

Jones, Day, Reavis & Pogue  
599 Lexington Avenue  
New York, New York 10022  
Attention: Andrew G. Kent, Esq.

RECORD AND RETURN TO:

Location: Churchill County, Nevada  
Lyon County, Nevada  
Eureka County, Nevada  
Humboldt County, Nevada  
Lander County, Nevada  
Storey County, Nevada  
Pershing County, Nevada  
Elko County, Nevada  
Washoe County, Nevada

Dated: October 13<sup>th</sup>, 1995

DEED OF TRUST, SECURITY AGREEMENT AND  
ASSIGNMENT OF LEASES AND RENTS

MORGAN STANLEY MORTGAGE CAPITAL, INC.  
(Beneficiary)

for the benefit of

FIRST AMERICAN TITLE COMPANY OF NEVADA, a Nevada corporation  
(Trustee)

to

SILVER STATE LAND COMPANY LLC  
(Trustor)

159628

*Eureka County*  
*License # 183243M*

THIS DEED OF TRUST, SECURITY AGREEMENT, and ASSIGNMENT OF LEASES AND RENTS (the "Deed of Trust"), made the 13th day of October, 1995, by SILVER STATE LAND COMPANY LLC, a Delaware limited liability company, having its principal place of business c/o Western Water Company, 4660 La Jolla Village Drive, Suite 680, San Diego, California 92122 ("Trustor"), to FIRST AMERICAN TITLE COMPANY OF NEVADA, a Nevada corporation (the "Trustee"), for the benefit of MORGAN STANLEY MORTGAGE CAPITAL, INC., having its principal place of business at 1585 Broadway, New York, New York 10036 ("Beneficiary").

W I T N E S S E T H :

To secure the payment of an indebtedness in the principal sum of Twelve Million and No/100 Dollars (\$12,000,000.00), lawful money of the United States of America, to be paid with interest according to a certain Deed of Trust Note dated the date hereof made by Trustor to Beneficiary (the note together with all extensions, replacements, renewals or modifications thereof being hereinafter collectively called the "Note") (said indebtedness, interest and all other sums due hereunder, under the other Security Documents (hereinafter defined) and under the Note being collectively called the "Debt"), Trustor has given, granted, bargained, sold, aliened and conveyed and by these presents does hereby give, grant, bargain, sell, alien and convey unto Trustee, in trust for the benefit of Beneficiary, with power of sale, all of Trustor's right, title and interest in the real property described on Exhibit A attached hereto (the "Premises") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon and owned by Trustor (the "Improvements"):

TOGETHER WITH: all right, title, interest and estate of Trustor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements together with the following property, rights, interests and estates being hereinafter described as collectively referred to herein as the "Property"):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, oil, gas and mineral rights, options to purchase or lease and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim

and demand whatsoever, both at law and in equity, of Trustor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Trustor, or in which Trustor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Trustor, or in which Trustor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements (hereinafter collectively called the "Equipment"), including the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Trustor in and to any of the Equipment which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "Uniform Commercial Code") superior in lien to the lien of this Deed of Trust;

(c) all awards or payments, including interest thereon, which may hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain or condemnation (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(d) all leases and other agreements affecting the use, enjoyment or occupancy of the Premises and the Improvements heretofore or hereafter entered into (collectively, the "Leases") and all income, rents, issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Premises and the Improvements (collectively, the "Rents") and all proceeds from the sale or other disposition of all or a portion of the Premises, the Improvements, the Equipment, the Leases and the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(e) subject to the provisions of paragraph 3(d) hereof, all proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(f) the right, in the name and on behalf of Trustor, to appear in and defend any action or proceeding brought with

respect to the Property and to commence any action or proceeding to protect the interest of Beneficiary in the Property; and

(g) any and all of Trustor's now existing or hereafter acquired water, water rights, and rights to use of water, whether or not adjudicated and whether or not appropriated, including, without limitation, tributary, non-tributary, surface, underground, spring and seep water, unconfined aquifer wells, confined aquifer wells, irrigation and drainage rights, ditches, ditch rights, wells, pumps, pipelines, reservoirs and reservoir rights, embankments, dams, water storage tanks, livestock watering tanks, springs, rights of way, easements, priorities fillings, permits, well permits and licenses, taps and tap fee agreements, water supply and service agreements, and Trustor's interest in leases of any of the foregoing water rights now or hereafter belonging or in anywise appertaining to the Premises or any part thereof; and all shares of stock evidencing the same, or any portion thereof; including, without limitation, Permit to Appropriate Water Numbers 41510, 49488, 49741, 50059, 56823, 46908, 46906, 42608, 45042, and all other water rights appurtenant to the Property (collectively, "Water Rights").

TO HAVE AND TO HOLD the above granted and described Property unto Trustee for the use and benefit of Beneficiary, and the successors and assigns of Beneficiary, forever;

AND Trustor represents and warrants to and covenants and agrees with Beneficiary as follows:

1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements. Trustor will pay the Debt at the time and in the manner provided in the Note and in this Deed of Trust. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Deed of Trust now or hereafter executed by Trustor and/or others and by or in favor of Beneficiary, which wholly or partially secure payment of the Note (the "Other Security Documents"), are hereby made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein.

2. Warranty of Title. Trustor warrants that, to the best of Trustor's current actual knowledge, Trustor has valid fee simple title to the Property and has the right to give, grant, bargain, sell, alien and convey the same (provided, however, that the foregoing warranty by Trustor is personal to Morgan Stanley Mortgage Capital Inc., as Beneficiary; and as to any successors or assigns of Beneficiary, such warranty will be limited as follows: Trustor warrants that Trustor possesses an ownership interest in the Property) and that Trustor possesses an ownership interest in all of the Premises free and clear of all liens, encumbrances and charges whatsoever except for (i) liens, encumbrances and charges which would not prevent Trustor from selling or mortgaging Trustor's interest therein or would not materially reduce the value of the Property, and (ii) the lien of

that certain Deed of Trust with Assignment of Rents, dated as of the date hereof, made by Trustor to Trustee for the benefit of the Railway (hereinafter defined) (the "Railway Deed of Trust"). It shall not be a breach of the foregoing warranty until the sum of (a) the value of the portion of the property affected by any lien, encumbrance or title matter that would prevent Trustor from selling or mortgaging its ownership interest in such portion of the property, plus (b) the reduction in value of the portion of the property affected by any lien, encumbrance or title matter, exceeds, individually or in the aggregate, \$450,000, all as determined in accordance with Section 3(e) of that certain Closing Agreement, dated as of the date hereof (the "Closing Agreement"), by and between Trustor and the Railway. Notwithstanding the foregoing, Trustor shall not be deemed to be in breach of the foregoing warranty if as a result of the existence of any lien, encumbrance or charge, other than the Railway Deed of Trust, Trustor is diligently pursuing or has pursued to a final decision its remedies for such breach against the Railway pursuant to the Closing Agreement. Trustor shall give Beneficiary prompt notice of the existence of any lien, encumbrance, charge or title matter affecting the property or any portion thereof which might enable Trustor to pursue its remedies against the Railway under the Closing Agreement and Trustor shall not settle, compromise or make any agreement with the Railway with respect to the disposition of any such title claim (other than dispositions determined by an independent third party appraiser as provided in Section 3(e) of the Closing Agreement) without Beneficiary's prior written consent, which consent shall not be unreasonably withheld or delayed; provided, however, the foregoing right to consent to such disposition shall be personal to Morgan Stanley Mortgage Capital, Inc. Any funds recovered from the Railway pursuant to such claim shall be applied in accordance with paragraph 9(d)(ii) hereof; Trustor hereby expressly acknowledges and agrees that, at no time while any portion of the debt is outstanding, will Trustor permit any sums owed Trustor by the Railway pursuant to such claim to be offset against any amounts outstanding on any debt owed by Trustor to the Railway. Trustor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Deed of Trust and shall forever warrant and defend the same to Beneficiary against the claims of all persons whomsoever. Trustor shall use all reasonable efforts to obtain for Beneficiary, at Trustor's sole cost and expense, a lender's policy of title insurance, including such endorsements as Beneficiary may reasonably request, in the amount of the then-outstanding principal balance of the Note, from the title insurer insuring Trustor's interest in the property, or another title insurer reasonably acceptable to Beneficiary willing to provide such policy, by no later than one (1) year from the date hereof; provided, however, that the failure to obtain such policy shall not constitute an Event of Default.

(a) Trustor, at its sole cost and expense, shall maintain during the entire term of this Deed of Trust for the mutual benefit of Trustor and Beneficiary comprehensive public liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages in an amount not less than \$1,000,000 per occurrence and \$9,000,000 in the aggregate. To the extent there are any improvements now or hereafter existing on the Premises, Trustor shall also insure the full replacement cost of such improvements, to the extent such improvements are material or to the extent Trustor is required to do so under any lease therefor. The policies of insurance carried in accordance with this paragraph shall be paid annually in advance.

(b) Trustor, at its sole cost and expense, for the mutual benefit of Trustor and Beneficiary, shall also obtain and maintain during the entire term of this Deed of Trust such other policies of insurance as may from time to time be reasonably required by Beneficiary in order to protect its interests.

(c) All policies of insurance (the "Policies") required pursuant to this paragraph 3 (i) shall be issued by an insurer having an A.M. Best rating of A:V or better and satisfactory to Beneficiary, (ii) if applicable and obtainable in Nevada, shall contain the standard New York mortgage non-contribution clause naming Beneficiary as the person to which all payments made by such insurance company shall be paid, (iii) shall be maintained throughout the term of this Deed of Trust without cost to Beneficiary, (iv) originals or copies thereof, certified to be true and correct, shall be delivered to Beneficiary, (v) shall contain such provisions as Beneficiary deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Trustor, Beneficiary nor any other party shall be a co-insurer under said policies and that Beneficiary shall receive at least thirty (30) days prior written notice of any modification or cancellation, and (vi) shall be satisfactory in form and substance to Beneficiary and shall be approved by Beneficiary as to amounts, form, risk coverage, deductibles, loss payees and insureds. All such premiums for such Policies (the "Insurance Premiums") shall be paid, at Beneficiary's option, in the manner provided in paragraph 5 of this Deed of Trust or by Trustor making payment, when due, directly to the carrier. Trustor shall deliver to Beneficiary certificates of insurance evidencing the coverages required above promptly after closing. Not later than thirty (30) days prior to the expiration date of each of the Policies, Trustor will deliver to Beneficiary satisfactory evidence of the renewal of each Policy.

(d) To the extent Trustor carries casualty insurance, any sums paid to Trustor and/or Beneficiary (Beneficiary shall

endorse such funds to Trustor) by an insurer for any claims under any of the policies of casualty insurance required hereunder, after deduction of Trustor's reasonable costs and expenses of collection (after such deduction, the "Insurance Proceeds"), may be, at the option of Trustor, (i) retained by Trustor and applied to pay expenses associated with the restoration of the improvements affected by such casualty, and/or (ii) paid by Trustor to Beneficiary in reduction of the then-outstanding principal amount of the Debt.

4. Payment of Taxes, etc.

(a) All taxes, assessments and water and sewer rents, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Taxes") shall be paid, prior to delinquency, at Beneficiary's option, in the manner provided in paragraph 5 of this Deed of Trust or by Trustor making payment directly to the party to whom such Taxes are due. Trustor shall pay all ground rents, maintenance charges, other governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Other Charges") as the same become due and payable. Trustor will deliver to Beneficiary, within twenty (20) days after payment therefor, evidence reasonably satisfactory to Beneficiary that the Taxes and other charges have been so paid or are not then delinquent. Trustor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Property, and shall promptly pay for all utility services provided to the Property. Trustor shall furnish to Beneficiary or its designee receipts for the payment of the Taxes, other charges and said utility services.

(b) After prior written notice to Beneficiary, Trustor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes or other charges, provided that (i) no Event of Default is continuing under the Note or this Deed of Trust, (ii) Trustor is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to this Deed of Trust, (iii) such proceeding shall suspend the collection of the Taxes or other charges from Trustor and from the Property, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Trustor is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost, (vi) Trustor shall have set aside adequate reserves for the payment of the Taxes or other charges, together with all interest and penalties thereon and (vii)

Trustor shall have furnished such security as may be required in the proceeding, or as may be requested by Beneficiary to insure the payment of any such Taxes or other charges, together with all interest and penalties thereon.

5. Tax and Insurance Impound. Upon the occurrence of an Event of Default, Trustor shall, at the option of Beneficiary or its designee, pay to Beneficiary:

(a) on the date on which Beneficiary exercises such option, the following:

(i) an amount equal to one-twelfth (1/12) of the Taxes payable (or estimated by Beneficiary to be payable) during the next ensuing twelve (12) months multiplied by the sum of (A) the number of months which have elapsed since the last payment of Taxes plus (B) one (1); and

(ii) an amount equal to one-twelfth (1/12) of the Insurance Premiums due for the renewal of the coverage afforded by the Policies at their expiration; and

(b) on the twentieth (20th) day of each calendar month after Beneficiary exercises such option, the following:

(i) one-twelfth (1/12) of an amount which would be sufficient to pay the Taxes payable, or estimated by Beneficiary to be payable, during the next ensuing twelve (12) months multiplied by the sum of (A) the number of months which have elapsed since the last payment of Taxes plus (B) one (1); and

(ii) one-twelfth (1/12) of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof.

(said amounts in (a) and (b) above shall be deposited by Beneficiary in an interest bearing account hereinafter called the "Tax and Insurance Impound").

The Tax and Insurance Impound and the payments of interest or principal or both, payable pursuant to the Note, shall be added together and shall be paid as an aggregate sum by Trustor to Beneficiary. Trustor hereby pledges to Beneficiary any and all monies now or hereafter deposited in the Tax and Insurance Impound as additional security for the payment of the Debt. Beneficiary will apply the Tax and Insurance Impound to payments of Taxes and Insurance Premiums required to be made by Trustor pursuant to paragraphs 3 and 4 hereof. If the amount of the Tax and Insurance Impound shall exceed the amounts due for Taxes and Insurance Premiums pursuant to paragraphs 3 and 4 hereof, Beneficiary shall, in its discretion, return any excess to Trustor or credit such excess against future payments to be made



6. Condemnation. Trustor shall promptly give Beneficiary written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Beneficiary copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Trustor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note, in this Deed of Trust and the other Security Documents and the Debt shall not be reduced until any award or payment therefor shall have been actually received after expenses of collection and applied by Beneficiary to the discharge of the Debt. Beneficiary shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or

Until expended or applied as above provided, any amounts in the Tax and Insurance Impound shall constitute additional security for the Debt. The Tax and Insurance Impound shall not constitute a trust fund and may be commingled with other monies held by Beneficiary. All earnings or interest on the Tax and Insurance Impound shall be deposited therein as additional security for the payment of the Debt.

Note, this Deed of Trust and the other Security Documents, including without limitation, advances made by Beneficiary pursuant to the terms of this Deed of Trust.

- (i) Taxes and other charges;
- (ii) Insurance Premiums;
- (iii) Utilities;
- (iv) Interest on the unpaid principal balance of the Note;
- (v) Amortization of the unpaid principal balance of the Note; or
- (vi) All other sums payable pursuant to the

to the Tax and Insurance Impound. In allocating such excess, Beneficiary may deal with the person shown on the records of Beneficiary to be the owner of the Property. If the balance in the Tax and Insurance Impound on the first day of the month which is one full month prior to the due date of any Taxes or Insurance Premiums is not sufficient to pay the Taxes or the Insurance Premiums, Trustor shall pay to Beneficiary, upon demand, an amount which Beneficiary shall estimate as sufficient to make up the deficiency. Upon the occurrence of an Event of Default, Beneficiary may apply any sums then present in the Tax and Insurance Impound to the payment of the following items in any order in its sole discretion:

rates provided herein and in the Note. Any award or payment made in any condemnation or eminent domain proceeding shall be paid to Trustor. Sums paid to Trustor and/or to Beneficiary (Beneficiary shall endorse such funds to Trustor) for such condemnation or action of eminent domain, after deduction of Trustor's reasonable costs and expenses of collection (after such deduction, the "Condemnation Proceeds"), shall be applied in accordance with paragraph 9(d)(ii) hereof. If the Property is sold pursuant to title to the Property, Beneficiary shall have all of the right, title and interest of Trustor in and to any condemnation Proceeds resulting from any condemnation or eminent domain proceeding of the Property prior to such sale or acquisition.

7. Leases and Rents. Trustor does hereby absolutely and

unconditionally assign to Beneficiary its right, title and interest in all current and future Leases and Rents, it being intended by Trustor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Beneficiary shall not be construed to bind Beneficiary to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise to impose any obligation upon Beneficiary. Trustor agrees to execute and deliver to Beneficiary such additional instruments, in form and substance satisfactory to Beneficiary, as may hereafter be reasonably requested by Beneficiary to further evidence and confirm such assignment. Nevertheless, subject to the terms of this paragraph 7, Beneficiary grants to Trustor a revocable license to operate and manage the Property and to collect the Rents. Trustor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, in trust for the benefit of Beneficiary for use in the payment of such sums. Upon an Event of Default, the license granted to Trustor herein shall be automatically revoked and Beneficiary shall immediately be entitled to possession of all Rents, whether or not Beneficiary enters upon or takes control of the Property. Beneficiary is hereby granted and assigned by Trustor the right, at its option, upon the revocation of the license granted herein to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license herein granted may be applied toward payment of the Debt in such priority and proportion as Beneficiary in its discretion shall deem proper.

8. Maintenance of Property. Subject to the provisions of paragraph 24(a)(v), Trustor shall promptly comply in all material respects with all laws, orders and ordinances affecting the Property, or the use thereof, which are not the responsibility of any lessee to comply with under the terms of its lease. Trustor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof which would have the effect of materially reducing the value of the Property.

If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Trustor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Beneficiary.

9. Transfer or Encumbrance of the Property.

(a) Trustor acknowledges that Beneficiary has a valid interest in maintaining the value of the Property so as to ensure that, should Trustor default in the repayment of the debt, Beneficiary can recover the debt by a sale of the Property. Subject to the provisions of subparagraph 9(d), Trustor shall not, without the prior written consent of Beneficiary, sell, convey, alien, mortgage, encumber, pledge or otherwise transfer the Property or any part thereof, or permit the Property or any part thereof to be sold, assigned, conveyed, aliened, mortgaged, encumbered, pledged or otherwise transferred (any of the foregoing, a "Transfer").

(b) A Transfer of the Property within the meaning of this paragraph 9 shall be deemed to include:

(i) an installment sales agreement wherein Trustor agrees to sell the Property or any part thereof for a price to be paid in installments;

(ii) an agreement by Trustor leasing all or a substantial part of the Property for other than actual occupancy by a tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Trustor's right, title and interest in and to any Leases or any Rents;

(iii) an agreement by Trustor to Transfer a portion of the Property in exchange for other real property (such property, the "Swap Property") not subject to the lien of this Deed of Trust; and

(iv) (A) any Transfer of any beneficial ownership interest in Trustor, other than to one of the members or to an Affiliate of one of the members, or (B) any change in the percentage ownership interest (direct or indirect) in the Trustor, other than changes resulting from the dilution provisions in Article IV of Trustor's Limited Liability Company Agreement or the carried interest provisions in Article VI of Trustor's Limited Liability Company Agreement or from a transfer to one of the members or to an Affiliate of one of the members. "Affiliate" shall mean an individual, partnership (whether limited or general), corporation, trust, or unincorporated association which directly or indirectly (through one or more intermediaries which it controls) is controlled by, or is under common control with, the person or entity of which it is an Affiliate. For purposes of the preceding sentence, the term "control" means the possession, directly or indirectly, of the

power to direct or cause the direction of a person or entity. With respect to an Affiliate of Western Water Company ("WWC"), WWC must own in excess of fifty percent (50%) of the stock of such Affiliate.

(c) Subject to subparagraphs 9(a) and 9(d) of this Deed of Trust, Beneficiary shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Trustor's Transfer of the Property or any part thereof (or any Transfer of beneficial ownership interests by Trustor's members or their shareholders or partners, other than to their respective affiliates) without Beneficiary's consent; this provision shall apply to every Transfer of the Property regardless of whether voluntary or not, or whether or not Beneficiary has consented to any previous Transfer of the Property.

(d) Notwithstanding paragraphs 9(a) through 9(c) above, as long as such of the following conditions which may be satisfied prior to the closing date are satisfied, Beneficiary shall not withhold its consent to a Transfer of a portion of the Property proposed by Trustor if:

(i) No Event of Default is then continuing under this Deed of Trust, the Note or any other Security Document executed in connection with the Debt;

(ii) The consideration for the proposed Transfer of such portion of the Property is consistent with existing local market rates and such Transfer is an arms-length transaction (except with respect to a condemnation, in which the consideration shall be determined by law, and a Transfer to the Railway pursuant to Section 3(e) of the Closing Agreement arising by reason of a breach of the title representation therein in which the consideration shall be determined in accordance with the provisions of the Closing Agreement. The net proceeds of any such Transfer shall be included within Revenues (as defined in the Pledge Agreement) and applied in accordance with Section 4.1 of the Pledge Agreement and the terms of the Note, provided, however, any net proceeds resulting from (1) a Transfer (A) where the gross consideration for the Transfer exceeds \$1,000,000, (B) which is a condemnation, (C) which is a Transfer to the Railway pursuant to Section 3(e) of the Closing Agreement, or (2) a claim (whether or not any portion of the Property shall be transferred to the Railway in connection therewith), shall be applied as follows: Trustor shall deliver to Beneficiary a written estimate of the Excess Cash Flow for the month in which such Transfer occurs, calculated as of the day of closing of such Transfer (assuming all items for such month set forth in Section 4.1.1 through 4.1.5, inclusive, are paid as of the closing date) and the amount of the estimate of the Excess Cash Flow shall be paid to Beneficiary on the date of such closing to be applied to the

reduction of the Principal Amount pursuant to Section 3 of the Note!

(iii) With respect to Transfers as described in paragraph 9(b)(i) above, such installment payments shall be paid to Trustor and considered Revenues and disbursed in accordance with Section 4.1 of the Pledge Agreement! Trustor shall cause the note and any deed of trust or other security documents entered into with respect to such Transfers to be pledged and collateral assigned to Beneficiary subject to no other liens and encumbrances!

(iv) With respect to Transfers as described in paragraph 9(b)(iii) above, Trustor shall cause the Swap Property to become subject to the Lien of this Deed of Trust by execution, acknowledgment and delivery to Beneficiary of an amendment of this Deed of Trust or an additional deed of trust covering such Swap Property, at Beneficiary's election, and Trustor, at its sole cost and expense, shall have delivered to Beneficiary an endorsement to any mortgage policies of title insurance then held by Beneficiary with respect to the Property insuring that Beneficiary has a first lien on the Swap Property subject to no liens or encumbrances other than the encumbrances permitted pursuant to paragraph 2 hereof!

(v) Trustor shall provide written notice of such Transfer no later than ten (10) days prior to the date of such Transfer, along with a copy of the contract of sale or other agreement with respect to such Transfer and such other documentation as Beneficiary may reasonably require! Promptly after satisfaction by Trustor of all conditions of Section 9(d) which can be satisfied prior to the closing date of such Transfer, Beneficiary shall issue a written request to Trustee to execute a partial reconveyance with respect to such Transfer; and (vi) Trustor shall deliver or cause to be delivered to Beneficiary a CLTA 111 endorsement to any lender's title policy insuring the Lien of this Deed of Trust (to the extent Trustor has obtained such a policy for Beneficiary), which endorsement shall insure against any loss that Beneficiary may sustain by reason of any loss of priority of the Lien of the Deed of Trust in the remainder of the Property resulting from the execution of a partial reconveyance pursuant to such Transfer.

10. Estoppel Certificate. After request by Beneficiary, Trustor shall within ten (10) days furnish Beneficiary with a statement, duly acknowledged and certified, setting forth (i) the unpaid principal amount of the Note, (ii) the date installments of interest and/or principal were last paid, (iii) to the best of Trustor's knowledge, any offsets or defenses to the payment of the Debt, if any and (iv) that the Note and this Deed of Trust are valid, legal and binding obligations of Trustor and have not been modified or if modified, giving the particulars of such modification.

11. Changes in the Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Deed of Trust which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Beneficiary's interest in the Property, Trustor will pay such tax, with interest and penalties thereon, if any. In the event Beneficiary is advised by counsel chosen by it that the payment of such tax or interest and penalties by Trustor would be unlawful or taxable to Beneficiary or unenforceable or provide the basis for a defense of usury, then in any such event, Beneficiary shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

12. No Credits on Account of the Debt. Trustor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or other charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Deed of Trust or the Debt. In the event such claim, credit or deduction shall be required by law, Beneficiary shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

13. Documentary Stamps. If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Deed of Trust, or impose any other tax or charge on the same, Trustor will pay for the same, with interest and penalties thereon, if any.

14. Usury Laws. This Deed of Trust and the Note are subject to the express condition that at no time shall Trustor be obligated or required to pay interest on the Debt at a rate which could subject Beneficiary to either civil or criminal liability as a result of being in excess of the maximum interest rate which Trustor is permitted by law to contract or agree to pay. If by the terms of this Deed of Trust or the Note, Trustor is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the same shall be deemed to be immediately reduced to such maximum rate and all previous payments in excess of such maximum rate shall be deemed to have been payments in reduction of the principal and not on account of the interest due hereunder.

15. Books and Records. Trustor shall keep adequate books and records of account in accordance with the accounting basis to be determined by Trustor and shall furnish to Beneficiary: (a) within twenty (20) days after the end of the applicable calendar month, a monthly statement from Trustor setting forth (1) all of Trustor's Revenues and disbursement of Revenues by category as

set forth in Section 4.1 of that certain Pledge and Security Agreement, dated the date hereof, by and between Trustor and Beneficiary (the "Pledge Agreement"), (2) a roll-forward of all reserve accounts required to be maintained pursuant to the Pledge Agreement for such month, showing the beginning balance, activity and ending balance of each such reserve account, and (3) a monthly and a year-to-date statement of Revenues and Disbursement of Revenues; (b) an annual balance sheet and profit and loss statement of Trustor, certified by Trustor within ninety (90) days after the close of each fiscal year; and (c) such annual balance sheets and profit and loss statements and other financial statements as may, from time to time, be reasonably required by Beneficiary.

16. Performance of Other Agreements. Trustor shall observe and perform each and every term to be observed or performed by Trustor pursuant to the terms of all material agreements or recorded instruments affecting or pertaining to the Property.

17. Further Acts, etc. Trustor will, at the cost of Trustor, and without expense to Beneficiary, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Beneficiary shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Trustee and/or Beneficiary the property and rights hereby given, granted, bargained, sold, aliened and conveyed or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Trustee and/or Beneficiary, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust or for filing, registering or recording this Deed of Trust. Trustor, on demand, will execute and deliver and hereby authorizes Beneficiary to execute in the name of Trustor with or without the signature of Trustor to the extent Beneficiary may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Beneficiary in the Property. Trustor grants to Beneficiary an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Beneficiary at law and in equity, including without limitation such rights and remedies available to Beneficiary pursuant to this paragraph 17.

18. Recording of Deed of Trust, etc. Trustor forthwith upon the execution and delivery of this Deed of Trust and thereafter, from time to time, will cause this Deed of Trust, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of

(f) If Trustor shall make an assignment for the benefit of creditors or if Trustor shall generally not be paying its debts as they become due;

(e) If any representation or warranty of Trustor made herein, or in any certificate, report, financial statement or other instrument or document furnished to Beneficiary by Trustor shall have been false or misleading in any material respect when made and Trustor fails to remedy the same within ten (10) Business Days after Trustor receives notice thereof;

(d) If Trustor violates or does not comply with any of the provisions of paragraph 9;

(c) If the policies are not kept in full force and effect, or if the policies are not delivered to Beneficiary in accordance with paragraph 3 hereof within ten (10) Business Days after Trustor receives notice thereof;

(b) If any of the Taxes or other Charges are not paid, subject to Trustor's right to contest such Taxes or other Charges in accordance with the provisions of paragraph 4, for a period of the earlier to occur of (A) fifteen (15) Business Days after Trustor receives notice of delinquency of such Taxes or other Charges, or (B) the date upon which any action is commenced to foreclose any lien or liens with respect thereto;

(a) If any portion of the Debt is not paid within five (5) days after written notice from Beneficiary that the same is due;

20. Events of Default. The Debt shall become immediately due and payable at the option of Beneficiary, without notice or demand, upon any one or more of the following events ("Events of Default"):

19. Prepayment. The Debt may be prepaid in accordance with the terms thereof.

Beneficiary in, the Property. Trustor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Deed of Trust, any mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Deed of Trust, any mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, except where prohibited by law so to do. Trustor shall hold harmless and indemnify Beneficiary, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Deed of Trust.



(g) If a receiver, liquidator or trustee of Trustor shall be appointed or if Trustor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Trustor or if any proceeding for the dissolution or liquidation of Trustor shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Trustor upon the same not being discharged, stayed or dismissed within sixty (60) days;

(h) If the property becomes subject to mechanic's, materialman's or other lien in the amount of \$50,000 or more with respect to any single lien or in the amount of \$150,000 in aggregate for all such liens, other than any lien for local real estate taxes and assessments not then due and payable and such lien or liens shall remain undischarged of record (by payment, bonding or otherwise) for a period of the earlier to occur of (A) forty-five (45) calendar days after Trustor receives notice thereof (provided, however, that to the extent such violation is not curable in such forty-five (45) day period, the time for cure may be extended as provided in paragraph 20(k) hereof), subject to Trustor's right to contest such violations as provided in Section 24(a)(v) hereof, and with respect to Environmental Matters, except to the extent Trustor is diligently pursuing its remedies against any third party responsible under any of the indemnities (hereinafter defined) in accordance with paragraph 33 hereof;

(i) If Trustor fails to cure promptly any violations of laws or ordinances affecting the property for a period of forty-five (45) calendar days after Trustor receives notice thereof (provided, however, that to the extent such violation is not curable in such forty-five (45) day period, the time for cure may be extended as provided in paragraph 20(k) hereof), subject to Trustor's right to contest such violations as provided in Section 24(a)(v) hereof, and with respect to Environmental Matters, except to the extent Trustor is diligently pursuing its remedies against any third party responsible under any of the indemnities (hereinafter defined) in accordance with paragraph 33 hereof;

(j) If for more than thirty (30) days after notice from Beneficiary, Trustor shall continue to be in default under any other term, covenant or condition of this Deed of Trust; provided, however, that if such default is not curable within such thirty (30) day period, then Trustor shall have such additional time as is reasonably necessary to cure the same, provided (1) Trustor promptly commences and at all times is diligently attempting to cure such default, (2) Beneficiary has determined in its reasonable discretion that the continued existence of such default will not adversely affect any collateral for the loan, and (3) that there are no other defaults hereunder; or

(k) If a default beyond the expiration of any applicable grace periods shall occur under the Note or the other Security Documents.

21. Default Interest. Upon the occurrence of any Event of Default, Trustor shall pay interest on the unpaid principal balance of the Note at the rate (the "Default Rate") of the greater of (i) 4% above the Applicable Interest Rate (as defined in the Note) or (ii) 6% above the Prime Rate (hereinafter defined). The term "Prime Rate" shall mean the prime rate reported in the Money Rates section of the Wall Street Journal. In the event that the Wall Street Journal should cease or temporarily interrupt publication, the term "Prime Rate" shall mean the daily average prime rate published in another business newspaper, or business section of a newspaper, or national standing selected by Beneficiary. In the event that the prime rate is no longer generally published or is limited, regulated or administered by a governmental or quasi-governmental body, then Beneficiary shall select a comparable interest rate index which is readily available and verifiable to Trustor but which is beyond Beneficiary's control. The Default Rate shall be computed from the occurrence of the Event of Default until the actual receipt and collection of the Debt. This charge shall be added to the Debt, and shall be deemed secured by this Deed of Trust. This clause, however, shall not be construed as an agreement or privilege to extend the date of the payment of the Debt, nor as a waiver of any other right or remedy accruing to Beneficiary by reason of the occurrence of any Event of Default. If the Default Rate is above the maximum rate permitted by applicable law, the Default Rate shall be the maximum rate permitted by applicable law.

22. Right to Cure Defaults. Upon the occurrence of any Event of Default or if Trustor fails to make any payment or to do any act as herein provided, Beneficiary may, but without any obligation to do so and without notice to or demand on Trustor and without releasing Trustor from any obligation hereunder, make or do the same in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. Beneficiary is authorized to enter upon the property for such purposes or appear in, defend, or bring any action or proceeding to protect its interest in the property or to foreclose this Deed of Trust or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest calculated at the Default Rate, shall constitute a portion of the Debt and shall be secured by this Deed of Trust and the other Security Documents and shall be due and payable to Beneficiary upon demand. All such costs and expenses incurred by Beneficiary in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Beneficiary that such cost or expense was incurred to the date of payment of Beneficiary.

23. Late Payment Charge. If any portion of the Debt is not paid within five (5) calendar days after the date on which it is due, Trustor shall pay to Beneficiary upon demand an amount equal to the lesser of five percent (5%) of such unpaid portion of the

Debt or the maximum amount permitted by applicable law, to delay the expense incurred by Beneficiary in handling and processing such delinquent payment and to compensate Beneficiary for the loss of the use of such delinquent payment, and such amount shall be secured by this Deed of Trust and the Other Security Documents.

24. Additional Affirmative and Negative Covenants.

(a) Affirmative Covenants.

(1) Trustor at all times will continue to be a duly formed and existing Delaware limited liability company and a single-purpose entity engaged in no other business or activity unrelated to the ownership, management, leasing, operation, financing, sale or disposition of the Property and Trustor shall at all times remain in good standing in the jurisdiction in which it is organized and qualify to do business in each of the states that it may from time to time be required to qualify by virtue of its business activities or otherwise.

(ii) Trustor will continue to comply with the provisions of its limited liability company agreement and the laws of the State of Delaware relating to limited liability companies. All customary formalities regarding the existence of Trustor as a limited liability company will continue to be observed.

(iii) Trustor will continue to accurately maintain its financial statements, accounting records and other documents separate from those of any affiliates of Trustor and any other Person.

(iv) Trustor will not commingle its assets with those of any affiliates of Trustor, or any other Person. Trustor will continue to identify itself in all dealings with the public, under Trustor's own name and as a separate and distinct entity. Trustor will not identify itself, as being a division or a part of any other entity. Trustor will not identify any affiliates of Trustor as being a division or part of Trustor.

(v) Trustor shall obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions, of all material licenses and permits, and shall abide by all applicable requirements of law in connection with Trustor's lawful ownership, operation, use and maintenance of the Property; provided, however, that Trustor may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the validity or application in whole or in part of any such requirements of law, provided that (i) no Event of Default is continuing under the Note or this Deed of

Trust, (ii) Trustor is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to this Deed of Trust, (iii) such proceeding shall be permitted under, and be conducted in accordance with, the provisions of any other instrument to which Trustor is subject and shall not constitute a default thereunder, (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost, (v) Trustor shall have set aside adequate reserves for the payment of any sums due under such requirements of law, together with all interest and penalties thereon and (vi) Trustor shall have furnished such security as may be required in the proceeding, or as may be reasonably requested by Beneficiary.

(b) Negative Covenants.

(i) None of Trustor or its members shall suffer or permit a dissolution or merger or the termination of its legal existence.

(ii) From and after an Event of Default, there shall be no distributions from the Trustor to its members, other than distributions in respect of Estimated Income Tax Expense (as defined in the Pledge Agreement).

(iii) Trustor shall not commit or permit any waste of any of the Property owned by it or permit any nuisance to be maintained thereon.

25. Right of Entry. Beneficiary and its agents shall have the right, upon notice by telephone, facsimile or in writing, to enter and inspect the Property at all reasonable times.

26. Remedies.

(a) Upon the occurrence of any Event of Default, Beneficiary may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Trustor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Beneficiary:

(i) declare the entire Debt to be immediately due and payable;

(ii) institute proceedings for the complete foreclosure of this Deed of Trust, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Deed of Trust for the portion of the Debt then due and payable, subject to the continuing lien of this Deed of Trust for the balance of the Debt not then due;

(iv) sell, or cause Trustee to sell, for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Trustor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note;

(vi) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Deed of Trust;

(vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Trustor, any guarantor or of any person, firm or other entity liable for the payment of the Debt;

(viii) enforce Beneficiary's interest in the Leases and Rents and enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Trustor and its agents and servants therefrom, and thereupon Beneficiary may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereof; (B) complete any construction on the Property in such manner and form as Beneficiary deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Property; (D) exercise all rights and powers of Trustor with respect to the Property, whether in the name of Trustor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Property and every part thereof; and (E) apply the receipts from the Property to the payment of the Debt, after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, assessments, insurance and other charges in connection with the Property, as well as just and reasonable compensation for the services of Beneficiary, its counsel, agents and employees;

(ix) pursue such other rights and remedies as may be available at law and in equity; or  
(x) without limiting the generality of the foregoing,

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

(B) After three (3) months shall have elapsed following recordation of any such notice of breach, Trustee shall sell the Property subject hereto at such time and at such place in the State of Nevada as Trustee, in its sole discretion, shall deem best to accomplish the objects of these trusts, having first given notice of such sale as then required by law. In the conduct of any such sale, Trustee may act itself or through any auctioneer, agent or attorney. The place of sale may be either in the county in which the Property to be sold, or any part thereof, is situated, or at an office of the Trustee located in the State of Nevada.

(I) Upon the request of Beneficiary, or if required by law, Trustee shall postpone sale of all or any portion of said Property or interest therein by public announcement at the time fixed by said notice of sale, and shall thereafter postpone said sale from time to time by public announcement at the time previously appointed.

(II) At the time of sale so fixed, Trustee shall sell the Property as 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 Property so sold, but without covenant or warranty, express or implied. Beneficiary and Trustee may bid and purchase at such sale. To the extent of the indebtedness secured hereby, Beneficiary need not bid for cash at any sale of all or any portion of the Property pursuant hereto, but the amount of any successful bid by Beneficiary shall be applied in reduction of said indebtedness. Trustor hereby agrees, if it is then still in possession, to surrender, immediately and without demand, possession of said Property to any purchaser.

In the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Deed of Trust shall continue as a lien on the remaining portion of the Property.

(b) The proceeds of any sale made under or by virtue of this paragraph, together with any other sums which then may be held by Beneficiary under this Deed of Trust, whether under the provisions of this paragraph or otherwise, shall be applied by Beneficiary to the payment of the Debt in such priority and proportion as Beneficiary in its discretion shall deem proper.

(c) To the extent permitted by applicable law, Trustee may adjourn from time to time any sale by it to be made under or by virtue of this Deed of Trust by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Trustee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales made or caused to be made by Beneficiary under or by virtue of this paragraph, Trustee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Trustee is hereby irrevocably appointed the true and lawful attorney of Trustee, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Property and rights so sold and for that purpose Trustee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Trustee hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any such sale or sales made under or by virtue of this paragraph shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Trustee in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Trustee and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Trustee.

(e) Upon any sale made under or by virtue of this paragraph, Beneficiary may bid for and acquire the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Beneficiary is authorized to deduct under this Deed of Trust.

(f) No recovery of any judgment by Beneficiary and no levy of an execution under any judgment upon the Property or upon

any other property of Trustor shall affect in any manner or to any extent the lien of this Deed of Trust upon the Property or any part thereof, or any liens, rights, powers or remedies of Beneficiary hereunder, but such liens, rights, powers and remedies of Beneficiary shall continue unimpaired as before.

27. Reasonable Use and Occupancy. In addition to the rights which Beneficiary may have herein, upon the occurrence of any Event of Default, Beneficiary, at its option, may require Trustor to pay monthly in advance to Beneficiary, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Trustor or may require Trustor to vacate and surrender possession of the Property to Beneficiary or to such receiver and, in default thereof, Trustor may be evicted by summary proceedings or otherwise.

28. Security Agreement. This Deed of Trust is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Property. Trustor by executing and delivering this Deed of Trust has granted and hereby grants to Beneficiary, as security for the Debt, a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called in this paragraph 28 the "Collateral"). If an Event of Default shall occur, Beneficiary, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the Collateral. Upon the request or demand of Beneficiary, Trustor shall at its expense assemble the Collateral and make it available to Beneficiary at a convenient place acceptable to Beneficiary. Trustor shall pay to Beneficiary on demand any and all expenses, including legal expenses and reasonable attorneys' fees, incurred or paid by Beneficiary in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Collateral sent to Trustor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Trustor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Beneficiary to the payment of the Debt in such priority and proportions as Beneficiary in its discretion shall deem proper.



29. Actions and Proceedings. Beneficiary has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Trustor, which Beneficiary, in its discretion, decides should be brought to protect their interest in the Property. Beneficiary shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

30. Waiver of Counterclaim. Trustor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Beneficiary, and, to the extent permitted by law, waives trial by jury in any action or proceeding brought by either party hereto against the other or in any counterclaim asserted by Beneficiary against Trustor, or in any matters whatsoever arising out of or in any way connected with this Deed of Trust, the Note, any of the other Security Documents or the Debt.

31. Recovery of Sums Required to Be Paid. Beneficiary shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Beneficiary thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Trustor existing at the time such earlier action was commenced.

32. Marshalling and Other Matters. Trustor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Trustor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Deed of Trust on behalf of Trustor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Deed of Trust and on behalf of all persons to the extent permitted by applicable law.

33. Hazardous Waste. Trustor hereby represents and warrants to Beneficiary that, to the best of Trustor's current actual knowledge: (a) the Property is not in direct or indirect violation of any local, state, federal or other governmental authority, statute, ordinance, code, order, decree, law, rule or regulation pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), the Resource Conservation and Recovery Act,

as amended ("RCRA"), and any state super-lien and environmental clean-up statutes (collectively, "Environmental Laws"); and (b) the Property is not subject to any private or governmental lien or judicial or administrative notice or action relating to hazardous and/or toxic, dangerous and/or regulated, substances, wastes, materials, pollutants or contaminants, petroleum, or polychlorinated biphenyls (including, without limitation, any raw materials which include hazardous constituents) and any other substances or materials which are included under or regulated by Environmental Laws (collectively, "Hazardous Substances"). So long as Trustor owns or is in possession of the Property, Trustor shall cause all Hazardous Substances kept on the Property to be stored, handled and used in compliance with all Environmental Laws and Trustor shall promptly notify Beneficiary if Trustor shall become aware of any Hazardous Substances on the Property which are in direct or indirect violation of any Environmental Laws, and in such event (a) if such direct or indirect violation(s) fall within the provisions of the indemnities (the "Indemnities") given by any one or more of (i) Santa Fe Pacific gold corporation ("Gold"), under the Exploration Agreement and Option to Lease dated November 29, 1990, as amended, between the Atchison, Topeka and Santa Fe Railway company (the "Railway") and Santa Fe Pacific Materials Corporations (now known as Santa Fe Pacific Gold Corporation) or under the mineral and mining leases, as amended, between Railway and Gold affecting the Property, (ii) Railway, under the Indemnity Agreement dated as of the date hereof between Railway and Trustor, (iii) Santa Fe Energy operating Partners, L.P. ("SFEOP"), under the Lease Option Agreement dated October 9, 1987, as amended, between SFEOP and Railway affecting the Property, (iv) Cellex-Nevada, Inc. ("Cellex"), under the geothermal Lease dated April 10 and April 18, 1992, as amended, between Cellex and Railway affecting the Property, or (v) Brady Power Partners ("Brady"), under the Geothermal Lease dated December 5, 1984, as amended, between Brady and Railway affecting the Property, then Trustor shall promptly and diligently pursue its remedies under the Indemnities, or (b) if such direct or indirect violations do not fall within the provisions of the Indemnities, Trustor shall remove or remediate such Hazardous Substances and/or cure such violations, as applicable, as required by law, promptly after Trustor becomes aware of same, at Trustor's sole expense. Nothing herein shall prevent Trustor from recovering such expenses from any other party that may be liable for such removal or cure. Upon Beneficiary's reasonable request, at any time and from time to time while this Deed of Trust is in effect, Trustor shall provide, at Beneficiary's expense, an inspection or audit of the affected portion of the Property prepared by a licensed hydrogeologist or licensed environmental engineer approved by Beneficiary indicating the presence or absence of Hazardous Substances on such portion of the Property. If Trustor fails to provide such inspection or audit within thirty (30) days after such request, or such longer period as may be reasonably required under the circumstances, Beneficiary may order same, and Trustor hereby grants to Beneficiary and its employees and agents access

36. Indemnification. In addition to any other indemnifications provided herein or in the Note or the other Security Documents, Trustor shall protect, defend, indemnify and save harmless Beneficiary from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Beneficiary by reason of (a) ownership of this Deed of Trust, the Property or any interest therein or receipt of any Rents except for those liabilities resulting from Beneficiary's negligence or willful misconduct after Beneficiary has obtained actual possession of the Property; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Property or any part

35. Intentionally omitted.

34. Asbestos. Trustor represents and warrants that, to the best of Trustor's current actual knowledge, no asbestos or any substance containing asbestos ("Asbestos") is located in any Improvements now existing on the Property. Trustor shall not install in the Property, nor permit to be installed in any Improvements now or hereafter existing on the Property, Asbestos and shall remove any Asbestos from such Improvements promptly upon discovery to the satisfaction of Beneficiary, at Trustor's sole expense. Upon Beneficiary's reasonable request, at any time and from time to time while this Deed of Trust is in effect, Trustor shall provide, at Beneficiary's sole expense, an inspection or audit of the affected portion of the Property prepared by an engineering or consulting firm approved by Beneficiary, indicating the presence or absence of Asbestos on such portion of the Property. If Trustor fails to provide such inspection or audit within thirty (30) days after such request, or such longer period as may be reasonably required under the circumstances, Beneficiary may order same, and Trustor hereby grants to Beneficiary and its employees and agents access to the Property and a license to undertake such inspection or audit. The obligations and liabilities of Trustor under this paragraph 34 shall survive any termination, satisfaction, or assignment of this Deed of Trust, any Transfer and/or any exercise by Beneficiary of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

to the Property and a license to undertake such inspection or audit. The obligations and liabilities of Trustor under this paragraph 33 shall survive any termination, satisfaction, or assignment of this Deed of Trust, any Transfer and/or any exercise by Beneficiary of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

thereof; (d) any failure on the part of Trustor to perform or comply with any of the terms of this Deed of Trust; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (f) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance or Asbestos on, from, or affecting the Property; (g) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance or Asbestos; (h) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance or Asbestos; and (i) in any way related to such Hazardous Substance or Asbestos including, without limitation, the costs and expenses of any remedial action, attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. Any amounts payable to Beneficiary by reason of the application of this paragraph 36 shall be secured by this Deed of Trust and shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Beneficiary until paid. The obligations and liabilities of Trustor under this paragraph 36 shall survive any termination, satisfaction or assignment of this Deed of Trust, any Transfer and/or any exercise by Beneficiary of any of its rights and remedies hereunder, including but not limited to, the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

37. Notices. Any notice, demand, statement, request or consent made hereunder shall be in writing to the other party hereto at its address set forth below or at such other address as such party may designate by notice to the other party hereto and shall be deemed given (i) on receipt, if mailed, by certified or registered U.S. mail, return receipt requested, postage prepaid; (ii) on receipt, if delivered, fee prepaid, to a national overnight delivery service (such as Federal Express, Purolater Courier, U.P.S. Next Day Air); (iii) when delivered, if delivered by hand, as evidenced by a signed receipt; or (iv) the date of transmission of notice sent by telecopier or facsimile machine with a confirmation of receipt obtained provided notice was transmitted on a Business Day (hereinafter defined) otherwise notice shall be deemed given on the next Business Day:

To Trustor:

Silver State Land Company LLC  
c/o Western Water Company  
4660 La Jolla Village Drive, Suite 680  
San Diego, California 92122  
Attn: Peter Jensen  
Telephone Number: (619) 535-9282  
Facsimile Number: (619) 535-9260

with a copy to:

Western Land Joint Venture  
c/o The Morgan Stanley Real Estate Fund II, L.P.  
1585 Broadway  
New York, New York 10036-8293  
Attn: Owen D. Thomas  
Telephone Number: (212) 761-4000  
Facsimile Number: (212) 761-0512

and

Western Land Joint Venture  
c/o The Morgan Stanley Real Estate Fund II, L.P.  
1999 Avenue of the Stars, Suite 2000  
Los Angeles, California 90067  
Attn: Jeffrey A. Dritley  
Telephone Number: (310) 203-9600  
Facsimile Number: (310) 203-9703

To Beneficiary:

Morgan Stanley Mortgage Capital, Inc.  
1585 Broadway  
New York, New York 10036-8293  
Attn: Jonathan Ashley  
Telephone Number: (212) 761-4000  
Facsimile Number: (212) 761-0525

A "Business Day" is any day other than a Saturday or Sunday, or a day on which banking and savings and loan institutions in the State of New York are authorized or obligated by law or executive order to remain closed. Refusal to accept delivery of any notice shall be deemed to be receipt of such notice.

38. Representations and Warranties. Trustor represents and warrants as follows:

(a) Trustor (and the undersigned representative of Trustor) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Deed of Trust, and to mortgage, give, grant, bargain, sell, alien, convey, confirm, pledge, hypothecate and assign the property pursuant to the terms

hereof and to keep and observe all of the terms of this Deed of Trust on Trustor's part to be performed;

(b) Trustor is qualified to transact business in the State of Nevada;

(c) Neither the execution and delivery of this Deed of Trust, the Note, or the other Security Documents by Trustor, nor compliance with the terms and provisions hereof and thereof will (i) result in a material breach of the terms, conditions or provisions of, or conflict with or constitute a default under, or result in the creation of any lien, charge or encumbrance upon the Property pursuant to the terms of any other material agreement to which Trustor is a party;

(d) No consent, approval, waiver, license, authorization of, filing with, or order of (i) any court or governmental agency, or (ii) any member of Trustor is required for the execution, delivery and performance by Trustor of, or compliance by Trustor with, this Deed of Trust, the Note or the other Security Documents, or the consummation of the transaction contemplated thereby, except for such consents and approvals as have been obtained prior to the execution of this Deed of Trust; and

(e) Trustor represents and warrants that Trustor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

39. Waiver of Notice. Trustor shall not be entitled to any notices of any nature whatsoever from Beneficiary except with respect to matters for which this Deed of Trust specifically and expressly provides for the giving of notice by Beneficiary to Trustor and except with respect to matters for which Beneficiary is required by applicable law to give notice, and Trustor hereby expressly waives the right to receive any notice from Beneficiary with respect to any matter for which this Deed of Trust does not specifically and expressly provide for the giving of notice by Beneficiary to Trustor.

40. Sole Discretion of Beneficiary. Wherever pursuant to this Deed of Trust, Beneficiary exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Beneficiary, the decision of Beneficiary to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Beneficiary and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

41. Non-Waiver. The failure of Beneficiary to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Deed of Trust. Trustor shall not be relieved of Trustor's obligations hereunder by reason of (a) the

failure of Beneficiary to comply with any request of Trustor to enforce any of the provisions hereof or of the Note or the other Security Documents, (b) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the debt or any portion thereof or (c) any agreement or stipulation by Beneficiary extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Deed of Trust or the other Security Documents. Beneficiary may resort for the payment of the Debt to any other security held by Beneficiary in such order and manner as Beneficiary, in its discretion, may elect. Beneficiary may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Beneficiary thereafter to foreclose this Deed of Trust. The rights and remedies of Beneficiary under this Deed of Trust shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Beneficiary shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Beneficiary shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

42. No Oral Change. This Deed of Trust, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Trustor or Beneficiary, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

43. Successors and Assigns. This Deed of Trust shall be binding upon and inure to the benefit of Trustor and Beneficiary and their respective successors and permitted assigns.

44. Inapplicable Provisions. If any term, covenant or condition of the Note or this Deed of Trust is held to be invalid, illegal or unenforceable in any respect, the Note and this Deed of Trust shall be construed without such provision.

45. Headings, etc. The headings and captions of various paragraphs of this Deed of Trust are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

46. Duplicate Originals. This Deed of Trust may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

47. Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Deed of Trust may be used interchangeably in singular or plural form and the word "Trustor" shall mean "each

Trustor and any subsequent owner or owners of the Property or any part thereof or any interest therein, "Trustee" shall mean "Trustee and any successor in interest to Trustee or substitute trustee appointed pursuant to the terms of this Deed of Trust," the word "Beneficiary" shall mean "Beneficiary and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Deed of Trust," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Property" shall include any portion of the Property and any interest therein. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms and the singular form of nouns and pronouns shall include the plural and vice versa.

48. Homestead. Trustor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Premises as against the collection of the Debt, or any part hereof.

49. Assignments. Beneficiary may assign or transfer its rights under this Deed of Trust without the consent of Trustor.

50. Commercial Loan. Trustor hereby stipulates and warrants that the loan secured hereby is a commercial loan, and that all of the proceeds of such loan will be used solely to acquire or carry on a business or commercial enterprise.

51. Substitution of Trustee. From time to time, Beneficiary may substitute a successor to any Trustee named in or acting under this Deed of Trust in any manner now or later to be provided at law, or by a written instrument executed and acknowledged by Beneficiary and recorded in the office of the recorder of the county where the premises is situated. Any such instrument shall be conclusive proof of the proper substitution of the successor Trustee, who shall automatically upon recordation of the instrument succeed to all estate, title, rights, powers and duties of the predecessor Trustee, without conveyance from it.

#### 52. Reconveyance.

(a) Upon written request of Beneficiary stating that all sums and obligations secured hereby have been paid and fully performed, and upon surrender by Beneficiary of this Deed of Trust to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees and the costs and expenses of executing and recording any requested reconveyance, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder.



(b) With respect to any transfer of any portion of the property pursuant to paragraph 9(d) hereof, upon written authorization from Beneficiary, Trustee shall convey to Trustor, or to the person or persons legally entitled thereto, without warranty, such portion of the property.

(c) The recitals in any such reconveyance of any matter or fact shall be conclusive proof of the truthfulness thereof. The grantee in any such reconveyance may be described as "the person or persons legally entitled thereto."

53. No Liability of Trustee. The Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever (including Trustee's negligence), except for Trustee's gross negligence or willful misconduct. The Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by him hereunder. Trustor hereby ratifies and confirms any and all acts which the herein named Trustee or his successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof. Trustor will reimburse Trustee for, and save him harmless against, any and all liability and expense which may be incurred by him in performance of his duties. The foregoing indemnity shall not terminate upon discharge of the indebtedness secured hereby or foreclosure, or release or other termination, of this Deed of Trust.

54. Governing Law. This Deed of Trust shall be governed by and construed in accordance with the laws of the state of Nevada.

55. Waiver of Trial by Jury. TRUSTOR AND BENEFICIARY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THE LOAN EVIDENCED BY THE NOTE OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE NOTE, THIS DEED OF TRUST OR ANY OF THE OTHER SECURITY DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF TRUSTOR OR BENEFICIARY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BENEFICIARY'S MAKING OF THE LOAN SECURED BY THIS DEED OF TRUST AND THE OTHER SECURITY DOCUMENTS.

56. After-Acquired Property. All right, title and interest of Trustor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the property hereafter acquired, constructed, assembled or placed by Trustor on or with respect to the property

(including, without limitation, any water rights of Trustor now or hereafter acquired, settled or adjudicated) immediately upon such acquisition, construction, assembly or placement, as the case may be, and in each such case without any further mortgage, conveyance or assignment or other act of Trustor, shall become subject to the lien of this Deed of Trust as fully and completely, and with the same effect, as though now owned by Trustor and specifically described in the granting clauses of this Deed of Trust; and at any time and from time to time Trustor, on demand, will execute, acknowledge and deliver to Beneficiary any and all such further assurances, mortgages, deeds of trust, conveyances, assignments or other instruments as Beneficiary may reasonably require to further evidence, inform and perfect the provisions of this paragraph 56.

57. Adoption of Statutory Covenants by Reference. Where not inconsistent with the above, the following covenants, Nos. 1; 3; 6; 7 (a reasonable percentage); 8 and 9 of Nevada Revised Statute 107.030 are hereby adopted and made a part of this Deed of Trust.

58. Water Rights. Trustor covenants and agrees that, as soon as practicable after the date hereof, Trustor shall file, or shall cause to be filed, with the State Engineer of Nevada, and any other appropriate governmental authorities, all documentation necessary to establish of record Trustor's interest in all certificated water rights with respect to the property in which Trustor has an interest.

59. Counterparts. This Deed of Trust may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute but one and the same instrument which may be sufficiently evidenced by one counterpart, and any of the parties hereto may execute this Deed of Trust by signing any such counterpart.

60. Non-Recourse. Notwithstanding any provision contained in this Deed of Trust, the Note or any other Security Document, the (a) liability of Trustor to pay the Principal Amount, any interest thereon or any other sums evidenced or secured by the Deed of Trust or the other Security Documents shall be limited to the assets of Trustor (specifically excluding the assets of any member of Trustor or any shareholder or partner of any member of Trustor), (b) no member of Trustor or any shareholder or partner of any member of Trustor shall be liable for any liability under this Deed of Trust, the Note or any other Security Document, (c) no member of Trustor or any shareholder or partner of any member of Trustor shall be named as a party in any suit or other judicial proceeding of any kind or nature whatsoever brought against Trustor with respect to this Deed of Trust, the Note or any other Security Document and (d) no attachment, execution or other writ or process shall be sought, issued or levied upon any assets, property or funds of any of the members of Trustor or any shareholder or partner of any member of Trustor. Except as

provided in this section, Beneficiary shall not seek (1) any judgment for a deficiency or other monetary amount against the members of Trustor, any shareholder or partner of any member of Trustor, or their respective successors or assigns, in any action to enforce any right or remedy under this Deed of Trust or the other Security Documents, or (ii) any judgment on the Note except as may be necessary in any action brought under this Deed of Trust or the other Security Documents to recover against the Property or any other collateral for the Debt; provided that the foregoing provision shall not: (1) release or reduce the Debt evidenced by the Note, (2) impair the lien of this Deed of Trust or any of the liens or security interests granted under the other Security Documents, (3) constitute a waiver, release, or impairment of any obligation evidenced or secured by this Deed of Trust, the Note or any of the other Security Documents given to Beneficiary, (4) impair the right

of Beneficiary to name Trustor as a party defendant in any action or suit for judicial foreclosure and sale under this Deed of Trust, (5) Impair the right of Beneficiary to obtain the appointment of a receiver, or (6) Impair the enforcement of any assignment of leases and rents executed in connection herewith. IN WITNESS WHEREOF, Trustor has executed this instrument, intending to be legally bound, the day and year first above written.

TRUSTOR:

SILVER STATE LAND COMPANY LLC, a Delaware limited liability company

By: Western Water Company, a Delaware corporation, its managing member

By:

Peter Jensen  
President

By: Western Land Joint Venture, a Delaware general partnership, its managing member

By: The Morgan Stanley Real Estate Fund II, L.P., its general partner

By: MSREF II, L.P., its general partner

By: MSREF II, Inc., its general partner

By:

Name: RONALD R ROESSLER  
Title: VICE PRESIDENT

By: Morgan Stanley Real Estate Investors, L.P., its general partner

By: MSREF II, L.P., its general partner

By: MSREF II, Inc., its general partner

By:

Name: RONALD R ROESSLER  
Title: VICE PRESIDENT


(SIGNATURES CONTINUE ON THE NEXT PAGE)

of Beneficiary to name Trustor as a party defendant in any action or suit for judicial foreclosure and sale under this Deed of Trust, (5) impair the right of Beneficiary to obtain the appointment of a receiver, or (6) impair the enforcement of any assignment of leases and rents executed in connection herewith. IN WITNESS WHEREOF, Trustor has executed this instrument, intending to be legally bound, the day and year first above written.

TRUSTOR:

SILVER STATE LAND COMPANY LLC, a Delaware limited liability company

By: Western Water Company, a Delaware corporation, its managing member

By:  Peter Jensen  
President

By: Western Land Joint Venture, a Delaware general partnership, its managing member

By: The Morgan Stanley Real Estate Fund II, L.P., its general partner

By: MSREF II, L.P., its general partner

By: MSREF II, Inc., its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: Morgan Stanley Real Estate Investors, L.P., its general partner

By: MSREF II, L.P., its general partner

By: MSREF II, Inc., its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(SIGNATURES CONTINUE ON THE NEXT PAGE)

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NYMAIN02 Doc: 138854 8

COPY

Name: RONALD R ROESSLER  
Title: VICE PRESIDENT

By: *[Signature]*

By: MSREF II, Inc., its  
general partner

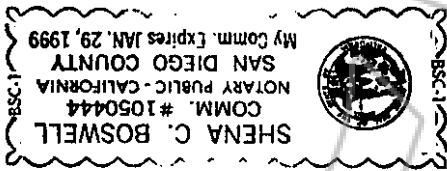
By: MSREF II, L.P., its general  
partner

By: MSREF II 892 Investors - B, L.P.,  
its general partner

Y

COOPER

My commission expires: 1-29-99

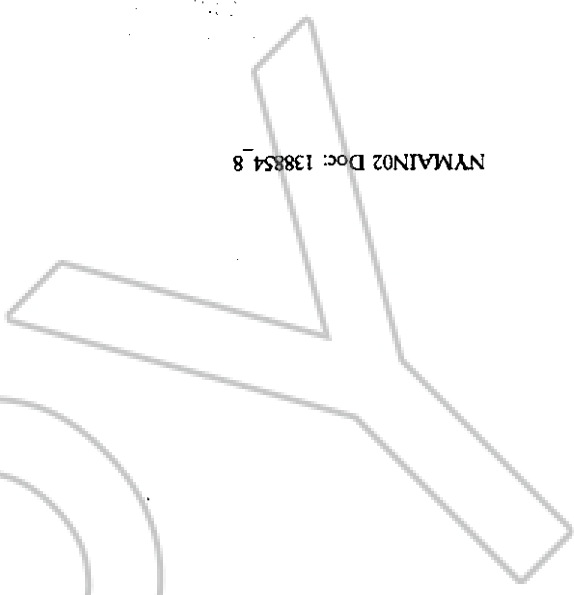


(Seal)

Shena C. Boswell  
Notary Public

This instrument was acknowledged before me on October 13, 1995, by Peter Jensen, as President of Western Water Company, a Delaware corporation, a managing member of Silver State Land Company LLC, a Delaware limited liability company, on behalf of said limited liability company.

STATE OF: California  
COUNTY OF: San Diego  
SS:



My commission expires: 5-15-97

ELANE M. RUST  
Notary Public, State of New York  
No. 01RUS011663  
Qualified in New York County  
Commission Expires May 15, 1997

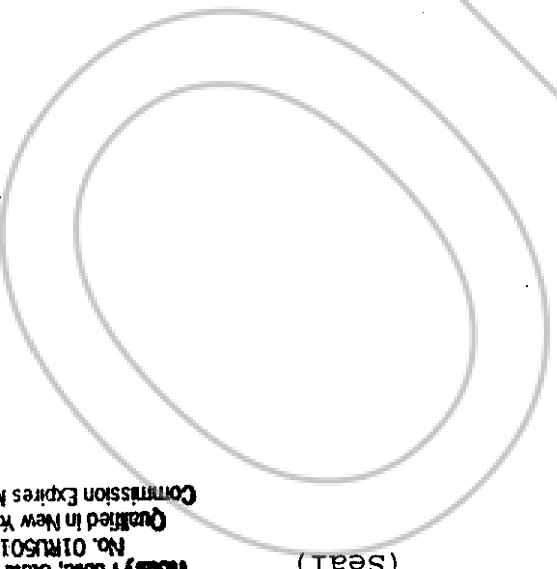
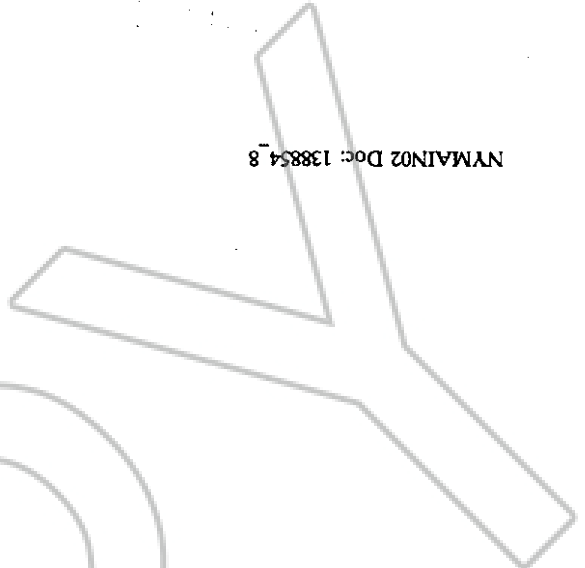
*Elane M. Rust*  
Notary Public

This instrument was acknowledged before me on October 13, 1995, by Ronald R. Roessler, as Vice President of MSREF II, Inc., the general partner of MSREF II, L.P., the general partner of The Morgan Stanley Real Estate Fund II, L.P., a general partner of Western Land Joint Venture, a Delaware general partnership, a managing member of Silver State Land Company LLC, a Delaware limited liability company, on behalf of said limited liability company.

STATE OF NEW YORK )  
                          ) SS:  
COUNTY OF NEW YORK )







My commission expires: 5-15-97

This instrument was acknowledged before me on October 13, 1995, by Ronald R. Roessler, as Vice President of MSRRF II, Inc., the general partner of MSRRF II, L.P., the general partner of MSRRF II 892 Investors - B, L.P., a general partner of Western Land Joint Venture, a Delaware general partnership, a managing member of Silver State Land Company LLC, a Delaware limited liability company, on behalf of said limited liability company.

*Ronald R. Roessler*  
Notary Public

BLANE M. RUST  
Notary Public, State of New York  
No. 01RUS011663  
Qualified in New York County  
Commission Expires May 15, 1997



STATE OF NEW YORK )  
COUNTY OF NEW YORK )  
SS: )

SEPTEMBER 18, 1995  
 17003888

# EXHIBIT "A"

## CHURCHILL COUNTY, NEVADA

ALL THOSE CERTAIN PARCELS OF LAND IN THE COUNTY OF CHURCHILL, STATE OF NEVADA, AS CONVEYED TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY BY THE FOLLOWING DEEDS:

Date Recorded:	Grantor:	Official Records Instrument No.:	ATSF Deed No.:
January 8, 1990	Santa Fe Pacific Realty Corporation	249820	50580
January 8, 1990	Santa Fe Pacific Realty Corporation	249819	50581
January 2, 1992	Catalus Development Corporation	264753	51065
January 2, 1992	Catalus Development Corporation	264754	61066
January 2, 1992	Catalus Development Corporation	264755	51087
January 2, 1992	Catalus Development Corporation	284756	51089
January 2, 1992	Catalus Development Corporation	264757	51090
January 2, 1992	Catalus Development Corporation	264758	51091

## LYON COUNTY, NEVADA

ALSO ALL THOSE CERTAIN PARCELS OF LAND IN THE COUNTY OF LYON, STATE OF NEVADA, AS CONVEYED TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY BY THE FOLLOWING DEEDS:

Date Recorded:	Grantor:	Official Records Instrument No.:	ATSF Deed No.:
January 8, 1990	Santa Fe Pacific Realty Corporation	BK 341 / Pg 112	50901

Exhibit Page 1 of 6 Pages

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EXHIBIT "A" continued

EUREKA COUNTY, NEVADA

ALSO ALL THOSE CERTAIN PARCELS OF LAND IN THE COUNTY OF EUREKA, STATE OF NEVADA, AS CONVEYED TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY BY THE FOLLOWING DEEDS:

Date Recorded:	Grantor:	Official Records Book / Page:	Deed No.:
February 25, 1991	Catebus Development Corporation	BK.221 / Pg.9	50778
January 12, 1990	Santa Fe Pacific Realty Corporation	BK.207 / Pg.116	50898
January 12, 1990	Santa Fe Pacific Realty Corporation	BK.207 / Pg.109	50899
February 4, 1992	Catebus Development Corporation	BK.231 / Pg.475	51093

EXCEPT ALL THOSE CERTAIN PARCELS OF LAND LYING IN THE COUNTY OF EUREKA, STATE OF NEVADA, AS CONVEYED TO THE FOLLOWING BY THE DEEDS LISTED AS FOLLOWS:

Date Recorded:	Grantee:	Official Records Book / Page:	Deed No.:
February 7, 1995	Santa Fe Pacific Gold Corporation	BK.281 / Pg.248	52078
May 19, 1995	Santa Fe Pacific Gold Corporation	BK.283 / Pg. 23	52167

ALSO EXCEPT A PARCEL OF LAND IN THE COUNTY OF EUREKA, STATE OF NEVADA, LYING IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 35, TOWNSHIP 32 NORTH, RANGE 51 EAST, MOUNT DIABLO MERIDIAN, BEING THAT PORTION OF LAND WITHIN SAID SECTION, NOW AND FOR MANY YEARS PAST, OCCUPIED BY THE "PALMSADE CEMETERY", AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT CORNER # 1 OF SAID PARCEL, THE WESTERLY FENCE CORNER OF THE DESCRIBED CEMETERY SITE, FROM WHICH THE X-SECTION CORNER COMMON TO SECTIONS 35 AND 36, OF SAID TOWNSHIP, BEARS S.50°44'E., 147.7 FEET; THENCE ALONG SAID FENCELINE N.34°51'E., 161.5 FEET TO A FENCE CORNER AT THE NORTHERLY CORNER OF SAID CEMETERY SITE; THENCE ALONG SAID FENCELINE N.67°38'E., 25.39 FEET TO A POINT ON THE EASTERLY SECTION LINE OF SAID SECTION 35; THENCE ALONG SAID SECTION LINE S.0°10'E., 190.17 FEET TO A POINT ON THE SOUTHWESTERLY FENCELINE OF SAID CEMETERY SITE; THENCE ALONG SAID FENCELINE N.58°04'W., 134.67 FEET TO CORNER #1, THE POINT OF BEGINNING FOR THE PARCEL HEREIN DESCRIBED.

THE "CEMETERY SITE" CONTAINS AN AREA OF 0.296 OF AN ACRE, MORE OR LESS.

EXHIBIT "A" continued

HUMBOLDT COUNTY, NEVADA

ALSO  
 ALL THOSE CERTAIN PARCELS OF LAND IN THE COUNTY OF HUMBOLDT, STATE OF NEVADA, AS CONVEYED TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY BY THE FOLLOWING DEEDS:

Date	Recorded:	Grantor :	Official Records	Book / Page :	Deed No. :
January 10, 1990		Santa Fe Pacific Realty Corporation	50571	BK.284 / Pg.459	
January 10, 1990		Santa Fe Pacific Realty Corporation	50572	BK.284 / Pg.470	
February 25, 1991		Catskill Development Corporation	50573	BK.298 / Pg.585	
February 25, 1991		Catskill Development Corporation	50574	BK.298 / Pg.584	
January 2, 1992		Catskill Development Corporation	51082	BK.307 / Pg.570	
January 2, 1992		Catskill Development Corporation	51084	BK.307 / Pg.571	
April 9, 1992		Catskill Development Corporation	51157	BK.310 / Pg.631	

EXCEPT ALL THOSE CERTAIN PARCELS OF LAND LYING IN THE COUNTY OF HUMBOLDT, STATE OF NEVADA, AS CONVEYED TO THE FOLLOWING BY THE DEEDS LISTED AS FOLLOWS:

Date	Recorded:	Grantor :	Official Records	Book / Page :	Deed No. :
January 10, 1990		Santa Fe Pacific Realty Corporation	50571	BK.284 / Pg.459	
January 10, 1990		Santa Fe Pacific Realty Corporation	50572	BK.284 / Pg.470	
February 25, 1991		Catskill Development Corporation	50573	BK.298 / Pg.585	
February 25, 1991		Catskill Development Corporation	50574	BK.298 / Pg.584	
January 2, 1992		Catskill Development Corporation	51082	BK.307 / Pg.570	
January 2, 1992		Catskill Development Corporation	51084	BK.307 / Pg.571	
April 9, 1992		Catskill Development Corporation	51157	BK.310 / Pg.631	
May 20, 1993		Western Rock Product, Inc.	51520	BK.322 / Pg.603	
July 13, 1993		Santa Fe Pacific Minerals Corporation	51719	BK.323 / Pg.588	
July 24, 1995		Santa Fe Pacific Gold Corporation	52167	BK.343 / Pg.805	
June 13, 1995		Santa Fe Pacific Gold Corporation	52168	BK.343 / Pg.204	

September 19, 1995

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September 19, 1995

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EXHIBIT "A" continued

LANDER COUNTY, NEVADA

ALSO ALL THOSE CERTAIN PARCELS OF LAND IN THE COUNTY OF LANDER, STATE OF NEVADA, AS CONVEYED TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY BY THE FOLLOWING DEEDS:

Date	Recorded:	Grantor:	Official Records	Book / Page:	Deed No.:
February 25, 1991	50775	Catalus Development Corporation	ATSF	BK 358 / Pg. 412	50775
February 25, 1991	50776	Catalus Development Corporation	ATSF	BK 356 / Pg. 405	50776
January 11, 1990	50900	Santa Fe Pacific Realty Corporation	ATSF	BK 341 / Pg. 115	50900
January 11, 1990	50901	Santa Fe Pacific Realty Corporation	ATSF	BK 341 / Pg. 112	50901
January 3, 1992	51092	Catalus Development Corporation	ATSF	BK 366 / Pg. 101	51092
April 26, 1992	51156	Catalus Development Corporation	ATSF	BK 370 / Pg. 674	51156

EXCEPT ALL THOSE CERTAIN PARCELS OF LAND LYING IN THE COUNTY OF LANDER, STATE OF NEVADA, AS CONVEYED TO THE FOLLOWING BY THE DEEDS LISTED AS FOLLOWS:

Date	Recorded:	Grantor:	Official Records	Book / Page:	Deed No.:
August 16, 1993	51719	Santa Fe Pacific Minerals Corporation	ATSF	BK 397 / Pg. 656	51719
June 2, 1995	52167	Santa Fe Pacific Gold Corporation	ATSF	BK 417 / Pg. 632	52167
May 24, 1995	52168	Santa Fe Pacific Gold Corporation	ATSF	BK 417 / Pg. 460	52168

STOREY COUNTY, NEVADA

ALSO ALL THOSE CERTAIN PARCELS OF LAND IN THE COUNTY OF STOREY, STATE OF NEVADA, AS CONVEYED TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY BY THE FOLLOWING DEEDS:

Date	Recorded:	Grantor:	Official Records	Book / Page:	Deed No.:
January 8, 1990	50578	Santa Fe Pacific Realty Corporation	ATSF	BK 75 / Pg. 166	50578

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BOOK 288 PAGE 154

EXHIBIT 'A' continued

PERSHING COUNTY, NEVADA

ALSO ALL THOSE CERTAIN PARCELS OF LAND IN THE COUNTY OF PERSHING, STATE OF NEVADA, AS CONVEYED TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY BY THE FOLLOWING DEEDS:

Date	Recorded:	Grantor:	Official Records	ATSF
			BOOK / PAGE :	Deed No. :
January 1, 1990		Santa Fe Pacific Realty Corporation	BK.240 / Pg.248	50558
January 1, 1990		Santa Fe Pacific Realty Corporation	BK.240 / Pg.410	50589
January 1, 1990		Santa Fe Pacific Realty Corporation	BK.240 / Pg.415	50570
February 25, 1991		Catalus Development Corporation	BK.253 / Pg. 1	50770
February 25, 1991		Catalus Development Corporation	BK.253 / Pg. 32	50777
January 2, 1992		Catalus Development Corporation	BK.261 / Pg.336	51079
January 2, 1992		Catalus Development Corporation	BK.261 / Pg.340	61080
January 2, 1992		Catalus Development Corporation	BK.261 / Pg.344	51081
April 6, 1992		Catalus Development Corporation	BK.263 / Pg.202	51159

EXCEPT ALL THOSE CERTAIN PARCELS OF LAND LYING IN THE COUNTY OF PERSHING, STATE OF NEVADA, AS CONVEYED TO THE FOLLOWING BY THE DEEDS LISTED AS FOLLOWS:

Date	Recorded:	Grantor:	Official Records	ATSF
			BOOK / PAGE :	Deed No. :
June 21, 1993		Western Rock Product, Inc.	BK.273 / Pg.472	51920

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September 18, 1993

EXHIBIT "A" continued

ELKO COUNTY, NEVADA

ALL THOSE CERTAIN PARCELS OF LAND IN THE COUNTY OF ELKO, STATE OF NEVADA, AS CONVEYED TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY BY THE FOLLOWING DEEDS:

Date	Recorded:	Grantor:	Official Records	Book / Page:	Deed No.:
February 25, 1981	February 25, 1981	Catelus Development Corporation	50779	BK746 / Pg.862	
February 25, 1991	February 25, 1991	Catelus Development Corporation	50780	BK746 / Pg.851	
January 11, 1980	January 11, 1980	Santa Fe Pacific Realty Corporation	50802	BK711 / Pg.82	
January 11, 1980	January 11, 1980	Santa Fe Pacific Realty Corporation	50803	BK711 / Pg.88	
January 31, 1992	January 31, 1992	Catelus Development Corporation	51094	BK774 / Pg.448	
April 6, 1992	April 6, 1992	Catelus Development Corporation	51158	BK780 / Pg.10	

WASHOE COUNTY, NEVADA

ALSO ALL THOSE CERTAIN PARCELS OF LAND IN THE COUNTY OF WASHOE, STATE OF NEVADA, AS CONVEYED TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY BY THE FOLLOWING DEEDS:

Date	Recorded:	Grantor:	Official Records	Book / Page:	Deed No.:
January 19, 1981	January 19, 1981	Santa Fe Pacific Realty Corporation	50581	BK3019 / Pg.760	
February 22, 1991	February 22, 1991	Catelus Development Corporation	50771	BK3216 / Pg.531	
February 22, 1991	February 22, 1991	Catelus Development Corporation	50772	BK3216 / Pg.628	
January 3, 1992	January 3, 1992	Catelus Development Corporation	51216	BK3391 / Pg.840	

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OFFICIAL RECORDS  
RECORDED AT THE REQUEST OF  
Mortenson, M.P.

95 OCT 19 AM 9:24

EUREKA COUNTY NEVADA  
M.N. REBAL/EAII, RECORDER  
FILE NO.

159628

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