to), at Trustor's expense, take such action as it considers to be necessary to protect the value of the Property and Beneficiary's rights in the Property, including the retaining of counsel, and any amount so expended by Beneficiary will be added to the Secured Obligations and will be payable by Trustor to Beneficiary on demand, together with interest thereon from the date of advance until paid at the rate then applicable under the Note (including any default rate if a Default shall have occurred).
- 5.2. TAXES AND ASSESSMENTS.** Trustor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed upon the Property by any public authority or upon Beneficiary by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; provided, however, Trustor shall have no obligation to pay taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income.
- 5.3. LIENS, ENCUMBRANCES AND CHARGES.** Trustor shall immediately discharge any lien not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust.
- 5.4. DUE ON SALE OR ENCUMBRANCE.** Except for Permitted Transfers, Trustor shall not, without Beneficiary's prior written consent, mortgage, assign, convey, transfer, sell or otherwise dispose of or encumber (each a "**Transfer**") the Property or any portion thereof or any interest therein or any interest in the income derived therefrom or ownership interests in Trustor or contract to do any of the same. Moreover, Beneficiary has approved the Loan in material reliance upon the ownership and control of Trustor and the Property being the same as exists as of the Effective Date. It is acknowledged that any change in such ownership or control of (a) Trustor and/or (b) the Property (whether direct or indirect and regardless of the percentage interest conveyed) materially affects the financial risks anticipated by Beneficiary in extending this Loan. Accordingly, other than as set forth

herein or with the prior written consent of Beneficiary, it is and shall be a Default under the Loan Agreement, the Deeds of Trust, the Note and all of the other Loan Documents for there to be any conveyance of any ownership interest or beneficial interest (regardless of the percentage interest conveyed or whether such interest is held as a partner, member, shareholder, beneficiary or otherwise) in: (i) Trustor or in the Property, or (ii) the operation, management, income, or profits of or fee title to the Property, or (iii) any entity holding an ownership or beneficial or controlling interest in Trustor or in the Property, or (iv) any entity which through one or more intermediaries holds any ownership interest or beneficial interest, or controlling interest (direct or indirect) in Trustor or the Property. “**Control**” hereunder means the ability of any person or entity to (1) direct the business operations or voting procedures for any entity, (2) cause the election, selection or the appointment of entity officers or managers, (3) cause the appointment of the management managing any entity, (4) cast a majority of the votes in any election or decision making process for any entity, or (5) do any of the foregoing for any intermediary entity holding any ownership or beneficial or majority interest (whether direct or indirect) in Trustor or in the Property. Without the prior written consent of Beneficiary, Trustor shall not assign its interest under any of the Loan Documents, or in any monies due or to become due thereunder, and any assignment without such consent shall be void. Further, except as may be permitted in this Section 5.4, Trustor shall not enter into any merger or joint venture with any third party, or otherwise dispose of its assets other than in the ordinary course of Trustor’s business. Furthermore, Trustor shall not modify or change the nature or type of its business without the prior written consent of Beneficiary.

If this Section 5.4 is breached, at the option of Beneficiary and without demand or notice, the full principal indebtedness of the Note and the other obligations under the Note, the Loan Agreement, the Deeds of Trust (including without limitation, this Deed of Trust) and the other Loan Documents shall immediately become due and payable to Beneficiary. If Beneficiary elects to accelerate payment of the principal indebtedness of the Note because of a Default under this Section 5.4, and if the Note or any other Loan Document contains a yield maintenance provision or a prepayment fee or prepayment premium, such acceleration shall be deemed to be a “prepayment” of the principal indebtedness under the Loan, whether or not the accelerated Loan balance is actually paid at the time of the subject conveyance. At the time the indebtedness is accelerated by Beneficiary, any prepayment fee or prepayment premium or yield maintenance fee set forth in the Note or other Loan Document shall be immediately due and payable to Beneficiary together with the balance of the unpaid indebtedness and all unpaid-accrued interest on the Loan.

The foregoing limitations in this Section 5.4 regarding conveyance and control shall not apply to the following situations (collectively, the “**Permitted Transfers**”): (a) a transfer to which Beneficiary has given its prior written consent, (b) a transfer of personalty (as defined under this Deed of Trust) due to obsolescence or ordinary wear and tear or fire or casualty and which is promptly replaced by Trustor with personalty of equal or greater value, or (c) any transfer by Trustor for the leasing of any portion of the Property to a tenant which is expressly permitted pursuant to (i) this Deed of Trust, and/or (ii) the Loan Agreement, provided, however, Beneficiary holds a security interest in the lease and a subordination and non-disturbance agreement is granted in favor of Beneficiary on a Beneficiary approved form (unless the same is waived or not required pursuant to the Loan



Agreement or the Assignments of Leases), or (d) where the transfer under applicable state or federal law governing Beneficiary and the Loan (pursuant to either statutory authority or judicial opinion) expressly prohibits the use, exercise or enforcement of said due-on-sale or change-of-control clause in the form set forth in this Section 5.4.

In the event of any conflict among this Deed of Trust, the Loan Agreement and any other security agreement governing the collateral for the Loan, the following conflict resolution provision shall apply: (i) if the collateral is personalty and does not constitute fixtures and is not part of the Property, such security agreement governing the personalty shall control, unless Trustor and Beneficiary agree otherwise; or (ii) if the collateral constitutes fixtures and is part of the Property, the Deed of Trust shall control, unless Trustor and Beneficiary agree otherwise. In any event, the Loan Agreement shall control over any conflict between the Deeds of Trust, including this Deed of Trust or any security agreement governing the Collateral.

**5.5. DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**

- a. Except as otherwise provided in the Loan Agreement, the following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Trustor to Beneficiary and, at the request of Beneficiary, shall be paid directly to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property or Collateral; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Property or Collateral; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property or Collateral; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in this Deed of Trust, Beneficiary may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in any order acceptable to Beneficiary, and/or Beneficiary may release all or any part of the proceeds to Trustor upon any conditions Beneficiary may impose. Except as provided in the Loan Agreement, Beneficiary may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided, however, in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Beneficiary or its employees or agents.
- b. Except as otherwise provided in the Loan Agreement, at its sole option, Beneficiary may permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration but may condition such application upon reasonable conditions, including, without limitation: (i) the deposit with Beneficiary of such additional funds which Beneficiary determines are needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an

arrangement for lien releases and disbursement of funds acceptable to Beneficiary (the arrangement contained in the Loan Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Beneficiary; and (iv) the delivery to Beneficiary of evidence acceptable to Beneficiary (aa) that after completion of the work the income from the Property will be sufficient to pay all expenses and debt service for the Property; (bb) that upon completion of the work, the size, capacity and total value of the Property will be at least as great as it was before the damage or condemnation occurred; (cc) of the continuation or effectiveness of Leases acceptable to and required by Beneficiary; (dd) that there has been no other material adverse change in the financial condition or credit of Trustor and Borrowers and any Guarantors since the date of the Deed of Trust; and (ee) of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Trustor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Beneficiary of such insurance or condemnation proceeds, then Beneficiary may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Beneficiary in its sole discretion may choose. Notwithstanding the foregoing provisions, but subject to the Loan Agreement, if the portion of the Property condemned or the casualty to a Property does not, in the reasonable judgment of Beneficiary materially impair, directly or indirectly, the rental revenues or rental revenue potential of the Property and no Default shall have occurred and be continuing, then Beneficiary will, upon written request of the Borrower, turn over the relevant condemnation proceeds or casualty insurance proceeds to the Borrower for use in the reasonable discretion of the Borrower, first, to the replacement or repair or restoration of the condemned or damaged property as Borrower may determine to be needed and, thereafter, for whatever purposes Borrower may wish to utilize the same in connection with its business.

**5.6. DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and Collateral and title to and right of possession of the Property and Collateral, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of any material damage to the Property or Collateral and of any condemnation offer or action.

**5.7. MAINTENANCE AND PRESERVATION OF THE PROPERTY.** Subject to the provisions of the Loan Agreement, Trustor covenants: (a) to insure the Property and Collateral against risks as required by the Loan Agreement and other applicable Loan Documents and, at Beneficiary's request, to provide evidence of such insurance to Beneficiary, and to comply with the requirements of any insurance companies providing such insurance; (b) to keep the Property and Collateral in good condition and repair

(reasonable wear and tear excepted) as they are renovated and/or constructed; (c) not to remove or demolish the Property or Collateral or any part thereof, not to alter or add to the Property or Collateral (which is not obsolete) and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Property without Beneficiary's prior written consent; (d) to complete or restore promptly and in good and workmanlike manner the Property and Collateral, or any part thereof which may be damaged or destroyed; (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Property or Collateral and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit waste of the Property or Collateral; and (g) to do all other acts which from the character or use of the Property or Collateral may be reasonably necessary to maintain and preserve its value.

**5.8. COMPENSATION; EXCULPATION; INDEMNIFICATION.** Trustor shall pay all Trustee's fees and reimburse Trustee promptly upon demand for expenses in the administration of this trust, including attorneys' fees. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of (i) the exercise or non-exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; or (iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure (whether by malfeasance, nonfeasance or refusal to act) to lease the Property after a Default (hereinafter defined) or from any other act or omission (regardless of whether same constitutes negligence) of Beneficiary in managing the Property after a Default unless the loss is caused by the gross negligence or willful misconduct of Beneficiary and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Trustor.

**TRUSTOR AGREES TO INDEMNIFY TRUSTEE AND BENEFICIARY AGAINST, AND HOLD TRUSTEE AND BENEFICIARY HARMLESS FOR, FROM, AND AGAINST ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER EXPENSES WHICH EITHER MAY SUFFER OR INCUR: (i) BY REASON OF THE PERFORMANCE OF ANY ACT REQUIRED OR PERMITTED HEREUNDER OR BY LAW; (ii) AS A RESULT OF ANY FAILURE OF TRUSTOR TO PERFORM TRUSTOR'S OBLIGATIONS UNDER THE LOAN DOCUMENTS; OR (iii) BY REASON OF ANY ALLEGED OBLIGATION OR UNDERTAKING ON BENEFICIARY'S PART TO PERFORM OR DISCHARGE ANY OF THE REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS OF TRUSTOR OR BORROWERS CONTAINED IN ANY OTHER DOCUMENT RELATED TO THE PROPERTY.** The above obligation of Trustor to indemnify and hold harmless Trustee and Beneficiary shall survive the release and cancellation of the Secured Obligations and the release or partial release of the lien of this Deed of Trust. The obligation to indemnify

shall not apply to matters which are attributable to the gross negligence or intentional wrongdoing of Beneficiary.

- 5.9. **SUBSTITUTION OF TRUSTEE.** Trustee may resign at any time by giving notice thereof to Beneficiary as provided by law. Beneficiary may, from time to time, by instrument in writing, substitute a successor to any Trustee named herein or acting hereunder in the manner provided by law. Such writing, upon recordation, shall be conclusive proof of proper substitution of such successor Trustee, who shall, without conveyance from the predecessor Trustee, succeed to all its title.
- 5.10. **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations (“**Interested Parties**”), Beneficiary may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Property and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Deed of Trust upon the Property and Collateral.
- 5.11. **SUBROGATION.** Beneficiary shall be subrogated to the lien of all encumbrances with respect to which the indebtedness or obligations secured thereby has been paid in whole or in part by Beneficiary using proceeds of any loan secured by this Deed of Trust (including the Secured Obligations and the Loan provided under the Loan Documents). Such subrogation interest in such lien interests shall continue and survive any release, recorded or not, by the original lien holder.
- 5.12. **RIGHT OF INSPECTION.** Beneficiary, its agents and employees, may enter the Property at any reasonable time for the purpose of inspecting the Property and Collateral and ascertaining Trustor’s compliance with the terms hereof
- 5.13. **COMMUNITY FACILITIES DISTRICT.** Without obtaining the prior written consent of Beneficiary, Trustor shall not consent to, or vote in favor of, the inclusion of all or any part of the Property in any special assessment, improvement, community facilities, service or other like district (any of the same herein referred to as a “**Community Facilities District**”). Trustor shall immediately give notice to Beneficiary of any notification or advice that Trustor may receive from any municipality or other third party of any intent or proposal to include all or any part of the Property in a Community Facilities District. Beneficiary shall have the right to file a written objection to the inclusion of all or any part of the Property in a Community Facilities District, either in its own name or in the name of Trustor, and to appear at, and participate in, any hearing with respect to the formation of any such district.
- 5.14. **COMPLIANCE WITH LAWS - GAMING LAWS.** Trustor covenants and agrees that it will comply in all respects with applicable federal, state and local laws that apply to the

Property and its use and has the legal power and authority under current agreements or contracts to enforce the same requirement upon any occupant, licensee, tenant or lessee that has rights for use or occupancy of the Property. This covenant expressly includes and shall apply with respect to any Nevada gaming laws, rules and regulations which have application by reason of the participation of Trustor, its licensee, tenant or lessee in the business of gaming on or with respect to the Property. Further, in connection with the exercise by Beneficiary of any and all remedies provided or granted by or with respect to the Property, Trustor shall provide full, good faith cooperation and assistance to Beneficiary to preserve and maintain, in compliance with all applicable gaming laws, rules and regulations, the necessary authority and right to preserve and continue the operation of any gaming business on or with respect to the Property. The obligations hereunder include and Trustor covenants and agrees to timely make any report to the appropriate gaming authorities of the State of Nevada, required by reason of (i) the credit accommodations being provided to Borrowers by Beneficiary under the Loan Agreement and the Loan Documents and/or (ii) Trustor's participation in the said credit transactions by the provision of this Deed of Trust.

#### ARTICLE 6. DEFAULT PROVISIONS

- 6.1. **DEFAULT.** For all purposes hereof, the term “**Default**” shall mean any Event of Default or Default (as those terms are defined in the Loan Agreement).
- 6.2. **RIGHTS AND REMEDIES.** At any time after Default, Beneficiary and/or Trustee shall each have, among other rights and remedies, including as provided in the other Loan Documents, all the following rights and remedies:
- a. Without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Trustor and all other parties obligated in any manner whatsoever on the Secured Obligations, to declare all the unpaid balance of the Secured Obligations immediately due and payable;
  - b. With or without notice, and without releasing Trustor or Borrower from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Trustor or Borrower and, in connection therewith, to enter upon the Property and do such acts and things as Beneficiary or Trustee deem necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee under this Deed of Trust; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain insurance and to pay any premiums or charges with respect to insurance required to be carried under this Deed of Trust; or (iv) to employ counsel, accountants, contractors and other appropriate persons;

- c. To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations. This remedy shall be cumulative of any other non-judicial remedies available to Beneficiary under this Deed of Trust and the other Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available non-judicial remedy of Beneficiary;
- d. To apply to a court of competent jurisdiction for and to obtain appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Trustor hereby consents to such appointment;
- e. To enter upon, possess, manage and operate the Property or any part thereof;
- f. To cause the Property to be sold by Trustee to satisfy the Secured Obligations through the exercise of the non-judicial power of sale granted herein. Except as required by law, neither Trustor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Property is sold;
- g. To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both; and

Upon sale of the Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, the costs of any structural reports, hazardous waste reports or any remediation costs related thereto; (iv) anticipated discounts upon resale of the Property as a distressed or foreclosed property; and (v) such other factors or matters that Beneficiary deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (w) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Trustor and Beneficiary; and

(z) Beneficiary's credit bid may be higher or lower than any appraised value of the Property.

Beneficiary may exercise its rights of enforcement with respect to the Collateral under the UCC, and in conjunction with, in addition to, or in substitution for the rights and remedies under the UCC, Beneficiary may, and Trustor agrees, as follows: (i) without demand or notice to Trustor, enter upon the Property to take possession of, assemble, receive, and collect the Collateral, or any part thereof, or to render it unusable; (ii) require Trustor to assemble the Collateral and make it available at a place Beneficiary designates which is mutually convenient to allow Beneficiary to take possession or dispose of the Collateral; (iii) written notice mailed to Trustor as provided herein at least ten (10) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; (iv) any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Collateral hereunder as is required for such sale of the Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under the UCC; (v) in the event of a foreclosure sale, whether made by Trustee under the terms hereof, or under judgment of a court, the Property may, at the option of Beneficiary, be sold as a whole; (vi) it shall not be necessary that Beneficiary take possession of the Collateral, or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; (vii) prior to application of proceeds of disposition of the Collateral to the Secured Obligations, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like, and the reasonable attorneys' fees and legal expenses incurred by Beneficiary in connection with the collection of the Secured Obligations and the enforcement of Beneficiary's rights under the Loan Documents or the Derivative Transaction Documents; (viii) after notification, if any, hereafter provided in this subsection, Beneficiary may sell, lease, or otherwise dispose of the Collateral, or any part thereof, in one or more parcels at public or private sale or sales, at Beneficiary's offices or elsewhere, for cash, on credit, or for future delivery; (ix) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder, the nonpayment of the Secured Obligations, the occurrence of any Default, Beneficiary having declared all or a portion of such Secured Obligations to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other act or thing having been duly done by Beneficiary, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and (x) Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of the sale, but in the name and on behalf of Beneficiary. Beneficiary shall apply the proceeds of the sale of the Collateral against the Secured Obligations in accordance with the requirements of this Deed of Trust. Borrower shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay, perform and discharge the Secured Obligations in full.

- 6.3. APPLICATION OF FORECLOSURE SALE PROCEEDS.** Except as may be otherwise required by applicable law, after deducting all costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, all proceeds of any foreclosure sale shall be applied: (a) to payment of all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.
- 6.4. APPLICATION OF OTHER SUMS.** All sums received by Beneficiary under this Deed of Trust other than those described in Section 6.3, less all costs and expenses incurred by Beneficiary or any receiver, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided, however, Beneficiary shall have no liability for funds not actually received by Beneficiary.
- 6.5. NO CURE OR WAIVER.** Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver, shall cure or waive any breach, Default or notice of Default under this Deed of Trust, or nullify the effect of any notice of Default or sale (unless all Secured Obligations then due have been paid and performed and Trustor has cured all other Defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of, or security interests created by, this Deed of Trust.
- 6.6. PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Trustor agrees to pay to Beneficiary immediately and without demand all costs and expenses incurred by Trustee and Beneficiary pursuant to this Article 6 (including, without limitation, court costs and attorneys' fees, whether incurred in litigation, including, without limitation, at trial, on appeal or in any bankruptcy or other proceeding, or not and the costs of any appraisals obtained in connection with a determination of the fair value of the Property). In addition, Trustor will pay a reasonable fee for title searches, sale guarantees, publication costs, appraisal reports or environmental assessments made in preparation for and in the conduct of any such proceedings or suit, and shall pay to Trustee all Trustee's fees hereunder and shall reimburse Trustee for all expenses incurred in the administration of this trust, including, without limitation, any attorneys' fees. All of the foregoing amounts must be paid to Beneficiary as part of any reinstatement tendered hereunder. In the event of any legal proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Beneficiary.



- 6.7. **POWER TO FILE NOTICES AND CURE DEFAULTS.** Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to prepare, execute and file or record any document necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Property and Collateral, and upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Beneficiary may perform any obligation of Trustor hereunder.
- 6.8. **REMEDIES CUMULATIVE.** All rights and remedies of Beneficiary and Trustee provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this instrument as though it were a mortgage) or in any other agreements between Trustor and Beneficiary. No failure on the part of Beneficiary to exercise any of its rights hereunder arising upon any Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Default. No delay on the part of Beneficiary in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while that Default is continuing. Beneficiary may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Secured Obligations after its due date, Beneficiary shall not waive the agreement contained herein that time is of the essence, nor shall Beneficiary waive either its right to require prompt payment or performance when due of the remainder of the Secured Obligations or its right to consider the failure to so pay or perform a Default.

#### **ARTICLE 7. MISCELLANEOUS PROVISIONS**

- 7.1. **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Property and Collateral and such further rights and agreements are incorporated herein by this reference. Where the Borrower or Borrowers and Trustor are not the same person or entity, "Trustor" means the owner of the Property in any provision dealing with the Property, "Borrower" or "Borrowers" means the obligor in any provision dealing with the Secured Obligations, and both were the context makes such dual reference reasonable and appropriate.
- 7.2. **ATTORNEYS' FEES.** If the Note is placed with an attorney for collection or if an attorney is engaged by Beneficiary to exercise rights or remedies or otherwise take actions to collect thereunder or under any other Loan Document, or if suit be instituted for collection, enforcement of rights and remedies, then in all events, Trustor agree(s) to pay all reasonable costs of collection, exercise of remedies or rights or other assertion of claims, including, but not limited to, reasonable attorneys' fees, whether or not court proceedings are instituted, and, where instituted, whether in district court, appellate court, or bankruptcy court.
- 7.3. **NO WAIVER.** No previous waiver and no failure or delay by Beneficiary in acting with respect to the terms of the Note or this Deed of Trust shall constitute a waiver of any breach,

default, or failure of condition under the Note, this Deed of Trust or the obligations secured thereby. A waiver of any term of the Note, this Deed of Trust or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of the Note and the terms of any other document related to the loan evidenced by the Note, the terms of the Note shall prevail.

- 7.4. **MERGER.** No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Property unless Beneficiary consents to a merger in writing.
- 7.5. **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section does not waive or modify the provisions of the Section above titled "Due on Sale or Encumbrance".
- 7.6. **GOVERNING LAW.** This Deed of Trust shall be construed in accordance with the laws of the state where the Property is located, except to the extent that federal laws preempt the laws of such state.
- 7.7. **EXHIBITS INCORPORATED.** All exhibits, schedules or other items attached hereto are incorporated into this Deed of Trust by such attachment for all purposes.
- 7.8. **NOTICES.** All notices, demands or other communications required or permitted to be given pursuant to the provisions of this Deed of Trust shall be in writing and shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, except that notice of Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective 3 days after mailing, if mailed by first class mail, and otherwise upon receipt at the address set forth below; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Trustor:	NORTHERN NEVADA COMSTOCK INVESTMENT LLC 562 North Maine Street Fallon, Nevada 89406  STILLWATER GAMING, LLC 562 North Maine Street Fallon, Nevada 89406
Trustee:	GREAT BASIN TITLE COMPANY LLC d/b/a WESTERN NEVADA TITLE COMPANY 2258 Reno Highway, Suite A Fallon, NV 89406

Beneficiary:	Zions Bancorporation, N.A. dba Nevada State Bank One West Liberty, 2 <sup>nd</sup> Floor Reno, Nevada 98501 Attn: Richard Thomas, Vice President
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Any party shall have the right to change its address for notice hereunder to any other location within the United States by the giving of 30 days' notice to the other party in the manner set forth hereinabove.

Trustor requests a copy of any statutory notice of default and a copy of any statutory notice of sale be mailed to Trustor at the address set forth above.

- 7.9. WAIVER OF MARSHALING RIGHTS.** Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Property, hereby waives all rights to have the Property and/or any other property marshaled upon any foreclosure of the lien of this Deed of Trust or on a foreclosure of any other lien securing the Secured Obligations. Beneficiary shall have the right to sell the Property and any or all of said other property as a whole or in separate parcels, in any order that Beneficiary may designate.
- 7.10. POWER OF SALE.** Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and request that Trustee commence such proceedings.
- a. Upon receipt of such notice from Beneficiary, Trustee shall give and record such notice as shall then be required by law as a condition of such sale. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, as directed by Beneficiary, or by Trustor to the extent required by law, 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. In addition, Beneficiary may credit bid at any such sale an amount up to and including the full amount of the indebtedness under the Loan Documents and hereunder, including, without limitation, accrued and unpaid interest, principal, charges, advances made hereunder and Trustee's fees and expenses.
  - b. Except as may be otherwise required by applicable law, after deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including costs of evidence

of title in connection with sale, Trustee shall apply the proceeds of sale in accordance with the provisions of the Loan Documents.

- c. Subject to the requirements and limits imposed by law, Trustee may postpone 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 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. Beneficiary may from time to time rescind any notice of default or notice of sale before any Trustee's sale in accordance with the laws of the State of Nevada. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any breach or Default then existing or subsequently occurring, or impair the right of Beneficiary to execute and deliver to Trustee, as above provided, other declarations or notices of default to satisfy the obligations of this Deed of Trust or secured hereby, nor otherwise affect any provision, covenant or condition of any Loan Document or any of the rights, obligations or remedies of Trustee or Beneficiary hereunder or thereunder.

*[Signatures and acknowledgments are on the following pages. The remainder of this page is left blank intentionally.]*

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year set forth above.

“TRUSTOR”

NORTHERN NEVADA COMSTOCK INVESTMENT LLC,  
a Nevada limited liability company

By: [Signature]  
David Scott Tate, Manager

STILLWATER GAMING, LLC,  
a Nevada limited liability company

By: [Signature]  
David Scott Tate, Manager

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

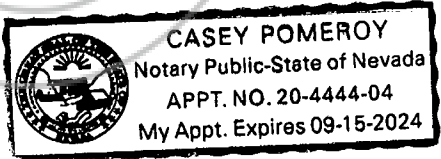
STATE OF NEVADA       §  
                                  §  
COUNTY OF Churchill §

This instrument was ACKNOWLEDGED before me on 4/14/23, 2023, by David Scott Tate, the Manager of NORTHERN NEVADA COMSTOCK INVESTMENT LLC, a Nevada limited liability company, on behalf of said limited liability company.

[S E A L] [Signature]  
Notary Public - State of Nevada

My Commission Expires:  
9.15.24

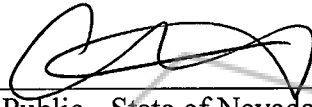
Casey Pomeroy  
Printed Name of Notary Public



STATE OF NEVADA §  
  §  
COUNTY OF Churchill §

This instrument was ACKNOWLEDGED before me on 4/14/23, 2023, by David Scott Tate, the Manager of STILLWATER GAMING, LLC, a Nevada limited liability company, on behalf of said limited liability company.

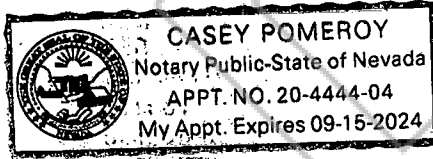
[SEAL]

  
\_\_\_\_\_  
Notary Public - State of Nevada

My Commission Expires:

9.15.24

Casey Pomeroy  
\_\_\_\_\_  
Printed Name of Notary Public



**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

The following property located in Douglas County, Nevada:

PARCEL 1:

ALL THAT CERTAIN REAL PROPERTY SITUATE WITHIN A PORTION OF THE SOUTHWEST ONE-QUARTER (SW ¼) OF SECTION 23, TOWNSHIP 13 NORTH, RANGE 18 EAST, M.D.M., COUNTY OF DOUGLAS, STATE OF NEVADA, BEING A PORTION OF THAT PROPERTY DESCRIBED IN DEED DOCUMENT NO. 759331, RECORDED FEBRUARY 26, 2010, TOGETHER WITH A PORTION OF THAT PROPERTY DESCRIBED IN DEED DOCUMENT NO. 70693, RECORDED SEPTEMBER 3, 1982, BOTH DOCUMENTS BEING OFFICIAL RECORDS OF THE COUNTY OF DOUGLAS, STATE OF NEVADA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF UNITED STATES HIGHWAY 50, SAID POINT BEING THE NORTHWEST CORNER OF PARCEL 2 AS DESCRIBED IN SAID DEED DOCUMENT NO. 759331, SAID POINT ALSO BEING IN A CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 2,540.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 88° 00' 10" WEST;

THENCE SOUTHERLY ALONG SAID EASTERLY RIGHT OF WAY, 69.36 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 01° 33' 52" TO THE TRUE POINT OF BEGINNING;

THENCE EASTERLY LEAVING SAID EASTERLY RIGHT OF WAY LINE, SOUTH 88° 59' 50" EAST, 157.00 FEET;

THENCE NORTH 30° 05' 43" EAST, 60.66 FEET; THENCE SOUTH 87° 24' 14" EAST, 66.23 FEET; THENCE SOUTH 53° 10' 48" EAST, 52.83 FEET; THENCE SOUTH 89° 06' 58" EAST, 14.35 FEET;

THENCE SOUTH 00° 48' 26" WEST, 100.00 FEET;

THENCE NORTH 89° 06' 58" WEST, 309.49 FEET TO A POINT IN A CURVE ON SAID EASTERLY RIGHT OF WAY LINE, SAID CURVE IS CONCAVE WESTERLY, HAVING A RADIUS OF 2,540.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS NORTH 88° 37' 11" WEST;

THENCE NORTHERLY ALONG SAID EASTERLY RIGHT OF WAY, 80.37 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 01° 48' 47" TO THE POINT OF BEGINNING AND THE END OF THIS DESCRIPTION.

REFERENCE IS HEREBY MADE TO ADJUSTED PARCEL A OF RECORD OF SURVEY IN SUPPORT OF A BOUNDARY LINE ADJUSTMENT, RECORDED SEPTEMBER 24, 2014, IN

BOOK 914, PAGE 4367, AS DOCUMENT NO. 849816, OFFICIAL RECORDS, DOUGLAS COUNTY, NEVADA.

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION APPEARED PREVIOUSLY IN THAT CERTAIN DOCUMENT RECORDED AUGUST 19, 2020 AS INSTRUMENT NO. 2020-951063 OF OFFICIAL RECORDS.

PARCEL 2:

ALL THAT CERTAIN REAL PROPERTY SITUATE WITHIN A PORTION OF THE SOUTHWEST ONE-QUARTER (SW ¼) OF SECTION 23, TOWNSHIP 13 NORTH, RANGE 18 EAST, M.D.M., COUNTY OF DOUGLAS, STATE OF NEVADA, BEING A PORTION OF THAT PROPERTY DESCRIBED IN DEED DOCUMENT NO. 759331, RECORDED FEBRUARY 26, 2010, TOGETHER WITH A PORTION OF THAT PROPERTY DESCRIBED IN DEED DOCUMENT NO. 70693, RECORDED SEPTEMBER 03, 1982, BOTH DOCUMENTS BEING OFFICIAL RECORDS OF THE COUNTY OF DOUGLAS, STATE OF NEVADA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF UNITED STATES HIGHWAY 50, SAID POINT BEING THE NORTHWEST CORNER OF PARCEL 2 AS DESCRIBED IN SAID DEED DOCUMENT NO. 759331, SAID POINT ALSO BEING IN A CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 2,540.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 88° 00' 10" WEST;

THENCE ALONG SAID EASTERLY RIGHT OF WAY, 149.73 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 03° 22' 39" TO THE TRUE POINT OF BEGINNING;

THENCE EASTERLY LEAVING SAID EASTERLY RIGHT OF WAY LINE, SOUTH 89° 06' 58" EAST, 309.49; THENCE SOUTH 00° 48' 26" WEST, 100.55 FEET;

THENCE NORTH 89° 04' 33" WEST, 312.47 FEET TO A POINT IN A CURVE ON SAID EASTERLY RIGHT OF WAY LINE, SAID CURVE IS CONCAVE WESTERLY, HAVING A RADIUS OF 2,540.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS NORTH 86° 21' 20" WEST;

THENCE NORTHERLY ALONG SAID EASTERLY RIGHT OF WAY, 100.38 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 02° 15' 51" TO THE POINT OF BEGINNING AND THE END OF THIS DESCRIPTION.

REFERENCE IS HEREBY MADE TO ADJUSTED PARCEL B OF RECORD OF SURVEY IN SUPPORT OF A BOUNDARY LINE ADJUSTMENT, RECORDED SEPTEMBER 24, 2014, IN BOOK 914, PAGE 4367, AS DOCUMENT NO. 849816, OFFICIAL RECORDS, DOUGLAS COUNTY, NEVADA.

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION APPEARED PREVIOUSLY IN THAT CERTAIN DOCUMENT RECORDED AUGUST 19, 2020 AS INSTRUMENT NO. 2020-951063 OF OFFICIAL RECORDS.



PARCEL 3:

ALL THAT CERTAIN REAL PROPERTY SITUATE WITHIN A PORTION OF THE SOUTHWEST ONE-QUARTER (SW ¼) OF SECTION 23, TOWNSHIP 13 NORTH, RANGE 18 EAST, M.D.M., COUNTY OF DOUGLAS, STATE OF NEVADA, BEING A PORTION OF THAT PROPERTY DESCRIBED IN DEED DOCUMENT NO. 759331, RECORDED FEBRUARY 26, 2010, TOGETHER WITH A PORTION OF THAT PROPERTY DESCRIBED IN DEED DOCUMENT NO. 70693, RECORDED SEPTEMBER 03, 1982, BOTH DOCUMENTS BEING OFFICIAL RECORDS OF THE COUNTY OF DOUGLAS, STATE OF NEVADA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF UNITED STATES HIGHWAY 50, SAID POINT BEING THE NORTHWEST CORNER OF PARCEL 2 AS DESCRIBED IN SAID DEED DOCUMENT NO. 759331, SAID POINT ALSO BEING IN A CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 2,540.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 88° 00' 10" WEST;

THENCE ALONG SAID EASTERLY RIGHT OF WAY, 250.11 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 05° 38' 30" TO THE TRUE POINT OF BEGINNING;

THENCE EASTERLY LEAVING SAID EASTERLY RIGHT OF WAY LINE, SOUTH 89° 04' 33" EAST, 312.47; THENCE SOUTH 00° 48' 26" WEST, 85.80 FEET;

THENCE NORTH 89° 16' 37" WEST, 75.41 FEET;

THENCE NORTH 00° 02' 30" WEST, 46.51 FEET;

THENCE NORTH 89° 03' 55" WEST, 238.64 FEET TO A POINT IN A CURVE ON SAID EASTERLY RIGHT OF WAY LINE, SAID CURVE IS CONCAVE WESTERLY, HAVING A RADIUS OF 2,540.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS NORTH 85° 27' 46" WEST;

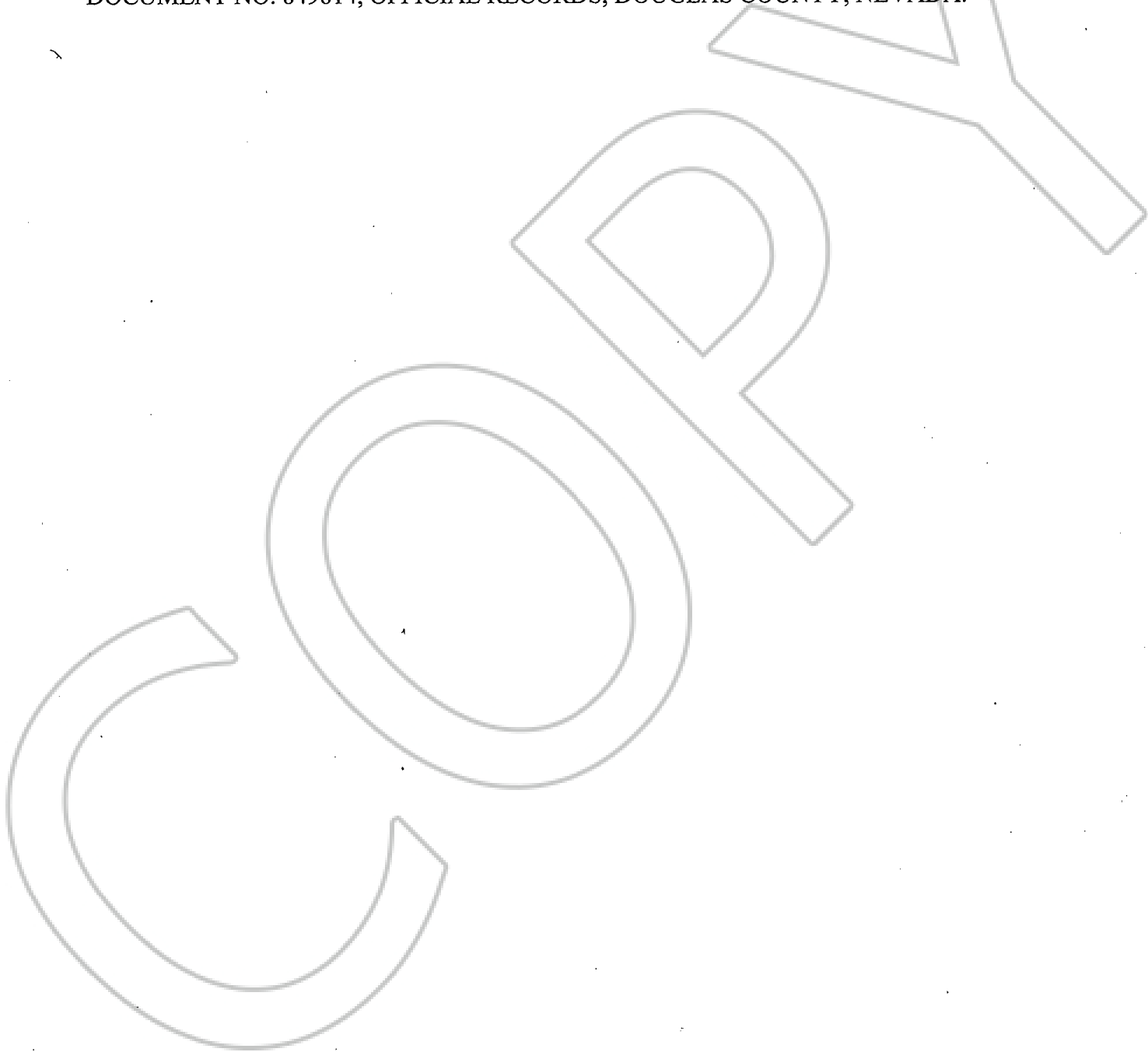
THENCE NORTHERLY ALONG SAID EASTERLY RIGHT OF WAY, 39.58 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 00° 53' 34" TO THE POINT OF BEGINNING AND THE END OF THIS DESCRIPTION.

REFERENCE IS HEREBY MADE TO ADJUSTED PARCEL C OF RECORD OF SURVEY IN SUPPORT OF A BOUNDARY LINE ADJUSTMENT, RECORDED SEPTEMBER 24, 2014, IN BOOK 914, PAGE 4367, AS DOCUMENT NO. 849816, OFFICIAL RECORDS, DOUGLAS COUNTY, NEVADA.

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION APPEARED PREVIOUSLY IN THAT CERTAIN DOCUMENT RECORDED AUGUST 19, 2020 AS INSTRUMENT NO. 2020-951063 OF OFFICIAL RECORDS.

PARCEL 4:

A RECIPROCAL EASEMENT OVER A PORTION OF ADJUSTED PARCEL D OF RECORD OF SURVEY IN SUPPORT OF A BOUNDARY LINE ADJUSTMENT, RECORDED SEPTEMBER 24, 2014, IN BOOK 914, PAGE 4367, AS DOCUMENT NO. 849816, OFFICIAL RECORDS, DOUGLAS COUNTY, NEVADA, FOR A NON-EXCLUSIVE RIGHT TO ACCESS AND USE THE AREA FOR PARKING AS EVIDENCED BY GRANT OF EASEMENT RECORDED SEPTEMBER 24, 2014, IN BOOK 914, PAGE 4359, AS DOCUMENT NO. 849814, OFFICIAL RECORDS, DOUGLAS COUNTY, NEVADA.



## EXHIBIT B

### NON-BORROWER TRUSTOR RIDER

This **NON-BORROWER TRUSTOR RIDER** (this “**Rider**”) shall be deemed to be incorporated into and constitute a part of that certain Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing (this “**Deed of Trust**”) made as of \_\_\_\_\_, 2023, by NORTHERN NEVADA COMSTOCK INVESTMENTS, LLC, a Nevada limited liability company (“**NNCI**”); and STILLWATER GAMING, LLC, a Nevada limited liability company (“**Stillwater**” or **Accommodation Trustor**”) (NNCI and Stillwater are referred to individual and collectively, as the context may require, herein as “**Trustor**”), as trustor, to GREAT BASIN TITLE COMPANY LLC d/b/a WESTERN NEVADA TITLE COMPANY, as trustee (“**Trustee**”) for the benefit of ZIONS BANCORPORATION, N.A. dba Nevada State Bank (“**Beneficiary**”). Capitalized terms used but not defined in this Rider shall have the definitions provided with respect thereto in the Deed of Trust.

This Deed of Trust secures the Note, the Loan Agreement and the Loan Documents made by a party not identical to Accommodation Trustor. Accommodation Trustor agrees as follows:

1. **CONDITIONS TO EXERCISE OF RIGHTS.** Accommodation Trustor hereby waives any right it may now or hereafter have to require Beneficiary, as a condition to the exercise of any remedy or other right against Accommodation Trustor hereunder or under any other document executed by Accommodation Trustor in connection with any Secured Obligation: (a) to proceed against any Borrower or other person, or against any other collateral assigned to Beneficiary by Accommodation Trustor or any Borrower or other person; (b) to pursue any other right or remedy in Beneficiary’s power; (c) to give notice of the time, place or terms of any public or private sale of real or personal property collateral assigned to Beneficiary by any Borrower or other person (other than Accommodation Trustor), or otherwise to comply with the Nevada Uniform Commercial Code (as modified or recodified from time to time) with respect to any such personal property collateral; or (d) to make or give (except as otherwise expressly provided in the Loan Documents) any presentment, demand, protest, notice of dishonor, notice of protest or other demand or notice of any kind in connection with any Secured Obligation or any collateral (other than the Property) for any Secured Obligation.
2. **DEFENSES.** Accommodation Trustor hereby waives any defense it may now or hereafter have that relates to: (a) any disability or other defense of any Borrower or other person; (b) the cessation, from any cause other than full performance, of the obligations of Borrowers or any other person; (c) the application of the proceeds of any Secured Obligation, by any Borrower or other person, for purposes other than the purposes represented to Accommodation Trustor by any Borrower or otherwise intended or understood by Accommodation Trustor or any Borrower; (d) any act or omission by Beneficiary which directly or indirectly results in or contributes to the release of any Borrower or other person or any collateral for any Secured Obligation; (e) the unenforceability or invalidity of any collateral assignment (other than this Deed of Trust) or guaranty with respect to any Secured Obligation, or the lack of perfection or continuing

perfection or lack of priority of any lien (other than the lien hereof) which secures any Secured Obligation; (f) any failure of Beneficiary to marshal assets in favor of Accommodation Trustor or any other person; (g) any modification of any Secured Obligation, including any renewal, extension, acceleration or increase in interest rate; (h) any and all rights and defenses arising out of an election of remedies by Beneficiary, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Accommodation Trustor's rights of subrogation and reimbursement against the principal by the operation of any applicable law; (i) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (j) any failure of Beneficiary to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (k) the election by Beneficiary, in any bankruptcy proceeding of any person, of the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code; (l) any extension of credit or the grant of any lien under Section 364 of the United States Bankruptcy Code; (m) any use of cash collateral under Section 363 of the United States Bankruptcy Code; or (n) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person. Accommodation Trustor further waives any and all rights and defenses that Accommodation Trustor may have because Borrowers' debt is secured by real property; this means, among other things, that: (1) Beneficiary may proceed against Accommodation Trustor under this Deed of Trust without first foreclosing on any real or personal property collateral pledged by Borrowers; (2) if Beneficiary forecloses on any real property collateral pledged by Borrowers, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) Beneficiary may proceed under this Deed of Trust to collect from Accommodation Trustor even if Beneficiary, by foreclosing on the real property collateral, has destroyed any right Accommodation Trustor may have to collect from Borrowers. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Accommodation Trustor may have because Borrowers' debt is secured by real property. These rights and defenses being waived by Accommodation Trustor include, but are not limited to, any rights or defenses based upon the provisions of any applicable law, including any statute, regulation, ordinance or other rule binding upon and applicable to this Deed of Trust. Without limiting the generality of the foregoing or any other provision hereof, Accommodation Trustor further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to Accommodation Trustor under the provisions of any applicable law, including any statute, regulation, ordinance or other rule binding upon and applicable to this Deed of Trust.

3. **SUBROGATION.** Accommodation Trustor hereby waives, until such time as all Secured Obligations are fully performed: (a) any right of subrogation against any Borrower that relates to any Secured Obligation; (b) any right to enforce any remedy Accommodation Trustor may now or hereafter have against any Borrower that relates to any Secured Obligation; and (c) any right to participate in any collateral now or hereafter assigned to Beneficiary with respect to any Secured Obligation.

4. **BORROWER INFORMATION.** Accommodation Trustor warrants and agrees: (a) that Accommodation Trustor has not relied, and will not rely, on any representations or warranties by Beneficiary to Accommodation Trustor with respect to the credit worthiness of any Borrower or the prospects of repayment of any Secured Obligation from sources other than the Property; (b) that Accommodation Trustor has established and/or will establish adequate means of obtaining from each Borrower on a continuing basis financial and other information pertaining to the business operations, if any, and financial condition of each Borrower; (c) that Accommodation Trustor assumes full responsibility for keeping informed with respect to each Borrower's business operations, if any, and financial condition; (d) that Beneficiary shall have no duty to disclose or report to Accommodation Trustor any information now or hereafter known to Beneficiary with respect to any Borrower, including, without limitation, any information relating to any of Borrower's business operations or financial condition; and (e) that Accommodation Trustor is familiar with the terms and conditions of the Loan Documents and consents to all provisions thereof.
5. **REINSTATEMENT OF LIEN.** Beneficiary's rights hereunder shall be reinstated and revived, and the enforceability of this Deed of Trust shall continue, with respect to any amount at any time paid on account of any Secured Obligation which Beneficiary is thereafter required to restore or return in connection with a bankruptcy, insolvency, reorganization or similar proceeding with respect to any Borrower.
6. **SUBORDINATION.** Until all of the Secured Obligations have been fully paid and performed: (a) Accommodation Trustor hereby agrees that all existing and future indebtedness and other obligations of each Borrower to Accommodation Trustor (collectively, the "**Subordinated Debt**") shall be and are hereby subordinated to all Secured Obligations which constitute obligations of the applicable Borrower, and the payment thereof is hereby deferred in right of payment to the prior payment and performance of all such Secured Obligations; (b) Accommodation Trustor shall not collect or receive any cash or non-cash payments on any Subordinated Debt or transfer all or any portion of the Subordinated Debt; and (c) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, any Borrower with respect to any Subordinated Debt is received by Accommodation Trustor, such payment or distribution shall be held in trust and immediately paid over to Beneficiary, is hereby assigned to Beneficiary as security for the Secured Obligations, and shall be held by Beneficiary in an interest bearing account until all Secured Obligations have been fully paid and performed.
7. **HAZARDOUS MATERIALS.**
  - a. **Special Representations and Warranties.** Without in any way limiting the other representations and warranties set forth in this Deed of Trust, and after reasonable investigation and inquiry, and except as provided in environmental reports delivered to Beneficiary in connection therewith, Accommodation Trustor hereby represents and warrants to the best of Accommodation Trustor's knowledge as of the date as follows:

- (i) **Hazardous Materials.** The Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any oil, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are “hazardous substances,” “hazardous wastes,” “hazardous materials,” “toxic substances,” “wastes,” “regulated substances,” “industrial solid wastes,” or “pollutants” under the Hazardous Materials Laws, as described below, and/or other applicable environmental laws, ordinances and regulations (collectively, the “**Hazardous Materials**”).
- (ii) **Hazardous Materials Laws.** The Property is in compliance with all laws, ordinances and regulations relating to Hazardous Materials (“**Hazardous Materials Laws**”), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 *et seq.*; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 *et seq.*; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, “CERCLA”), 42 U.S.C. Section 9601 *et seq.*; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 *et seq.*; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 *et seq.*; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 *et seq.*; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f *et seq.*; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.
- (iii) **Hazardous Materials Claims.** There are no claims or actions (“**Hazardous Materials Claims**”) pending or threatened against Accommodation Trustor or the Property by any governmental entity or agency or by any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws.

b. **Hazardous Materials Covenants.** Accommodation Trustor agrees as follows:

- (i) **No Hazardous Activities.** Accommodation Trustor shall not cause or permit the Property to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.
- (ii) **Compliance.** Accommodation Trustor shall comply and cause the Property and Collateral to comply with all Hazardous Materials Laws.

- (iii) **Notices.** Accommodation Trustor shall immediately notify Beneficiary in writing of: (A) the discovery of any Hazardous Materials on, under or about the Property and Collateral; (B) any knowledge by Accommodation Trustor that the Property and Collateral does not comply with any Hazardous Materials Laws; and (C) any Hazardous Materials Claims.
- (iv) **Remedial Action.** In response to the presence of any Hazardous Materials on, under or about the Property, Accommodation Trustor shall immediately take, at Accommodation Trustor's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.
- c. **Inspection By Beneficiary.** Upon reasonable prior notice to Accommodation Trustor, Beneficiary, its employees and agents may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding) enter and inspect the Property and Collateral for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property and Collateral.
- d. **Hazardous Materials Indemnity.** **ACCOMMODATION TRUSTOR HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS BENEFICIARY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FOR, FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, JUDGMENTS, COURT COSTS AND LEGAL OR OTHER EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES) WHICH BENEFICIARY MAY INCUR AS A DIRECT OR INDIRECT CONSEQUENCE OF THE USE, GENERATION, MANUFACTURE, STORAGE, DISPOSAL, THREATENED DISPOSAL, TRANSPORTATION OR PRESENCE OF HAZARDOUS MATERIALS IN, ON, UNDER OR ABOUT THE PROPERTY AND COLLATERAL. ACCOMMODATION TRUSTOR SHALL IMMEDIATELY PAY TO BENEFICIARY UPON DEMAND ANY AMOUNTS OWING UNDER THIS INDEMNITY, TOGETHER WITH INTEREST FROM THE DATE THE INDEBTEDNESS ARISES UNTIL PAID AT THE RATE OF INTEREST APPLICABLE TO THE PRINCIPAL BALANCE OF THE NOTE. ACCOMMODATION TRUSTOR'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS BENEFICIARY SHALL SURVIVE THE CANCELLATION OF THE NOTE AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THIS DEED OF TRUST.**
- e. **Legal Effect of Section.** Accommodation Trustor and Beneficiary agree that: (a) this Section 7 is intended as Beneficiary's written request for information (and Accommodation Trustor's response) concerning the environmental condition of the

real property security as may be required by any provision of applicable law (including the laws of the State of Nevada); and (b) each provision in this Article (together with any indemnity applicable to a breach of any such provision) with respect to the environmental condition of the real property security is intended by Beneficiary and Accommodation Trustor to be an “environmental provision” or other similar designation for purposes of any applicable law dealing with the same (including the laws of the State of Nevada), and as such it is expressly understood that Accommodation Trustor’s duty to indemnify Beneficiary hereunder shall survive: (i) any judicial or non-judicial foreclosure under this Deed of Trust, or transfer of the Property in lieu thereof, (ii) the release and reconveyance or cancellation of this Deed of Trust, and (iii) the satisfaction of all of Accommodation Trustor’s obligations under the Loan Documents.

8. **LAWFULNESS AND REASONABLENESS.** Accommodation Trustor warrants that all of the waivers in this Deed of Trust are made with full knowledge of their significance, and of the fact that events giving rise to any defense or other benefit waived by Accommodation Trustor may destroy or impair rights which Accommodation Trustor would otherwise have against Beneficiary, Borrowers and other persons, or against collateral. Accommodation Trustor agrees that all such waivers are reasonable under the circumstances and further agrees that, if any such waiver is determined (by a court of competent jurisdiction) to be contrary to any law or public policy, the other waivers herein shall nonetheless remain in full force and effect.
9. **ENFORCEABILITY.** Accommodation Trustor hereby acknowledges that: (a) the obligations undertaken by Accommodation Trustor in this Deed of Trust are complex in nature, and (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of Beneficiary’s consideration for entering into this transaction, Beneficiary has specifically bargained for the waiver and relinquishment by Accommodation Trustor of all such defenses, and (d) Accommodation Trustor has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Accommodation Trustor does hereby represent and confirm to Beneficiary that Accommodation Trustor is fully informed regarding, and that Accommodation Trustor does thoroughly understand: (i) the nature of all such possible defenses, (ii) the circumstances under which such defenses may arise, (iii) the benefits which such defenses might confer upon Accommodation Trustor, and (iv) the legal consequences to Accommodation Trustor of waiving such defenses. Accommodation Trustor acknowledges that Accommodation Trustor makes this Deed of Trust with the intent that this Deed of Trust and all of the informed waivers herein shall each and all be fully enforceable by Beneficiary, and that Beneficiary is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.
10. **DISCLOSURE OF INFORMATION; PARTICIPATIONS.** Accommodation Trustor understands and agrees that Beneficiary may elect, at any time, to sell, assign, or participate all or any part of Beneficiary’s interest in the Loan, and that any such sale, assignment or participation may be to one or more financial institutions, private investors, and/or other entities, at Beneficiary’s sole discretion. Accommodation Trustor further agrees that



Beneficiary may disseminate to any such potential purchaser(s), assignee(s) or participant(s) all documents and information (including, without limitation, all financial information) which has been or is hereafter provided to or known to Beneficiary with respect to: (a) the Property and Collateral and its operation; (b) any party connected with the Loan (including, without limitation, Accommodation Trustor, any Borrower, any partner of any Borrower and any guarantor); and/or (c) any lending relationship other than the Loan which Beneficiary may have with any party connected with the Loan.

11. **INTEGRATION; INTERPRETATION.** This Deed of Trust and the other Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. This Deed of Trust and the other Loan Documents shall not be modified except by written instrument executed by all parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Beneficiary in writing.