

DOUGLAS COUNTY, NV

**2024-1006676**

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FIRST AMERICAN TITLE RENO

SHAWNYNE GARREN, RECORDER

APN:

1318-22-310-016;

1318-22-710-013;

1318-22-710-014;

1318-22-710-012.

File No. 2673137-KN

**WHEN RECORDED, MAIL TO:**

Andrew Abraham, Esq.  
Burch & Cracchiolo, P.A.  
1850 N. Central Avenue, Suite 1700  
Phoenix, Arizona 85004

The undersigned hereby affirms that this document, including any exhibits, submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

**Beach Club Development Phase III, LLC, a Delaware limited liability company**  
(Trustor)

To

**First American Title Insurance Company, a Nebraska corporation**  
(Trustee)

For the Benefit of

**Pacific Coach, Inc., an Arizona limited liability company**  
(Beneficiary)

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

Dated: As of April 12, 2024

County: Douglas

State: NEVADA

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Deed of Trust") is made as of the 12 day of April, 2024, by Beach Club Development Phase III, LLC, a Delaware limited liability company, c/o Excel Realty Holdings, LLC, Gateway Tower West, 15 West South Temple, Suite 900, Salt Lake City, Utah 84101, Attention: Mark Burton (the "Trustor"), to First American Title Insurance Company, a Nebraska corporation whose address is 3 First American way, Santa Ana, CA 92707 (the "Trustee"), for the benefit of Pacific Coach, Inc., an Arizona corporation, whose address is 2801 E. Camelback Road, Suite 450, Phoenix, Arizona 85016 (the "Beneficiary"). Trustor's organizational identification number is LLC1159-2004.

**THIS INSTRUMENT IS A DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING, AFFECTING BOTH REAL AND PERSONAL PROPERTY INCLUDING FIXTURES. THE NOTE SECURED BY THIS DEED OF TRUST MAY CONTAIN PROVISIONS FOR THE ADJUSTMENT OF THE INTEREST RATE. THIS DOCUMENT IS A SECURITY AGREEMENT WITHIN THE MEANING OF NRS 104.9203 AND A RECORD OF MORTGAGE AS A FINANCING STATEMENT AND FIXTURE FILING IN ACCORDANCE WITH NRS 104.9502.**

Trustor is indebted to Beneficiary in the original principal amount of \$15,000,000.00 or so much thereof as may be advanced from time to time (the "Loan"). The Loan bears interest and is to be repaid pursuant to that certain

Promissory Note (the "Note"), dated on or about the date hereof, executed and delivered by Trustor in favor of Beneficiary in the principal amount of the Loan.

Performance of the Note is secured by this Deed of Trust and by certain other security agreements and documents, dated on or about the date hereof, executed by Trustor. In connection with the Loan, Trustor has also entered into a Loan Agreement executed by Trustor in favor of Beneficiary (the "Loan Agreement") and an Absolute Assignment of Leases and Rents (the "Assignment of Leases").

**TRUSTOR, IN CONSIDERATION OF AND AS AN INDUCEMENT FOR BENEFICIARY TO MAKE THE LOAN, IRREVOCABLY GRANTS, TRANSFERS, CONVEYS AND ASSIGNS TO TRUSTEE, IN TRUST, WITH POWER OF SALE,** all of Trustor's estate, right, title and interest now existing or hereafter acquired in that certain real property located in the County of Douglas, State of Nevada, more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the "Property").

**TOGETHER** with all of Trustor's right, title and interest in and to:

1. All structures and improvements now existing or to be hereafter constructed and erected on the Property;
2. All easements, rights and appurtenances thereto or used in connection therewith;
3. All rents, royalties, issues, profits, revenues, income and other benefits thereof or arising from the use or enjoyment of all or any portion thereof (subject, however, to the rights and authorities given herein to Trustor to collect and apply such rents, royalties, issues, profits, revenues, income and other benefits);
4. All intangible property and rights relating to the Property, if any;
5. Solely to the extent related to the Property, a collateral assignment of declarant rights (including but not limited to Special Declarant Rights) under the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Tahoe Beach Club Condominiums dated April 13, 2021 and recorded on April 13, 2021 at document number 2021-965433, records of Douglas county, Nevada as amended;
6. All fixtures, machinery, equipment, furnishings, appliances belonging exclusively to Trustor) now or hereafter located in or on, or attached or affixed to, or used or intended to be used in connection with, the Property,

including, but without limitation, all heating, cooling, lighting, laundry, electric and power equipment, plumbing fixtures, fire prevention, fire extinguishing, refrigerating, ventilating, and air cooling and air conditioning apparatus, blinds, curtains, drapes, attached floor coverings, including carpeting, screens, and windows, stoves, refrigerators, dishwashers and other installed appliances, attached cabinets, partitions, ducts and compressors on the Property or attached, affixed thereto; all of which, including replacements and additions thereto, shall, to the fullest extent permitted by law and for the purposes of this Deed of Trust, be deemed to be part and parcel of, and appropriated to the use of, the Property and, whether affixed or annexed thereto or not, be deemed conclusively to be real property and conveyed by this Deed of Trust to the extent exclusively owned by the Trustor. Trustor agrees to execute and deliver, from time to time, such further instruments and documents as may be required by Beneficiary to confirm the lien of this Deed of Trust on any of the foregoing. The foregoing property, together with the Property, is referred to herein as the "Mortgaged Property."

**THIS DEED OF TRUST SHALL SECURE TO BENEFICIARY:**

1. Repayment of the indebtedness and performance of the obligations evidenced by and set forth in the Note, with all interest and additional interest thereon, and any and all prepayment charges, late charges, costs and fees required thereunder, and all extensions, renewals, modifications, amendments and replacements thereof.

2. The payment of all other sums which may be advanced by or otherwise be due to Trustee or Beneficiary or any successor to the interest of Beneficiary in and to the Note under any provision of this Deed of Trust or under any other instrument or document referred to in paragraph 3 below, with interest thereon at the rate provided herein or therein;

3. The performance of each and all of the covenants and agreements of Trustor contained:

a. herein, in the Note, and/or in any note evidencing a Future Advance (as hereinafter defined); and/or

b. in any and all loan commitments, pledge agreements, building and loan agreements, supplemental agreements, assignments and instruments of indebtedness or security now or hereafter executed by Trustor in connection with any indebtedness referred to in sub-paragraphs (a), (b) or (c) of this paragraph or for the purpose of supplementing or amending this Deed of Trust or any instrument secured hereby (all of the foregoing in this clause, as the

same may be amended, modified or supplemented from time to time, being referred to hereinafter as "Related Agreements"); and

c. the repayment of any other loans or advances, with interest thereon, hereafter made to Trustor (or any successor in interest to Trustor as the owner of the Mortgaged Property or any part thereof) by Beneficiary when the promissory note evidencing the loan or advance specifically states that said note is secured by this Deed of Trust, together with all extensions, renewals, modifications, amendments and replacements thereof ("Future Advance").

## **ARTICLE I COVENANTS OF TRUSTOR**

To protect the security of this Deed of Trust, Trustor covenants and agrees as follows:

### **1.1 Performance of Obligations Secured. Trustor:**

a. Shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, the principal of and interest on any Future Advances, and any prepayment, late charges, costs and fees provided for in the Note or in any note evidencing a Future Advance, or as provided for herein; and

b. Shall further perform fully and in a timely manner all other obligations of Trustor contained herein or in the Note or in any note evidencing a Future Advance, or in any of the Related Agreements.

### **1.2 Insurance.**

#### **a. Mortgaged Property Insurance.**

(1) If required by Beneficiary, Trustor shall provide Beneficiary, with Beneficiary named as an additional insured on any insurance policy carried by Trustor on the Property with coverage against loss or damage by fire, theft, vandalism, malicious mischief, lightning, windstorm, hail, smoke, coverage (including business interruption) insuring against loss from such risks, in the maximum amount as approved by Beneficiary.

(2) Each of the above policies shall contain to the extent available and as applicable, a standard non-contributory mortgagee clause, a standard waiver of subrogation endorsement, and a full replacement cost endorsement. No coinsurance clause shall be permitted without having a "stipulated amount" endorsement as to the buildings.

(3) The proceeds of any such policy shall be totally payable to Beneficiary if the insured elects not to restore the insured premises, and Beneficiary shall thereafter determine whether to apply such proceeds to the unpaid balance of the applicable Loan and accrued interest or to permit Trustor to use the same to restore the insured premises, such determination to be made within Beneficiary's sole, absolute and uncontrolled discretion.

b. Liability Insurance. Trustor shall maintain liability insurance (including bodily injury and property damage), with a combined single per occurrence limit of not less than Two Million Dollars (\$2,000,000.00) and with Beneficiary named as an additional insured.

c. Insurance Company Ratings. Whenever a type or classification of insurance is written by insurance carriers that are rated by the Best Insurance rating system, all policies shall be written by carriers having a Best's Insurance Guide rating of A-VII.

d. General Insurance Requirements. All policies of insurance described in this Section 1.2 shall be in form, substance, and written by an insurance carrier or carriers reasonably acceptable to Beneficiary. All such insurance shall be maintained during the term of the Loan and copies of all such policies and proof of payment of the premiums therefor shall be delivered to Beneficiary. All such policies shall provide that they may not be canceled without thirty (30) days' prior written notice to Beneficiary.

### 1.3 **Condemnation and Insurance Proceeds.**

a. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of or damage or injury to the Mortgaged Property, or any part thereof, or for conveyance in lieu of condemnation, are hereby assigned to and shall be paid to Beneficiary. In addition, all causes of action and claims for relief, whether accrued before or after the date of this Deed of Trust, for all types for damages or injury to the Mortgaged Property or any part thereof, or in connection with any transaction financed by funds loaned to Trustor by Beneficiary and secured hereby, or in connection with or affecting the Mortgaged Property or any part thereof, including without limitation causes of action or claims for relief arising in tort (to the extent any of the foregoing causes of action or claims for relief arise in tort, only such as are a claim or claims for physical damage or injury to the Mortgaged Property or any portion thereof) are hereby assigned to Beneficiary as additional security and the proceeds shall be paid to Beneficiary. Beneficiary may at its option appear in and prosecute in its own name any action or proceeding to enforce any such cause of action or claim for relief and may make any compromise or settlement

thereof. Trustor, immediately upon obtaining knowledge of the institution of any proceedings relating to condemnation or other taking of or damage or injury to Mortgaged Property or any portion thereof, or knowledge of any casualty damage to the Mortgaged Property any portion thereof or damage in any other manner, will immediately notify Beneficiary in writing. Beneficiary may participate in any such proceedings and may join Trustor in adjusting any loss covered by insurance.

b. Any and all proceeds recovered or recoverable in any cause of action or claim for relief which Trustor may now have or may acquire after the date of this Deed of Trust against any person whomsoever or entity whatsoever and which arises out of or in connection with any facts or circumstances which materially adversely affect the ability of Trustor to operate the Mortgaged Property shall be paid over to Beneficiary and shall be applied in accordance with the provisions of Section 1.3(c) below.

c. Subject to the provisions of Section 1.3(d) below, all compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action and payments which Trustor may receive or to which Trustor may become entitled under this Section 1.3 with respect to the Mortgaged Property or any part thereof shall be paid over to Beneficiary and shall be applied first toward reimbursement of all reasonable costs and expenses of Beneficiary in connection with recovery of the same, and then shall be applied, in the sole and absolute discretion of Beneficiary and without regard to the adequacy of its security hereunder, to the payment or prepayment (without premium) of any indebtedness secured hereby in such order as Beneficiary may determine, or to the reimbursement of Trustor for expenses incurred by it in the restoration of the Mortgaged Property. Any application of such amounts or any portion thereof to any indebtedness secured hereby shall not be construed to cure or waive any default or notice of default hereunder or invalidate any act done pursuant to any such default or notice. In the event Beneficiary elects or is required pursuant to Section 1.3(d), below, to make any monies available to Trustor to restore the Mortgaged Property, Trustor shall proceed forthwith with the completion of construction of the improvements, including the necessary work of restoration in accordance with plans, specifications and drawings submitted to and approved by Beneficiary in the exercise of reasonable judgment; and any monies which Beneficiary so elects to make available for restoration shall be disbursed in accordance with a Building and Loan Agreement containing customary loan disbursement terms to be entered into between the parties.

d. Notwithstanding the provisions of Section 1.3(c) above, the Trustor shall have the right and option to use and utilize the proceeds of any policy paid or payable following an insured loss to rebuild or restore the insured premises. If, however, the cost of rebuilding or restoration shall be less than the

amount of insurance proceeds paid or payable, the excess of such proceeds over the estimated costs shall be paid to or retained by Trustor.

**1.4 Taxes, Liens and Other Items.** Trustor shall pay all taxes, bonds, assessments, fees, liens, charges, fines, impositions and any and all other items which are attributable to or affect the Mortgaged Property and which may attain a priority over this Deed of Trust by making payment prior to delinquency directly to the payee thereof. Trustor shall promptly discharge any lien which has or may attain priority over this Deed of Trust.

**1.5 Rents and Profits.**

a. All of the rents, royalties, issues, profits, revenue, income and other benefits of the Mortgaged Property arising from the use or enjoyment of all or any portion thereof or from any lease or agreement pertaining thereto (the "Rents and Profits"), whether now due, past due, or to become due, and including all prepaid rents and security deposits, are hereby absolutely, presently and unconditionally assigned, transferred, conveyed and set over to Beneficiary to be applied by Beneficiary in payment of the principal and interest, and all other sums payable on the Note, and of all other sums payable under this Deed of Trust. Prior to the happening of any Event of Default as set forth in Article II hereof, Trustor shall have a license to collect and receive all Rents and Profits, which license shall be terminable at the sole option of Beneficiary, without regard to the adequacy of its security hereunder and without notice to or demand upon Trustor, upon and during the continuance of any Event of Default. It is understood and agreed that neither the foregoing assignment of Rents and Profits to Beneficiary nor the exercise by Beneficiary of any of its rights or remedies under this Section 1.5 or Article III hereof shall be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any portion thereof, unless and until Beneficiary, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Mortgaged Property by any court either at the request of the Beneficiary or by agreement with Trustor, or the entering into possession of the Mortgaged Property or any part thereof by such receiver, be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any portion thereof.

b. Except as permitted under the Loan Agreement and the Assignment of Leases, Trustor shall not execute any lease or other occupancy agreement (herein "leases") of any part of the Mortgaged Property without Beneficiary's prior written consent, which consent shall not be unreasonably withheld or delayed, and shall at all times fully perform the obligations of the



lessor under all such leases. Trustor shall at any time or from time to time, upon request of the Beneficiary, transfer and assign to Beneficiary in such form as may be satisfactory to Beneficiary, Trustor's interest in any lease, subject to and upon the condition, however, that prior to the occurrence of any Event of Default hereunder, except as provided in paragraph (c) below, Trustor shall have a license to collect and receive all Rents and Profits under such lease after accrual, but not prior thereto, as set forth in paragraph (a) above. Whenever requested by Beneficiary, Trustor shall furnish to Beneficiary a certificate of Trustor setting forth the names of all lessees under any leases, the terms of their respective leases, the space occupied, and the rents payable thereunder.

c. Without the prior written consent of Beneficiary, Trustor shall not (i) except as is customary in certain forms of leases, accept prepayments of rent exceeding one month under any leases of any part of the Mortgaged Property, or (ii) take any action under or with respect to any such leases which would materially decrease either the obligations of the lessee thereunder or the rights or remedies of the lessor, or (iii) modify or amend any such leases or, except when the lessee is in default or as provided in the lease, cancel or terminate the same or accept a surrender of the leased premises, or (iv) create or permit any lien or encumbrance (except mechanics' or materialmen's liens upon lessee's interest, duly perfected) which, upon foreclosure, would be superior to any such leases, or (v) in any other manner impair Beneficiary's rights and interest with respect to the Rents and Profits.

d. If Beneficiary hereafter requests Trustor to do so, each lease thereafter of the Mortgaged Property, or any part thereof, shall make provision for the attornment and non-disturbance of the lessee thereunder to any person succeeding to the interest of Trustor as the result of any foreclosure, trustee's sale or transfer in lieu of foreclosure hereunder, said provision to be in form and substance approved by Beneficiary.

e. This Deed of Trust is intended to be an "Assignment of Rents and Profits" under NRS 107A.040 which means a transfer of an interest in rents in connection with an obligation secured by Mortgaged Property located in this State and from which the Rents and Profits arise. Upon the occurrence of an Event of Default and during the continuance thereof, such license in favor of Trustor shall automatically and immediately terminate upon the notice required under the Nevada Uniform Assignment of Rents Act, NRS Chapter 107A ("Nevada Uniform Assignment of Rents Act"). Trustor, and Beneficiary shall then be entitled thereupon to receive and collect the Rents and Profits personally or through an agent or a receiver appointed as a matter of right without regard to the sufficiency of the Mortgaged Property or any other security or guaranty under the Nevada Uniform Assignment of Rents Act and without any showing as required by NRS 107.100.

(f) Notwithstanding anything above to the contrary, to the extent that any provision of this Section 1.5 conflicts with the terms and provisions of the Loan Agreement and the Assignment of Leases, the terms and provisions of the Loan Agreement and Assignment of Leases shall control.

**1.6 Security Agreement.** This Deed of Trust is intended to be a security agreement pursuant to the Nevada Uniform Commercial Code for any items of personal property specified above as part of the Mortgaged Property which, under applicable law, may be subject to a security interest pursuant to the Nevada Uniform Commercial Code and which are not herein effectively made part of the real property, and Trustor hereby grants Beneficiary a security interest in said personal property, and in all additions thereto, substitutions therefor and proceeds thereof, for the purpose of securing all indebtedness and other obligations of Trustor now or hereafter secured by this Deed of Trust, all of which shall be deemed part of the Mortgaged Property. Trustor agrees to execute and deliver financing and continuation statements covering said personal property from time to time and in such form as Beneficiary may require to perfect and continue the perfection of Beneficiary's lien or security interest with respect to said personal property and all the Mortgaged Property. Trustor shall pay all costs of filing such statements and renewals and releases thereof and shall pay all reasonable costs and expenses of any record searches for financing statements Beneficiary may reasonably require. Without the prior written consent of Beneficiary, Trustor shall not create or suffer to be created any other security interest in any part of said Mortgaged Property, including replacements and additions thereto. Upon the occurrence of any default of Trustor hereunder, Beneficiary shall have the rights and remedies of a secured party under the Nevada Uniform Commercial Code as well as all other rights and remedies available at law or in equity, and, at Beneficiary's option, Beneficiary may also invoke the remedies provided in Article III of this Deed of Trust as to such personal property and all the portions of the Mortgaged Property which are personal property.

**1.7 Further Encumbrances or Sales.** Unless expressly permitted under the Loan Agreement, without the prior written consent of Beneficiary being first had and obtained, , Trustor shall not:

a. sell or transfer all or any portion of the Mortgaged Property or any interest therein. If such consent is given, the transfer shall nevertheless be subject to this Deed of Trust and payment of the indebtedness (including without limitation the Note) and performance of the obligations secured hereby. Any transferee shall be required to assume and shall be bound by all obligations of payment and performance pursuant to or secured by this Deed of Trust, including, without limitation, the obligation to pay the Note. Beneficiary retains

the right to change the terms of the Note, including but not limited to, increasing the rate of interest provided therein. Such assumption will not release Trustor from any liability to Beneficiary without the prior consent of Beneficiary to such release and Trustor agrees to remain directly and primarily liable to Beneficiary pursuant hereto and for the payment and performances secured hereby despite such assumption. Consent to one such transfer will not be deemed to be a waiver by the Beneficiary of the right to require consent to successive transfers. As used herein, the words "sale" or "transfer" include, in addition to the transfers described under Section 2.5, any sale, lease with option to purchase, lease for a term in excess of three (3) years (other than leases to tenants executed in the ordinary course of Trustor's business), creation of any lien or other encumbrance subordinate to the lien of this Deed of Trust or alienation, disposition or conveyance of the Mortgaged Property and/or any personal property described herein or any portion thereof or interest therein, whether voluntary, involuntary or by operation of law or otherwise or the dissolution of Trustor or any change in the control of Trustor. Any change, whether voluntarily, involuntarily or otherwise, (i) in a general partner or joint venturer, in the case of a general partnership or joint venture; (ii) in the General Partner, in the case of a limited partnership; (iii) in the Managing Member, in the case of a manager managed limited liability company; or (iv) a transfer of twenty percent (20%) or more of the issued and outstanding stock, in the case of a corporation; or the sale, conveyance, transfer, disposition or encumbrance of (i) a general partnership or joint venture interest in a general partnership or joint venture; (ii) the General Partnership interest in a limited partnership; (iii) the interest of the interest of the Managing Member, or any member owning more than a twenty percent (20%) interest in a limited liability company; or (iv) the transfer of twenty percent (20%) or more of the issued and outstanding stock of a corporation, shall be deemed to be a conveyance of Trustor's interest in the Mortgaged Property. Trustor must also comply with the terms of the Loan Agreement. Notwithstanding anything above to the contrary, to the extent that any provision of this paragraph 1.7 (a) conflicts with the terms and provisions of Section 13.16 of the Loan Agreement and Section 5.15 regarding releases of the Mortgaged Property, the terms and provisions of said Section 5.15 hereof and Section 13.16 of the Loan Agreement shall control.

b. execute or deliver any pledge, security agreement, mortgage, deed of trust, or other instrument of hypothecation, covering all or any portion of the Mortgaged Property or any interest therein.

#### **1.8 Preservation and Maintenance of Mortgaged Property.**

a. Other than planned redevelopment demolition, Trustor shall keep the Mortgaged Property and every part thereof in good condition and repair, and shall not permit or commit any waste, impairment, or deterioration of the Mortgaged Property, nor commit, suffer or permit any act upon or use of the

Mortgaged Property in violation of law or applicable order of any governmental authority, whether now existing or hereafter enacted and whether foreseen or unforeseen, or in violation of any covenants, conditions or restrictions affecting the Mortgaged Property, or bring or keep any article upon any of the Mortgaged Property or cause or permit any condition to exist thereon which would be prohibited by or could invalidate any insurance coverage maintained, or required hereunder to be maintained, by Trustor on or with respect to any part of the Mortgaged Property, and further shall do all other acts which from the character or use of the Mortgaged Property may be reasonably necessary to protect the security hereof, the specific enumerations herein not excluding the general. Trustor shall underpin and support, when necessary, any building, structure or other improvement situated on the Mortgaged Property and shall not remove or demolish any building on the Mortgaged Property. Trustor shall complete or restore and repair promptly and in a good workmanlike manner, in accordance with approved plans and specifications and all applicable building codes and regulations, any building, structure or improvement which may be constructed, damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefor, whether or not insurance or other proceeds are available to cover in whole or in part the costs of any such restoration or repair; provided, however, that Trustor shall not demolish, remove, expand or extend any building, structure or improvement on the Mortgaged Property, nor construct, restore, add to or alter any such building, structure or improvement, nor consent to or permit any of the foregoing to be done, without in each case obtaining the prior written consent of Beneficiary thereto. Trustor shall promptly notify Beneficiary in writing of any damage to the Mortgaged Property in excess of Ten Thousand (\$10,000.00).

- b. Intentionally Omitted.
- c. Intentionally Omitted.
- d. Intentionally omitted.
- e. As to environmental matters, Trustor represents, warrants, covenants, and agrees as follows:

(1) Trustor, as of the date hereof, has never used, generated, manufactured, produced, stored, released, discharged, or disposed of on or about the Mortgaged Property or transported to or from the Mortgaged Property any Hazardous Substance (as defined herein) or allowed any other person or entity to do so and, further, Trustor has no actual knowledge of any use, generation, manufacture, production, storage, release or disposition of, on or about the Mortgaged Property or transportation to or from the Mortgaged

Property any Hazardous Substance by any other person or entity except such which was carried out in the ordinary course of business;

(2) Trustor will not use, generate, manufacture, produce, store, release, discharge, or dispose of on or about the Mortgaged Property or transport to or from the Mortgaged Property any Hazardous Substance or allow any other person or entity to do so, unless such is customarily used in Trustor's use of the Mortgaged Property or Beneficiary has expressly consented in writing in advance and, even with such written consent, Trustor shall only do so in strict and full compliance with all Environmental Laws (as defined herein) and all reasonable conditions, if any, then established by Beneficiary;

(3) Trustor shall keep and maintain the Mortgaged Property in compliance with, and shall not cause or permit the Mortgaged Property to be in violation of any of the Environmental Laws (as defined herein) or allow any other person or entity to do so;

(4) Trustor shall give prompt written notice to Beneficiary of: (i) any proceeding or inquiry by any governmental authority whether Federal, state, or local, with respect to the presence of any Hazardous Substance on the Mortgaged Property; (ii) all claims made or threatened by any third party against Trustor or the Mortgaged Property relating to any loss or injury resulting from any Hazardous Substance; and (iii) Trustor's discovery of any occurrence or condition on any real property that could cause the Mortgaged Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Mortgaged Property under any Environmental Law;

(5) Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Environmental Law and Trustor hereby agrees to pay any attorneys' fees and expenses thereby incurred by Beneficiary in connection therewith;

(6) Trustor shall protect, indemnify and hold harmless Beneficiary, its directors, officers, administrators, employees, agents, contractors, attorneys, successors, and assigns from and against any and all loss, damage, cost, liability or expense (including reasonable attorneys' fees and costs incurred in the investigation of the status of the Mortgaged Property and in the investigation, defense, settlement of claims, or otherwise incurred) directly or indirectly arising out of or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under or about the Mortgaged Property prior to Beneficiary acquiring possession or title to the Mortgaged Property, including without limitation, (i) all consequential damages sustained or suffered

by any of the persons herein indemnified or by any other person or entity including, without limitation, third party claimants and (ii) the reasonable costs of any required or necessary repair, cleanup, or detoxification of the Mortgaged Property and the preparation and implementation of any closure, remedial or other required plans, including compliance with all Environmental Laws. This indemnity and covenant shall survive the repayment of the Note, the reconveyance or assignment of this Deed of Trust, or the extinguishment of lien of this Deed of Trust by foreclosure, Trustee's Sale or action in lieu thereof;

(7) In the event that any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is required under any applicable local, state or Federal law or regulation, any judicial order, or by an governmental or non-governmental entity or person having proper legal authority based on applicable Environmental Laws because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance in or into the air, soil, ground water, surface water or soil vapor at, on, under or within the Mortgaged Property, or any portion thereof, Trustor shall within the time frames mandated by the applicable Environmental Laws commence to perform, or cause to be commenced, and thereafter diligently prosecuted to completion, all such Remedial Work. All Remedial Work shall be performed by one or more contractors, approved in advance in writing by Beneficiary, and under the supervision of a consulting engineer reasonably approved in advance in writing by Beneficiary. All costs and expenses of such Remedial Work shall be paid by Trustor, including, without limitation, the charges of such contractor and the consulting engineer, and Beneficiary's reasonable attorneys' fees and costs incurred in connection with the monitoring or review of such Remedial Work. In the event Trustor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Beneficiary may, but shall not be required to, (i) declare an Event of Default hereunder and proceed to exercise any and all remedies available therefor and/or (ii) cause such Remedial Work to be performed and all costs and expenses thereof incurred in connection therewith shall become part of the indebtedness secured hereby (regardless of whether such indebtedness then increases the outstanding balance of the Note to an amount in excess of the face amount thereof) and such indebtedness shall become due and payable immediately upon demand and with interest thereon at the Default Rate provided in the Note;

(8) Without Beneficiary's prior written consent, which shall not be unreasonably withheld, Trustor shall not take any remedial action in response to the presence of any Hazardous Substance on or about the Mortgaged Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Substance claims. Said consent

may be withheld, without limitation, if Beneficiary, in its reasonable judgment, determines that said remedial action, settlement, consent, or compromise might, impair the value of Beneficiary's security hereunder, provided, however, that Beneficiary's prior consent shall not be necessary in the event that the presence of Hazardous Substances in, on, under, or about the Mortgaged Property either poses an immediate threat to the health, safety, or welfare of any individual, such remedial action is required by Environmental Laws or is of such a nature that an immediate remedial response is necessary, and it is not possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken. Beneficiary agrees not to withhold its consent, when such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction or is mandated by applicable Environmental Laws, or (ii) Trustor establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action that would result in materially less impairment of Beneficiary's security hereunder;

(9) Trustor shall give to the Beneficiary, its agents and employees access to the Mortgaged Property and hereby specifically grants to the Beneficiary a license, effective: (i) immediately, if, in the opinion of the Beneficiary, irreparable harm to the environment, the Mortgaged Property or persons or substantial amounts of personal property is imminent; or otherwise (ii) upon expiration of the applicable cure periods to remove the Hazardous Substance;

(10) In the event that any portion of the Mortgaged Property is determined to be "environmentally impaired" (as "environmentally impaired") is defined in Nevada Revised Statutes 40.502, then, without otherwise limiting or in any way affecting Beneficiary's, Beneficiary' or Trustee's rights and remedies under this Deed of Trust, Beneficiary may elect to exercise its right under Nevada Revised Statutes 40.501 through 40.512, inclusive, to (i) waive its lien on such environmentally impaired or affected portion of the Mortgaged Property, and (ii) exercise the rights and remedies of an unsecured creditor, including reduction of its claim against Trustor to judgment and any other rights and remedies permitted by Applicable Laws. Trustor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of Nevada Revised Statutes 40.505, if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant or user of any portion of the Mortgaged Property and Trustor knew or should have known of the activity by such lessee, occupant or user which caused or contributed to the release or threatened release. Beneficiary shall have the right under this Deed of Trust to allocate amounts recovered on the Loan first to those portions thereof other than damages and other amounts recoverable under Nevada Revised Statutes

40.509, and thereafter to damages and other amounts recoverable under said Section.

(11) For purposes of this paragraph, the following terms shall have the meanings as set forth below:

(i) "Environmental Laws" shall mean any Federal, state or local law, statute, ordinance, or regulation pertaining to the environmental conditions on, under or about the Mortgaged Property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as amended, 42 U.S.C. Sections 9601 et seq., and the Resource Conservation and Recovery Act of 1976 ("RCRA") as amended, 42 U.S.C. Sections 6901 et seq. and further including any and all subsequent amendments to any of the Environmental Laws applicable to or binding upon Trustor, Beneficiary or the Mortgaged Property;

(ii) The term "Hazardous Substance" shall include without limitation: (aa) Those substances included within the definitions of any or more of the terms "hazardous substances", "hazardous materials", "toxic substances", and "solid waste" in CERCLA, RCRA, and the Hazardous Materials Transportation Act as amended, 49 U.S.C. Sections 1801 et seq., and in the regulations promulgated pursuant to said laws or under applicable (state) law; (bb) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); (cc) Such other substances, materials and wastes which are or become regulated under applicable local, state or Federal laws, or which are classified as hazardous or toxic under Federal, state, or local laws or regulations; and (dd) Any material, waste or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a hazardous substance pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (E) flammable explosives; or (F) radioactive materials.

#### **1.9 Financial Statements; Offset Certificates.**

a. Trustor, without expense to Beneficiary, shall upon Beneficiary's request furnish annual compilation statements of the operation and financial condition of Trustor and affiliated entities prepared in accordance with generally accepted accounting principles, consistently applied within ninety (90) days after the close of each fiscal year, beginning with the fiscal year first being after the date of delivery of this Deed of Trust, and quarterly statements concerning the operation of the Mortgaged Property. On demand, Trustor shall furnish to Beneficiary and its agents convenient facilities for the audit of any such



statements. Such convenient facilities shall be at or near the location where the records are kept in the ordinary course of business.

b. Trustor, within five (5) days after receipt of written request shall furnish a written statement duly acknowledged of all amounts due on any indebtedness secured hereby, whether for principal or interest on the Note or otherwise, and stating whether any offsets or defenses exist against the indebtedness secured hereby and covering such other matters with respect to any such indebtedness as Beneficiary may reasonably require.

**1.10 Trustee's Costs and Expenses; Governmental Charges.**

Subject to the provisions of the Loan Agreement, Trustor shall pay all costs, fees and expenses of Trustee, its agents and counsel in connection with the performance of its duties hereunder, including, without limitation, the cost of any trustee's sale, guaranty or other title insurance coverage ordered in connection with any foreclosure proceedings hereunder, and shall pay all taxes (except federal and state income taxes) or other governmental charges or impositions imposed by any governmental authority on Trustee or Beneficiary by reason of their interest in the Note, or any note evidencing a Future Advance, or this Deed of Trust.

**1.11 Protection of Security; Costs and Expenses.**

Trustor shall appear in and defend any action or proceeding purporting to affect materially and adversely the security hereof or the rights or powers of the Beneficiary or Trustee, and shall pay all reasonable costs and expenses, including, without limitation, cost of evidence of title and reasonable attorneys' fees, as determined by the judge of the court in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust or to enforce or establish any other rights or remedies of Beneficiary hereunder. If Trustor fails to perform any of the covenants or agreements contained in this Deed of Trust, or if any action or proceeding is commenced which adversely affects Beneficiary's interest in the Mortgaged Property or any part thereof, including, but not limited to, eminent domain, code enforcement, or proceedings of any nature whatsoever under any federal or state law, whether now existing or hereafter enacted or amended, relating to bankruptcy, insolvency, arrangement, reorganization or other form of debtor relief, or to a decedent, then Beneficiary or Trustee may, but without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereunder, make such appearances, disburse such sums and take such action as Beneficiary or Trustee deems necessary or appropriate to protect Beneficiary's interest, including, but not limited to, disbursement of reasonable attorneys' fees, entry upon the Mortgaged Property to make repairs or otherwise protect the security hereof, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the

judgment of either Beneficiary or Trustee appears to be prior or superior hereto. Trustor further agrees to pay all reasonable expenses of Beneficiary (including fees and disbursements of counsel) incident to the protection of the rights of Beneficiary hereunder, and enforcement or collection of payment of the Note or any Future Advances whether by judicial or non-judicial proceedings, or in connection with any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding of Trustor, or otherwise. Any amounts disbursed by Beneficiary or Trustee pursuant to this section shall be additional indebtedness of Trustor secured by this Deed of Trust and each of the Related Agreements as of the date of disbursement and shall bear interest at the Contract Rate set forth in the Note prior to demand. All such amounts shall be payable by Trustor upon demand and shall thereafter bear interest at the Default Rate set forth in the Note. Nothing contained in this section shall be construed to require Beneficiary or Trustee to incur any expense, make any appearance, or take any other action. Notwithstanding any provision in this paragraph to the contrary, if any dispute contemplated under the terms of this paragraph results in litigation, the prevailing party shall, in addition to any other relief granted or awarded by the court, be entitled to an award of reasonable attorneys' fees to be determined by the judge of the court.

**1.12 Funds for Taxes and Insurance.** If within ten (10) days after the delinquency date of the obligations of Trustor under Sections 1.2 and 1.4 hereof, Trustor fails to provide Beneficiary with proof satisfactory to Beneficiary that such sums have been timely paid, Beneficiary may upon five (5) days' written notice require the deposit by Trustor, at the time of each payment of an installment of interest or principal under the Note, of an additional amount sufficient to discharge the obligations of Trustor under Sections 1.2 and 1.4 hereof as and when they become due. The determination of the amount payable and of the fractional part thereof to be deposited with Beneficiary shall be made by Beneficiary in its sole discretion. Said amounts shall be held by Beneficiary not in trust and not as agent of Trustor and shall not bear interest, and shall be applied to the payment of the obligations in respect to which the amounts were deposited or, at the option of Beneficiary if the sums deposited shall be insufficient to pay all such obligations in full, to the payment of said obligations in such order or priority as Beneficiary shall determine. If at any time after thirty (30) days prior to the delinquency date of any of the aforementioned obligations the amounts then on deposit therefor shall be insufficient for the payment of such obligation in full, Trustor shall within ten (10) days after receipt of written notice deposit the amount of the deficiency with Beneficiary. If the amounts deposited are in excess of the actual obligations for which they were deposited, Beneficiary may refund any such excess, or, at its option, may hold the same in a reserve account, not in trust and not as agent of Trustor and not bearing interest, and reduce proportionately the required monthly deposits for the ensuing year. Nothing herein contained shall be deemed to affect any right or remedy of

Beneficiary under any other provision of this Deed of Trust or under any statute or rule of law to pay any such amount and to add the amount so paid to the indebtedness hereby secured.

If Beneficiary requires deposits to be made pursuant to this section, Trustor shall deliver to Beneficiary true and correct copies of all tax bills, bond and assessment statements, statements of insurance premiums, and statements for any other obligations referred to above as soon as the same are received by Trustor.

If Beneficiary sells or assigns this Deed of Trust, Beneficiary shall transfer all amounts deposited under this section to the purchaser or assignee, and Beneficiary shall thereupon be released and have no further liability hereunder for the application of such deposits, and Trustor shall look solely to such purchaser or assignee for such application and for all responsibility relating to such deposits.

## **ARTICLE II EVENTS OF DEFAULT**

Each of the following shall constitute an event of default ("Event of Default") hereunder (including, if any successor to Trustor consists of more than one person or entity, the occurrence of any of such events with respect to any one or more of such persons or entities):

2.1 Failure to make any payment of principal or interest on the Note or any Future Advance, when and as the same shall become due and payable, whether at maturity or by acceleration or otherwise, or default in the performance of any of the covenants or agreements of Trustor contained herein, or in the Note, or in any note evidencing a Future Advance, or in any of the Related Agreements which failure is not cured within five (5) business days after notice to Trustor.

2.2 The appointment pursuant to an order of a court of competent jurisdiction, of a trustee, receiver or liquidator of the Mortgaged Property or any part thereof, or of Trustor, or of any general partner in Trustor or any termination or voluntary suspension of the transaction of business of Trustor, or any attachment, execution or other judicial seizure of any substantial portion of Trustor's assets which appointment of receiver, trustee or liquidator or attachment, execution or seizure is not discharged within forty-four (44) days.

2.3 The filing by or against Trustor or any partner or member of Trustor, if any, of a petition in bankruptcy or for an arrangement or for reorganization or for other form of debtor relief pursuant to the Federal Bankruptcy Code, as the

same may be amended or replaced from time to time, or any other law, federal or state, whether now existing or hereafter amended or enacted, relating to insolvency or debtor relief (except that in the case of a filing against Trustor, default shall not exist unless Trustor fails to have the proceeding discharged within ninety (90) days after such filing), or the adjudication of Trustor or a general partner of Trustor as a bankrupt or an insolvent by a decree of a court of competent jurisdiction, or the making of an assignment for the benefit of creditors, or the admission by Trustor or a general partner of Trustor in writing of its inability to pay its debts generally as they become due, or the giving of consent by Trustor or a general partner of Trustor to the appointment of a receiver or receivers of all or any part of its property.

2.4 At the date of this Deed of Trust, there are guaranties of the indebtedness secured hereby. As to such guaranties of the indebtedness, and if any additional guaranties of part or all of such indebtedness shall hereafter be given, default under the terms of such existing guaranties or any additional agreement of guaranty relating to the indebtedness evidenced by the Note or relating to any Future Advance, or the occurrence of any of the events enumerated in Section 2.2 or 2.3 with regard to any guarantor or all or part of the Note or any Future Advance, or the revocation, limitation or termination of the obligations of any guarantor of the Note or any Future Advance, except in accordance with the express written terms of the instrument of guaranty.

2.5 In the event Trustor or any successor to Trustor is a limited or general partnership, a joint venture, a limited liability company, or a corporation, the change in any general partner, joint venturer or Managing Member, or the transfer of twenty percent (20%) of the issued and outstanding stock of a corporation, whether voluntarily, involuntarily or otherwise; or the sale, conveyance, transfer, disposition, charging or encumbrance of any such general partnership interest, joint venture interest, membership interest, or stock ownership, without the prior written consent of Beneficiary.

2.6 The imposition of a tax, other than a state or federal income tax, on or payable by Trustee or Beneficiary by reason of their ownership of the Note, or any note evidencing a Future Advance, or this Deed of Trust, and Trustor has not promptly paid said tax, or it would be illegal for Trustor to pay said tax.

2.7 Any representation or disclosure made to Beneficiary by Trustor or by any guarantor of any indebtedness secured hereby in connection with or as an inducement to the making of the Loan or the making of any Future Advance shall prove to be false or misleading in any material respect as of the time the same was made, whether or not any such representation or disclosure appears as part of this Deed of Trust.

2.8 Any other event shall occur which, under this Deed of Trust, or under the Note or any note evidencing a Future Advance, or under any of the Related Agreements or under any other Loan or Lending Agreement between Trustor and Beneficiary, constitutes a default by Trustor hereunder or thereunder or gives Beneficiary the right to accelerate the maturity of the indebtedness, or any part thereof, secured hereby.

2.9 This Deed of Trust, Assignment of Rents and Profits and Security Agreement is cross-defaulted in connection with other loans by and between Trustor and Beneficiary where a default under said loans shall constitute a default under the Loan entitling Beneficiary to exercise any and all rights permitted under the Deed of Trust, the Loan Agreement, the Note, and other documents securing the Loan.

### ARTICLE III REMEDIES

Upon the occurrence of any Event of Default and the expiration of any applicable period within which to cure the same, Trustee and Beneficiary shall have the following rights and remedies in addition to any other available at law or in equity:

3.1 **Acceleration.** Beneficiary may declare the entire principal amount of the Note and/or any Future Advances then outstanding (if not then due and payable), and accrued and unpaid interest thereon, and all other sums or payments required thereunder, hereunder or under the Related Agreements, to be due and payable immediately, and notwithstanding the stated maturity in the Note, or any note evidencing any Future Advance, the principal amount of the Note and/or any Future Advances and the accrued and unpaid interest thereon and all other sums or payments required thereunder, hereunder or under the Related Agreements, including the additional interest, shall thereupon become and be immediately due and payable.

3.2 **Entry.** Without regard to the value of the security, Beneficiary in person or by agent or by court-appointed receiver may enter upon, take possession of, manage and operate the Mortgaged Property or any part thereof and do all things necessary or appropriate in a commercially reasonable manner, including, without limitation, making and enforcing, and if the same be subject to modification or cancellation, modifying or canceling leases upon such terms or conditions as Beneficiary deems proper, obtaining and evicting tenants, and fixing or modifying rents, contracting for and making repairs and alterations, and doing any and all other acts which Beneficiary deems proper to protect the security hereof; and either with or without so taking possession, in its own name or in the name of Trustor, suing for or otherwise collecting and receiving the

Rents and Profits, including those past due and unpaid, and applying the balance after paying costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. Upon request of the Beneficiary, Trustor shall assemble and make available to Beneficiary at the site of the Property covered hereby any of the Mortgaged Property which has been removed therefrom. The entering upon and taking possession of the Mortgaged Property, or any part thereof, the collection of any Rents and Profits and the application thereof as aforesaid shall not cure or waive any default theretofore or thereafter occurring or affect any notice of default hereunder or invalidate any act done pursuant to any such default or notice, and, notwithstanding continuance in possession of the Mortgaged Property or any part thereof by Beneficiary, Trustor or a receiver, and the collection, receipt and application of the Rents and Profits, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law or in equity. Subject to any notice provisions and other provisions affording Trustor an opportunity to cure defaults hereunder, any and all such actions may be taken by Beneficiary irrespective of whether any notice of default or election to sell has been given hereunder and without regard to the adequacy of the security for the indebtedness hereby secured. The exercise by Beneficiary of any of the remedies provided herein shall be deemed acceleration pursuant to Section 3.1.

**3.3 Judicial Action.** Beneficiary may bring an action in any court of competent jurisdiction to foreclose this instrument by judicial foreclosure of mortgage or to enforce any of the covenants and agreements hereof which are specifically enforceable, and seek damages for the breach of other covenants and agreements.

**3.4 Power of Sale.**

a. Should default be made by Trustor in the payment or performance of the obligations secured hereby and/or in the performance of any agreement herein, or should Trustor otherwise be in default hereunder, Beneficiary may, in compliance with NRS 107.080, or successor statute then in effect, declare all sums secured hereby immediately due by delivery to Trustee of a written notice of breach and election to sell (which notice Trustee shall cause to be recorded and mailed as required by law) and shall surrender to Trustee this Deed of Trust.

b. Either Trustee or Beneficiary must, if applicable, comply with:

(i) the provisions of NRS 107.090, or successor statute then in effect, concerning providing persons who are or may be held liable for the

debt secured by the lien on the Mortgaged Property, an Association, or persons with an interest in the Mortgaged Property, with a copy of notices of default or sale; provided that such persons or an Association have recorded an acknowledged request for a copy of the notices of default or sale in accordance with NRS 107.090, or successor statute then in effect; and

(ii) the provisions of NRS 107.095, or successor statute then in effect, concerning sending the notice of default required by NRS 107.080 by registered or certified mail, return receipt requested and with postage prepaid, to each guarantor or surety of the debt.

c. If the Mortgaged Property is a residential foreclosure, and if required by NRS 107.080, or successor statute then in effect, either Trustee or Beneficiary must comply with the provisions of NRS 107.087, or any successor statute concerning residential foreclosures then in effect.

d. After three (3) months shall have elapsed following recordation of any such notice of breach, Trustee shall, in compliance with NRS 107.080, 107.087, or NRS 107.090, or successor statutes then in effect, sell the Mortgaged Property subject hereto at such time and at such place in the State of Nevada as is required by Nevada law, including, without limitation, the time and place of sale required by NRS 107.081, or successor statute then in effect.

e. Upon the request of the Beneficiary or if required by law Trustee shall postpone sale of all or any portion of said Mortgaged Property or interest therein by oral postponement of sale pursuant to NRS 107.082, or successor statute then in effect, and shall thereafter postpone said sale up to three times by oral announcement at the time previously appointed; provided, however, after three times of oral postponement, if so required by NRS 107.082, or successor statute then in effect, any new sale information must be provided by written notice as provided in NRS 107.080, or successor statute then in effect.

f. At the time of sale so fixed, Trustee shall sell the Mortgaged Property so advertised or any part thereof or interest therein either as a whole or in separate parcels, as Beneficiary may determine in its sole and absolute discretion, to the highest bidder for cash in lawful money of the United States, payable at the time of sale, and shall deliver to such purchaser a deed or deeds or other appropriate instruments conveying the Mortgaged Property so sold, but without covenant or warranty, express or implied. If neither Beneficiary nor Trustee are the agent holding the sale, then, in compliance with NRS 107.081 (or successor statute then in effect), Beneficiary or Trustee may bid and purchase at such sale. To the extent of the obligations secured hereby, Beneficiary need not bid for cash at any sale of all or any portion of the Mortgaged Property pursuant hereto, but the amount of any successful bid by Beneficiary shall be applied in

reduction of said obligations. Trustor hereby agrees, if it is then still in possession, to surrender, immediately and without demand, possession of said Mortgaged Property to any purchaser.

g. Trustee shall apply the proceeds of any such sale to the payment of expenses of sale and all charges and expenses of Trustee and of these trusts, including costs of evidence of title and Trustee's fees in connection with sale; all sums expended under the terms hereof, not then repaid, with accrued interest at the default rate determined by the Loan Agreement; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

h. Beneficiary, from time to time before Trustee's sale, may rescind any notice of breach and election to sell by executing, delivering and causing Trustee to record a written notice of such rescission. 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 notices of breach and election to sell, nor otherwise affect any term, covenant or condition hereof or under any obligation secured hereby, or any of the rights, obligations or remedies of the parties thereunder.

**3.5 Proceeds of Sale.** Except as may otherwise be required by law, the proceeds of any sale made under or by virtue of this Article III, together with all other sums which then may be held by Trustee or Beneficiary under this Deed of Trust, whether under the provisions of this Article III or otherwise, shall be applied as provided in NRS 40.462 and to the extent not inconsistent therewith follows:

First: To the payment of the costs and expenses of operation of the Mortgaged Property to the extent that the same shall not be paid from operating revenues, to the costs and expenses of exercising the remedies hereunder, including, but not limited to, the payment of the Trustee's and reasonable attorney's fees, actually incurred, to the payment of all expenses, liabilities and advances made or incurred by Trustee under this Deed of Trust, together with interest on all advances made by Trustee at the Contract Rate set forth in the Note until demand and thereafter at the Default Rate set forth in the Note.

Second: To the payment of any and all sums expended by Beneficiary under the terms hereof, not then repaid, with accrued interest at the Default Rate set forth in the Note, and all other sums (except advances of principal and interest thereon) required to be paid by Trustor pursuant to any provisions of this Deed of Trust, or the Note, or any note evidencing any Future Advance, or any of the Related Agreements, including, without limitation, late



fees and charges, all expenses, liabilities and advances made or incurred by Beneficiary under this Deed of Trust or in connection with the enforcement thereof, together with interest thereon at the Default Rate set forth in the Note.

Third: To the payment of the entire amount then due, owing or unpaid for principal and interest upon the Note and any notes evidencing any Future Advances, with interest on the unpaid principal at the rate set forth therein from the date of advancement thereof until the same is paid in full.

Fourth: The remainder, if any, to the person or persons legally entitled thereto.

At any foreclosure sale, any person, including Trustor, Trustee or Beneficiary, may bid for and acquire the Mortgaged Property or any part thereof to the extent permitted by then applicable law. Instead of paying cash for such Mortgaged Property, Beneficiary may settle for the purchase price by crediting the sales price of the Mortgaged Property against the obligations in the order provided by NRS 40.462.

**3.6 Waiver of Marshaling.** Trustor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Deed of Trust, hereby expressly waives and releases all rights to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Mortgaged Property and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshaled upon any foreclosure of this Deed of Trust or of any other security for any of said indebtedness.

**3.7 Remedies Cumulative.** No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Trustee or Beneficiary to exercise any right or power accruing upon any Event of Default shall impair any right or power or shall be construed to be a waiver of any Event of Default or any acquiescence therein; and every power and remedy given by this Deed of Trust to Trustee or Beneficiary may be exercised from time to time as often as may be deemed expedient by Trustee or Beneficiary. If there exists additional security for the performance of the obligations secured hereby, the Beneficiary under the provisions of the Note, at its sole option, and without limiting or affecting any of its rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder either concurrently with whatever rights and remedies it may have in connection with such other security or in such order as it

may determine. Any application of any amounts or any portion thereof held by Beneficiary at any time as additional security hereunder, whether pursuant to Sections 1.2, 1.3, 1.12 or 3.2 hereof or otherwise, to any indebtedness secured hereby shall not extend or postpone the due dates of any payments due from Trustor to Beneficiary hereunder or under the Note, any Future Advances or any of the Related Agreements, or change the amounts of any such payments or otherwise be construed to cure or waive any default or notice of default hereunder or invalidate any act done pursuant to any such default or notice.

#### **ARTICLE IV MISCELLANEOUS**

**4.1 Severability.** In the event any one or more of the provisions contained in this Deed of Trust shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**4.2 Certain Charges.** Interest rate charges on default are provided for in the Note at a Default Rate, and late charges are also provided for in the Note.

**4.3 Notices.** Except as required by Nevada statutes relating to trust deed sales, all notices expressly provided hereunder to be given by Beneficiary to Trustor and all notices and demands of any kind or nature whatsoever which Trustor may be required or may desire to give to or serve on Beneficiary shall be in writing and shall be served either in person or by first class or certified mail. Any such notice or demand so served by first class or certified mail shall be deposited in the United States mail, with postage thereon fully prepaid and addressed to the party so to be served at its address above stated or at such other address of which said party shall have theretofore notified in writing, as provided above, the party giving such notice. Service of any notice or demand made in person shall become effective as of said delivery and if made by mailing, it shall be deemed effective on the day of actual delivery as shown by the addressee's return receipt or the expiration of forty-eight (48) hours after the date of mailing, whichever is the earlier in time, except that service of any notice of default or notice of sale provided or required by law shall, if mailed, be deemed effective on the date of mailing.

**4.4 Trustor Not Released.** Extension of the time for payment or modification of the terms of payment of any sums secured by this Deed of Trust granted by Beneficiary to any successor in interest of Trustor shall not operate to release, in any manner, the liability of the original Trustor. Beneficiary shall not be required to commence proceedings against such successor or refuse to

extend time for payment or otherwise modify the terms of payment of the sums secured by this Deed of Trust by reason of any demand made by the original Trustor. Without affecting the liability of any person, including Trustor, for the payment of any indebtedness secured hereby, or the lien of this Deed of Trust on the remainder of the Mortgaged Property for the full amount of any such indebtedness unpaid, Beneficiary and Trustee are respectively empowered as follows: Beneficiary may from time to time and without notice (a) release any person liable for the payment of any of the indebtedness, (b) extend the time or, with the consent of Trustor, otherwise alter the terms of payment of any of the indebtedness, (c) accept additional real or personal property of any kind as security therefor, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security, or (d) alter, substitute or release any property securing the indebtedness; Trustee may, at any time, and from time to time, upon the written request of the Beneficiary (a) consent to the making of any map or plat of the Mortgaged Property or any part thereof, (b) join in granting any easement or creating any restriction thereon, (c) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge hereof, or (d) reconvey, without any warranty, all or any part of the Mortgaged Property.

**4.5 Inspection.** Beneficiary may at any reasonable time or times make or cause to be made entry upon and inspections of the Mortgaged Property or any part thereof in person or by agent.

**4.6 Reconveyance.** Upon the payment in full of all sums secured by this Deed of Trust, and upon the performance in full of all terms, conditions and obligations of Trustor under the provisions of all contracts secured by this Deed of Trust, Beneficiary shall request Trustee to reconvey the Mortgaged Property and shall surrender this Deed of Trust and all notes, if any, evidencing indebtedness secured by this Deed of Trust to Trustee. Upon payment of its fees and any other sums owing to it under this Deed of Trust, Trustee shall reconvey the Mortgaged Property, without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. The recitals in such conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Six years after issuance of such full reconveyance, Trustee may destroy the Note, said notes, if any, and this Deed of Trust unless otherwise directed by Beneficiary.

**4.7 Statute of Limitations.** The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the fullest extent permitted by law.

**4.8 Variable Rate; Future Advances.**

a. As may be required by the terms of the Note, Beneficiary may make advances of principal to Trustor (which amounts shall bear interest under the Note), may accept partial payments or entire payments of such advances, and interest thereon, and may re-advance principal previously repaid by Trustor (which amounts shall bear interest under the Note), provided that the amount of principal outstanding shall not exceed the face amount of the Note as set forth on the first (1<sup>st</sup>) page of this Deed of Trust, plus such amounts of interest as may be added to principal and such other interest, charges and fees, as may be otherwise be accrued and outstanding under the Note from time-to-time. The terms of the Note are incorporated herein by this reference as though set forth in full.

b. This instrument secures future advances, as defined in NRS 106.320, and is to be governed by NRS 106.300 to 106.400, inclusive. The maximum principal amount to be secured hereby is the principal amount set forth in this Deed of Trust.

c. In addition, however, funds disbursed that, in the reasonable exercise of Beneficiary's judgment, are needed to complete the improvements to the Mortgaged Property or to protect Beneficiary's security are to be deemed obligatory advances hereunder and will be added to the total indebtedness evidenced by the Note and secured by this Deed of Trust and this indebtedness shall be increased accordingly.

d. To the fullest extent permitted by applicable law, it shall be an Event of Default hereunder if Trustor, or any other "borrower" (as that term is defined in NRS 106.310): (i) delivers, sends by certified mail or otherwise gives, or purports to deliver, send by mail or otherwise give, to Beneficiary (A) any notice of an election to terminate the operation of this Deed of Trust as security for any secured obligation pursuant to NRS 106.380(1), including, without limitation, any obligation to repay any "future advance" (as defined in NRS 106.320) of "principal" (as defined in NRS 106.345) or (B) any other notice pursuant to NRS 106.380(1), (ii) records a statement pursuant to NRS 106.380(3), or (iii) causes this Deed of Trust, any secured obligation or Beneficiary to be subject to NRS 106.380(2), NRS 106.380(3) or NRS 106.400.

**4.9 Interpretation.** Wherever used in this Deed of Trust, unless the context otherwise indicates a contrary intent, or unless otherwise specifically provided herein, the word "Trustor" shall mean and include both Trustor and any subsequent owner or owners of the Mortgaged Property, and the word "Beneficiary" shall mean and include not only the original Beneficiary hereunder but also any future owner, holder or assignee, including pledgees, of the Note secured hereby, the evidence of any other indebtedness or obligation secured hereby and this Deed of Trust. In this Deed of Trust whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the

neuter includes the feminine and/or masculine, and the singular number includes the plural and conversely. In this Deed of Trust, the use of the word "including" shall not be deemed to limit the generality of the term or clause to which it has referenced, whether or not non-limiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto. The captions and headings of the articles and sections of this Deed of Trust are for convenience only and are not to be used to interpret, define or limit the provisions hereof.

**4.10 Consent; Delegation to Sub-Agent.** The granting or withholding of consent by Beneficiary to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions. Wherever a power of attorney is conferred upon Beneficiary hereunder, it is understood and agreed that such power is conferred with full power of substitution, and Beneficiary may elect, in its sole, absolute and uncontrolled discretion, to exercise such power itself or to delegate such power, or any part thereof, to one or more sub-agents.

**4.11 Successors and Assigns.** All of the grants, obligations, covenants, agreements, terms, provisions and conditions herein shall apply to be binding upon and inure to the benefit of, the heirs, administrators, executors, legal representatives, successors and assigns of Trustor and the substitutes for and successors of Trustee as a trustee and the endorsees, transferees, successors and assigns of Beneficiary. In the event Trustor is composed of more than one party, the obligations, covenants, agreements, and warranties contained herein as well as the obligations arising therefrom are and shall be joint and several as to each such party.

**4.12 Governing Law and Adoption of Covenants.**

a. Except where preempted by the laws and regulations of the United States, this Deed of Trust is to be governed by the laws of the State of Nevada. The initials "NRS" mean Nevada Revised Statutes (2023).

b. To the extent not inconsistent with the other provisions of this Deed of Trust, the following covenants, Nos. 1; 2 (insurance as required by the Loan Documents); 3; 4 (Default Rate); 5; 6; 7 (a reasonable percentage); 8 and 9 of NRS 107.030 are hereby adopted and made a part of this Deed of Trust.

**4.13 Substitution of Trustee.** Beneficiary may at Beneficiary's sole cost and expense remove Trustee at any time or from time to time and appoint a successor trustee qualified under NRS 107.028, and upon such appointment, all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall be appointed by

written instrument, duly recorded in the county or counties where Land is located, which appointment may be executed by any authorized agent of Beneficiary or in any other manner permitted by applicable law.

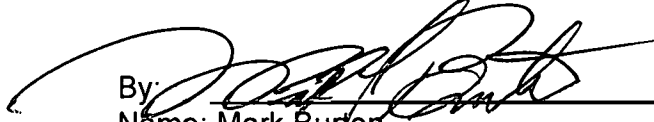
**4.14 Waiver of Certain Rights.** Trustor specifically, unconditionally and irrevocably waives (a) all rights of an owner granted under applicable law, including NRS 37.115, as amended or recodified from time to time, which provide for an allocation of condemnation proceeds between an owner and a lienholder, and any other law or successor statute of similar import; and (b) any right to a marshalling of assets, a sale in inverse order of alienation or to require sale of assets in a particular order, including rights provided by NRS 100.040 and 100.050, as such sections may be amended or recodified from time to time. Regardless of any provision of this Deed of Trust or the Loan Documents, Beneficiary shall not be considered to have accepted anything other than cash or immediately available funds in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary has given express written notice of Beneficiary's election of that remedy in accordance with NRS 104.9505, or successor statute then in effect.

**4.15. Conflicts between Documents.** To the extent that any provision of this Deed of Trust conflicts with any term or provision of the Loan Agreement or the Assignment of Leases, the terms and provisions of the Loan Agreement and the Assignment of Leases shall control.

[INTENTIONALLY LEFT BLANK – SIGNATURES ON NEXT PAGE]

**TRUSTOR:**

Beach Club Development Phase III, LLC,  
a Delaware limited liability company,

By:   
Name: Mark Burton  
Its: President

**ACKNOWLEDGMENT**

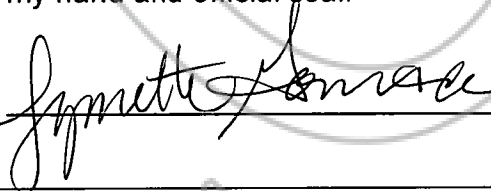
State of Utah )  
County of Salt Lake )

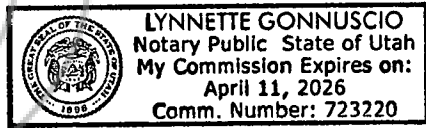
On April 12, 2024 before me, Lynnette Gonnuscio  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature  (Seal)



[ADDITIONAL SIGNATURES ON FOLLOWING PAGES]

The undersigned is executing this Deed of Trust in connection with the collateral assignment of declarant rights described in Paragraph 5 of the grant set forth in this Deed of Trust.

Beach Club Development, LLC,  
a Delaware limited liability company

By:   
Name: Mark Burton  
Its: President

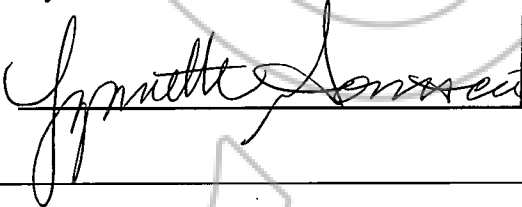
**ACKNOWLEDGMENT**

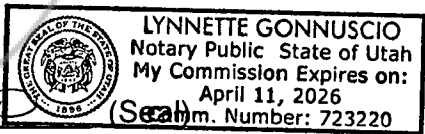
State of Utah )  
County of Salt Lake )

On April 12<sup>th</sup> 2024 before me, Lynnette Gonnuscio  
(insert name and title of the officer)  
personally appeared Mark Burton, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature 

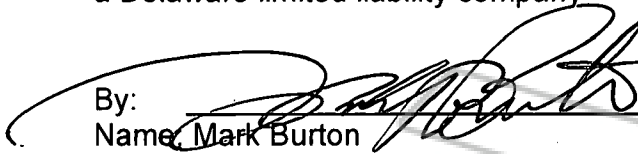


[ADDITIONAL SIGNATURES ON FOLLOWING PAGES]



The undersigned is executing this Deed of Trust in connection with the collateral assignment of declarant rights described in Paragraph 5 of the grant set forth in this Deed of Trust.

Beach Club Development Phase II, LLC,  
a Delaware limited liability company

By:   
Name: Mark Burton  
Its: President

**ACKNOWLEDGMENT**

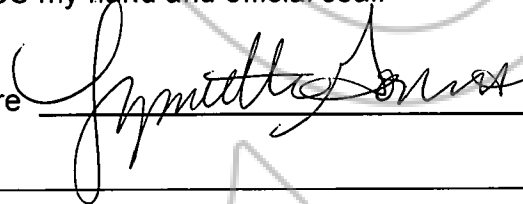
State of Utah )  
County of Salt Lake )

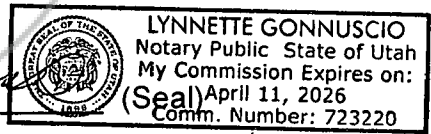
On April 12 2024 before me, Lynnette Gonnuscio  
(insert name and title of the officer)

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

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

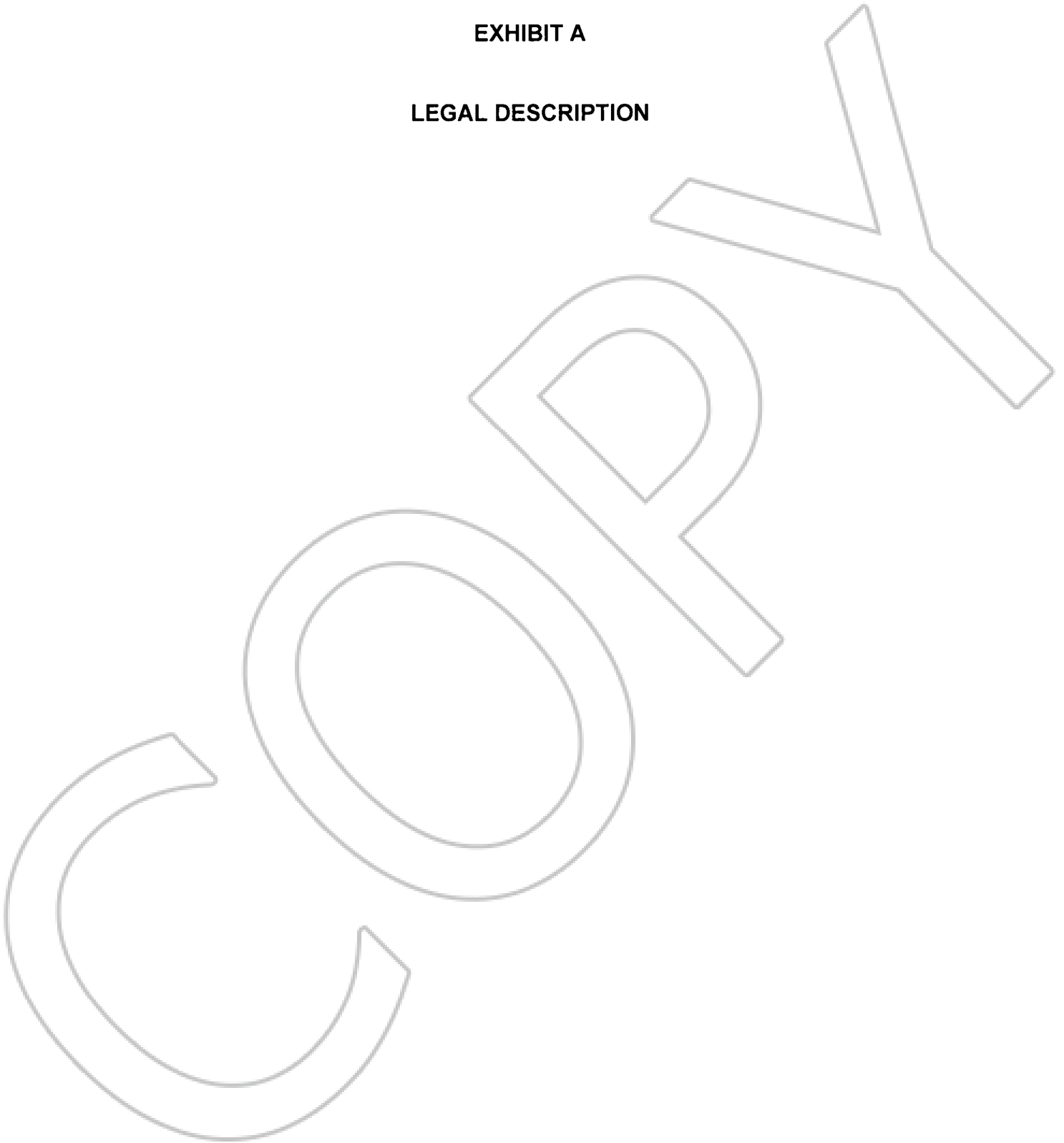
WITNESS my hand and official seal.

Signature 



**EXHIBIT A**

**LEGAL DESCRIPTION**





**EXHIBIT 'A'**

**PARCEL 1A:**

**AN UNDIVIDED FRACTIONAL INTEREST IN THE COMMON AREAS AS SET FORTH IN THAT AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATIONS OF EASEMENTS FOR TAHOE BEACH CLUB CONDOMINIUMS RECORDED JUNE 19, 2019, AS INSTRUMENT 2019-930614, OFFICIAL RECORDS OF DOUGLAS COUNTY, STATE OF NEVADA, AND AS SET FORTH IN THAT SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR TAHOE BEACH CLUB CONDOMINIUMS RECORDED APRIL 13, 2021 AS INSTRUMENT 2021-965433, OFFICIAL RECORDS; AND FIRST AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR TAHOE BEACH CLUB CONDOMINIUMS RECORDED JANUARY 06, 2022 AS INSTRUMENT 2022-979444 IN THE OFFICE OF DOUGLAS COUNTY, STATE OF NEVADA AND AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**COMMON AREA PARCEL "A" AS SHOWN ON THE MINOR MODIFICATION TO FINAL SUBDIVISION MAP LDA 15-026 FOR TAHOE BEACH CLUB RECORDED AS DOC. NO. 2022-990258 ON SEPTEMBER 21, 2022 IN THE RECORDER'S OFFICE OF DOUGLAS COUNTY, NEVADA.**

**PARCEL 1B:**

**PARCELS 8, 10, 11 AND 12 OF THE MINOR MODIFICATION TO FINAL SUBDIVISION MAP LDA 15-026 FOR TAHOE BEACH CLUB RECORDED AS DOC. NO. 2022-990258 ON SEPTEMBER 21, 2022 IN THE RECORDER'S OFFICE OF DOUGLAS COUNTY, NEVADA.**

**PARCEL 1C:**

**A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AS DEFINED IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR TAHOE BEACH CLUB CONDOMINIUMS RECORDED JUNE 19, 2019 AS INSTRUMENT 2019-930614 IN THE OFFICE OF THE DOUGLAS COUNTY RECORDER.**

**PARCEL 1D:**

**A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS RECORDED NOVEMBER 07, 2018 IN A RECIPROCAL ACCESS EASEMENT AGREEMENT IN BOOK N/A AS INSTRUMENT**

**2018-921866 IN THE OFFICE OF THE DOUGLAS COUNTY RECORDER.**

**PARCEL 1E:**

**A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS TO THE BEACH AREA, AND FOR PASSIVE AND ACTIVE BEACH RECREATION, RECORDED JUNE 19, 2019 IN A BEACH USE AND ACCESS AGREEMENT AS INSTRUMENT 2019-930632 IN THE OFFICE OF THE DOUGLAS COUNTY RECORDER.**

**COOPY**