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WALKER, LEELING & CARROLL, LLP

Lincoln County - NV

Leslie Boucher - Recorder

Fee: \$39.00 Page 1 of 26

RPTT: Recorded By LB

Book- 257 Page- 0559

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:Wells Fargo Bank, National Association
5938 Priestly Drive, Suite 200
Carlsbad, CA 92008
Attention: Loan Administration

0136324

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

STATE OF NEVADA

COUNTY OF LINCOLN

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS, AND FIXTURE FILING (this "Deed of Trust") made effective as of October 1, 2009, ~~2010~~; is executed and delivered by Thomas Petroleum, LLC, a Texas limited liability company ("Grantor"), whose address for purposes of this Deed of Trust is c/o C.L. Thomas, Inc., P.O. Box 1876, Victoria, TX 77902-1876, to and in favor of Stewart Title of Nevada—Las Vegas Division, as trustee ("Trustee"), the address of which is 376 E. Warm Springs Road, Ste 190, Las Vegas, Nevada, 89119, for the benefit of Wells Fargo Bank, National Association, as Administrative Agent for its benefit and for the benefit of Holder (as defined in Section 1.4 herein) ("Beneficiary"), whose address is 5938 Priestly Dr, Ste 200, Carlsbad, CA 92008.

ARTICLE 1

Certain Definitions: Granting Clauses: Secured Indebtedness

Section 1.1 Certain Definitions and Reference Terms. In addition to other terms defined herein, each of the following terms shall have the meaning assigned to it:

"Administrative Agent" means Wells Fargo Bank, National Association, as Administrative Agent for Lenders under the Credit Agreement.

"Beneficiary" has the meaning given to it in the introductory paragraph of this Deed of Trust.

"Borrowers" means C. L. Thomas, Inc., a Texas corporation; Speedy Stop Food Stores, LLC, a Texas limited liability company; Thomas Petroleum, LLC, a Texas limited liability company; Thomas Foods, LLC, a Texas limited liability company; and Thomas Fuels, Lubricants & Chemicals, Inc., a Texas corporation. "Borrower" refers to any one of such Borrowers.

"County" means Lincoln County, Nevada.

"Credit Agreement" means that certain Credit Agreement dated July 18, 2007, executed by and between Borrowers, Administrative Agent and Lenders, as the same may from time to time be amended, restated, supplemented or otherwise modified (and in particular, as amended by that certain Amendment No. 1 to Credit

Agreement dated as of July 10, 2008 and by that certain Amendment No. 2 to Credit Agreement, dated as of September 25, 2009, each by and among the Borrowers, Administrative Agent and Lenders; and as amended by that certain Amendment No. 3 to Credit Agreement and Limited Consent, dated May 14, 2010 by and among the Borrowers, Administrative Agent and Lenders), to which reference is here made for all purposes.

"Credit Documents" shall mean and include this Deed of Trust, the Credit Agreement, the Notes, the Security Documents, each Letter of Credit Application, each Notice of Borrowing, each Notice of Interest Period Selection, each Notice of Conversion, all Lender Rate Contracts, each Collateral Certificate, the Administrative Agent's Fee Letter, and all other documents, instruments and agreements delivered by any Loan Party to the Administrative Agent or any Lender in connection with this Agreement or any other Credit Document on or after the date of this Agreement, including, without limitation, any amendments, consents or waivers, as the same may be amended, restated, supplemented or modified from time to time but excluding the Guaranty and the Environmental Indemnity Agreement.

"Environmental Indemnity Agreement" means any environmental indemnity agreement given in connection with the Credit Agreement, including without limitation, that certain Environmental Indemnity Agreement, dated as of July 18, 2007, made by Borrowers and TREM, INC., a Texas corporation, in favor of Administrative Agent and that certain Environmental Indemnity Agreement, dated of even date herewith, made by Borrowers and TREM, INC., a Texas corporation, in favor of Administrative Agent.

"General Exceptions" means, with respect to any Mortgaged Property, all validly existing easements or rights-of-way (including prescriptive easements); all validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests, and water interests outstanding in persons other than Grantor, and other instruments (other than any that create a Lien or convey any of the surface fee estate, except for a conveyance to a state or local government of a portion of the fee estate for public right-of-way purposes in connection with the Grantor's development of the fee estate or in lieu of or as a result of condemnation by the governmental authority) that affect the Mortgaged Property; rights of tenants under recorded or unrecorded leases of all or any part of the Mortgaged Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; all rights, obligations, and other matters (other than any that would not constitute a Permitted Lien under the Credit Agreement or that convey any of the surface fee estate) arising from and existing by reason of any special water district or owner's association; and inchoate liens created by taxes for the current year, but which are not yet due and payable; but the term "General Exceptions" shall not in any event include any prior fee conveyance other than to a state or local government for public right-of-way purposes as described above; any Lien that is not a Permitted Lien under Section 5.02(b)(i), (iii), (iv), (viii), (xii), (xiii) or (xiv) of the Credit Agreement; or any other voluntary Lien that is or could be superior to the Liens of this Deed of Trust.

"Grantor" means Thomas Petroleum, LLC, a Texas limited liability company.

"Guaranty" means any guaranty given in connection with the Credit Agreement, including without limitation, that certain Guaranty, dated as of July 18, 2007, made by TPI MANAGEMENT, INC., a Texas corporation, TPI PARTNERS, LTD., a Texas limited partnership, and each of the other entities which may become a party to such Guaranty pursuant to Section 23 thereof, in favor of Administrative Agent.

"Holder" has the meaning given it in Section 1.4(a).

"Lenders" means Wells Fargo Bank, National Association together with the other Lenders, as defined in the Credit Agreement. "Lender" refers to any one of such Lenders.



“Notes” has the meaning given it in Section 1.4(a).

“Obligations” shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed or owing by Borrowers to any Lender (or in the case of any Lender Rate Contract, any Affiliate of a Lender, as applicable) of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising pursuant to the terms of the Credit Documents (as defined in this Deed of Trust), including without limitation all interest (including interest that accrues after the commencement of any bankruptcy or other insolvency proceeding by or against Grantor, whether or not allowed or allowable), fees, charges, expenses, attorneys’ fees and accountants’ fees chargeable to and payable by Borrowers hereunder and thereunder.

“Permitted Encumbrances” means the General Exceptions and any easements, exceptions, restrictions, encroachments and other matters specifically identified on Exhibit B attached hereto and made a part hereof for all purposes, but only to the extent (and no further) that the same are subsisting and affect title to the Mortgaged Property with respect to which such matters are listed.

“Promissory Notes” means:

(i) those certain Revolving Loan Notes dated July 18, 2007 in the aggregate face principal amount of up to \$75,000,000.00, executed by Grantor and the other Borrowers and made payable to the order of certain of the Lenders; (B) those certain Term Loan Notes dated July 18, 2007 in the aggregate face principal amount of \$66,875,000.00, executed by Grantor and the other Borrowers and made payable to the order of certain of the Lenders; (C) that certain Swing Line Note dated July 18, 2007 in the face principal amount of up to \$15,000,000.00, executed by Grantor and the other Borrowers and made payable to the order of Wells Fargo Bank, National Association; (D) that certain Term Loan Note dated August 30, 2007 in the face principal amount of \$3,125,000.00, executed by Grantor and the other Borrowers and made payable to the order of one of the Lenders; (E) those certain Amended and Restated Term Loan Notes dated July 10, 2008 in the aggregate face principal amount of \$70,000,000.00, executed by Grantor and the other Borrowers and made payable to the order of certain of the Lenders; (G) that certain Amended and Restated Term Loan Note dated August 14, 2008 in the face principal amount of \$20,000,000.00, executed by Grantor and the other Borrowers and made payable to the order of one of the Lenders; and (G) each and every other Revolving Loan Note, Term Loan Note, and/or Swing Line Note now or hereafter executed by Grantor under the Credit Agreement in favor of the Lenders or any of them;

(ii) the obligations of Grantor and/or the other Borrowers (or any of them) arising from any L/C Credit Extension now or hereafter made under the Credit Agreement and any other Credit Event now or hereafter occurring; and

(iii) any other promissory note now or hereafter made by Grantor and/or the other Borrowers (or any of them) payable to the order of the Lenders or any of them; in each case as any of the same may be renewed, extended, supplemented, amended, or otherwise modified.

“Required Holder” means the Required Lenders as such term is defined in the Credit Agreement.

“Security Agreement” has the meaning set forth in the Credit Agreement.



Trustee" means Stewart Title of Nevada—Las Vegas Division, of 376 E. Warm Springs Road, Ste 190, Las Vegas, Nevada, 89119, or any successor or substitute appointed and designated as herein provided from time to time acting hereunder.

Other capitalized terms used but not specifically defined herein shall have the meaning given them in the Credit Agreement.

Section 1.2 Mortgaged Property. In consideration of the premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, and to secure payment and performance by Grantor of the secured indebtedness (defined hereafter), Grantor does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, PLEDGE, WARRANT, ASSIGN and SET OVER to Trustee, in trust for Beneficiary:

a. all the real estate described in Exhibit A which is attached hereto and incorporated herein by reference (the "Land"), and (i) all improvements now or hereafter situated or to be situated on the Land (herein together called the "Improvements"); and (ii) all right, title and interest of Grantor in and to (1) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the Land or the Improvements; (2) any strips or gores between the Land and abutting or adjacent properties; and (3) all water and water rights, timber, crops and mineral interests on or pertaining to the Land (the Land, Improvements and other rights, titles and interests referred to in this clause (a) being herein sometimes collectively called the "Premises");

b. all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies, and articles of personal property, of every kind and character, now owned or hereafter acquired by Grantor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing (the properties referred to in this clause (b) being herein sometimes collectively called the "Accessories" all of which are hereby declared to be permanent accessions to the Land);

c. all (i) plans and specifications for the Improvements; (ii) Grantor's rights, but not liability for any breach by Grantor, under all commitments (including any commitment for financing to pay any of the secured indebtedness, as defined below), insurance policies and other contracts and general intangibles (including but not limited to trademarks, trade names and symbols) related to the Premises or the Accessories or the operation thereof; (iii) deposits (including but not limited to Grantor's rights in tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits or reserves hereunder or under any other Credit Document for taxes, insurance or otherwise), money, accounts, instruments, documents, notes and chattel paper arising from or by virtue of any transactions related to the Premises or the Accessories; (iv) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories; (v) leases, rents, royalties, bonuses, issues, profits, revenues and other benefits of the Premises and the Accessories (without derogation of Article 3 hereof); (vi) oil, gas and other hydrocarbons and other minerals produced from or allocated to the Land and all products processed or obtained therefrom, and the proceeds thereof; and (vii) engineering, accounting, title, legal, and other technical or business data concerning the Mortgaged Property which are in the possession of Grantor or in which Grantor can otherwise grant a security interest; and

d. all (i) proceeds of or arising from the properties, rights, titles and interests referred to above in this Section 1.2, including but not limited to proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance relating thereto (including premium refunds), proceeds of the taking thereof or



of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by eminent domain or transfer in lieu thereof for public or quasi-public use under any Governmental Rule, and proceeds arising out of any damage thereto; and (ii) other interests of every kind and character which Grantor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in this Section 1.2 and all property used or useful in connection therewith, including but not limited to, rights of ingress and egress and remainders, reversions and reversionary rights or interests; and if the estate of Grantor in any of the property referred to above in this Section 1.2 is a leasehold estate or a reversionary or other interest in improvements, fixtures or other property that exists or may come into existence by virtue of the terms of a lease of the Land by Grantor to another, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by Grantor in or to the property (i) that is demised under the lease creating the leasehold estate or (ii) that Grantor otherwise acquires under the terms of a lease of the Land to another;

TO HAVE AND TO HOLD, IN TRUST, WITH POWER OF SALE, the foregoing rights, interests and properties, and all rights, estates, powers and privileges appurtenant thereto (herein collectively called the "Mortgaged Property"), unto Trustee, and his successors or substitutes in this trust, and to his or their successors and assigns, in trust, however, upon the terms, provisions and conditions herein set forth.

Section 1.3 Security Agreement. This Deed of Trust constitutes both a real property deed of trust and a "security agreement" within the meaning of the Nevada Uniform Commercial Code. The Mortgaged Property includes real and personal property and all tangible and intangible rights and interest of Grantor in the Mortgaged Property. Grantor hereby grants to Beneficiary, as security for the indebtedness secured hereby, a security interest in all of the Mortgaged Property which constitutes personal property or fixtures to the fullest extent that the same may be subject to the Nevada Uniform Commercial Code or the Uniform Commercial Code of any other state or states where the Mortgaged Property is situated (said portion of the Mortgaged Property so subject to a commercial code collectively called the "Collateral"). In addition to its rights hereunder or otherwise, Beneficiary shall have all of the rights of a secured party under the Nevada Uniform Commercial Code, or under the Uniform Commercial Code in force in any other state to the extent the same is applicable law. Grantor authorizes Beneficiary to file any financing or continuation statements and amendments thereto relating to the Collateral without the signature of Grantor if permitted by applicable law.

Section 1.4 Notes, Credit Documents, Other Obligations. This Deed of Trust is made to secure and enforce the payment and performance of the following promissory notes, obligations, indebtedness and liabilities and all renewals, extensions, supplements, increases, and modifications thereof in whole or in part from time to time:

a. the full and punctual payment when due of indebtedness in the aggregate principal amount evidenced by the Promissory Notes in lawful money of the United States of America, to be paid with interest and periodic charges, any prepayment premium amount and all other sums which may or shall become due according to the Promissory Notes (such notes, as from time to time renewed, extended, supplemented, increased or modified and all other notes given in substitution therefor, or in modification, renewal or extension thereof, in whole or in part, being hereinafter called the "Notes", and the Lenders, or the subsequent holders at the time in question of any of the Notes or any of the secured indebtedness, as hereinafter defined, being herein called "Holder," whether one or more);

b. the full and punctual payment and performance of all amounts payable under the Credit Agreement, this Deed of Trust and all other Credit Documents, including without limitation, indemnification and expense reimbursement obligations; and

c. the timely and full payment and performance and observance of each and every other obligation of Borrowers (or any of them) under the Credit Documents, however and whenever incurred, due or to become due, and whether Borrowers (or any of them) is obligated alone, or with others on a joint, several or solitary basis, as a principal obligor or as a surety (including any interest, prepayment premium, costs, fees and expenses which at any time accrue or otherwise payable on or with respect to the foregoing, whether before or after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of any Borrower), and each other term, covenant, agreement, requirement, condition and other provision under or in connection with any Credit Document, specifically including, without limitation, the Obligations.

The indebtedness referred to in this Section 1.4 (as well as any advances described in Section 1.5, below) is hereinafter sometimes referred to as the "secured indebtedness" or the "indebtedness secured hereby."

Section 1.5 Future Advances. The Holder may make future advances or extensions of credit under any one or more of the Notes, the Credit Agreement or otherwise, at its option. The total amount of the indebtedness of the Borrowers, including future advances, that is secured by this Deed of Trust, may increase or decrease from time to time, but shall not exceed a maximum principal amount of FOUR HUNDRED MILLION Dollars (\$400,000,000) at any one time, plus interest thereon and any disbursement made by Holder for the payment of taxes, levies or insurance on the Mortgaged Property encumbered by this Deed of Trust, with interest on such disbursement.

ARTICLE 2

Representations, Warranties and Covenants

Section 2.1 In addition to the representations, warranties and covenants contained in the Credit Agreement (the terms and provisions of which are incorporated in and made a part hereof for all purposes) and in any other Credit Documents, Grantor represents, warrants, and covenants that:

a. **Payment and Performance.** Grantors and Borrowers will timely and properly perform and comply with all of the covenants, agreements, and conditions imposed, respectively, upon them by this Deed of Trust and the other Credit Documents to which any of them is a party and will not permit an Event of Default to occur hereunder or thereunder. Time shall be of the essence in this Deed of Trust. Grantors and Borrowers shall cause their respective representations and warranties in this Deed of Trust and in any of the other Credit Documents to continue to be true in each and every respect at all times prior to the termination of this Deed of Trust.

b. **Title and Permitted Encumbrances.** Grantor has lawful, good and marketable title to all of the Mortgaged Property described on attached Exhibit A, subject only to the Permitted Encumbrances, and Grantor has, in Grantor's own right, and Grantor covenants to maintain, lawful, good and marketable title to the Mortgaged Property, free and clear of all liens, charges, claims, security interests, and encumbrances except for the Permitted Encumbrances or as otherwise permitted under the Credit Agreement. Grantor, and Grantor's successors and assigns, will warrant and forever defend title to the Mortgaged Property, subject as aforesaid, to Trustee and his successors or substitutes and assigns, against the claims and demands of all persons claiming or to claim the same or any part thereof. The Liens created by this Deed of Trust constitute a valid, binding and enforceable Lien on the Mortgaged Property and a security interest in the Collateral subject to the Permitted Encumbrances.

c. **Insurance.** Grantor shall keep the Mortgaged Property insured in accordance with the provisions of the Credit Documents (the "Insurance Requirements"). Sums paid to Beneficiary by any insurer may be retained and applied by Beneficiary and Holder toward payment of any of the indebtedness secured hereby



whether or not then due and payable in such order, priority and proportions as required by the Credit Agreement and the other Credit Documents. If Beneficiary shall receive and retain any proceeds of such insurance, the Lien of this Deed of Trust shall be reduced only by the amount thereof received and retained by Beneficiary and Holder and actually applied by Beneficiary and Holder in reduction of the secured indebtedness in accordance with the terms of the Credit Agreement and the other Credit Documents.

d. Payment of Taxes, etc. Grantor shall pay all Taxes and other Governmental Charges now or hereafter levied or assessed against the Mortgaged Property or any part thereof prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by Governmental Rule for the nonpayment thereof, except as allowed by the Credit Agreement. Grantor shall deliver to Beneficiary, upon request, receipted bills, canceled checks and other evidence satisfactory to Beneficiary evidencing the payment of the Taxes and any Governmental Charges prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by Governmental Rule for the nonpayment thereof. At any time upon and following the occurrence of an Event of Default under the Credit Agreement, Beneficiary may demand, and except where prohibited by Governmental Rule, Grantor shall, until all indebtedness secured hereby have been paid in full, pay to Beneficiary each month an amount estimated by Beneficiary in its sole discretion to be an amount approximately equal to (a) the Taxes, (b) all payments under any Lease Agreement (as defined in Article 6), (c) all payments and premiums with respect to Insurance Requirements, and (d) any payments required under Permitted Encumbrances, if any, (collectively, the "Required Payments"). Except to the extent required to satisfy the requirements of any applicable Governmental Rule or otherwise determined by Beneficiary in its sole discretion, amounts so paid shall not bear interest. Amounts so paid shall be additions to Collateral and subject to the terms of the Security Agreement and, prior to the occurrence of an Event of Default may be applied by Beneficiary in its discretion to the payment of the Required Payments or released to Grantor for application to and payment of the Required Payments.

e. Condemnation. Notwithstanding any actual or threatened taking by a Governmental Authority or other person exercising the power of eminent domain, Borrowers shall continue to pay the indebtedness secured hereby at the time and in the manner provided for its payment in the Credit Agreement, Notes and the other Credit Documents, and such indebtedness shall not be reduced until any award or payment therefor shall have been actually received and applied by Beneficiary and Holder to the discharge or reduction of the indebtedness secured hereby. Any disposition by Grantor of an interest in the Mortgaged Property shall be treated as an asset disposition under the Credit Agreement and regulated by the applicable provisions of the Credit Agreement, including without limitation, Sections 5.02(c) and 2.06(c) of the Credit Agreement. Grantor shall file and prosecute its claim or claims for any such award or payment in good faith and with due diligence. The proceeds from any condemnation shall be collected and paid in accordance with the applicable provisions of the Credit Documents. Cumulatively of any other remedies available hereunder, Grantor hereby irrevocably authorize and empower Beneficiary and Trustee, in the name of Grantor or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claim or claims in the event that Grantor shall fail to do so. Although it is hereby expressly agreed that the same shall not be necessary in any event, Grantor shall, upon demand of Beneficiary or Trustee, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to Beneficiary and/or Trustee, free and clear of any Lien of any kind or nature whatsoever.

f. Maintenance of the Mortgaged Property. Grantor, at its sole cost and expense, shall cause the Mortgaged Property to be maintained in commercially reasonable good condition and repair and will not commit or suffer to be committed any waste of the Mortgaged Property, given and subject to reasonable business judgment concerning maintenance and repair and scheduled remodeling or construction. Grantor shall promptly comply with all existing and future material requirements of any applicable Governmental Rule affecting the Mortgaged Property, or any portion thereof or the use thereof. Grantor shall promptly repair, replace or rebuild, in a commercially reasonable manner, all or any part of the Mortgaged Property which has suffered any loss or



damage, whether by casualty, condemnation or otherwise, and shall complete and pay for, within a commercially reasonable time, any structure at any time in the process of construction or repair on the Premises. Should Grantor initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or affecting the uses which may be made of the Mortgaged Property or any part thereof, the same shall be treated as an asset disposition under the Credit Agreement and regulated by the applicable provisions of the Credit Agreement, including without limitation, Sections 5.02(c) and 2.06(c) of the Credit Agreement.

g. Transfer or Encumbrance of the Mortgaged Property. Except as allowed in the Credit Agreement, no part of the Mortgaged Property nor any interest of any nature whatsoever therein, nor any interest of any nature whatsoever in Grantor (whether partnership, stock, equity, beneficial, profit, loss or otherwise) shall in any manner be (nor shall any Grantor permit any such property or interest to be) sold, assigned, conveyed, pledged, granted, encumbered, leased, donated, abandoned or otherwise disposed of, further encumbered, sold, transferred, assigned or conveyed; or otherwise made subject to any Lien without the prior consent of Required Holder. Any such transaction in respect of any Mortgaged Property (including, but not limited to granting easements, selling individual tracts of real estate, granting and amending restrictions, modifying zoning and/or entering into covenants running with the land) shall be treated as an asset disposition under the Credit Agreement and regulated by the applicable provisions of the Credit Agreement, including without limitation, Sections 5.02(c), 2.06(c) and 2.14(c) of the Credit Agreement. Unless a release is granted by the Administrative Agent at the request of Required Holder or otherwise permitted by the Credit Agreement, any attempted disposition or transfer of any interest in any part of the Mortgaged Property, shall be subject to this Deed of Trust. The provisions of this subparagraph shall apply to each and every such disposition and further encumbrance, sale, transfer, assignment or conveyance, regardless of whether or not Holder has consented to, or waived by its action or inaction its rights hereunder with respect to, any such disposition and any such previous further encumbrance, sale, transfer, assignment or conveyance, and irrespective of whether such disposition and further encumbrance, sale, transfer, assignment or conveyance is voluntary, by reason of operation of any Governmental Rule or is otherwise made.

ARTICLE 3
Default

Section 3.1 Events of Default. The occurrence of an Event of Default, as defined in the Credit Agreement, shall constitute an "Event of Default" under this Deed of Trust.

ARTICLE 4
Remedies

Section 4.1 Certain Remedies. If an Event of Default shall occur, Beneficiary may (but shall have no obligation to), at Beneficiary's election and by or through Trustee or otherwise, exercise any one or more of the following remedies, without notice (unless notice is required by applicable statute or by the Credit Agreement) in addition to and cumulative of any or all other remedies provided for under the Credit Agreement and or any of the other Credit Documents, or that may be available to Beneficiary at law, in equity or by statute:

a. Acceleration. Beneficiary may at any time and from time to time declare any or all of the secured indebtedness immediately due and payable and such secured indebtedness shall thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, notice of acceleration or of intention to accelerate or any other notice or declaration of any kind, all of which are hereby expressly waived by Grantor. Notwithstanding the preceding sentence or anything else to the contrary herein, upon the occurrence or existence of any Event of Default described in Section 6.01(f) or 6.01(g) of the Credit Agreement, immediately and

without notice, (1) the Commitments, any obligation of the L/C Issuer to make L/C Credit Extensions and the obligations of the Holder to make Loans shall automatically terminate, (2) the obligation of the Grantor and the other Borrowers to Cash Collateralize the Obligations in an amount equal to the then Effective Amount of the L/C Obligations shall automatically become effective, which amounts shall be immediately pledged and delivered to the Beneficiary as security for the Obligations and (3) all outstanding Obligations payable by Grantor and the other Borrowers hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Notes to the contrary notwithstanding.

b. Foreclosure. Upon the occurrence of an Event of Default, Trustee, or its successor or substitute is authorized and empowered and it shall be its special duty at the request of Beneficiary, to sell the Mortgaged Property or any part thereof situated in the State of Nevada, at the courthouse of any county (whether or not the counties in which the Mortgaged Property or any part thereof to be sold is located are contiguous, if the Mortgaged Property is located in more than one county) in the State of Nevada in which any part of the Mortgaged Property is located, "AS IS" to the highest bidder for cash with a general warranty binding Grantor, subject to the Permitted Encumbrances, and without representation or warranty, express or implied, by Trustee, between the hours of ten o'clock a.m. and four o'clock p.m. on the first Tuesday in any month or at such other place, time and date as provided by the statutes of the State of Nevada then in force governing sales of real estate under powers of sale conferred by deed of trust, after having given notice of such sale in accordance with such statutes. Any sale made by Trustee hereunder may be as an entirety or in such parcels as Beneficiary may request. To the extent permitted by applicable Governmental Rule, any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by Governmental Rule. The sale by Trustee of less than the whole of the Mortgaged Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Mortgaged Property shall be sold; and, if the proceeds of such sale of less than the whole of the Mortgaged Property shall be less than the aggregate of the indebtedness secured hereby and the expense of executing this trust as provided herein, this Deed of Trust and the Lien hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Property just as though no sale had been made; provided, however, that Grantor shall never have any right to require the sale of less than the whole of the Mortgaged Property, but Beneficiary shall have the right, at its sole election, to request Trustee to sell less than the whole of the Mortgaged Property. Trustee may, after any request or direction of Beneficiary, sell not only the real property but also the Collateral and other interests which are a part of the Mortgaged Property, or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Mortgaged Property separately from the remainder of the Mortgaged Property. It shall not be necessary for Trustee to have taken possession of any part of the Mortgaged Property or to have present or to exhibit at any sale any of the Collateral. After each sale, Trustee shall make to the purchaser or purchasers at such sale good and sufficient conveyances in the name of Grantor, conveying the property so sold to the purchaser or purchasers with general warranty of title by Grantor, subject to the Permitted Encumbrances (and to such leases and other matters, if any, as Trustee may elect upon request of Beneficiary), and shall receive the proceeds of said sale or sales and apply the same as herein provided. Payment of the purchase price to the Trustee shall satisfy the obligation of purchaser at such sale therefor, and such purchaser shall not be responsible for the application thereof. The power of sale granted herein shall not be exhausted by any sale held hereunder by Trustee or his substitute or successor, and such power of sale may be exercised from time to time and as many times as Beneficiary may deem until all of the Mortgaged Property has been duly sold and all secured indebtedness has been fully paid. In the event any sale hereunder is not completed or is defective in the opinion of Beneficiary, such sale shall not exhaust the power of sale hereunder and Beneficiary shall have the right to cause a subsequent sale or sales to be made hereunder. Any and all statements of fact or other recitals made in any deed or deeds or other conveyances given by Trustee or any successor or substitute appointed hereunder as to nonpayment of the secured indebtedness or as to the occurrence of any Event of Default, or as to Beneficiary's having declared all of said indebtedness to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and



the properties to be sold having been duly given, or as to the refusal, failure or inability to act of Trustee or any substitute or successor trustee, or as to the appointment of any substitute or successor trustee, or as to any other act or thing having been duly done by Beneficiary or by such Trustee, substitute or successor, shall be taken as prima facie evidence of the truth of the facts so stated and recited. The Trustee or his successor or substitute may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Trustee, including the posting of notices and the conduct of sale, but in the name and on behalf of Trustee, his successor or substitute. If Trustee or his successor or substitute shall have given notice of sale hereunder, any successor or substitute Trustee thereafter appointed may complete the sale and the conveyance of the property pursuant thereto as if such notice had been given by the successor or substitute Trustee conducting the sale.

c. Uniform Commercial Code. Without limitation of Beneficiary's rights of enforcement with respect to the Collateral or any part thereof in accordance with the procedures for foreclosure of real estate, Beneficiary may exercise its rights of enforcement with respect to the Collateral or any part thereof under the Uniform Commercial Code in effect in Nevada or any other state to the extent the same is the law applicable to Grantor) and in conjunction with, in addition to or in substitution for those rights and remedies: (1) Beneficiary may enter upon any Grantor's premises to take possession of, assemble and collect the Collateral or, to the extent and for those items of the Collateral permitted under applicable Governmental Rule, to render it unusable; (2) Beneficiary may require Grantor to assemble the Collateral and make it available at a place Beneficiary designates which is mutually convenient to allow Beneficiary to take possession or dispose of the Collateral; (3) written notice mailed to Grantors and the other Borrowers as provided herein at least ten (10) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; (4) any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Mortgaged Property under power of sale as provided in paragraph b. above in this Section 4.1; (5) in the event of a foreclosure sale, whether made by Trustee under the terms hereof, or under judgment of a court, the Collateral and the other Mortgaged Property may, at the option of Beneficiary, be sold as a whole; (6) it shall not be required that Beneficiary take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; (7) with respect to application of proceeds of disposition of the Collateral under Section 4.3 hereof, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Beneficiary; (8) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the secured indebtedness or as to the occurrence of any Event of Default, or as to Beneficiary's having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Beneficiary, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and (9) Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of the sale, but in the name and on behalf of Beneficiary.

d. Lawsuits. Beneficiary may proceed by a suit or suits in equity or at law, whether for collection of the indebtedness secured hereby, the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Mortgaged Property under the judgment or decree of any court or courts of competent jurisdiction.

e. Entry on Mortgaged Property. Beneficiary is authorized, prior or subsequent to the institution of any foreclosure proceedings, to the fullest extent permitted by applicable Governmental Rule, to enter upon the Mortgaged Property, or any part thereof, and to take possession of the Mortgaged Property and all books



and records relating thereto, and to exercise without interference from Grantor any and all rights which Grantor has with respect to the management, possession, operation, protection or preservation of the Mortgaged Property. Beneficiary shall not be deemed to have taken possession of the Mortgaged Property or any part thereof except upon the exercise of its right to do so, and then only to the extent evidenced by its demand and overt act specifically for such purpose. All costs, expenses and liabilities of every character incurred by Beneficiary in managing, operating, maintaining, protecting or preserving the Mortgaged Property shall constitute a demand obligation of Grantor (which obligation Grantor hereby promises to pay) to Beneficiary pursuant to this Deed of Trust. If necessary to obtain the possession provided for above, Beneficiary may invoke any and all legal remedies to dispossess any Grantor. In connection with any action taken by Beneficiary pursuant to this Section, Beneficiary shall not be liable for any loss sustained by any Grantor resulting from any failure to let the Mortgaged Property or any part thereof, or from any act or omission of Beneficiary in managing the Mortgaged Property unless such loss is caused by the willful misconduct and bad faith of Beneficiary, nor shall Beneficiary be obligated to perform or discharge any obligation, duty or liability of any Grantor arising under any lease or other agreement relating to the Mortgaged Property or arising under any Permitted Encumbrance or otherwise arising. Grantor hereby assents to, ratifies and confirms any and all actions of Beneficiary with respect to the Mortgaged Property taken under this Section.

f. Receiver. Beneficiary shall as a matter of right be entitled to the appointment of a receiver or receivers for all or any part of the Mortgaged Property, whether such receivership be incident to a proposed sale (or sales) of such property or otherwise, and without regard to the value of the Mortgaged Property or the solvency of any person or persons liable for the payment of the indebtedness secured hereby, and Grantor does hereby irrevocably consent to the appointment of such receiver or receivers, waives any and all defenses to such appointment, agrees not to oppose any application therefor by Beneficiary, and agrees that such appointment shall in no manner impair, prejudice or otherwise affect the rights of Beneficiary to application of Rents as provided in this Deed of Trust. Nothing herein is to be construed to deprive Beneficiary of any other right, remedy or privilege it may have at common law or under any Governmental Rule to have a receiver appointed. Any money advanced by Beneficiary in connection with any such receivership shall be a demand obligation (which obligation Grantor hereby promises to pay) owing by Grantor to Beneficiary pursuant to this Deed of Trust.

g. Termination of Commitment to Lend. Holder may terminate any commitment or obligation to lend or disburse funds under any Credit Document.

Section 4.2 Effective as Mortgage. This instrument shall be effective as a mortgage as well as a deed of trust and upon the occurrence of an Event of Default may be foreclosed as to any of the Mortgaged Property in any manner permitted by applicable Governmental Rule, and any foreclosure suit may be brought by Trustee, Beneficiary or by Holder, and to the extent, if any, required to cause this instrument to be so effective as a mortgage as well as a deed of trust, Grantor hereby mortgages the Mortgaged Property to Beneficiary. In the event a foreclosure hereunder shall be commenced by Trustee, or his substitute or successor, Beneficiary or Holder may at any time before the sale of the Mortgaged Property direct Trustee to abandon the sale, and may then institute suit for the collection of the Notes and/or any other secured indebtedness, and for the foreclosure of this Deed of Trust.

It is agreed that if Holder should institute a suit for the collection of the Notes or any other secured indebtedness and for the foreclosure of this Deed of Trust, Holder may at any time before the entry of a final judgment in said suit dismiss the same, and require Trustee, his substitute or successor to sell the Mortgaged Property in accordance with the provisions of this Deed of Trust.

Section 0.1 Proceeds of Foreclosure. The proceeds of any sale held by Trustee or Holder or any receiver or public officer in foreclosure of the liens and security interests evidenced hereby shall be applied: FIRST, to the payment of all necessary costs and expenses incident to such foreclosure sale, including but not limited to all reasonable attorneys' fees and legal expenses, all court costs and charges of every character, and a

reasonable fee (not exceeding five percent (5%) of the gross proceeds of such sale) to Trustee acting under the provisions of paragraph b. of Section 4.1 hereof if foreclosed by power of sale as provided in said paragraph, and thereafter to the payment of the other secured indebtedness in the order set forth in clauses "second" *et seq.* in Section 7(g) of the Security Agreement.

Section 4.4 Holder as Purchaser. Beneficiary shall have the right to become the purchaser at any sale held by Trustee or substitute or successor or by any receiver or public officer or at any public sale, and Beneficiary shall have the right to credit upon the amount of Beneficiary's successful bid, to the extent necessary to satisfy such bid, all or any part of the secured indebtedness in such manner and order as Beneficiary may elect.

Section 0.2 Foreclosure as to Matured Debt. Upon the occurrence of a Default, Administrative Agent shall have the right to proceed with foreclosure (judicial or nonjudicial) of the Liens hereof without declaring the entire secured indebtedness due, and in such event any such foreclosure sale may be made subject to the unmatured part of the secured indebtedness; and any such sale shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part this Deed of Trust shall remain in full force and effect just as though no sale had been made. The proceeds of such sale shall be applied as provided in Section 4.3 hereof except that the amount paid under clause FIRST thereof shall be only the matured portion of the secured indebtedness and any proceeds of such sale in excess of those provided for in clause FIRST (modified as provided above) shall be applied to the prepayment (without penalty) of any other secured indebtedness in such manner and order and to such extent as Administrative Agent deems advisable, and the remainder, if any, shall be applied as provided in the order set forth in clauses "second" *et seq.* in Section 7(g) of the Security Agreement. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the secured indebtedness.

Section 0.3 Remedies Cumulative. All rights and remedies provided for herein and in the Credit Documents are cumulative of each other and of any and all other rights and remedies existing at law or in equity, and Trustee and Beneficiary shall, in addition to the rights and remedies provided herein or in any other Credit Document, be entitled to avail themselves of all such other rights and remedies as may now or hereafter exist at law or in equity for the collection of the secured indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and the resort to any right or remedy provided for hereunder or under any such other Credit Document or provided for by law or in equity shall not prevent the concurrent or subsequent employment of any other appropriate right or rights or remedy or remedies.

Section 0.4 Holder's Discretion as to Security. Beneficiary may resort to any security given by this Deed of Trust or to any other security, now existing or hereafter, to secure the payment of the secured indebtedness, in whole or in part, and in such portions and in such order as may seem best to Beneficiary in its sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Deed of Trust.

Section 0.5 Grantor's Waiver of Certain Rights. To the full extent Grantor may do so, Grantor agrees that Grantor, for itself, and its successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the extent permitted by applicable Governmental Rule, hereby waives and releases all rights of notice of intention to mature or declare due the whole of the secured indebtedness, notice of election to mature or declare due the whole of the secured indebtedness and all rights to a marshaling of assets of Grantor, including the Mortgaged Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and/or security interests hereby created. Grantor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the



administration of estates of decedents, or other matters whatever to defeat, reduce or affect the right of Beneficiary under the terms of this Deed of Trust to a sale of the Mortgaged Property for the collection of the secured indebtedness without any prior or different resort for collection, or the right of Holder under the terms of this Deed of Trust to the payment of the secured indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other claimant whatever. To the full extent Grantors may do so, Grantors waive any right or remedy which Grantors may have or be able to assert pursuant to any provision of Nevada law pertaining to the rights and remedies of sureties. If any Governmental Rule referred to in this Section and now in force, of which Grantor or any Grantor's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Mortgaged Property might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such Governmental Rule shall not thereafter be deemed to preclude the application of this Section.

Section 0.6 Delivery of Possession After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, Grantor or its successors or assigns are occupying or using the Mortgaged Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser; and to the extent permitted by applicable Governmental Rule, the purchaser at such sale shall, notwithstanding any language herein apparently to the contrary, have the sole option to demand immediate possession following the sale or to permit the occupants to remain as tenants at will. In the event the tenant fails to surrender possession of said property upon demand, the purchaser shall be entitled to institute and maintain a summary action for possession of the property (such as an action for forcible detainer) in any court having jurisdiction.

Section 4.10 Discontinuance of Remedies. In case Beneficiary shall have proceeded to invoke any right, remedy, or recourse permitted under this Deed of Trust or any of the Credit Documents and shall thereafter elect to discontinue or abandon the same for any reason, Beneficiary shall have the unqualified right so to do and, in such event, Beneficiary and (as the case may be) Borrowers and/or Grantor shall be restored to their former positions with respect to the secured indebtedness, the Credit Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary shall continue as if same had never been invoked.

Section 4.11 Releases at Beneficiary's Option. Beneficiary may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing all Liens evidenced by this Deed of Trust or any of the Credit Documents or affecting the obligations of Grantor or any of the other Borrowers or any other party to pay the secured indebtedness.

Section 4.12 Statute of Limitations. To the extent permitted by applicable Governmental Rule, Beneficiary's and Holder's rights hereunder shall continue even to the extent that a suit for collection of the indebtedness secured hereby or any part thereof, is barred by a statute of limitations. Grantor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the secured indebtedness.

Section 4.13 Waiver of Automatic or Supplemental Stay. In the event of the filing of any voluntary or involuntary petition under the U.S. Bankruptcy Code (the "Bankruptcy Code") by or against Grantor or any of the other Borrowers (other than an involuntary petition filed by or joined in by Holder), to the extent such a waiver may be enforceable, the bankrupt Borrower or Grantor shall not assert, or request any other party to assert, that the automatic stay under Section 362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Holder to enforce any rights it has by virtue of this Deed of Trust, or any other rights that Holder has, whether now or hereafter acquired, against any guarantor of the indebtedness secured hereby. Further, to the extent such a waiver or covenant may now or hereafter be enforceable at law, no such Borrower or Grantor shall seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant



to Section 105 of the Bankruptcy Code or any other provision therein to stay, interdict, condition, reduce or inhibit the ability of Holder to enforce any rights it has by virtue of this Deed of Trust against any guarantor of the secured indebtedness. The waivers contained in this paragraph are a material inducement to Holder's willingness to extend credit to Grantor under the Credit Documents and Grantor acknowledges and agrees that no grounds now exist for equitable relief which would bar, delay or impede the exercise by Holder of Holder's rights and remedies against Grantor, any of the other Borrowers, or any guarantor of the secured indebtedness.

Section 4.14 Bankruptcy Acknowledgment. In the event that the Mortgaged Property or any portion thereof or any interest therein becomes property of any bankruptcy estate or subject to any state or federal insolvency proceeding, to the extent allowed by law, Grantor shall not contend or allege in any pleading or petition filed in any court proceeding that Secured Party does not have sufficient grounds for relief from the automatic stay.

Section 4.15 Payment of Expenses. Grantor shall pay on demand all of Beneficiary's expenses incurred in any efforts to enforce any terms of this Deed of Trust, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, legal fees and disbursements, foreclosure costs (including Trustee fees and expenses) and title charges, together with interest thereon from and after the date incurred by Beneficiary until actually paid by Grantor at the Default Rate, and the same shall be secured by this Deed of Trust and by all of the other Credit Documents securing all or any part of the indebtedness evidenced by the Notes or other Obligations.

ARTICLE 5
 Assignment of Rents

Grantor hereby assigns and transfers to Beneficiary, all leases and rents of any kind or nature from the Mortgaged Property, including all rents now due and which may hereafter become due under all leases, licenses and tenancy agreements, whether written or oral, existing or hereafter made. This transfer is a present, absolute, specific and irrevocable transfer and assignment, and Grantor hereby confirms Beneficiary's absolute right and authority to collect said leases and rents with or without suit, and to apply them when actually received, less expenses of collection, to the indebtedness secured hereby, in such manner and order as Beneficiary may elect. Provided, however, that for so long as no Event of Default has occurred, Grantor shall have a revocable license to collect and retain the currently accruing leases and rents from the Mortgaged Property, but in no event may any Grantor collect any such rents, revenues, profits or income more than one month in advance except as specifically allowed by the lease agreement or otherwise in the ordinary course of business including the ordinary course of business of prosecuting claims against a tenant in breach or repudiation of a lease agreement. Upon an Event of Default, such license shall automatically terminate and be revoked, and Grantor shall deliver possession, management and control of all rents and of the Mortgaged Property to Beneficiary immediately after Beneficiary's request, and the exclusive right to collect all such leases and rents shall be automatically vested in Beneficiary. Grantor specifically agrees that Beneficiary may upon the occurrence of any Event of Default or at any time thereafter, take possession and control of all or any part of the Mortgaged Property and may receive and collect all leases and rents theretofore accrued and all thereafter accruing therefrom for so long as any of the indebtedness secured hereby remains unpaid or until the foreclosure of the lien of this Deed of Trust, applying so much thereof as may be collected before sale of the Mortgaged Property by the Trustee or judicial foreclosure of this Deed of Trust in accordance with the preceding provisions hereof. Beneficiary or the Trustee may use against any Grantor or any other person such lawful or peaceable means as the person acting may see fit to enforce the collection of any such leases and rents and to secure possession of the Mortgaged Property, or any part of it and may settle or compromise on any terms as the person acting sees fit, the liability of any persons for any such leases and rents. In particular, Beneficiary or the Trustee may institute and prosecute to final conclusion actions of forcible entry and detainer, actions of trespass to try title, actions for damages, or any other appropriate actions, in the name of



Beneficiary, Grantor, or the Trustee; and Grantor binds itself and its successors and assigns to take whatever lawful or peaceable steps or the Trustee may ask it or any such person or concern so claiming to take for such purposes. However, neither Beneficiary nor the Trustee shall be obligated to collect any such rents or income or be liable or chargeable for failure to do so. Grantor may modify, cancel or terminate any such lease, without consent of the Beneficiary, so long as such modification, cancellation or termination is commercially reasonable. Beneficiary does not assume and shall not be liable in respect of any obligation of the landlord or lessor under any of said leases.

ARTICLE 6
Leasehold Interests

Section 6.1 Lease Agreements. As used in this Article 6, the term "Lease Agreements" shall mean each and every lease, lease agreement or other instrument (regardless of how denominated) now or hereafter creating a leasehold interest in favor of Grantor in or to any of the Lands and/or any other part of the Mortgaged Properties, including, without limitation, those leases, lease agreements or other instruments identified and described on Exhibit C, as any of the same may be renewed, extended, amended or otherwise modified from time to time.

Section 6.2 Terms Applicable to Leasehold Interests. To the extent that the estate and interest of any Grantor in any part of the Land and/or any other part of the Mortgaged Property described on Exhibit A hereto is a leasehold interest, the following terms and provisions shall apply, in addition to the other terms and provisions hereof.

a. Grantor will pay all rents and other amounts payable under the provisions of the Lease Agreements and otherwise reasonably observe and perform all of the other material terms and provisions of the Lease Agreements; provided that Grantor may, without committing an Event of Default, be in breach of a Lease Agreement if the breach does not materially impair the value of Beneficiary's Collateral or the ability of any Borrower to pay or perform its obligations under the Credit Documents, and if a termination of any such Lease Agreement would constitute a disposal of an asset that is otherwise permissible under the Credit Agreement. Grantor will not do, or permit anything to be done, or refrain from doing, anything in respect of any Lease Agreement which would or might impair the security of this Deed of Trust, including anything that results in the involuntary termination of a Lease Agreement. Notwithstanding the foregoing, but only to the extent authorized by the Credit Agreement, Grantor may voluntarily terminate a Lease Agreement. Any such voluntary termination by a Grantor of a Lease Agreement shall be treated as an asset disposition under the Credit Agreement and regulated by the applicable provisions of the Credit Agreement, including without limitation, Sections 5.02(c), 2.06(c) and 2.14(c) of the Credit Agreement. Grantor shall comply with the Credit Agreement with regard to requesting and/or obtaining estoppel certificates from any landlord.

b. Grantor agreed that in the event Grantor acquires the fee estate in and to the property covered by any Lease Agreement, or any part thereof, to the fullest extent allowed by law, the fee estate and the leasehold estate created by and existing under such Lease Agreement will not merge, and that Lease Agreement shall remain in full force and effect as a separate and distinct estate in the real property described on Exhibit A, and in such event the fee estate acquired by such Grantor shall automatically (and without need for notice to, or execution of any further instruments by, such Grantor or any other person or entity) be subject to all of the terms and provisions of this Deed of Trust.

c. Grantor agrees that in the event Beneficiary elects to make any payments or do any act or thing required to be paid or done by any Grantor as tenant under any Lease Agreement, Beneficiary and Holder shall, in addition to all other remedies given them herein, be fully subrogated to any and all rights of such Grantor

as tenant under such Lease Agreement arising from or relating to such payment or performance under such Lease Agreement.

d. Grantor shall not surrender any leasehold estate created by a Lease Agreement or terminate or cancel a Lease Agreement unless such action is commercially reasonable and complies with all provisions of the Credit Agreement

e. The Lien of this Deed of Trust shall, to the extent allowed by applicable law, attach to all of Grantor's rights and remedies arising hereafter under or pursuant to Subsection 365(h) of the Bankruptcy Code, including all of Grantor's rights to remain in possession of any of the Mortgaged Property. Grantor shall not, without first obtaining Beneficiary's prior written consent, elect to treat any Lease Agreement as terminated under Subsection 365(h)(1) of the Bankruptcy Code. Any such election made without first obtaining Beneficiary's prior written consent shall, to the extent allowed by applicable law, be void or voidable. To the extent allowed by applicable law, Grantor hereby unconditionally assigns, transfers and sets over to Beneficiary for its benefit and for the benefit of Holder, all of Grantor's claims and rights to the payment of damages arising from any rejection by any landlord of any Lease Agreement under the Bankruptcy Code. Except to the extent limited by applicable law, Administrative Agent shall have the right to proceed in its own name, any Holder's name, or in the name of Grantor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease Agreement, including the right to file and prosecute, with or without the joinder of Grantor, any proofs of claim, complaints, motions, applications, notices and other documents in any case with respect to the landlord under any Lease Agreement under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until this Deed of Trust shall have terminated. Any amounts received by Beneficiary as damages arising out of the rejection of any Lease Agreement as aforesaid shall be applied first to all costs and expenses of Beneficiary (including attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this Section and then applied in accordance with the provisions of this Deed of Trust and the Credit Agreement in the manner and order specified for condemnation proceeds.

f. If any action, suit, proceeding, motion or notice shall be commenced or filed with respect to the landlord under any Lease Agreement in connection with any case under the Bankruptcy Code, Grantor shall--to the extent not prevented from doing so by the provisions of applicable law--participate in any such litigation to an extent and in a manner acceptable to Beneficiary. Grantor shall promptly after obtaining knowledge thereof notify Beneficiary of any filing by or against the landlord under any Lease Agreement of a petition under the Bankruptcy Code and of any and all notices, summonses, pleadings, applications and other documents received by Grantor in connection with any such petition and in connection with any proceedings relating thereto.

g. If there shall be filed by or against Grantor a petition under the Bankruptcy Code, and Grantor, as tenant under a Lease Agreement, shall determine to reject the Lease Agreement pursuant to Section 365(a) of the Bankruptcy Code, Grantor shall--unless prohibited from doing so by the provisions of applicable law--give Beneficiary prior written notice of the date on which Grantor shall apply to the Bankruptcy Court for authority to reject the Lease Agreement. To the extent allowed under applicable law, such date of application by Grantor shall not be less than ten (10) days from the date such written notice is received by Beneficiary, and Beneficiary shall have the right, but not the obligation, to serve upon any such Grantor, prior to the date Grantor has indicated as the date on which it will apply to the Bankruptcy Court for authority to reject a Lease Agreement, a written notice stating: (a) that Beneficiary demands that Grantor assume and assign such Lease Agreement to Beneficiary pursuant to Section 365 of the Bankruptcy Code; and (b) that Beneficiary covenants to cure or provide adequate assurance of prompt cure of all defaults and provide adequate assurance of future performance under such Lease Agreement. If Beneficiary serves upon any Grantor the written notice described in the preceding sentence,



Grantor agrees that to the extent consistent with applicable law it shall not seek to reject any Lease Agreement and shall comply with the demand provided for in clause (a) of the preceding sentence within thirty (30) days after such written notice shall have been given subject to the performance by Beneficiary of the covenant provided for in clause (b) of the preceding sentence. Effective upon the entry of any order for relief with respect to Grantor under Chapter 7 of the Bankruptcy Code and unless prohibited from doing so by applicable law, Grantor hereby assigns and transfers to Beneficiary for its benefit and for the benefit of Holder, a non-exclusive right to apply to the Bankruptcy Court under Subsection 365(d)(1) of the Bankruptcy Code for an order extending the period during which any Lease Agreement under which Grantor is a tenant may be rejected or assumed.

h. The term "Mortgaged Property" as used herein shall include Grantor's estates, rights, titles and interests in and to the property covered by the leasehold estate created under and pursuant to any Lease Agreement.

i. All Lease Agreements are in full force and effect and there is no agreement amending, modifying or rearranging any Lease Agreement or diminishing or impairing the liability of the landlord or landlord thereunder to perform fully its obligations in strict accordance with such Lease Agreement or diminishing or impairing the obligation of any endorser, guarantor or surety for or of any such Lease Agreement to perform fully its obligations in strict accordance with the writings creating or evidencing the obligation of such endorser, guarantor or surety. Each Lease Agreement is the valid and legally binding obligations of the parties thereto, enforceable in accordance with its terms. A true, correct and complete copy of each Lease Agreement has heretofore been delivered to Beneficiary.

ARTICLE 7
Miscellaneous

Section 7.1 Scope of Deed of Trust. This Deed of Trust is a deed of trust and mortgage of both real and personal property, a security agreement, a financing statement and a collateral assignment, and also covers proceeds and fixtures.

Section 7.2 Effective as a Financing Statement. This Deed of Trust shall be effective from the date of its recording as a financing statement filed as a fixture filing with respect to all fixtures and Accessories included within the Mortgaged Property and is to be filed for record in the real estate records of each county where any part of the Mortgaged Property (including said fixtures and Accessories) is situated. This Deed of Trust shall also be effective as a financing statement covering all assets including as-extracted collateral (as defined in the Uniform Commercial Code in effect in Nevada) which will be financed at the wellhead or minehead of the wells or mines located on the Mortgaged Property and is to be filed for record in the real estate records of each county where any part of the Mortgaged Property is situated. This Deed of Trust shall also be effective as a financing statement covering any other Mortgaged Property and may be filed in any other appropriate filing or recording office. The mailing address of Grantor is the address of Grantor set forth in the introductory paragraph of this Deed of Trust and the address of Beneficiary from which information concerning the security interests hereunder may be obtained is the address of Beneficiary set forth in the introductory paragraph of this Deed of Trust.

Section 7.3 Notice to Account Debtors. In addition to the rights granted elsewhere in this Deed of Trust, Beneficiary may at any time notify the account debtors or obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Beneficiary directly. Grantor shall upon the request of Beneficiary provide to Beneficiary a current list of all such account debtors and obligors and their addresses in accordance with the provisions of the Credit Agreement or the other Credit Documents.

Section 7.4 Waiver by Holder. Beneficiary may at any time and from time to time by a specific writing intended for the purpose: (a) waive compliance by Grantor with any covenant herein made by Grantor to the extent and in the manner specified in such writing; (b) consent to Grantor's doing any act which hereunder Grantor is prohibited from doing, or to Grantor's failing to do any act which hereunder Grantor is required to do, to the extent and in the manner qualified in such writing; (c) release any part of the Mortgaged Property or any interest therein from the lien and security interest of this Deed of Trust, without the joinder of Trustee; or (d) release any party liable, either directly or indirectly, for the secured indebtedness or for any covenant herein or in any other Credit Document, without impairing or releasing the liability of any other party. No such act shall in any way affect the rights or powers of Beneficiary, Holder or Trustee hereunder except to the extent specifically agreed to by Beneficiary or Holder in such writing.

Section 7.5 No Impairment of Security. The Liens hereunder or under any other Credit Document shall not be impaired by any indulgence, moratorium or release granted by Beneficiary including, but not limited to, any renewal, extension or modification which Beneficiary may grant with respect to any secured indebtedness, or any surrender, compromise, release, renewal, extension, exchange or substitution which Beneficiary may grant in respect of the Mortgaged Property, or any part thereof or any interest therein, or any release or indulgence granted to any endorser, guarantor or surety of any secured indebtedness. The taking of additional security by Beneficiary shall not release or impair the lien, security interest or other security rights of Beneficiary hereunder or affect the liability of any Borrower, of Grantor or of any endorser, guarantor or surety, or improve the right of any junior lienholder in the Mortgaged Property (without implying hereby Beneficiary's consent to any junior lien).

Section 7.6 Acts Not Constituting Waiver by Holder. Beneficiary may waive any Event of Default without waiving any other prior or subsequent default. Beneficiary may remedy any Event of Default without waiving any other prior or subsequent default. Beneficiary may remedy any Event of Default without waiving the default remedied. Neither failure by Beneficiary or Holder to exercise, nor delay by Beneficiary or Holder in exercising, nor discontinuance of the exercise of any, right, power or remedy (including but not limited to the right to accelerate the maturity of the secured indebtedness or any part thereof) upon or after any Event of Default shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Beneficiary or Holder of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Grantor or any Borrower therefrom shall in any event be effective unless the same shall be in writing and signed by Beneficiary and then such waiver or consent shall be effective only in the specific instance, for the purpose for which given and to the extent therein specified. No notice to nor demand on Grantor or any other Borrower in any case shall of itself entitle Grantor or any such other Borrower to any other or further notice or demand in similar or other circumstances. Remittances in payment of any part of the secured indebtedness other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Beneficiary or Holder in immediately available U.S. funds and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Beneficiary or Holder of any payment in an amount less than the amount then due on any secured indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of an Event of Default hereunder.

Section 7.7 Grantor's Successors. If the ownership of the Mortgaged Property or any part thereof becomes vested in a person other than Grantor, Beneficiary or Holder may, without notice to Grantor, deal with such successor or successors in interest with reference to this Deed of Trust and to the indebtedness secured hereby in the same manner as with other Grantors, without in any way vitiating or discharging any Grantor's



liability hereunder or Borrowers' or any other obligor's liability for the payment of the indebtedness or performance of the obligations secured hereby. No transfer of the Mortgaged Property, no forbearance on the part of Beneficiary or Holder, and no extension of the time for the payment of the indebtedness secured hereby given by Beneficiary or Holder shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of any Grantor hereunder or any Borrower's or any other obligor's liability for the payment of the indebtedness or performance of the obligations secured hereby. Grantor agrees that it shall be bound by any modification of this Deed of Trust or any of the other Credit Documents made by Beneficiary or Holder and any subsequent owner of the Mortgaged Property, with or without notice to Grantor, and no such modifications shall impair the obligations of Grantor under this Deed of Trust or any other Credit Document. Nothing in this Section or elsewhere in this Deed of Trust shall be construed to imply Beneficiary's or Holder's consent to any transfer of the Mortgaged Property.

Section 7.8 Place of Payment. All secured indebtedness which may be owing hereunder at any time shall be payable at the place designated in the Credit Agreement.

Section 7.9 Subrogation to Existing Liens; Vendor's Lien. To the extent that proceeds of the Notes are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Mortgaged Property, such proceeds have been advanced by Holder at Borrowers' request, and Administrative Agent, on behalf of Holder shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, however remote, irrespective of whether said liens, security interests, charges or encumbrances are released, and all of the same are recognized as valid and subsisting and are renewed and continued and merged herein to secure the secured indebtedness, but the terms and provisions of this Deed of Trust shall govern and control the manner and terms of enforcement of the liens, security interests, charges and encumbrances to which Administrative Agent, on behalf of Holder is subrogated hereunder. It is expressly understood that, in consideration of the payment of such indebtedness by Holder or Beneficiary, Grantor hereby waives and releases all demands and causes of action for offsets and payments in connection with the said indebtedness. If all or any portion of the proceeds of the loans evidenced by the Notes or of any other secured indebtedness has been advanced for the purpose of paying the purchase price for all or a part of the Mortgaged Property, no vendor's lien is waived; and Beneficiary is hereby granted, a vendor's lien on the Mortgaged Property as cumulative additional security for the secured indebtedness. Beneficiary may foreclose under this Deed of Trust or under the vendor's lien without waiving the other or may foreclose under both.

Section 7.10 Application of Payments to Certain Indebtedness. If any part of the secured indebtedness cannot be lawfully secured by this Deed of Trust or if any part of the Mortgaged Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is not secured by this Deed of Trust.

Section 7.11 Substitute Trustee. The Trustee may resign by an instrument in writing addressed to Beneficiary, or Trustee may be removed at any time with or without cause by an instrument in writing executed by Beneficiary. In case of the death, resignation, removal, or disqualification of Trustee, or if for any reason Beneficiary shall deem it desirable to appoint a substitute or successor trustee to act instead of the herein named trustee or any substitute or successor trustee, then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor trustee, or a substitute trustee, without other formality than appointment and designation in writing executed by Beneficiary, and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the indebtedness secured hereby has been paid in full, or until the Mortgaged Property is fully and finally sold hereunder. If Beneficiary is a corporation or association or trust and such appointment is executed in its behalf by an officer or trustee of such corporation or association or

trust, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation or association or trust. Upon the making of any such appointment and designation, all of the estate and title of Trustee in the Mortgaged Property shall vest in the named successor or substitute Trustee, and it shall thereupon succeed to and shall hold, possess and execute, all of the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to "Trustee" shall be deemed to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder.

Section 7.12 No Liability of Trustee. TRUSTEE SHALL NOT BE LIABLE FOR ANY ERROR OF JUDGMENT OR ACT DONE BY TRUSTEE IN GOOD FAITH, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCES WHATSOEVER (INCLUDING TRUSTEE'S NEGLIGENCE), EXCEPT FOR TRUSTEE'S GROSS NEGLIGENCE OR MISCONDUCT. The Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by Governmental Rule), and Trustee shall be under no liability for interest on any moneys received by him hereunder. Grantor hereby ratifies and confirms any and all acts which the herein named Trustee or his successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof. Grantor will reimburse Trustee for, and save him or her harmless against, any and all liability and expenses which may be incurred by him in the performance of his or her duties. The foregoing indemnity shall not terminate upon discharge of the secured indebtedness or foreclosure, or release or other termination, of this Deed of Trust.

Section 7.13 Release of Mortgage. If all of the secured indebtedness be paid as the same becomes due and payable and all of the covenants, warranties, undertakings and agreements made in this Deed of Trust are kept and performed, and all obligations, if any, of Holder for further advances have been terminated, then, and in that event only, all rights under this Deed of Trust shall terminate (except to the extent expressly provided herein with respect to indemnifications, representations and warranties and other rights which are to continue following the release hereof) and the Mortgaged Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, and such liens and security interests shall be released by Holder in due form at Grantors' cost. Without limitation, all provisions herein for indemnity of Beneficiary, Holder and/or Trustee – insofar as they pertain to any occurrence on or before the Release Date or to any condition that exists on or prior to the Release Date – shall survive discharge of the secured indebtedness and any foreclosure, release or termination of this Deed of Trust.

Section 7.14 Notices. All notices, requests, demands, statements, authorizations, approvals or consents made hereunder shall be in writing and shall be sent in the manner specified in the Credit Agreement. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Credit Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

Section 7.15 Invalidity of Certain Provisions. A determination that any provision of this Deed of Trust is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Deed of Trust to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.



Section 7.16 Gender; Titles; Construction. Within this Deed of Trust, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Deed of Trust and not to any particular Article, Section, paragraph or provision. The term "person" and words importing persons as used in this Deed of Trust shall include firms, associations, limited liability companies, partnerships (including limited partnerships), joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

Section 7.17 Reporting Compliance. Grantor agrees to comply with any and all reporting requirements applicable to the transaction evidenced by the Credit Documents and secured by this Deed of Trust which are set forth in any Governmental Rule, and further agree upon request of Beneficiary to furnish Holder with evidence of such compliance.

Section 7.18 Holder's Consent. Except where otherwise expressly provided herein or in the Credit Agreement, in any instance hereunder where the approval, consent or the exercise of judgment of Beneficiary or Holder is required or requested, (i) the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Beneficiary or Holder, and Beneficiary or Holder shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner, regardless of the reasonableness of either the request or Beneficiary or Holder's judgment, and (ii) no approval or consent of Beneficiary or Holder shall be deemed to have been given except by a specific writing intended for such purpose and executed by an authorized representative of Beneficiary or Holder.

Section 7.19 Grantor. Unless the context clearly indicates otherwise, as used in this Deed of Trust, "Grantor" mean the grantor named in Section 1.1 hereof. If Grantor, or any signatory who signs on behalf of any Grantor, is a corporation, partnership, limited liability company or other legal entity, Grantor and any such signatory, and the person or persons signing for it, represent and warrant to Beneficiary and Holder that this instrument is executed, acknowledged and delivered by Grantor's duly authorized representatives. If Grantor is an individual, no power of attorney granted by Grantor herein shall terminate on Grantor's disability.

Section 7.20 Execution; Recording. This Deed of Trust may be executed in several counterparts, all of which are identical, and all of which counterparts together shall constitute one and the same instrument. The date or dates reflected in the acknowledgments hereto indicate the date or dates of actual execution of this Deed of Trust but such execution is as of the date shown on the first page hereof, and for purposes of identification and reference the date of this Deed of Trust shall be deemed to be the date reflected on the first page hereof. Grantor will cause this Deed of Trust and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating thereto to be recorded, filed, re-recorded and refiled in such manner and in such places as Beneficiary, Trustee or Holder shall reasonably request and will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

Section 7.21 Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Grantor, and the successors and assigns of Grantor, and shall inure to the benefit of Trustee and Holder and shall constitute covenants running with the Land. All references in this Deed of Trust to Grantor shall be deemed to include all such successors and assigns of Grantor.

Section 7.22 Modification or Termination. The Credit Documents may only be modified or terminated by a written instrument or instruments intended for that purpose and executed by the party against



which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

Section 7.23 No Partnership, Etc. The relationship between Beneficiary and Holder, on the one hand, and Grantor, on the other hand, is solely that of lender and borrower. Neither Beneficiary nor Holder has no fiduciary or other special relationship with Grantor or Borrowers. Nothing contained in the Credit Documents is intended to craft any partnership, joint venture, association or special relationship between Grantor or any Borrower and Holder or in any way make Holder a co-principal with Grantor and/or any Borrower with reference to the Mortgaged Property. All agreed contractual duties between or among Beneficiary, Holder, Borrowers, Grantor and Trustee are set forth herein and in the other Credit Documents and any additional implied covenants or duties are hereby disclaimed. Any inferences to the contrary of any of the foregoing are hereby expressly negated.

Section 7.24 Governing Law; Consent to Jurisdiction.

a. WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THE LIENS CREATED PURSUANT TO THIS DEED OF TRUST, THIS DEED OF TRUST SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE WHERE THE MORTGAGED PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAWS OF SUCH STATE, THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN ALL MATTERS RELATING TO THIS DEED OF TRUST AND ALL OF THE INDEBTEDNESS AND OBLIGATIONS DESCRIBED HEREIN.

b. GRANTOR AND HOLDER HEREBY CONSENT, UNCONDITIONALLY AND IRREVOCABLY TO THE NONEXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS IN THE STATE OF NEW YORK WITH RESPECT TO ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING UNDER THE CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY OTHER THAN PURSUIT OF A JUDGMENT ON THE NOTES (OR ANY OF THEM) WHERE SUIT IS ALSO BROUGHT IN THE STATE WHERE THE MORTGAGED PROPERTY IS LOCATED TO TAKE JURISDICTION OF THE MORTGAGED PROPERTY. GRANTOR FURTHER CONSENTS, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE WHERE THE MORTGAGED PROPERTY IS LOCATED IN RESPECT OF ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING WITH RESPECT TO THE MORTGAGED PROPERTY INCLUDING BUT NOT LIMITED TO FORECLOSURES. GRANTOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS, UNCONDITIONALLY AND IRREVOCABLY, AT THE ADDRESSES OF GRANTOR AS SET FORTH HEREIN IN CONNECTION WITH ANY OF THE AFORESAID PROCEEDINGS IN ACCORDANCE WITH THE RULES APPLICABLE TO SUCH PROCEEDINGS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, GRANTOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH ANY OF THEM MAY NOW HAVE OR MAY HAVE IN THE FUTURE TO THE LAYING OF VENUE IN RESPECT OF ANY OF THE AFORESAID PROCEEDINGS BROUGHT IN THE COURTS REFERRED TO ABOVE AND EACH AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF HOLDER TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR TO COMMENCE PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY GRANTOR IN ANY JURISDICTION. To the extent that Grantor has or may hereafter acquire any immunity from the jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to Grantor or Grantor's property,

Grantor hereby irrevocably waives such immunity in respect of its obligations under this Deed of Trust to the fullest extent permitted by law.

Section 7.25 WAIVER OF TRIAL BY JURY. TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTOR BY EXECUTION AND DELIVERY HEREOF AND BENEFICIARY BY ACCEPTANCE HEREOF, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT OF ANY LITIGATION BASED HEREIN, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS DEED OF TRUST AND ANY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY IN CONNECTION HEREWITH OR THEREWITH.

Section 7.26 Waiver of Counterclaims. Grantor absolutely, unconditionally and irrevocably waives any and all right to assert any defense, setoff, counterclaim or crossclaim of any nature with respect to this Deed of Trust or the obligations of Grantor under this Deed of Trust in any action or proceeding brought by Beneficiary to collect the secured indebtedness or any portion thereof, or to enforce the obligations of Grantor under this Deed of Trust.

Section 7.27 Entire Agreement. The Credit Documents and the Environmental Indemnity Agreement constitute the entire understanding and agreement among Grantor, Beneficiary and Holder with respect to the transactions arising in connection with the indebtedness secured hereby and supersede all prior written or oral understandings and agreements among Grantor, Beneficiary and Holder with respect to the matters addressed in the Credit Documents. Grantor hereby acknowledges that, except as incorporated in writing in the Credit Documents, there are not, and were not, and no persons are or were authorized by Beneficiary to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Credit Documents. This Deed of Trust and the Credit Agreement are both documents included within the term "Credit Documents," and both documents are intended to be interpreted harmoniously. In the event of any conflict between the terms of this Deed of Trust and those of the Credit Agreement, the terms of the Credit Agreement shall control, and the terms of the Credit Agreement are intended to be incorporated herein by reference.

IN WITNESS WHEREOF, this instrument is executed by Grantor as of the date first written on page 1 hereof.

THOMAS PETROLEUM, LLC, a Texas limited liability company

By: C.L. THOMAS, INC., a Texas corporation, Manager

Clifton L. Thomas, Jr.
By: _____
Clifton L. Thomas, Jr.
Secretary and Sole Director

Address of Grantor:
P.O. Box 1876
Victoria, Texas 77902-1876

STATE OF TEXAS §
 §
COUNTY OF VICTORIA §

This instrument was acknowledged on the and day of July, 2010 by Clifton L. Thomas, Jr., Secretary and Sole Director of C.L. Thomas, Inc., a Texas corporation, on behalf of said corporation.



Susan Hillyer

Notary Public in and for
the State of Texas
Printed Name: _____
My Commission expires: _____

List of Exhibits attached:

- | | |
|-----------|---------------------------|
| Exhibit A | Legal Description of Land |
| Exhibit B | Permitted Encumbrances |
| Exhibit C | Lease Agreements (if any) |

**EXHIBIT A** NV-0-23**Legal description of Property**

The land referred to herein is situated in the State of Nevada, County of Lincoln, described as follows:

That portion of the Northeast Quarter of the Northwest Quarter of Section 8, Township 4 South, Range 67 East, M.D.M., described as follows:

Beginning at a point in the westerly right-of-way line of the Union Pacific Railroad Company's branch of the Salt Lake Division leading from Caliente, Lincoln County, Nevada, to Pioche, Lincoln County, Nevada, which bears South 46° 38' West 45.55 feet and South 21° 00' West 64.2 feet from Engineers Station 24 plus 95.8 of track #53 of the above mentioned line; thence along the Westerly boundary line of the lands of Alice Culverwell Dixon South 21° West 115.8 feet, South 60.00 feet to a 2"X2" stake at the Southwest corner of said lands, which stake is on the Easterly line of the Spring Street produced and 35 feet North of the Northwest corner of the most Northerly of a row of lots containing Union Pacific Railroad Company Employees Cottages; turning thence at right angles, parallel to and 35.0 feet distant from the fence marking the Northerly boundary of said mentioned lot, East 147.3 feet to a point from which a 2"X2" stake bears North 0.26 feet; thence continuing on the same course, East 39.2 feet to a point in the above mentioned right of way line, from which point Engineers Station 19 plus 88.9 on Tract No. 51 bears East 97.4 feet; thence along the above mentioned Westerly right of way line, parallel to and 100 feet distant from the center line of Tract Nos. 63 and 53, a distance of 222 feet more or less, to the place of beginning.

Note: The above metes and bounds description appeared previously in that certain document recorded May 7, 1992 in Book 101, Page 167 as Instrument No. 098400 of Official Record, Lincoln County, Nevada.



Exhibit B NV-0-23

Permitted Exceptions

- 1. Standby fees, taxes, and assessments by any taxing authority for the year 2009 and subsequent years, but only to the extent the same are not yet due and payable.**
- 2. The terms, exceptions, reservations and easements contained in a Deed recorded January 30, 1981 in Book 42, Page 245, as Instrument No. 71334 of the Official Public Records.**
- 3. Mineral rights, reservations, easements and exclusions in the patent from the United States of America recorded June 7, 1901, in Book F, Page 14 of Miscellaneous Records.**

