

165808

Submitted for recordation by, and when recorded, return to:



National Trust and Savings Association

Branch Credit Risk Mgmt. #13761
 Address 100 Ellinwood Way, Ste. 250
 City Pleasant Hill, CA 94523
 State
 Zip ATTN: Alan Smith

Loan #:

Reference #

Space above this line for Recorder's Use

FICTITIOUS DEED OF TRUST

This Deed of Trust is made on _____ by _____

(collectively and individually "Trustor"); Equitable Deed Company ("Trustee"); and the beneficiary, Bank of America NT&SA, a national banking association ("Bank"). Trustee is a subsidiary of Bank. Any non-titleholder signs below as Trustor solely for the purpose of subjecting any community property interest in the property described below to this Deed of Trust. The words "I," "me," and "my" in this Deed of Trust refer to the Trustor, whether one or more.

Bank and I agree:

1. **Property Security.** For the purpose of securing the obligations described below, I irrevocably grant, convey, transfer and assign to Trustee, in trust with power of sale, the property located in Eureka County, Nevada described as follows:

**THIS IS A FICTITIOUS DEED OF TRUST PURSUANT TO
 NEVADA REVISED STATUTES**

with the street address: _____ and with Parcel No. _____ and including all improvements and fixtures now or later erected on the property, and all easements, rights, appurtenances and fixtures now or later a part of or related to the above described property (collectively the "Property").

This Deed of Trust secures (a) all of the obligations of the borrowers under the Disclosure and Loan Agreement dated _____, and naming _____

as borrowers, in the original principal sum of \$ _____ with interest thereon, as well as any modifications, extensions and renewals thereof (collectively, the "Loan Agreement"), (b) the repayment of all other sums, with interest thereon, advanced in accordance with this Deed of Trust, and (c) the performance of each obligation in this Deed of Trust.

2. **Payment of Principal and Interest.** I will pay or cause to be paid all obligations evidenced by the Loan Agreement as provided therein.

3. **Insurance.** I will keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Bank requires insurance. I will maintain this insurance in the amounts and for the periods that Bank requires. I am free to buy this insurance from any insurance company authorized to do business in Nevada subject to Bank's right to refuse any insurance company for reasonable cause. All such insurance policies and renewals must be acceptable to Bank. If I fail to maintain coverage described above, Bank may, at its option, obtain coverage to protect Bank's rights in the Property in accordance with Paragraph 7.

All insurance policies and renewals obtained by me related to the Property, including those not required by Bank, together with all compensation, awards, damages, rights of action and proceeds derived therefrom are hereby assigned to Bank and must name Bank as loss payee under a standard mortgagee loss payee clause. Bank will have the right to hold the policies and renewals. If Bank requires, I will promptly give to Bank all receipts of paid premiums and renewal notices. In the event of loss, I will give prompt notice to the insurance carrier and Bank. I authorize Bank to make proof of loss if not made promptly by me.

At the discretion of Bank, the amount collected under any insurance policy attributable to damage to the Property from any insured peril shall be received, controlled and disbursed by Bank. Unless Bank and I otherwise agree in writing, all insurance proceeds from any insurance policy obtained by me, including those not required by Bank will be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Bank's security interest is not lessened. If the restoration or repair is not economically feasible or Bank's security would be lessened, the insurance proceeds will be applied to the sums secured by this Deed of Trust, whether or not then due, with any excess paid to me. If I abandon the Property, or do not answer a notice from Bank that the insurance carrier has offered to settle a claim within 30 days, then Bank may collect the insurance proceeds. Bank may use the proceeds to repair or restore the Property or to pay sums secured by this Deed of Trust, whether or not then due. The 30-day period will begin when the notice is given. Unless Bank and I otherwise agree in writing, any application of proceeds to principal will not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If the Property is acquired by Bank under this Deed of Trust, my right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition will pass to Bank to the extent of the sums secured by this Deed of Trust immediately prior to the acquisition.

4. Property Maintenance. I will keep and maintain the Property in good repair. If this Deed of Trust is on a leasehold, I will comply with the terms of any lease. If this Deed of Trust is on a unit in a condominium or planned unit development ("PUD"), I will perform all of my obligations under the Covenants, Conditions and Restrictions (the "Declaration"), Articles of Incorporation, Trust Instrument or any equivalent documents which create the homeowners' association or equivalent entity owning or managing the common areas and facilities of the condominium or PUD (the "Owners' Association") and any bylaws or other rules or regulations of the Owners' Association. I will promptly pay, when due, all dues and assessments imposed by the Owners' Association. In the event of a distribution of hazard insurance proceeds, in lieu of restoration or repair following a loss to the Property or to common areas and facilities of the condominium or PUD, any proceeds payable to me are hereby assigned and shall be paid to Bank, and Bank, at its option, may apply such proceeds to restoration or repair of the Property or to sums secured by this Deed of Trust. I will take such actions as may be reasonable to insure the Owners' Association maintains a public liability insurance policy acceptable in form, amount and extent of coverage to Bank. I will not, except after notice to Bank, and with Bank's written consent, either partition or subdivide the Property or consent to: (a) the abandonment or termination of the condominium or PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of taking by condemnation or eminent domain; (b) any amendment to any provision of the Declaration or other documents creating or governing the Owners' Association if the provision is for the express benefit of Bank; (c) termination of professional management and assumption of self-management of the Owners' Association; or (d) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners' Association unacceptable to Bank.

5. Environmental Responsibilities. To my knowledge, there has been no disposal, discharge, deposit, injection, dumping, leaking, spilling, placing or escape of any toxic or hazardous substance, waste, pollutant or contaminant (as these items are defined under federal and state laws) on, in, under, or from the Property, and there is, and will be, no facility in, or on the Property which is to be used for the treatment, storage or disposal of any toxic or hazardous substance, waste, pollutant or contaminant (as defined under federal and state laws). I shall indemnify and hold Bank harmless from and against all claims, liabilities, proceedings, suits, losses, damages (including without limitation punitive damages), judgments and environmental response and clean-up costs, fines, penalties and expense (including without limitation reasonable attorneys' fees, costs and expenses incurred in investigating and defending against the assertion of any such liabilities, regardless of merit), which may be asserted against, sustained, suffered or incurred by Bank because of the existence of any such toxic or hazardous substance, waste, pollutant or contaminant. This indemnity shall include, without limitation, claims asserted by any federal or state governmental agency or any private party and shall continue in effect following any foreclosure, release and reconveyance of this Deed of Trust or other realization upon the security of Bank.

6. Prior Liens. I will perform all of my obligations under any mortgage, deed of trust, or other security instrument which creates a lien having priority over the lien of this Deed of Trust. I will pay all taxes, assessments and charges resulting from any lien having priority over this Deed of Trust, and leasehold payments or ground rents, if any.

7. Protection of Bank's Security Interest. If I fail to perform my obligations under this Deed of Trust, or if any action or proceeding adversely affects Bank's interest in the Property, Bank may, at Bank's option, take any action reasonably necessary (including, without limitation, paying expenses and attorneys' fees) to perform my obligations or to protect Bank's interest. Any sums that Bank pays in accordance with this Paragraph will be an additional indebtedness secured by this Deed of Trust. These payments will be subject to finance charge in accordance with the variable rate terms of the Loan Agreement and will be due and payable by me immediately upon Bank's demand.

8. Inspection. Bank may enter and inspect the Property, after giving me reasonable prior notice.

9. Condemnation. I assign to Bank the proceeds of any award or claim for damages arising from any condemnation or taking of all or part of the Property, (and if the Property is a unit in a condominium or PUD, the common areas and facilities, or any part thereof), or for any conveyance instead of condemnation. The proceeds will be paid to Bank.

10. Not Released from Liability; Forbearance by Bank not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Bank to me, any borrower under the Loan Agreement or any successor in interest shall not operate to release from liability me, or any borrower under the Loan Agreement or any successors in interest. Bank shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by me and my successors in interest. Any forbearance by Bank in exercising any right or remedy hereunder, or otherwise afforded by law, shall not be a waiver of, or preclude the exercise of, any such right or remedy.

11. Successors in Interest; Joint and Individual Liability; Co-Signers. This Deed of Trust will bind and benefit the successors in interest of Bank and me, subject to Paragraph 14 below. If more than one Trustor is signing this Deed of Trust, my obligations will be joint and individual. Any Trustor who is not a borrower under the Loan Agreement is: (a) signing this Deed of Trust only to grant and convey that Trustor's interest in the Property to Trustee according to this Deed of Trust; (b) not personally liable for obligations under the Loan Agreement; and (c) agreeing that Bank and a Trustor who is a borrower under the Loan Agreement may extend, modify, forbear, or make any other agreements related to this Deed of Trust without that Trustor's consent, and without releasing that Trustor from this Deed of Trust or any extension or modification of this Deed of Trust.

12. Beneficiary Statement; Payoff Demand Statement. Bank may collect a fee not to exceed the maximum amount permitted by law for furnishing a beneficiary statement, payoff demand statement, or any similar statement.

13. No Release. I will not be released from liability under this Deed of Trust until Trustee, acting with Bank's authority, executes and

records a deed of reconveyance that releases me from this obligation under the Deed of Trust.

14. Property Transfer; Due-On-Sale. If I sell or transfer all or part of the Property or any interest in the Property (or if my beneficial interest in this Property is altered in any way) without Bank's prior written consent, Bank may, at Bank's option, declare all sums secured by this Deed of Trust to be immediately due and payable.

15. Default. The occurrence of any of the following will be deemed to be an event of default: (a) I engage in fraud or material misrepresentation in connection with the Loan Agreement or the account established pursuant to the Loan Agreement; (b) I do not meet my repayment obligations in the Loan Agreement; or (c) I act or fail to act in a way that adversely affects the Property or any of Bank's right in the Property, including, but not limited to, the sale or transfer of the Property without Bank's prior written consent, unless prohibited by law. If I commit an event of default, at Bank's option, Bank may require immediate payment in full of all sums secured by this Deed of Trust without demand and may invoke the power of sale and any other remedies permitted by law. Bank shall be entitled to collect all costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorneys' fees (including allocated cost of Bank's salaried attorneys, to the extent permitted by law). If Bank invokes the power of sale, Bank shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Bank's election to have the Property sold and shall have the notice recorded in each county in which the Property or some part thereof is located. Bank or Trustee shall give notice of sale in the manner prescribed by law. Trustee shall give public notice of sale to the persons and in the manner prescribed by law. After the lapse of time required by law, Trustee, without demand on me, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Bank or Bank's designee may purchase the Property at any sale. Trustee shall deliver to the purchaser trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the trustee's deed shall be *prima facie* evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order; (a) to all reasonable costs and expense of the sale, including but not limited to, reasonable trustee's and attorneys' fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any to the person or persons legally entitled thereto.

16. Substitution of Trustee. At Bank's option, Bank may from time to time appoint a substitute trustee to replace Trustee by executing an instrument and recording it with the Recorder in the county stated above. This provision will supersede any other provision for trustee substitution.

17. Request for Notices. Bank requests that copies of notice of foreclosure from the holder of any lien which has priority over this Deed of Trust be sent to Bank's address as set forth on page one of this Deed of Trust. Any notice to me provided for in this Deed of Trust shall be given by delivering it by first class mail unless law requires use of another method. If a mailing address appears below for any Trustor, Bank's notices to that Trustor will be mailed to the address shown. Otherwise, notices will be sent to Trustor at the Property address shown on the first page of this Deed of Trust or at such other address as I shall designate by written notice to Bank. Any notice to Bank shall be given by first class mail to Bank's address on the first page of this Deed of Trust or any other address Bank designates by notice to me. Any notice provided for in this Deed of Trust shall be deemed to have been given me or Bank when given as provided in this paragraph.

18. Leasehold. If this Deed of Trust is on a leasehold; I shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease creating said estate and interest, and I shall not, without the express written consent of Bank, alter or amend said ground lease. Trustor covenants and agrees that there shall not be a merger of the ground lease, or the leasehold estate created thereby, with the fee estate covered by the ground lease by reason of said leasehold estate or said fee estate, or any part of either, coming into common ownership, unless Bank shall consent in writing to such merger; if I shall acquire such fee estate, then this Deed of Trust shall simultaneously and without further action be spread so as to become a lien on such fee estate.

19. Governing Law; Enforceability. This Deed of Trust will be governed by federal law and Nevada law. In the event that any provision or clause of this Deed of Trust or the Loan Agreement conflict with law, such conflict shall not affect other provisions of the Deed of Trust or the Loan Agreement which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Loan Agreement are declared to be severable. Bank's failure to exercise any right or remedy under this Deed of Trust will not waive Bank's rights in the future.

20. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Bank shall request Trustee to reconvey the Property and also shall return this Deed of Trust and Loan Agreement evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of reconveyance and recordation, if any.

Trustor requests that a copy of ANY NOTICE OF DEFAULT AND ANY NOTICE OF SALE under this Deed of Trust be mailed to Trustor at the Trustor's address shown below, or if no address is shown, then at the address of the Property.

Signature

Mailing Address for Notices:

Street

City and State

GENERAL ACKNOWLEDGMENT

State of Nevada

County of _____

On this _____ day of _____, _____, personally appeared before me, a Notary Public (or judge or other authorized person, as the case may be) in, and for said County and state,

known (or proved) to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he/she/they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Notary Public

GENERAL ACKNOWLEDGMENT

State of Nevada

County of _____

On this _____ day of _____, _____, personally appeared before me, a Notary Public (or judge or other authorized person, as the case may be) in, and for said County and state,

known (or proved) to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he/she/they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Notary Public

BOOK 304 PAGE 457
OFFICIAL RECORDS
RECORDED AT THE REQUEST OF
United Title
96 DEC 24 AM 11:47
EUREKA COUNTY NEVADA
M.N. REBALEATI, RECORDER
FILE NO. FEES 10.00

165808