

The undersigned confirms that no Social Security Number is contained herein
Assessor's Parcel Number
007-395-17

Mail Tax Statements To:
Evergreen Note Servicing
6121 Lakeside Dr #150,
Reno, NV 89511

When Recorded Mail To:
Capella Mortgage Corp.
3765 E. Sunset Road #B9
Las Vegas, NV 89120
License #456/NMLS 372157

DOC# 233593
08/08/2017 01:15PM

Official Record

Requested By
DOCUMENT PROCESSING SOLUTIONS INC.

Eureka County - NV

Lisa Hoehne - Recorder

Page: 1 of 22 Fee: \$35.00

Recorded By CH RPTT: \$0.00

Book- 0604 Page- 0257



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First Deed of Trust and Assignment of Rents

This First Deed of Trust and Assignment of Rents (this "*Deed of Trust*") is made as of July 31, 2017 by Cynthia Lynne Garcia, An Unmarried Woman (*Tristor*), whose address is 1280 Crosswater Dr, Reno, NV 89523 to Fidelity National Title Agency ("*Trustee*"), whose address is 2450 St Rose Pkwy., Ste. 150, Henderson, NV 89074 in favor of and for the benefit of THE BENEFICIARIES LISTED ON EXHIBIT B ("*Beneficiary(ies)*") whose address is c/o Evergreen Note Servicing, 6121 Lakeside Dr #150, Reno, NV 89511.

See Exhibit "B" attached for BENEFICIARY(IES).

WITNESSETH: That whereas Tristor has borrowed and received from Beneficiary in lawful money of the United States, the sum of **Seventy Five Thousand Dollars and Zero Cents (\$75,000.00)** for the Refinance of 579 El Gato, Eureka, NV 89316, APN 007-395-17 and has agreed to repay the same, with interest, to Beneficiary in lawful money of the United States according to the terms of a Promissory Note Secured by Deed of Trust and Assignment of Rents of even date herewith, executed and delivered therefore by Tristor;

WITNESSETH: That Tristor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO TRUSTEE IN TRUST WITH POWER OF SALE, an undivided 100% interest in that property in [Clark County], Nevada, described as:

See Exhibit "A" attached for Legal Description

Trustor grants, bargains, sells, assigns, transfers, and pledges the real property, described on Exhibit A, attached hereto and incorporated herein by reference, to Trustee in trust, with power of sale for the benefit of Beneficiary, to have and to hold upon the trusts, covenants and agreements hereinafter set forth.

TOGETHER WITH: (a) All buildings, structures and all other improvements that are, or that may be hereafter, erected or placed thereon or therein; (b) all interests of Trustor in and to all inventory, equipment, fixtures and other goods now or in the future located thereon or therein or otherwise affixed or attached to or installed in said real property, including furniture, furnishings, machinery, appliances, generators, boilers, furnaces, water tanks, heating, ventilating and air conditioning equipment, and building materials and supplies, and all accessories, additions, parts, proceeds, products, repairs, replacements and substitutions of or to any of such property; (c) all water rights and rights to the use of water that are now or that may be hereafter used in connection with the said real property or any part thereof and any improvements or appurtenances thereto; (d) any and all other rights pertaining or appurtenant, including, without limitation, all development rights and mineral rights and easements and right-of-way now owned or hereafter acquired which are used in connection with any portion of the said real property or as a means of ingress to or egress from said real property, and the interests of Trustor herein; (e) subject to the present assignment of rents which is hereinafter made to Beneficiary: (i) the tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining, and the rents, issues, income revenues, royalties and profits thereof, and (ii) Trustor's interest as lessor in and to all leases of said real property, or any part thereof, now existing or hereafter made, including all modifications, extensions and renewals thereof, provided that any purchaser at foreclosure of the real property granted hereunder shall be entitled, at his election, to terminate or enforce any lease of the said real property, or any part thereof, which is hereinafter entered into, modified, extended or renewed; (f) all the estate, right, title, property, possession, interest or other claim or demand, in law or in equity, which Trustor now has or may hereafter acquire, in or to the said real property, or any part thereof, with appurtenances; (g) any interest of Trustor as tenant under any leases of such real property, now or hereafter executed; (h) Trustor's interest in and to all permits, approvals and other government authorizations, plans and specifications, agreements with contractors, subcontractors, suppliers, managers and supervisors, architects and engineers, warranties, indemnities and insurance policies, take-out, refinancing and other loan commitments, claims, awards and settlements relating to or arising from any insurance or loss of, damage to, trespass on, or taking, condemnation or public use of any said real property, license agreements, purchase and sale agreements and options, sale proceeds, escrow proceeds, deposits, and rights to payment; and (i) any and all other rights pertaining to or appertaining to the said real property, and the interests of Trustor



therein. The real property together with the rights and interests of Trustor described herein above shall hereinafter collectively be referred to as the "*Property*".

FOR THE PURPOSE OF SECURING:

- A. Payment when due of the principal sum as listed above and as may be adjusted herein, together with interest thereon, according to the terms of that certain Promissory Note Secured by Deed of Trust, of even date herewith between Trustor, as Borrower, and Beneficiary, as holder, payable to Beneficiary according to the tenor and effect of said secured promissory note and all renewals, extensions, modifications, amendments and substitutions of, or for, said secured promissory note or notes (hereinafter collectively referred to as the "*Note*").
- B. The expenses and costs incurred or paid by Beneficiary in the preservation and enforcement of the rights and remedies of Beneficiary and the duties and liabilities of Trustor hereunder, including, but not by way of limitation, attorneys' fees, court costs, witness fees, expert witness fees, collection costs, and costs and expenses paid by Beneficiary in performing for Trustor's account any obligation of said Trustor under this instrument or under any obligation secured hereby.
- C. Payment of additional sums and interest thereon which may hereafter be loaned to Trustor when evidenced by a promissory note or notes which recite that the same is secured by this Deed of Trust.
- D. Performance of every obligation, covenant, agreement and warranty of Trustor contained in this Deed of Trust.
- E. Performance of each and every term, provision, covenant and condition contained in any guaranty agreement, purchase agreement, security agreement, pledge agreement or any other document or instrument executed by Trustor in favor of Beneficiary relating to the loan evidenced by the Note hereby secured (the Note together with any such agreement, document or instrument shall hereinafter collectively be referred to as the "*Loan Documents*").

AND IT IS FURTHER PROVIDED THAT:

1. ***Compliance with Laws; Protection of Property from Adverse Claims.*** Trustor shall not commit, suffer or permit any act to be done, or condition to exist, on the Property which violates or is prohibited by any law, statute, code, act, ordinance, order, judgment, decree, injunction, rule, regulation, permit, license, authorization, direction or requirement of any government or subdivision thereof, whether it be federal, state, county or municipal, which is applicable to the Property, or any part thereof, now or at any time hereafter. The requirements set forth by this Section 1 are hereinafter collectively referred to as the "*Legal Requirements*". In the event of any suit, action or proceeding affecting the Property, or any part thereof or Trustor's title thereto or interests therein, or if any adverse claim for or against the Property or any part thereof be made or asserted, Trustor will appear in, oppose and defend any such suit, action, proceeding, claim or related matter, and will pay all costs and damages and protect the



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Property against any judgments, liens, encumbrances or other adverse claim arising therefrom.

2. ***Repair and Maintenance.*** Trustor agrees to properly care for and keep the Property in first class condition, order and repair; to care for, protect and repair all buildings and improvements situate thereon; not to remove or demolish any buildings or other improvements situate thereon; not to remove, materially alter or demolish any buildings or improvements damaged or destroyed thereon; to complete in a good workmanlike manner any building or other improvement which may be constructed thereon; and to pay, when due, all claims for labor performed and for materials furnished therefore; and otherwise to protect and preserve the same; to comply with all Legal Requirements having application to any alterations or improvements made thereon; not to commit or permit any waste or deterioration of said buildings and improvements or of said Property; and to do any other act or acts all in a timely and proper manner, which, from the character or use of the Property may be reasonably necessary to maintain the Property in a first-class condition, the specific enumerations herein not excluding the general.

3. ***Environmental Compliance.***

a. As used herein, the term "***Hazardous Substances***" shall mean any or all of the following: (i) any and all hazardous substances, hazardous materials, toxic substances or solid waste as defined in the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Resource Conservation Act of 1976, as amended, and the Hazardous Materials Transportation Act, as amended, the Resource Conservation and Recovery Act, as amended, or any other Legal Requirement related to hazardous substances and the regulations promulgated thereunder; (ii) any substance or materials listed as hazardous or toxic in the United States Department of Transportation Table, by the Environmental Protection Agency or any successor agency or under any Federal, state or local laws or regulations; (iii) any asbestos, poly-chlorinated biphenyls, urea formaldehyde foam, explosives or radioactive waste; or (iv) any other chemical, material or substance which is not classified as hazardous or toxic but exposure to which is prohibited, limited or regulated by any Federal, state, local or other governmental authority having jurisdiction over the Property.

b. Trustor shall comply with any and all Legal Requirements regarding the presence or removal of Hazardous Substances on the Property, shall pay immediately, when due, the costs of removal from the Property of any such Hazardous Substances which are required to be removed pursuant to any Legal Requirement and shall keep the Property free of any lien which may arise pursuant to such Legal Requirements. The Trustor shall not, and shall not permit any person or entity to release, discharge, or dispose of any Hazardous Substances on the Property except in compliance with all Legal Requirements and, if the same shall exist, Trustor shall immediately remove or cause to be removed from the Property such



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Hazardous Substances to the extent required to be removed pursuant to any Legal Requirement.

4. **Taxes.**

- a. Trustor agrees to pay, at least ten (10) days before delinquency: (i) all taxes and assessments, of any kind or nature, which are assessed against or affect the Property or any part thereof ("*Impositions*"); and (ii) all obligations which are represented, evidenced or secured by liens, encumbrances, charges and/or claims on said Property, or any part thereof, which appear to have priority over the lien of this Deed of Trust ("*Senior Encumbrances*").
- b. In the event that Trustor fails to make any payment required by Section 4(a), within the time periods required therein, Beneficiary may pay the same without demand or notice (in which case Beneficiary shall be the sole judge of the legality, validity and/or priority of the obligation so paid and of the amount required to be paid).

5. **Insurance.** Trustor agrees to keep the Property, and all buildings and/or improvements which are now or hereafter ever located on the Property, insured by such policy or policies of insurance as may be reasonably satisfactory to Beneficiary, providing coverage against loss by fire, earthquake, flood and/or hazard, which policy(ies) shall have extended coverage endorsements and shall be issued by company(ies) authorized to issue such policy(ies) in the State of Nevada. Said insurance shall provide for at least thirty (30) days advance written notice to Beneficiary prior to cancellation and provide coverage in such sum or sums as shall equal the current fair market value of buildings and improvements on the Property, or the full replacement value of such buildings and/or improvements, whichever is greater (such policies shall not contain a co-insurance provision whereby Trustor becomes a co-insurer in the event of loss). The policy or policies of said insurance shall be delivered to Beneficiary, as further security, and in default hereof, Beneficiary may procure such insurance, and expend such sum or sums therefor as Beneficiary shall deem necessary. Said insurance shall provide for any loss to be payable to Beneficiary, and any amount collected by Trustor with respect to an insurance or other claim shall be delivered immediately to Beneficiary. The amount collected by Trustor or Beneficiary under any such insurance policy may be applied by Beneficiary to any unsatisfied portion of the indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary, the entire amount so collected, or any part thereof, may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or under the Note, or invalidate any act done pursuant to any such notice. Upon the occurrence and during the continuance of an Event of Default, Beneficiary shall have the sole right to settle, compromise or adjust any insurance or other claim in such manner as Beneficiary may determine, and for this purpose, Beneficiary may, in its own name or in the name of Trustor, take such action as Beneficiary deems appropriate.



6. **Impound Accounts.** If required by Beneficiary, Trustor shall pay to Beneficiary, on the day of each calendar month that installment or interest payments are due under the Note secured hereby, an amount, to be estimated by Beneficiary, which will be sufficient to provide for payment, at least thirty (30) days prior to the applicable due date(s), of one or more (as required by Beneficiary) of the following: (i) the Impositions which are required to be paid under Section 4; (ii) the obligations which are represented, evidenced or secured by Senior Encumbrances and which are required to be paid under Section 4; and/or (iii) the annual premiums necessary to maintain the insurance coverage required by Section 5. Amounts held by Beneficiary hereunder shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Beneficiary, and no interest shall be payable in respect thereof. Upon demand of the Beneficiary, Trustor agrees to deliver to Beneficiary such additional monies as are necessary to make up any deficiencies in the amounts necessary to enable Beneficiary to pay such Impositions, obligations which are represented, evidenced or secured by Senior Encumbrances and/or insurance premiums. Upon occurrence of an Event of Default as set forth in Section 13, the Beneficiary may apply to reduction of the sums secured hereby, in such manner as Beneficiary shall determine, any amount remaining to the Beneficiary's credit hereunder.

7. **Assignment of Rents and Condemnation Proceeds.**

a. Trustor hereby irrevocably and absolutely assigns and transfers to Beneficiary, all rents, issues, income, revenues, royalties and profits derived from the Property, or any business activity conducted thereon, and each and every part thereof, including all present and future leases and rental agreements, reserving unto Trustor a license to collect such rents, issues, income, revenue, royalties and profits prior to written notice to Trustor of any Event of Default, as defined by Section 13. Subsequent to such an Event of Default, and written notice to Trustor thereof, any rents, issues, profits and income, including those past due, unpaid or undetermined, shall be collected by Beneficiary or its agent, and shall be applied, less costs and expenses of operation and collection, including reasonable attorneys' fees and Collection Costs payable under the Note, to any indebtedness and/or obligation secured hereby, and in such order as Beneficiary shall determine. Rights assigned to Beneficiary under this Section 7 may be enforced by Beneficiary without regard to the adequacy of the security hereof or the solvency of Trustor by any one or more of the following methods: (i) appointment of a receiver; (ii) Beneficiary's taking possession of the Property; (iii) Beneficiary's collecting any monies payable under leases or rental agreements directly from the parties obligated for payment; (iv) injunctions; and (v) any other method permitted by law. The collection of such rents, issues and profits and income, and the application thereof as aforesaid, shall not cure or constitute a waiver of any default or notice of default hereunder or invalidate any act done pursuant to such notice. Trustor and Beneficiary intend that this assignment shall



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be a present, absolute and unconditional assignment, not an assignment for additional security only, and shall, immediately upon the execution hereof, subject to the license granted above, give Beneficiary, and its agent, the right to collect the rents, issues, profits and income and to apply them as aforesaid. Nothing contained herein, nor any collection of rents, issues, profits and income by Beneficiary, or its agent, or a receiver, shall be construed to make Beneficiary a *Mortgagee-in-Possession* of the Property so long as Beneficiary has not itself entered into actual possession of the Property or shall be construed to be an assumption of liability by Beneficiary under, or a subordination of, the lien of this Deed of Trust, to any tenancy, lease or option. Trustee agrees to provide Beneficiary with updated leases within thirty (30) days of any request by Beneficiary.

- b. Any award of damages in connection with any condemnation for public use of, or injury to the Property, or any part thereof, is hereby assigned and shall be paid to Beneficiary, who may apply or release such moneys received by Beneficiary in the same manner and with the same effect as herein provided for disposition of proceeds of insurance.

8. Performance by Trustee or Beneficiary.

- a. Should the Trustor fail to make any payment or perform any act which Trustor is obligated to make or perform hereby, then the Trustee, or Beneficiary, at the election of either of them, but without any obligation to do so, without demand or notice to the Trustor, or any successor in interest of the Trustor and without releasing Trustor from any obligation hereunder, may make such payment or perform such act and incur any liability, or expend whatever amounts, in its absolute discretion, it may deem necessary therefor. All sums incurred or expended by the Trustee or Beneficiary, under the terms hereof, shall become immediately due and payable by the Trustor to the Trustee or Beneficiary when so incurred or expended, and shall bear interest until paid at an annual percentage rate equal to the *Default Rate* which is set forth in the Note. In no event shall payment by Trustee or Beneficiary be construed as a waiver of the default occasioned by Trustor's failure to make such payment or payments.
- b. If, during the existence of the trust created hereby, there is commenced or pending any suit or action affecting the Property, or any part thereof, or the title thereto, or if any adverse claim for or against the Property, or any part thereof, is made or asserted, the Trustee or Beneficiary may appear or intervene in the suit or action and retain counsel therein and defend same, or otherwise take such action therein as they may be advised, and may settle or compromise same or the adverse claim; and in the behalf and for any of the purposes may pay and expend such sums of money as the Trustee or Beneficiary may deem to be necessary. All such sums incurred or expended by Trustee or Beneficiary under the provisions of this paragraph shall become immediately due and payable by the Trustor to the



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Trustee or Beneficiary when so incurred or expended and shall bear interest until paid at an annual percentage rate equal to the Default Rate.

- c. Trustor agrees to pay and discharge all costs, fees and expenses of incurred in connection with any default by Trustor or the preservation of the trust created hereby, including without limitation: (i) reconveyance and foreclosure fees of Trustee; (ii) costs and expenses of Beneficiary or Trustee or any receiver appointed under this Deed of Trust in connection with the operation, maintenance, management, protection, preservation, collection, sale or other liquidation of the trust created hereby or foreclosure of this Deed of Trust; (iii) advances made by Beneficiary to complete or partially construct all or any part of any construction which may have commenced on the Property or otherwise to protect the security of this Deed of Trust; (iv) costs of evidence of title; (v) the reasonable fees and disbursements of Trustee's and Beneficiary's legal counsel and other out-of-pocket expenses; (vi) Collection Costs payable under the Note; and (vii) interest on any and all of the foregoing amounts at the Default Rate.
9. **Modifications.** At any time, and from time to time, without liability therefor and without notice to Trustor, upon written request of Beneficiary and presentation of this Deed of Trust and the Note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Property, Trustee may (a) reconvey any part of the Property; (b) consent in writing to the making of any map or plat thereof; (c) join in granting any easement thereon, or (d) join in any extension agreement or subordination agreement in connection herewith. The Beneficiary may without notice to or consent of Trustor extend the time of payment of any indebtedness secured hereby to any successor in interest of the Trustor without discharging the Trustor from liability thereon.
10. **Reconveyance.** Upon receipt of written request from Beneficiary reciting that all sums secured hereby have been paid and upon surrender of this Deed of Trust and the Note secured hereby to Trustee for cancellation and retention, or such other disposition as Trustee, in its sole discretion, may choose, and upon payment of its fees, the Trustee shall reconvey, without warranty all portions of the Property which are then encumbered hereby. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truth thereof. The grantee in such reconveyance may be described in general terms as "*the person or persons legally entitled thereto*". Five years after issuance of such full reconveyance, the Trustee may destroy the Note and this Deed of Trust (unless directed in such request to retain them).
11. **Substitution of Trustee.** The Beneficiary or its assigns may, from time to time, appoint another trustee, or trustees, to execute the trust created by this Deed of Trust or other conveyance in trust. Upon the recording in the appropriate county of such instrument or certified copy thereof as executed and acknowledged by the Beneficiary, such executed and recorded instrument shall be conclusive proof of the proper substitution of the new



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trustee or trustees, who shall be vested with all the title, interest, estate, powers, duties and trusts in the Property which are vested in or conferred upon the original trustee. If there be more than one trustee, either may act alone and execute the trusts upon the request of the Beneficiary, and all his acts thereunder shall be deemed to be the acts of all trustees, and the recital in any conveyance executed by such sole trustee of such request shall be conclusive evidence thereof, and of the authority of such sole trustee to act in accordance therewith.

12. Due on Sale, etc.

- a. If a "*Transfer of Interest*" (as defined by Section 12(b) hereof) shall have occurred with respect to the Property, without the prior written consent of Beneficiary having first been obtained, then, at the option of Beneficiary, any indebtedness or obligation which is secured hereby shall immediately become due and payable, without demand or notice, irrespective of the maturity dates which may be expressed in any Loan Documents evidencing such indebtedness or obligation.
- b. A "*Transfer of Interest*" shall be deemed to have occurred with respect to the Property if Trustor, or any of them shall sell, transfer, convey or in any manner alienate any interest in the Property or shall enter into an agreement to do so or shall be divested of title to the Property in any manner or way, whether voluntarily or involuntarily, or as otherwise determined pursuant to the due-on-sale clause of the Note.

13. Default.

- a. The occurrence of any of the following shall constitute an "*Event of Default*" hereunder: (i) failure by Trustor to pay when due any amount which Trustor is required to pay under any Loan Documents secured by this Deed of Trust; (ii) failure by Trustor to satisfy or perform any obligation secured by this Deed of Trust, including a Trustor Obligation (as defined in Section 24), other than the payment of money, or failure by Trustor to comply with, satisfy or perform any term, provision, covenant or condition, other than the payment of money as contained in the Loan Documents which default continues for a period of more than thirty (30) days after written notice from Beneficiary or such lesser period, if any, as may be provided for in the relevant Loan Document; (iii) the commencement by Trustor of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to it or its respective debts under the United States Bankruptcy Code or any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official, for any substantial part of its property or the consent by Trustor to any such relief or to the appointment or taking possession by any such official in any involuntary case or other proceeding commenced against Trustor or the admission by Trustor, in writing, of its inability



to pay its debts as they come due, or (iv) any other default under this Deed of Trust or under the Loan Documents.

- b. Trustor shall be in default if, during the loan application process, Trustor or any persons or entities acting at the direction of Trustor or with Trustor's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Beneficiary (or failed to provide Trustee with material information) in connection with the loan. Material representations include, but are not limited to, representations concerning Trustor's occupancy of the Property as Trustor's principal residence, if the same was a requirement of the loan.
- c. If Trustor defaults under this Deed of Trust or under any covenant or clause of any loan agreement with Beneficiary, Beneficiary at its option may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by applicable law. In addition to any other amounts set forth in this Deed of Trust or under the Note, Beneficiary shall be entitled to collect all expenses incurred including, but not limited to, reasonable attorneys' fees, Collection Costs (as defined in the Note), costs of title evidence, and the Trustee's fees (whether any sale is completed or not).

14. Power of Sale; Remedies for Trustor's Default. Should Trustor default on its obligations hereunder or under the terms of the Note, then Beneficiary may, by written notice to Trustee, declare Trustor to be in default and that all sums secured hereby are immediately due and payable. At Beneficiary's sole and absolute discretion, any such notice of default may or may not include an election and demand upon Trustee to cause the Property to be sold hereunder. Concurrently with delivery of any demand upon Trustee to cause the Property to be sold, Beneficiary shall deliver to Trustee this Deed of Trust and any Loan Documents in Beneficiary's possession. Upon the occurrence of an Event of Default, as defined by Section 13, and recording of the notice of default and election to sell, as required by Chapter 107 of the Nevada Revised Statutes, then the Trustee, its successors or assigns, on demand by Beneficiary shall sell the Property, in whole or in part, in order to accomplish the objectives of these trusts, in the manner following, namely:

- a. The Trustee shall first give notice of the time and place of such sale, in the manner and in accordance with the time periods provided by the laws of the State of Nevada for the sale of real property under execution, and may from time to time postpone such sale by such advertisement as it may deem lawful and reasonable, or without further advertisement by proclamation made to the persons assembled at the time and place previously appointed and advertised for such sale. On the day of sale so advertised, or to which such sale may have been lawfully postponed, the Trustee may sell the property as so advertised, at public auction, at the time and place specified in the notice, either in the county in which the Property, or any part thereof, to be sold, is situated, or at the principal office of the



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Trustee, in its discretion, to the highest cash bidder. The Beneficiary or any obligee, creditor, or the holder or holders of the Loan Documents secured hereby may bid and purchase at such sale. The Beneficiary may, after recording the notice of default and election, waive or withdraw the same or any proceedings thereunder, and shall thereupon be restored to his former position and have and enjoy the same rights as though such notice had not been recorded.

- b. The Trustee, upon such sale, shall make (without any express or implied warranty), execute and, after due payment made, deliver to purchaser or purchasers, his or their heirs or assigns, a deed or deeds of the Property so sold which shall convey to the purchaser all the title and rights of the Trustor in and to the Property and possession thereof. The Trustee shall apply the proceeds of the sale thereof in payment, firstly, of the expenses of such sale, together with the reasonable expenses of this trust, including counsel fees, in a reasonable amount, which shall become due upon any default made by Trustor in any of the payments aforesaid; and also all Collection Costs (as defined in the Note) and such sums, if any, as Trustee of Beneficiary shall have paid or incurred for procuring a search of the title to the Property, of any part thereof, subsequent to the execution of the Deed of Trust; and in payment, secondly, in such order as Beneficiary, in its sole and absolute discretion, elects. In absence of such other election by Beneficiary, payments shall be credited in the following order: (i) interest due under the Note; (ii) costs, fees, charges, and advances paid or incurred by Lender/Beneficiary/Trustee or payable to Lender/Beneficiary/Trustee in accordance with or arising out of the Note or this Deed of Trust; and (iii) principal and any other amounts due under the Note. The Trustee shall thereafter pay the balance or surplus of such proceeds of sale, if any, to Trustor, its successor or assigns, or other persons legally entitled thereto, including Broker, per paragraph 6 under Disclosure #7, SubServicing Agreement.
- c. In the event of a sale of the Property conveyed or transferred in trust, or any part thereof, and the execution of a deed or deeds therefor under such trust, the recital therein of default, and of recording the notice of breach and election to sell, and of the elapsing of the three (3) month period, and of the giving of notice of sale, and of a demand by Beneficiary that such sale should be made, shall be conclusive proof of such default, recording, election, elapsing of time, and of the due giving of such notice, and that the sale was regularly and validly made on due and proper demand by Beneficiary; and any such deed or deeds with such recitals therein shall be effectual and conclusive against Trustor, its successors and assigns, and all other persons; and the receipt for the purchase money recited or contained in any deed executed to the purchaser as aforesaid shall be sufficient discharge to such purchaser from all obligation to see to the proper application of the purchase money, according to the trusts aforesaid. With respect to any of the Property which is personal property, Beneficiary shall have, in the jurisdiction in which enforcement of this Deed of Trust is sought, or in any other applicable



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jurisdiction, all remedies of a secured party under the Uniform Commercial Code and may require Trustor, on demand, to assemble all such personal property and make the same available to Beneficiary at such places as Beneficiary may select that are reasonably convenient for both parties, whether at the premises of Trustor or elsewhere.

15. *Remedies Cumulative and Limitation of Waiver.* The rights and remedies of Beneficiary upon the occurrence of one or more defaults by Trustor (whether such rights and remedies are conferred by statute, by rule of law, by this Deed of Trust, or otherwise) may be exercised by Beneficiary, in the sole discretion of Beneficiary, either alternatively, concurrently, or consecutively in any order. The exercise by Beneficiary, or Trustee at the express direction of Beneficiary, of any one or more of such rights and remedies shall not be construed to be an election of remedies nor a waiver of any other rights and remedies Beneficiary might have unless, and limited to the extent that, Beneficiary shall so elect or so waive by an instrument in writing delivered to Trustee. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment, when due, of all other sums so secured or to declare default, as herein provided, for failure to so pay.

16. *Law.* Trustor acknowledges and agrees that this Deed of Trust and the other Loan Documents shall be governed by and construed exclusively in accordance with the laws of the State of Nevada.

17. *Miscellaneous.*

- a. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. It is expressly agreed that the trust created hereby is irrevocable by Trustor.
- b. In the event that Trustor consists of more than one person or entity, the obligations of Trustor hereunder shall be joint and several.
- c. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "*Beneficiary*" includes any future holder of the note secured hereby. The term "*Trustor*" includes the term "*Grantor*."
- d. Trustor hereby appoints Beneficiary the attorney-in-fact of Trustor to prepare, sign, file and record one or more financing statements; any documents of title or registration, or like papers, and to take any other action deemed necessary, useful or desirable by Beneficiary to perfect and preserve Beneficiary's security interest against the rights or interests of third persons.
- e. If any provision of this Deed of Trust or its application to any person or circumstances is held invalid, the other provisions hereof or the application of the provision to other persons or circumstances shall not be affected.
- f. The captions or headings at the beginning of each section hereof are for convenience of the parties and are not a part of this Deed of Trust.



g. Time is of the essence of each provision of this Deed of Trust.

18. **Notice.** All notices, consents, approvals or other instruments required or permitted to be given by either party pursuant to this Deed of Trust shall be in writing and given by (i) hand delivery, (ii) facsimile, (iii) express overnight delivery service or (iv) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon (a) receipt, if hand delivered, (b) transmission, if delivered by facsimile (and if a copy of such notice is also mailed by certified or registered mail, return receipt requested, and deposited with the U.S. Postal Service no later than the first business day after the notice was transmitted by facsimile), (c) the next business day following the date of deposit with the delivery service, if delivered by express overnight delivery service, or (d) the third business day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below.

SERVICER INFORMATION

Evergreen Note Servicing

6121 Lakeside Dr #150

Reno, NV 89511

(253) 848-5678

newaccounts@notecollection.com

19. **No Third Party Beneficiaries.** This Deed of Trust is made and entered into for the sole protection and benefit of the parties hereto, and no other person or entity shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with this Deed of Trust or any of the other Loan Documents, except for the Broker of Record, namely, Capella Mortgage Corp.
20. **No Offset.** Under no circumstances shall Trustor fail or delay to perform (or resist the enforcement of) any of its obligations in connection with any of the Loan Documents because of any alleged offsetting claim or cause of action against Beneficiary (or any indebtedness or obligation of Beneficiary) which has not been confirmed in a final judgment of a court of competent jurisdiction (sustained on appeal, if any) against Beneficiary, and Trustor hereby waives any such rights of setoff (or Offset) which it might otherwise have with respect to any such claims or causes of action against Beneficiary (or any such obligations or indebtedness of Beneficiary), unless and until such right of setoff is confirmed and liquidated by such a final judgment. Trustor further waives any right that it might otherwise have to require a marshaling of any security of Beneficiary or to direct the order in which Beneficiary pursues its rights or remedies with respect to any of its security.
21. **Continuation of Payments.** Notwithstanding any taking by eminent domain or other governmental action causing injury to, or decrease in value of, the Property and creating



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a right to compensation therefor, Trustor shall continue to make the required payments of principal and interest on the Note. If, prior to the receipt by Beneficiary of such award or compensation, the Property shall have been sold in any action or proceeding to foreclose this Deed of Trust, Beneficiary shall have the right to receive said award or compensation to the extent of any deficiency found to be due upon such sale, with interest hereon, whether or not a deficiency judgment of this Deed of Trust shall have been sought or recovered, together with reasonable counsel fees and the costs and disbursements incurred by Beneficiary in connection with the collection of such award or compensation.

22. Security Agreement and Fixture Filing. If so indicated on the first page of this Deed of Trust, Trustor may hereby grant to Beneficiary a security interest in any of the Property which is personal property in which a security interest can be granted under the Uniform Commercial Code, to secure the obligations described in Paragraphs A through E above. This Deed of Trust may cover certain goods which are or are to become fixtures related to the Property, and constitutes a "fixture filing" with respect thereto, executed by Trustor as "debtor" and Beneficiary as "secured party."

23. Loan Charges.

- a. Beneficiary may charge Trustor fees for services performed in connection with Trustor's default, for the purpose of protecting Beneficiary's interest in the Property and rights under this Deed of Trust, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Deed of Trust to charge a specific fee to Trustor shall not be construed as a prohibition on the charging of such fee. Beneficiary may not charge fees that are expressly prohibited by this Deed of Trust or by applicable law.
- b. If the loan is subject to a law which sets maximum loan charges or maximum interest rate, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan or interest charges shall be reduced by the amount necessary to reduce the same to the maximum amount allowed by law; and (b) any sums already collected from Trustor which exceeded permitted limits will be refunded to Trustor. Beneficiary may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Trustor. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Trustor's acceptance of any such refund made by direct payment to Trustor will constitute a waiver of any right of action Trustor might have arising out of such overcharge.

24. Rights of Beneficiary. Trustor authorizes Beneficiary to perform any or all of the following acts at any time in its sole and absolute discretion, all without notice to



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Trustor and without affecting Beneficiary's rights or Trustors obligations under this Deed of Trust:

- a. Beneficiary may alter any terms of the obligations secured by this Deed of Trust or any part of them, including renewing, compromising, extending or accelerating, or otherwise changing the time for payment of, or increasing or decreasing the rate of interest on, the Trustor Obligations or any part of them;
- b. Beneficiary may take and hold security for the Trustor Obligations, accept additional or substituted security for that obligation, and subordinate, exchange, enforce, waive, release, compromise, fail to perfect, and sell or otherwise dispose of any such security;
- c. Beneficiary may direct the order and manner of any sale of all or any part of any security now or later to be held for the Trustor Obligations, and Beneficiary may also bid at any such sale;
- d. Beneficiary may apply any payments or recoveries from Trustor, Trustor, or any other source, and any proceeds of any security, to the Trustor Obligations in the manner, order, and priority Beneficiary may elect, in its sole and absolute discretion, whether that obligation is secured by this Deed of Trust or not at the time of the application;
- e. Beneficiary may release Trustor of its liability for the Trustor Obligations or any part of them;
- f. Beneficiary may substitute, add, or release any one or more guarantors or endorsers;
- g. In addition to the Trustor Obligations, Beneficiary may extend other credit to Trustor, and may take and hold security for the credit so extended, all without affecting Beneficiary's rights or the effectiveness or enforcement of this Deed of Trust; and
- h. In the event that multiple parties are named as Beneficiary, or multiple parties hold beneficial interests in this Note or the Deed of Trust, a vote of 51% or greater of the beneficial interests will be considered the majority necessary for any decision or action by Beneficiary under the terms of this Note and the Deed of Trust.

As used in this Deed of Trust, Trustor "Obligations" means and includes any obligation of Trustor which is the obligation of Trustor under this Deed of Trust, including but not limited to payment of the Note.

25. Deed of Trust to be Absolute. Trustor expressly agrees that until each and every term, covenant, and condition of this Deed of Trust is fully performed, Trustor will not be released by or because of:

- a. any act or event that might otherwise discharge, reduce, limit, or modify any Trustor Obligation under this Deed of Trust;



- b. any waiver, extension, modification, forbearance, delay, or other act or omission of Beneficiary, or its failure to proceed promptly or otherwise as against Trustor or any security;
- c. any action, omission, or circumstance that might increase the likelihood Trustor may be called upon to perform under this Deed of Trust or that might affect the rights or remedies of Trustor; or
- d. any dealings occurring at any time between Trustor and Beneficiary, whether relating to the Trustor Obligations or otherwise.

Trustor hereby expressly waives and surrenders any defense to its liability under this Deed of Trust based upon any of the foregoing acts, omissions, agreements, waivers, and/or matters. It is the express purpose and intent of this Deed of Trust that the obligations of Trustor under it be absolute and unconditional under any and all circumstances.

26. Trustor's Waivers. To the extent permissible under Nevada law, Trustor waives:

- a. all statutes of limitations as a defense to any action or proceeding brought against Trustor by Beneficiary, to the fullest extent permitted by law;
- b. any right it may have to require Beneficiary to proceed against Trustor, proceed against or exhaust any security held from Trustor, or pursue any other remedy in Beneficiary's power to pursue;
- c. any defense based on any claim that Trustor Obligations exceed or are more burdensome than those of Trustor;
- d. any defense based on: (i) any legal disability of Trustor, (ii) any release, discharge, modification, impairment, or limitation of the liability of Trustor to Beneficiary from any cause, whether consented to by Beneficiary or arising by operation of law or from any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships ("*Insolvency Proceeding*") or (iii) any rejection or disaffirmance of the Trustor Obligations, or any part of them, or any security held for them, in any Insolvency Proceeding;
- e. any defense based on any action taken or omitted by Beneficiary in any Insolvency Proceeding involving Trustor, including any election to have Beneficiary's claim allowed as being secured, partially secured, or unsecured, any extension of credit by Beneficiary to Trustor in any Insolvency Proceeding, or the taking and holding by Beneficiary of any security for any such extension of credit;
- f. all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Deed of Trust and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind; and



- g. any defense based on or arising out of any defense that Trustor may have to the payment or performance of the Trustor Obligations or any part of them.

27. Waivers of Subrogation and Other Rights.

- a. Upon a default by Trustor, Beneficiary, in its sole and absolute discretion, without prior notice to or consent of Trustor, may elect to: (i) foreclose either judicially or nonjudicially against any real or personal property security it may hold for the Trustor Obligations, (ii) accept a transfer of any such security in lieu of foreclosure, (iii) compromise or adjust the Trustor Obligations or any part of them or make any other accommodation with Trustor, or (iv) exercise any other remedy against Trustor or any security. No such action by Beneficiary will release or limit the liability of Trustor, who will remain liable under this Deed of Trust after the action, even if the effect of the action is to deprive Trustor of any subrogation rights, rights of indemnity, or other rights to collect reimbursement from Trustor for any sums paid to Beneficiary, whether contractual or arising by operation of law or otherwise. Trustor expressly agrees that under no circumstances will it be deemed to have any right, title, interest, or claim in or to any real or personal property to be held by Beneficiary or any third party after any foreclosure or transfer in lieu of foreclosure of any security for the Trustor Obligations.
- b. Regardless of whether Trustor may have made any payments to Beneficiary, Trustor hereby waives: (i) all rights of subrogation, all rights of indemnity, and any other rights to collect reimbursement from Trustor for any sums paid to Beneficiary, whether contractual or arising by operation of law (including the United States Bankruptcy Code or any successor or similar statute) or otherwise, (ii) all rights to enforce any remedy beneficiary may have against Trustor, and (iii) all rights to participate in any security now or later to be held by Beneficiary for the Trustor Obligations.

28. Revival and Reinstatement. If Beneficiary is required to pay, return, or restore to Trustor, or any other person, any amounts previously paid on the Trustor Obligations because of any Insolvency Proceeding of Trustor or any other reason, the obligations of Trustor will be reinstated and revived, and the rights of Beneficiary will continue with regard to such amounts, all as though they had never been paid.

29. Trustor's Right to Reinstate after Acceleration. If Trustor meets certain conditions, Trustor shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earliest of: (a) five (5) days before sale of the Property pursuant to any power of sale contained in this Deed of Trust; (b) such other period as applicable law might specify for the termination of Trustor's right to reinstate; or (c) entry of a judgment enforcing this Deed of Trust. Those conditions are that Trustor: (a) pays Beneficiary all sums which then would be due under this Deed of Trust and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or



agreements; (c) pays all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Beneficiary's interest in the Property and rights under this Deed of Trust; and (d) takes such action as Beneficiary may reasonably require to assure that Beneficiary's interest in the Property and rights under this Deed of Trust, and Trustor's obligation to pay the sums secured by this Deed of Trust, shall continue unchanged. Beneficiary may require that Trustor pay such reinstatement sums and expenses in one or more of the following forms, as selected by Beneficiary: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) electronic funds transfer. Upon reinstatement by Trustor, this Deed of Trust and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 13(c) or elsewhere in this Deed of Trust or under the Note.

30. *Sale of Note; Change of Loan Servicer.* The Note or a partial interest in the Note (together with this Deed of Trust) can be sold one or more times without prior notice to Trustor. A sale might result in the change in the entity (known as the "Loan Servicer") that collects payments due under the Note and this Deed of Trust and performs other mortgage loan servicing obligations under the Note, this Deed of Trust and applicable law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Trustor will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information which applicable law requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Trustor will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

31. *Request for Notices.* The undersigned Trustor(s) and the Beneficiary(s) named herein hereby request that copies of any and all notice of default and notice of sale hereunder be mailed to each of them at the addresses set forth in Section 18 hereof, or to such other address as he/she/it may hereafter designate in writing. However, Trustee shall be under no obligation to notify any party hereto of any pending sale hereunder or of any action or proceeding of any kind in which Trustor, Beneficiary and/or Trustee may be named as a defendant, excepting only with respect to such actions as may be brought by Trustee.

32. *Prepayment Provisions; Default Interest; Balloon Payment.* This Deed of Trust secures a Note that may contain express provisions for a prepayment penalty, Default Interest and or a Balloon Payment.



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33. *Miscellaneous.* Trustor acknowledges that Trustor has had adequate opportunity to carefully read this Deed of Trust and to consult with an attorney of Trustor's choice prior to signing it. No consent, approval or authorization of or notice to any person or entity is required in connection with Trustor's execution of and obligations under this Deed of Trust. No course of prior dealing, usage of trade, parol or extrinsic evidence of any nature may be used to supplement, modify or vary any of the terms here.

IN WITNESS WHEREOF, Trustor has executed this First Deed of Trust and Assignment of Rents on the day and year first above written.



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Commitment No 00068938

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF EUREKA, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

PARCEL B AS SHOWN ON THAT CERTAIN PARCEL MAP FOR E.A. AND L.C. RASMUSSEN FILED IN THE OFFICE OF THE COUNTY RECORDER OF EUREKA COUNTY, STATE OF NEVADA, ON JANUARY 6, 1988, AS FILE NO. 115500, BEING A PORTION OF LOT 4 OF PARCEL "B" OF LARGE DIVISION MAP, E1/2 SECTION 17, TOWNSHIP 20 NORTH, RANGE 53 EAST, M.D.B.&M.

EXCEPTING THEREFROM ALL THE OIL AND GAS LYING IN AND UNDER SAID LAND AS RESERVED BY THE U.S.A., IN PATENT RECORDED APRIL 15, 1966, IN BOOK 10 PAGE 331, OFFICIAL RECORDS, EUREKA COUNTY, NEVADA.

FURTHER EXCEPTING THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN AND TO ALL OF THEIR RIGHT, TITLE AND INTEREST IN THE MINERAL RIGHTS LYING IN AND UNDER SAID LAND AS RESERVED BY EARL A. RASMUSSEN AND LAVERNA C. RASMUSSEN, AS CO-TRUSTEES OF THE RASMUSSEN TRUST, ET AL IN DEEDS RECORDED JULY 11, 1996, IN BOOK 297, PAGES 482, 485, 490, 494, 498 AND 502, OFFICIAL RECORDS, EUREKA COUNTY, NEVADA.

Parcel ID: 007-395-17

Commonly known as 579 El Gato, Eureka, NV 89316
However, by showing this address no additional coverage is provided



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EXHIBIT B
TO THE NOTE AND DEED OF TRUST

LIST OF INVESTORS

James Edward Reilly, A Married Man
As to an Undivided
\$75,000.00 / \$75,000.00
or 100.00 % Interest

COPY



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