

19030978

APN: 14-010-18; 14-010-20; 14-010-21;
14-010-22; 14-010-23; 14-010-08

RECORDING REQUESTED BY:

COW COUNTY TITLE CO.
761 S. Raindance Dr.
Pahrump NV 89048

FILED FOR RECORDING
AT THE REQUEST OF

Cow County Title

2005 AUG 25 PM 4 50

LINCOLN COUNTY RECORDER
FEE *31.00* DEPT *ce*
LESLIE BOUCHER

**SECOND DEED OF TRUST WITH ASSIGNMENT OF
RENTS AND SECURITY AGREEMENT**

COPY

19030978

14-010-22; 14-010-23; 14-010-08
APN Numbers 14-010-18; 14-010-20; 14-010-21; (PTN), Lincoln County, NV

When recorded mail to:

325 East Fourth Street LLC
c/o John H. Huston
8075 Rancho Destino Road
Las Vegas, NV 89123

Send tax statements to:

Caliente Land Company
c/o Gary R. Davis
912 Sir James Bridge Way
Las Vegas, NV 89145

**DEED OF TRUST WITH ASSIGNMENT OF
RENTS AND SECURITY AGREEMENT**

THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS AND SECURITY AGREEMENT ("Deed of Trust") is made this 24 day of August, 2005, by and among 325 EAST FOURTH STREET LLC, a Nevada limited liability company, as trustor (hereinafter referred to as "Trustor"), COW COUNTY TITLE COMPANY, a Nevada corporation, as trustee (hereinafter referred to as "Trustee") and CALIENTE LAND COMPANY, a Nevada limited liability company (hereinafter referred to as "Beneficiary").

W_I_T_N_E_S_S_E_T_H:

That Trustor grants: (i) the following described real property collateral to Trustee in trust, with power of sale, to have and to hold upon the trusts, covenants and agreements hereinafter set forth; and (ii) a security interest in the following described personal property collateral to Beneficiary, pursuant to Article 9 of the Uniform Commercial Code-Secured Transactions, as enacted in the State of Nevada, as it may be amended or recodified from time to time (hereinafter the "UCC"). Said real property collateral and personal property collateral are described as follows:

The following described real property that is situate in the County of Lincoln, State of Nevada, and is hereinafter referred to as the "Land" or "Real Property":

See Exhibit "A" attached hereto and incorporated by reference herein;

Together with: (a) all interest of Trustor, whether now owned, or hereafter acquired, in or to any real property lying within the right of way of any street, open or proposed, which adjoins any of said Land and any and all sidewalks, bridges, elevated walkways, tunnels, alleys, strips and gores of real property adjacent to, connecting or used in connection with any of said Land, (b) all buildings, structures and all other improvements and fixtures that are, or that may be hereafter, erected or placed on the Land, (c) any and all other rights pertaining or appurtenant to the Land, including, without

limitation, all easements and rights of way now owned or hereafter acquired which are used in connection with any portion of the said Land or as a means of ingress to or egress from said Land, and the interests of Trustor therein, (d) 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, and any and all other rights pertaining to or appertaining to the said real property, and the interests of Trustor therein, and (e) subject to the present assignment of rents which is hereinafter made to Beneficiary: (i) the rents, issues and profits of all of the foregoing; 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 its 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.

And also together with all right, title and interest of Trustor, whether now owned or hereafter acquired, in and to: (a) all plans, specifications, soil reports, engineering reports, land planning maps, surveys, and any other reports, exhibits or plans used or to be used in connection with the development, construction, planning, operation or maintenance of the above described real property, if any, together with all amendments and modifications thereof, whether now existing or hereafter created; and (b) all development permits, zoning commitments, governmental entitlements, commitments to provide water, electricity and other utilities and all other rights and commitments which are granted by any governmental authority, entity or person in connection with development, construction, occupation or use of any of the above described real property.

The Real Property and the Personal Property are hereinafter collectively referred to as the "Property".

FOR THE PURPOSE OF SECURING:

A. Payment of the principal sum of Eight Hundred Fifty Thousand and no/100 Dollars (\$850,000.00), together with interest thereon, according to the terms of a Secured Promissory Note, dated concurrently, or substantially concurrently, herewith made by Trustor, payable to the order of 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 (hereinafter collectively referred to as the "Note").

B. Reimbursement of Beneficiary for 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, attorney's 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, under any obligation secured hereby, and any obligation of the Borrower under the Note.

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 this Deed of Trust is security therefor.

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 other document or instrument (collectively, the "Additional Documents") which are now, or hereafter, executed by Trustor in favor of Beneficiary, and which relate to the loan evidenced by the Note hereby secured (the "Loan"). The Note, this Deed of Trust and the Additional Documents are hereinafter collectively referred to as the "Loan Documents".

AND IT IS FURTHER PROVIDED THAT:

1. **Compliance with laws.** Trustor shall not commit, suffer or permit any act to be done, or condition to exist, on, or with respect to, 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 paragraph 1 are hereinafter collectively referred to as the "Legal Requirements".

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 on the Real Property; not to remove or demolish any buildings or other improvements situate on the Real Property; to restore any building or improvement on the Real Property which is damaged or destroyed; to complete in a good workmanlike manner any improvement which may be constructed on the Real Property or performed with respect to the Personal Property; and to pay, when due, all claims for labor performed and for materials furnished in connection with such improvement; and otherwise to protect and preserve the Property; to comply with all Legal Requirements having application to any alterations or improvements made to the Property; not to commit or permit any waste or deterioration of the 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 and Indemnity.**

(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 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 substances 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 Real Property ("Hazardous Substance Laws"), shall pay immediately, when due, the costs of removal from the Real Property of any such Hazardous Substances which are required to be removed pursuant to any Hazardous Substance Laws and shall keep the Property free of any lien which may arise pursuant to such Hazardous Substance Laws. The Trustor shall not, and shall not permit any person or entity to release, discharge, or dispose of any Hazardous Substances on the Real Property except in compliance with all Hazardous Substance Laws and, if the same shall exist, Trustor shall immediately remove or cause to be removed from the Real Property such Hazardous Substances to the extent required to be removed pursuant to any Hazardous Substance Laws.

(c) Trustor hereby agrees to indemnify, hold harmless and defend Beneficiary and its successors and assigns from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including but not limited to attorneys' fees and expenses), arising directly or indirectly, in whole or in part, out of: (a) the presence on or under the Property of any Hazardous Substances, or any releases or discharges of any Hazardous Substances on, under or from the Property, or (b) any violation of Hazardous Substances Laws, or any activity carried on or undertaken on or off the Property, whether prior to or during the term of the Note, and whether by Trustor or any predecessor in title or any employees, agents, contractors or subcontractors of Trustor or any predecessor in title, or any third persons at any time occupying or present on the Property, in connection with the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Substances at any time located or present on or under the Property. The foregoing indemnity shall further apply to any residual contamination on or under the Property, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such Hazardous Substances, and irrespective of whether any of such activities were or will be undertaken in accordance with applicable laws, regulations,

codes and ordinances. Trustor hereby acknowledges and agrees that, notwithstanding any other provision of this Deed of Trust or any of the other Loan Documents to the contrary, the obligations of Trustor under this Paragraph 3 shall be unlimited personal obligations of Trustor and shall survive any foreclosure under this Deed of Trust, any transfer in lieu thereof, any reconveyance of this Deed of Trust and any satisfaction of the obligations of Trustor in connection with the Note and/or the Loan Documents. Trustor acknowledges that Beneficiary's appraisal of the Property is such that Beneficiary would not extend the Loan, but for the personal liability undertaken by Trustor for the obligations under this Paragraph 3. The obligations of Trustor under this Paragraph 3 are separate from and in addition to the obligations to pay the indebtedness evidenced by the Note, and the other obligations under the Loan Documents. The liability of Trustor under this Paragraph 3 shall not be limited to or measured by the amount of the indebtedness owed under the Note or the value of the Property. Trustor shall be fully and personally liable for all obligations of Trustor under this Paragraph 3 and a separate action may be brought and prosecuted against Trustor under this Paragraph 3. Trustor waives the right to assert any statute of limitations as a bar to the enforcement of this Paragraph 3 or to any action brought to enforce this Paragraph 3. This Paragraph 3 shall not affect, impair or waive any rights or remedies of Beneficiary or any obligations of Trustor with respect to Hazardous Substances created or imposed by Hazardous Substances Laws (including Beneficiary's rights of reimbursement or contribution under Hazardous Substances Laws). The remedies under this Paragraph 3 are cumulative and in addition to all remedies provided by law.

4. **Taxes.**

(a) Trustor agrees to pay, at least ten (10) days before default and/or 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, security interests, encumbrances, charges and/or claims, on said Property, or any part thereof, which appear to have priority over the lien and/or security interest of this Deed of Trust ("Senior Encumbrances").

(b) In the event that Trustor fails to make any payment required by Subparagraph 4(a) above, 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 all buildings and/or improvements, which are ever located on the Real Property, and all goods, equipment, fixtures, inventory and farm products which are subject to the security interest of this Deed of Trust insured by policies of insurance 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 coverage in such sum or sums as shall

equal the total indebtedness secured by this Deed of Trust and all obligations having priority over this Deed of Trust, or the full replacement value of such insured Property, whichever is less (such policies shall not contain a co-insurance provision whereby Trustor becomes a co-insurer in the event of loss). Said insurance shall be payable to Beneficiary to the amount of the unsatisfied obligation to Beneficiary hereby secured. The policy or policies of said insurance shall be delivered to Beneficiary, as further security, and in default thereof, Beneficiary may procure such insurance, and expend such sum or sums therefor as Beneficiary shall deem necessary. The amount collected by Beneficiary under any fire or other insurance policy may be applied by Beneficiary upon 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 invalidate any act done pursuant to such notice.

6. **Impound Accounts.** If required by Beneficiary, Trustor shall pay to Beneficiary, on the day of each calendar month when installment 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) satisfying the Impositions which are required to be paid under paragraph 4 above, (ii) satisfying obligations which are represented, evidenced or secured by Senior Encumbrances and which are required to be paid under paragraph 4 above; and/or (iii) payment of the premiums necessary to maintain the insurance coverage required by paragraph 5 above. 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 by paragraph 13 below, the Beneficiary may apply to reduction of the sums secured hereby, in such manner as Beneficiary shall determine, any amount remaining to the Beneficiaries credit here under.

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

(a) Trustor hereby irrevocably and absolutely assigns and transfers to Beneficiary, all rents, issues, profits and income derived from the Real 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 and profits and income prior to written notice to Trustor of any Event of Default, as defined by paragraph 13 below. 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, upon any indebtedness and/or obligation secured hereby, and in such order as Beneficiary shall determine. Rights assigned to

Beneficiary under this paragraph 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 Real 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 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 Real Property so long as Beneficiary has not itself entered into actual possession of the Real Property.

(b) Any award of damages in connection with any condemnation for public use of, or injury to the Real Property, or any part thereof, is hereby assigned and shall be paid to Beneficiary, who may apply or release such moneys received by him 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, or under any other Loan Document, then the Trustee, or Beneficiary, at the election of either of them, 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 by paragraph 13 below. 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 and/or the security interest created hereunder, there shall be 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, be 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 that 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 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 by paragraph 13 below.

(c) Trustor agrees to pay and discharge all costs, fees and expenses of this trust incurred in connection with any default by Trustor.

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: reconvey any part of the Real Property; consent in writing to the making of any map or plat thereof; join in granting any easement thereon, or 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 Real 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".

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 of such certified copy or executed and acknowledged instrument, the new trustee or trustees shall be vested with all the title, interest, powers, duties and trusts in the Real 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 its 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 and Partial Release Provision.** If Trustor shall sell, assign, contract to sell, convey or transfer any interest in, any of the Property or shall be divested of any of its title to any of the Property, in any manner or way, whether voluntary or involuntary, or by merger, without the written consent of Beneficiary being first had and

obtained, all indebtedness secured hereby, irrespective of the maturity date thereof, at the option of Beneficiary, without demand or notice, shall immediately become due and payable.

13. **Default.**

(a) All references in this Deed of Trust to an "Event of Default" shall mean the occurrence of an Event of Default as defined by Section 4 of the Note.

(b) Upon occurrence of an Event of Default, as defined by Paragraph 4 of the Note, Beneficiary shall be entitled to all remedies provided herein, which remedies shall include, but shall not be limited to, the right to declare all sums secured hereby, immediately due and payable, without notice or demand.

(c) Any reference in this Deed of Trust to the "Default Rate" shall be to the rate of interest, which is so defined by Paragraph 5 of the Note.

14. **Receivership.** Upon occurrence of an Event of Default, Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property or any part thereof, without notice to Trustor or anyone claiming under Trustor, and without regard to the then value of the Property or the adequacy of any security for the obligations secured hereby, and Trustor irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided herein and shall continue as such and exercise all such powers until the later of: (i) the date of confirmation of sale of all of the Property; (ii) the disbursement of all proceeds of the Property collected by such receiver and the payment of all expenses incurred in connection therewith; or (iii) the termination of such receivership with the consent of Beneficiary or pursuant to an order of a court of competent jurisdiction.

15. **Power of Sale.** Upon the occurrence of an Event of Default, as defined by Paragraph 13 above, and recording of the notice of default and election to sell, and upon expiration of the required period of time after such recording, all as required by Chapter 107 of the Nevada Revised Statutes, then Trustee, its successors or assigns, on demand by Beneficiary, shall sell the Real Property, in order to accomplish the objects 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 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 reasonable, or without further advertisement, by proclamation made to the persons assembled at the time and place previously appointed and advertised for such sale (as such time may have been previously postponed), and: (a) on the day of sale so advertised, the Trustee may, in its discretion, sell the property so advertised, or any portion thereof, in one or more lots (and thereafter postpone such sale,

in accordance herewith, as to any portion of the Property remaining unsold, if Trustee so elects); and (bb) on any day to which such sale may have been postponed, the Trustee may, in its discretion, sell all or any portion of the Property then remaining unsold, in one or more lots (and thereafter further postpone such sale, in accordance herewith, as to any portion of the Property remaining unsold, if Trustee so elects); all at public auction, at the time and place specified in the notice (as such time may have been postponed), either in the county in which the property, or any part thereof, to be sold, is situated, or at the principal office of the Trustee, in its discretion, to the highest cash bidder. The Beneficiary, Trustee, obligee, creditor, or the holder or holders of the Note (and/or other obligations) secured hereby may bid (including by credit bid) and purchase at such sale. The Beneficiary may, after recording the notice of breach and election, waive or withdraw the same or any proceedings thereunder, and shall thereupon be restored to its former position and have and enjoy the same rights as though such notice had not been recorded.

(b) That the Trustee, upon such sale, shall make (without warranty), execute and, after due payment made, deliver to purchaser or purchasers, his or their heirs or assigns, a deed or deeds of the Real Property so sold which shall convey to the purchaser all the title of the Trustor in the Real Property, and shall apply the proceeds of the sale thereof in accordance with the terms and conditions of the Note.

(c) That in the event of a sale of the Real 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 notice of default and election of sale, and of the elapsing of the 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.

16. **UCC Remedies.** Upon occurrence of an Event of Default, Beneficiary shall have all rights and remedies made available to a secured party under the UCC. In addition to those rights and remedies, which are generally made available to a secured party under the UCC, Beneficiary shall have the following:

(a) Beneficiary may notify the debtor, under any account, which is included within the Personal Property, to make payment under such account directly to Beneficiary.

(b) Beneficiary may require Trustor to assemble the Personal Property and to make it available to Beneficiary at the location of the Real Property.

Trustor and Beneficiary agree that such location shall be deemed to be reasonably convenient to each of them.

(c) Any other remedy provided by this Deed of Trust, with respect to the Personal Property, which is authorized or permitted under the UCC.

17. **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 statutes, 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, or failure to so pay. Without limiting the generality of the foregoing, to the extent that this Deed of Trust covers both real and personal property, Beneficiary may, in the sole discretion of Beneficiary, either alternatively, concurrently, or consecutively in any order:

(a) Proceed as to both the real and personal property in accordance with Beneficiary's rights and remedies in respect to the Real Property; or

(b) Proceed as to the Real Property in accordance with Beneficiary's rights and remedies in respect to the real property and proceed as to the personal property in accordance with Beneficiary's rights and remedies in respect to the personal property.

Beneficiary may, in the sole discretion of Beneficiary, appoint Trustee as the agent of Beneficiary for the purpose of disposition of the Personal Property in accordance with the UCC.

If Beneficiary should elect to proceed as to both the Real Property and Personal Property collateral in accordance with Beneficiary's rights and remedies in respect to real property:

(i) All the Real Property and all the Personal Property may be sold, in the manner and at the time and place provided in this Deed of Trust and Security Agreement, in one lot, or in separate lots consisting of any combination or combinations of Real and Personal Property, as the Beneficiary may elect, in the sole discretion of Beneficiary.

(ii) Trustor acknowledges and agrees that a disposition of the Personal Property collateral in accordance with Beneficiary's rights and remedies in

respect to Real Property, as hereinabove provided, is a commercially reasonable disposition of the collateral.

18. **Deficiency.** Trustor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled, after applications of the proceeds of any sale held in accordance with the provisions of Sections 14, 15, 16 or 17 above.

19. **Stamps.** If at any time the United States of America, any state thereof or any governmental subdivision of such state shall require revenue stamps to be affixed to the Note or any of the other Loan Documents, or the payment of any other tax paid on or in connection therewith, Trustor shall pay the same with any interest or penalties imposed in connection therewith if Trustor is permitted by law to pay such amount and, if not so permitted, then the Note shall immediately be due and payable.

20. **Law.** Trustor acknowledges and agrees that this Deed of Trust and the other Loan Documents, including provisions with respect to the making of any disbursements, the creation of any monetary obligations and the rights accruing and compensation payable to Beneficiary in connection therewith, shall be governed by and construed in accordance with the laws of the State of Nevada; provided, however, in all instances, Federal Law shall apply to the extent that Beneficiary may have greater rights thereunder.

21. **Miscellaneous.**

(a) The Property includes goods that are, or are to become, fixtures to the Real Property, and this Deed of Trust is intended to be a fixture filing under NRS 104.9502. The address of Beneficiary from which information may be obtained concerning the security interest granted hereunder and the mailing address of Trustor are set forth by Section 22 below.

(b) 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.

(c) In the event that Trustor consists of more than one person or entity, the obligations of Trustor hereunder shall be joint and several.

(d) 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".

(e) 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

the plural. The term "Beneficiary" includes any future holder of the note secured hereby. The term "Trustor" includes the term "Grantor".

(e) 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.

(f) If any provision of this Deed of Trust or its application to any person or circumstance is held invalid, the other provisions hereof or the application of the provision to other persons or circumstances shall not be affected.

(g) The captions or headings at the beginning of each section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

(h) Time is of the essence of each provision of this Deed of Trust.

22. **Notice.** Except as otherwise provided by law, any notice, request, demand, consent, approval or other communication ("Notice") provided or permitted under this Deed of Trust, or any other instrument contemplated hereby, shall be in writing, signed by the party giving such Notice, and shall be given by personal delivery to the other party or by United States certified or registered mail, postage prepaid, return receipt requested, addressed to the party for whom it is intended at its address as set forth below. Unless otherwise specified, Notice shall be deemed given when received, but if delivery is not accepted, on the earlier of the date delivery is refused or the third day after same is deposited in any official United States Postal Depository. Any party from time to time, by Notice to the other parties given as above set forth, may change its address for purposes of receipt of any such communication.

Beneficiary: Caliente Land Company LLC
c/o Gary R. Davis
912 Sir James Bridge
Las Vegas, NV 89145

Trustor: 325 East Fourth Street LLC
c/o John H. Huston
8075 rancho Destino Road
Las Vegas, NV 89123

23. **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.

24. **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.

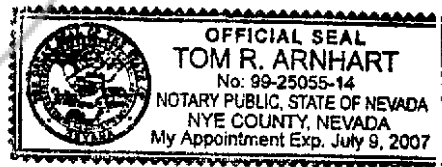
25. **Continuation of Payments.** Notwithstanding any taking by eminent domain or other governmental action causing injury to, or decrease in value of, the Property and creating a right to compensation therefor, Trustor shall continue to make the required payments of principal and interest on the Note. 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 thereon, whether or not a deficiency judgment on 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.

IN WITNESS WHEREOF, Trustor has executed this instrument as of the day and year first above written.

**TRUSTOR: 325 EAST FORTH STREET
LLC, a Nevada limited liability company**

By: 
John H. Huston
Managing Member

STATE OF NEVADA)
) ss.
County of Clark)



This instrument was acknowledged before me on August 24, 2005, by John H. Huston, as Managing Member of 325 east Fourth Street LLC, a Nevada limited liability company.


Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION

ESCROW NO.: 19030978

PARCEL 1

That portion of land situate within the West Half (W1/2) of Section 2, Township 5 South, Range 66 East, M.D.B.&M., more particularly described as follows:

Parcels 3, 5, 6, 8, 9 of the Record of Survey Map of Large Parcels for 325 East Fourth Street L.L.C. recorded February 13, 2004, in Book C of Plats, Page 30 as File No. 121774, Lincoln County, Nevada records.

ASSESSOR'S PARCEL NUMBER FOR 2005-2006: 14-010-18
14-010-20
14-010-21
14-010-22
14-010-23

PARCEL 2

That portion of Lot 4 of Section 2, Township 5 South, Range 66 East M.D.B.&M., more particularly described as follows:

¹
Parcel 2 of that certain Parcel Map recorded August 22, 1994 in the Office of the County Recorder of Lincoln County, Nevada in Book A of Plats, Page 425 as File No. 102249, Lincoln County, Nevada records.

ASSESSOR'S PARCEL NUMBER FOR 2005-2006: 14-010-08

Together with the following described water rights ("**Conveyed Water Rights**"):

- (1) All those certain water rights for irrigation purposes associated with 6.3 cultural acres located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, Township 5 South, Range 66 East, M.D.B.&M., being 31.5 acre-feet per year of the combined duty of Proof #01262 and Proof #01704, Records of the Division of Water Resources, Office of the State Engineer, State of Nevada; and
- (2) All those certain water rights for irrigation purposes associated with 5.3 cultural acres located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 3, Township 5 South, Range 66 East, M.D.B.&M., being 26.5 acre-feet per year of the combined duty of Proof #01262 and Proof #01704, Records of the Division of Water Resources, Office of the State Engineer, State of Nevada; and
- (3) All those certain water rights for irrigation purposes associated with 5.0 cultural acres located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, Township 5 South, Range 66 East, M.D.B.&M., being 25.0 acre-feet per year of duty of Proof #01704, Records of the Division of Water Resources, Office of the State Engineer, State of Nevada; and

- (4) All those certain water rights for irrigation purposes associated with 34.4 cultural acres located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, Township 5 South, Range 66 East, M.D.B.&M., being 172.0 acre-feet per year of the combined duty of Proof #01262 and Proof #01704, Records of the Division of Water Resources, Office of the State Engineer, State of Nevada; and
- (5) All those certain water rights for irrigation purposes associated with 3.6 cultural acres located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, Township 5 South, Range 66 East, M.D.B.&M., being 8.0 acre-feet per year of combined duty of Proof #01704 and of Proof #01262, Records of the Division of Water Resources, Office of the State Engineer, State of Nevada; and
- (6) All those certain water rights for irrigation purposes associated with 3.8 cultural acres located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, Township 5 South, Range 66 East, M.D.B.&M., being 19.0 acre-feet per year of duty of Proof #01704, Records of the Division of Water Resources, Office of the State Engineer, State of Nevada; and
- (7) Subject to and conditioned upon the exceptions and reservations listed below, a 62.91% undivided interest in and to 334.5 acre-feet per year (210.43 acre-feet per year) of Permit #45945, limited to use as stated therein, issued by the Division of Water Resources, Office of the State Engineer, State of Nevada.

EXCEPT and reserving the following described water rights (“**Excepted and Reserved Water Rights**”):

- (1) All those certain water rights for irrigation purposes associated with 13.0 cultural acres located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, Township 5 South, Range 66 East, M.D.B.&M., being 65.0 acre-feet per year of the combined duty of Proof #01262 and Proof #01704, Records of the Division of Water Resources, Office of the State Engineer, State of Nevada; and
- (2) All those certain water rights for irrigation purposes associated with 1.2 cultural acres located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 3, Township 5 South, Range 66 East, M.D.B.&M., being 6.0 acre-feet per year of duty of Proof #01704, Records of the Division of Water Resources, Office of the State Engineer, State of Nevada; and
- (3) All those certain water rights for irrigation purposes associated with 15.6 cultural acres located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 3, Township 5 South, Range 66 East, M.D.B.&M., being 78.0 acre-feet per year of the combined duty of Proof #01262 and Proof #01704, Records of the Division of Water Resources, Office of the State Engineer, State of Nevada; and
- (4) All those certain water rights for irrigation purposes associated with 15.0 cultural acres located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, Township 5 South, Range 66 East, M.D.B.&M., being 75.0 acre-feet per year of duty of Proof #01704, Records of the Division of Water Resources, Office of the State Engineer, State of Nevada; and
- (5) All those certain water rights for irrigation purposes associated with 3.6 cultural acres located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, Township 5 South, Range 66 East, M.D.B.&M., being 18.0 acre-feet per year of the combined duty of Proof #01262 and Proof #01704, Records of the Division of Water Resources, Office of the State Engineer, State of Nevada; and
- (6) All those certain water rights for irrigation purposes associated with 10.4 cultural acres located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, Township 5 South, Range 66 East, M.D.B.&M., being

52.0 acre-feet per year of combined duty of Proof #01704 and of Proof #01262, Records of the Division of Water Resources, Office of the State Engineer, State of Nevada; and

- (7) All those certain water rights for irrigation purposes associated with 11.2 cultural acre; located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, Township 5 South, Range 66 East, M.D.B.&M., being 56.0 acre-feet per year of duty of Proof #01704, Records of the Division of Water Resources, Office of the State Engineer, State of Nevada; and
- (8) An undivided 37.09% undivided interest in and to 334.5 acre-feet per year (124.07 acre-feet per year) of Permit #45945, limited to use as stated therein, issued by the Division of Water Resources, Office of the State Engineer, State of Nevada.

EXCEPT AND RESERVING the rights, easements and rights-of-way necessary and convenient to divert and use beneficially all the Excepted and Reserved Water Rights for irrigation and cropping of the Land, provided that Seller shall not be required to continue irrigation of the Land for any period and may transfer and move the Excepted and Reserved Water Rights off the Land at Seller's sole option; and

EXCEPT AND RESERVING a non-exclusive easement and right-of-way in, over, and across any and all existing ditches, flumes, and distribution boxes (collectively "irrigation structures") necessary and convenient to the access to, operation, maintenance, replacement and repair of all such irrigation structures in order that all the lands irrigated or entitled to be irrigated pursuant to Proof #01262, Proof #01704, and Permit #45945, records of the Division of Water Resources, Office of the State Engineer, State of Nevada, may be fully irrigated in keeping with historic priorities and irrigation practices; and

EXCEPT AND RESERVING any and all grazing rights and allotments which shall be transferred by Seller to other lands retained and owned by the Seller, with cooperation in such transfer by the Buyer; and

EXCEPT AND RESERVING any and all personal property located on the above-described lands; and

EXCEPT AND RESERVING any and rights of occupancy for livestock grazing and animal husbandry, including use of corrals and facilities for the keeping and feeding of livestock upon Parcel 2 per Parcel Map filed in Plat Book A, Page 425, Office of the Recorder, Lincoln County, NV, until such time as the Seller's grazing allotments and rights upon U.S. BLM lands is transferred to other fee title lands.